

Pakistan Information Commission

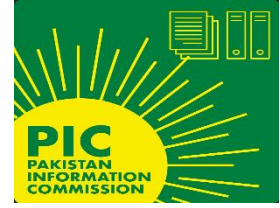
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In Pakistan Information Commission

Appeal No 225/12/19

Shazia Mehboob

(Appellant)

Vs.

National Database Registration Authority, Islamabad

(Respondent)

Order

Date: August 5, 2020

Zahid Abdullah: Information Commissioner

A. The Appeal

1. The Appellant filed an appeal, dated 12/12/2019, to the Commission, stating that she Submitted an information request to the Chairman, National Database Registration Authority, (NADRA) dated 08/10/2019 under the Right of Access to Information Act 2017.

2. The information sought by the Appellant is as follows:

" What is the total number of transgender persons in Pakistan? Also, give province wise list (Punjab, KP, Sindh, Balochistan). "

B. Proceedings

3. Through a notice dated 01/01/2020 sent to Faik Ali Chachar, Deputy Director, (Media, designated Public Information Officer, the Commission called upon the Respondent to submit reasons for not providing the requested information.

4. The hearing date was fixed for 12/03/2020 through the hearing notice sent to designated Public Information Officer on 25/02/2020 and both parties were informed accordingly.

C. Discussion and Commission's View on Relevant Issues

5. The questions for the consideration of the commission are as under:

(a) Should a citizen have access to requested information in accordance with the provisions of the Right of Access to Information Act 2017, hereafter referred as Act?

(b) Did the Respondent follow procedure laid down in the Act in responding to the request of the citizen? and

(c) Is there a case of wilful denial of the requested information on the part of the Public Information Officer, (PIO) and if so, what fine should be imposed on the PIO?

6. The requested information belongs to the category of information which public bodies are legally bound to proactively disclose under Section 5 (a) of the Right of Access to Information Act 2017.

7. In response to letters written by this commission to federal public bodies to designate Public Information Officers, (PIOs) by post, NADRA designated the post of Deputy Director, (Media) as PIO under Section 9 of the Act through letter dated 25/08/19 vide letter No. NADRA/CS/47 to fulfil its obligations under the Act.

8. The request for information sent by the Appellant to Chairman, NADRA and subsequent notices to the designated PIO should have been responded by the designated PIO in accordance with the provisions of the Act. In this regard, Section 10 (1) of the Act holds that a PIO “shall be responsible for ensuring that requests are dealt with promoting full compliance by the public body of its obligation under this Act”.

9. The PIO violated the procedure laid down in the Act for handling information requests and neither acknowledged the receipt of the information request as required under Section 13 (1) nor communicated with the Appellant with regard to the acceptance or refusal of the information request on the basis of grounds described in Section 13 (2) of the Act.

10. The PIO also violated Section 14 (1) and (2) of the Act in following the timeline for responding to the information requests as the PIO did not respond to the information request at all.

11. The PIO wilfully delayed and denied access to the requested information, as apart from not responding to the request for information of the Appellant, the PIO also failed to comply with the duly sent notices of the commission.

12. This commission has received a total of 5 appeals against NADRA, out of which 3 are in process whereas the commission issued orders on 2 appeals where the Respondent disregarded requests filed by citizens as well as notices of the commission. Only in one case did NADRA shared requested information with the Appellant on the intervention of this commission and Mr. Mujahid Khan, Deputy Director (Legal) represented the Respondent in the hearing.

The emerging trends suggests that NADRA is treating requested information like a jealously guarded secret which in fact should be on its web site in the best interest of the public. The Appellant has not sought information which may be deemed as private information about the transgender people. In other words, it is not information about identifiable individuals. This information is of generic nature.

NADRA collects data about citizens, on the behalf of citizens and for the citizens. It is custodian of this data and not its owner.

13. This commission is of the view that the wellful delay or denial of the requested information causes undue cost to citizens and the commission. Citizens have to approach this commission for the exercise of their fundamental constitutional right of access to information which involves cost both in terms of money and time.

14. Citizens of Pakistan through their elected representatives have included the provision of imposing fine on public official who wilfully delay or deny access to the requested information so that they do not have to pay the undue cost in terms of time and money in exercising their right of access to information because of the dereliction of the duty of a public official.

15. It should be noted that information of similar nature was requested by another appellant from the Federal Board of Revenue. This Commission held its order in the case of Mukhtar Ahmed Ali VS Federal Board of Revenue Appeal, No. 052-06/19, which was challenged by FBR but upheld by the Honourable Islamabad High Court, that the requested information pertained to proactive disclosure of Information under section 5 of the Right of Access to Information Act 2017. In the Constitutional Petition W.P. No. 3080/2019 Federal Board of Revenue through its Member FATE versus Chief information Commissioner the Honourable IHC stated that “.... The Information sought by the private respondent definitely falls within the ambit of clause (a) of sub section (1) of section 5 of the Act 2017.”

16. Similarly, instead of following the Order of the commission in the case of Mukhtar Ahmed Ali VS. Secretariat, Senate of Pakistan in the Appeal No. 051/06/19, the Chairman Senate wrote to the commission that “work of Parliament is not only extremely significant but also highly sensitive.....I hereby declare the record of Senate Secretariat employees, their sanctioned strength and related numbers, their perks and privileges, incumbency/vacancy position and all other related and ancillary matters as classified.”

17. Whether it is FBR, Secretariat, Senate of Pakistan or NADRA the public officials are raising the cost of access to information both in terms of time and money through violation of the provisions of the Right of Access to Information Act 2017. Furthermore, this commission is of the view that the powers vested in officers are not being exercised “reasonably, fairly, justly, and for the advancement of the purposes of the enactment” as required under Section 24A (1) of the General Clauses Act 1897.

18. The commission has no option but to fulfil its legal obligation and offset this trend of raising cost in terms of time and money for citizens, the commission and the superior judiciary.

D. Order

19. The appeal is allowed. The Respondent is directed to provide the requested information to the Appellant, with intimation to this commission at the earliest, but in any case, not later than 10 working days of the receipt of this order.

20. Chairman NADRA is directed to take measures to deduct 05 days salary of the designated Public Information officer, Deputy Director (Media), imposed as a fine under Section 20 (f) of the Right of Access to Information Act 2017 by this commission for wilful denial of requested information and submit compliance report to this commission by 10/09/2020.

21. The Respondent is directed to take immediate steps to proactively share through the web site all categories of information mentioned in Section 5 of the Right of Access to Information Act 2017 and submit the compliance report to the commission by 08/09/2020.

22. Copies of this order be sent to the Chairman, NADRA, Public Information Officer, NADRA and the Appellant for information and necessary action.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on:
August 05, 2020

This order consist of 4 (four) pages, each page has been read and signed