

Pakistan Information Commission

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In The Pakistan Information Commission, Islamabad

Appeal No 389-06/20

Murtaza Hashim

(Appellant)

Vs.

National Accountability Bureau

(Respondent)

Zafar Iqbal Khan – Director / Public Information Officer

Order

Date: September 15, 2020

Zahid Abdullah: Information Commissioner

A. The Appeal

1. The Appellant filed an appeal, dated 21-03-2020, to the Commission, stating that he submitted an information request to the Zafar Iqbal Khan, Director / Public Information Officer at National Accountability Bureau dated 22-02-2020 under the Right of Access to Information Act 2017.
2. The information sought by the Appellant is as follows:
 1. “Service Structure for the post of Accountant (BPS-16) in National Accountability Bureau (NAB).
 2. How much salary is paid to Accountant (BPS-16) in National Accountability Bureau (NAB) along-with all allowance component wise detail.
 3. Total Sanctioned & vacant post of Accountant (BPS-16), Assistant Director (Finance), Deputy Director (Finance), Additional Director (Finance) and Director Finance in National Accountability Bureau (NAB) (in annual Bulletin of employees 2017-2018 finance cadre posts are not mentioned).
 4. How salary of a person is fixed if MEPCO/LESCO/WAPDA employee selected through Federal Public Service Commission proper channel for the post of

Accountant (BPS-16) in National Accountability Bureau (NAB), employee have 4-year graduation degree and 4-year service in audit department?

5. Is there any proposal under consideration or in near future for up-gradation of Accountant (BPS-16) to Assistant Director (BPS-17) like Deputy Assistant Director (BPS-16) post up-graded to Assistant Director (BPS-17) in 2018-2019?"

B. Proceedings

3. Through a notice dated 17-06-2020 sent to the Zafar Iqbal Khan, Director / Public Information Officer NAB, the Commission called upon the Respondent to submit reasons for not providing the requested information.

4. The Respondent through a letter vide No. 1(001)/DM-1/NAB HQ/2019 dated 06th July 2020 stated that

“the request of the applicant (Mr. Murtaza Hashim) dated 22.02.2020 was processed at NAB's legal forum where threadbare discussion was held in light of the Article 19-A of the Constitution of Islamic Republic of Pakistan and Section 7 (Exclusion of certain record) as well as Section 13 (Procedure for acceptance and refusal of requests) of the Right of Access to Information Act 2017. It has been concluded and opined that the NAB is under no obligation to provide requested information, as section 19 of the National Accountability Ordinance, 1999 read with Section 28(c) stipulates confidentiality of information.

It is not out of place to cite that following information is available at NAB's website (www.nab.gov.pk) for applicant's consumption:

- a) NAB Employees Terms & Conditions (TCS) of Service
 - b) Methods of Appointment & Qualification (MAQ).
 - c) NAB Employees 'Code of Conduct & Ethics'.
 - d) National Accountability Ordinance, 1999.”
5. On August 07, 2020, the Appellant shared his dissatisfaction over the response and stated that “I have received Honourable Commission Letter No. 389-06/2020 dated 23-07-2020 on 03-08-2020, which contains reply of Public Information Officer of National Accountability Bureau (NAB) Public Information Officer, National Accountability Bureau (NAB) vide his letter No.1(001)DM-1 NAB HQ/2019 dated 06-07-2020

refused to provide information by stating that NAB is under no obligation to provide information under section 19 read with 28(c) National Accountability Ordinance 1999. I am not satisfied with reply of NAB. My view point is under:

Requested information are Service Structure, Sanctioned & vacant post pay protection and proposal under consideration for up-gradation of post or not, which are public record as mentioned under section 6 of Right of Access to Information Act 2017, whereas Right to Information is fundamental constitutional right of citizen of Pakistan and Honourable Supreme Court of Pakistan set parameter for Right to Information public report in Judgment The Jurists Foundation through its Chairman versus Federal Government through Secretary Ministry of Defence, declare that Acts of the Parliament or subordinate legislation are public documents and must be readily available to the citizen of the country subject to the exceptions provided under the Right of Access to Information Act, 2017. Those exceptions extend only to record relating to defence forces, defence installations or connected therewith and ancillary to defence and national security.

Section 19 and section 28(c) never prohibit NAB to provide information to public. Requested information's are not related to any inquiry, personal record or sub judice matter. So, it is requested that please directed Public Information Officer of National Accountability Bureau (NAB) to provide requested information to applicant.”

C. Discussion and Commission's View on Relevant Issues

6. 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) Can a public body exempt requested information citing its own law or should the Right of Access to information take precedence in matters of access to information held by public bodies?
7. This commission is of the view that the Act takes precedence over all other laws when deciding access to information. Section 25 of the Act overrides all other laws in matters of access to information which is as under:

“Act to override other laws--- The provisions of this act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force”.

8. There is no other law which lays down procedure for sharing requested information with citizens’ on-demand; spells out categories of information to be proactively shared by public bodies through their web sites and provides guidelines and procedure for exempting information. Hence, the Act is a special law, specifically enacted, as mentioned in its Preamble as well, to provide procedure regarding access to information in matters of public importance to operationalize Article 19-A of the Constitution of the Islamic Republic of Pakistan which is as under:

“Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law”

9. The honourable Supreme Court of Pakistan also cited the Act in Jurists Foundation through its Chairman versus Federal Government through Secretary Ministry of Defence stating “Acts of the Parliament or subordinate legislation are public documents and must be readily available to the citizen of the country subject to the exceptions provided under the Right of Access to Information Act, 2017”.
10. In the light of arguments in para 7, 8 and 9 of this Order, the reliance of the Respondent on section 19 of the National Accountability Ordinance, 1999 read with Section 28(c) for not providing the requested information is legally untenable.
11. The Respondent has also broadly referred sections 7 and 16 of the Act for not providing access to the requested information, leaving it to the commission to determine under which particular clause of these sections the requested information can be exempted from disclosure.
12. This commission is of the view that the requested information does not fall within any of the exemption clauses of the Act.
13. The requested information should not only be made available to the Appellant as a constitutional right of access to information in matters of public importance under Article 19-A of the Constitution of Islamic Republic of Pakistan but also as a statutory

right under different provisions of the Right of Access to Information Act 2017. The Preamble of the Act states:

“Whereas Government believes in transparency and the right to have access to information to ensure that the people of Islamic Republic of Pakistan have improved access to records held by public authorities and promote the purpose of making the government more accountable to its people, of improving participation by the people in public affairs, of reducing corruption and inefficiency in Government, of promoting sound economic growth, of promoting good governance and respect for human rights”.

14. The requested information belongs to the category of information which public bodies are legally bound to proactively disclose, through their web sites, under Section 5 (1), (a), (b), (c), (d), (e) and (i) of the Act.
15. After the enactment of the Right of Access to Information Act 2017, it is not at the discretion of the public bodies to proactively disclose categories of information through web site which they deem fit. Hence, the Respondent is not only bound to guide the Appellant through the relevant links containing items of the requested information already proactively disclosed through its web site, it is also legally bound to proactively share all categories of information mentioned in Section 5 of the Act.
16. While the Respondent has failed to provide any cogent arguments for withholding the requested information, benefits of bringing this information in the public domain are too obvious to be missed. The requested information may reveal whether or not the Respondent National Accountability Bureau is properly staffed to carry out its functions and responsibilities, to give just one example.

D. Order

17. 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.
18. The Respondent is directed to put contact details of the designated Public Information Officer on its web site as required under Section 5 (1) (h) of the Act and submit

compliance report to this commission within 10 working days of the receipt of this Order.

19. 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 19/09/2020.
20. Copies of this order be sent to Public Information Officer, National Accountability Bureau and the Appellant for information and necessary action.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on:
September 16, 2020

This order consists of 6 (Six) pages, each page has been read and signed