

## **Pakistan Information Commission**

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### **In The Pakistan Information Commission, Islamabad**

#### **Appeal No 354-03/20**

**Muhammad Waseem Elahi**

(Appellant)

Vs.

**Employees Old Age Benefit Institute**

Through its Chairman

(Respondent)

### **Order**

**Date:** October 06, 2020

**Zahid Abdullah:** Information Commissioner

#### **A. The Appeal**

1. The Appellant filed an appeal, dated 09-03-2020, to the Commission, stating that he submitted an information request to the Chairman, Employee Old Age Benefit Institute dated 19-02-2020 under the Right of Access to Information Act 2017.
2. The information sought by the Appellant is as follows:
  1. *“Does EOBI deduct contribution from bank employees?”*
  2. *How many banks are registered with EOBI? Names required.*
  3. *Since when the EOBI is deducting contribution from banks?*
  4. *How many bank employees are registered with EOBI to date?*
  5. *Either EOBI is paying old age pension to bankers?*
  6. *How many bankers are receiving old age pension at present?”*

#### **B. Proceedings**

3. Through a notice dated March 13, 2020 sent to the Chairman, Employees Old Age Benefit Institute the Commission called upon the Respondent to submit reasons for not providing the requested information.
4. The Respondent through a notice dated July 09, 2020 was directed that the above-mentioned appeal is pending decision before this Commission. The text of the notice is as under:

“In pursuance of the Standard Operating Procedures issued by the Government of Pakistan for the Covid-19 and to ensure public safety, the personal appearance before the Commission at the time of hearing, is condoned for the time being. Therefore, you

are directed to submit your written reply and arguments to Pakistan Information Commission within fifteen days of the receipt of this notice.

Copies of the supporting documents may be annexed with the written arguments. If the written arguments are not submitted within 15 days, the appeal will be decided Ex Parte in the light of the record available on file and the Right of Access to Information Act 2017”

5. The Respondent did not respond to the notice and the hearing date was fixed for October 01, 2020 through the hearing notice sent on September 17, 2020 and both parties were informed accordingly.
6. No one appeared on behalf of the Respondent on the date of hearing on October 01, 2020.

### **C. Discussion and Commission’s View on Relevant Issues**

7. 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?
  - (c) Has the Respondent ensured the implementation of the proactive disclosure of information as required under Section 5 of the Act?
  - (d) Is the information made available on the web site of the Respondent accessible for all citizens of Pakistan, including the blind, low vision and with other disabilities?
8. 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”.
9. The public body is legally obligated to proactively disclose through its web site the requested information under following sub-sections of Section 5 of the Right of Access to Information Act 2017:
  - a) “Description of the public body’s organization and functions, duties, powers and any services it provides to the public, including a directory and any

services it provides to the public, including a directory of its officers and employees, indicating their duties that these are accessible subject to reasonable restrictions based on limited resources;

- b) Statutes, statutory rules, regulations, bye-laws, orders and notifications, etc. applicable to the public body disclosing the date of their respective commencement or effect.
- (d) Relevant facts and background information relating to important policies and decisions which have been adopted, along with a statement of policies adopted by the public body and the criteria, standards or guidelines upon which discretionary powers are exercised by it.”

10. The requested information is declared public records under Section 6 (c) which is as under:

- c) “Information regarding grant of licenses, allotments and other benefits, privileges, contracts and agreements made by a public body”.

11. 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 legally bound to proactively share all categories of information mentioned in Section 5 of the Act.

12. The implementation of Section 5 of the Act can only be ensured if federal public bodies continuously juxtapose categories of information enlisted in section 5 with the information provided on the web sites. In this regard, all federal public bodies are required to use the following template to ensure proactive disclosure of information. In this template, the Pakistan Information Commission has explained as to how each category of information is to be proactively disclosed through web sites.

**Template for the Compliance Report-Proactive Disclosure of Information under  
Section 5 of the Right of Access to Information Act 2017**

<b>Serial No.</b>	<b>Information to be Proactively Disclosed</b>	<b>Explanation</b>	<b>Status as on (insert the date)</b>
1	Description of the public body’s organization and functions, duties, powers and any services it provides to the public, including a directory and any services it provides to the public, including a directory of its officers and employees, indicating their duties	The public body should ensure that all this information is available on its web site by analysing information made already available on its web site. The public body should indicate which of these have been uploaded and which are missing.	In all rows of this column, the public body should enlist what information has been made available and what is missing.

2	Statutes, statutory rules, regulations, bye-laws, orders and notifications, etc. applicable to the public body disclosing the date of their respective commencement or effect	Self-explanatory. The public body should indicate which of these have been uploaded and which are missing.	
3	Substantive or procedural rules of the general application evolved or adopted by the public body, including any manual or policies by its employees	Self-explanatory	
4	Relevant facts and background information relating to important policies and decisions which have been adopted, along with a statement of policies adopted by the public body and the criteria, standards or guidelines upon which discretionary powers are exercised by it	Self-explanatory. The public body should indicate which of these have been uploaded and which are missing.	
5	The condition upon which members of the public body can acquire any license, permit, consent, approval, grant, allotment or other benefits of whatsoever nature from any public body or upon which transactions, agreements and contracts, including, contracts of employment which can be entered into with the public body, along with particulars about the recipients of any concession, permit, license	Criteria and terms and conditions for all kinds of licenses, permits, consents, approval, grants, allotments or other benefits. The public body should also publish list with names and addresses of those received concession, permit, license or authorization.	

	or authorization granted by the public body		
6	A description of its decision making processes as defined in the Federal government's secretariat instructions, 2004 and any instructions for the time being in force for the public to provide any input into or be consulted about decision	Self-explanatory	
7	Detailed budget of the public body; including proposed and actual expenditures, original or revised revenue targets, actual revenue, receipts, revision in the approved budget and the supplementary budget	The public body should publish allocated budget for the given Financial Year and the budget released and spent at the end of every quarter of the given Financial Year. Similarly, revenue target set for the given year, achieved at the end of each quarter. Revision of the allocated budget, if any and the supplementary budget requested for the current Financial Year. The public body should indicate which of these have been uploaded and which are missing.	
8	The methods whereby information in the possession or control of the public body may be obtained and the prescribed fee required along with the name, title and contact details of the designated officials	Public bodies should put on their web sites Application Form developed by the commission for seeking information under the Act. This form and the 'Schedule of Costs' can be retrieved from <a href="http://www.rti.gov.pk">www.rti.gov.pk</a> . Federal public bodies should also put the	

		name, designation, official E-mail and contact number of the Public Information Officer on the web site. These details should be placed below the heading: ‘Public Information Officer Designated under the Right of Access to Information Act 2017’.	
9	Reports including performance reports, audit reports, evaluation reports, inquiry or investigative reports and other reports that have been finalized	All such finalised reports be made available on the web site. The public body should indicate which of these have been uploaded and which are missing.	
10	Such other matters which the principal officer of the public body deems fit to be published in the public interest	Especially all classified records that are more than 20 years old are public records and be made available on the web sites of federal public bodies.	
11	Camera footages at public places, wherever available, which have a bearing a crime	Self-explanatory	

13. Pakistan has ratified UN Convention on Rights of Persons with Disabilities. Article 4: General Obligations lists obligations of the states parties in achieving the purpose of the convention as enunciated in Article 1. The states parties are expected to “adopt all appropriate legislative, administrative and other measures” to achieve the purpose of the convention and “modify or abolish existing laws, regulations, customs and practices” which run contrary to the spirit of the convention.
14. Article 9 of the UN Convention on Rights of Persons with Disabilities talks about the elimination of barriers pertaining to “information, communications and other services, including electronic services and emergency services“.

15. Article 21: Freedom of Expression and Opinion, and Access to Information aims at ensuring that persons with disabilities have freedom of expression as well as freedom of information. They should be able to receive and impart information in the manner of their choice. The states are required to ensure that information intended to be provided to the general public should be made available to persons with disabilities in formats they prefer, and in timely manner and there should not be extra costs involved for making the information accessible. The states parties should accept and facilitate “the use of sign language, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions”. This provision of the article aims at fostering the spirit of accepting diversity and differences as the generally accepted modes of communication are not the only ways of communication and having access to information. In Pakistan, in the absence of web accessibility policy, almost all the official websites are inaccessible, in varying degrees, to the disabled people.
16. This commission has observed that public bodies generally upload scanned images of documents which people are forced to convert into Doc. And Excel formats for research purposes. As such these scanned images are inaccessible for general public, let alone the blind who use screen reading softwares to read documents.
17. The information proactively published under Section 5 of the Right of Access to Information Act 2017 should be accessible for all citizens, including the blind, low-vision, physically disabled, speech and hearing impaired and people with other disabilities. This commission is of the view that it is about time federal public bodies start taking seriously the accessibility of the web sites as well. As a starting point, the public bodies need to determine the accessibility level of the web sites. The web sites of public bodies should be accessible to level AA of Web Content Accessibility Guidelines (WCAG) 2.1 (of W3C. A quick reference guide for WCAG2.1 is available at this link: <http://www.w3.org/WAI/WCAG21/quickref/>

**Template for the Compliance Report for Determining Accessibility Level of Web Sites of Public Bodies**

S.No	Accessibility Indicator	Status (Yes/No)
1	The web site provides the facility of changing the font size.	
2	The web site provides the facility of changing the background color of the web site.	
3	The buttons used on the web site are clearly labelled.	
4	The images used on the web site are accompanied with meaningful text.	
5	The graphs used on the web site are accompanied by meaningful description.	

6	The website provides easy navigation using the keyboard such as logical tabbing and navigation between headings and elements.	
7	The website provides audio descriptions for all important visual information.	
8	The web site provides text captioning for audible output.	
9	Social media icons of the web site are labelled.	
10	Automatically updating content (e.g., a dynamically-updating news ticker, chat messages, etc.) can be paused, stopped, or hidden by the user or the user can manually control the timing of the updates.	

18. In the instant appeal, the head of public body, deemed to be Public Information Officer, (PIO), as required under Section 9 of the Act when a PIO is not designated by the head of a public body, failed to perform following obligations under the Act.

- I. Failure to provide “written acknowledgement in response to” a request for information filed by citizen as required by Section 10 (1) of the Act.
- II. Failure to follow procedure enunciated in the Act for acceptance and refusal of request for information laid down in Section 13 (2) of the Act which is as under:

“(2) The designated official shall process the request and by notice in writing inform the applicant that---

- a) A request has been acknowledged and the applicant is entitled to receive the information or record, subject to the payment of the prescribed fee. On payment of the fee the designated official shall provide the requested record, or
- b) The request has been rejected-
  - i. On the basis that it does not comply with the provisions of this act and the rules made there under but only after requisite assistance has been offered to the applicant as mentioned in sub-section (2) of section 10;
  - ii. On the basis that the information is already available in a generally accessible form in which case the notice shall indicate to the applicant the place from where the information may be found;
  - iii. On the basis that it is incorrect, because it relates to information which is substantially the same information that has already has been provided to the same applicant during last six months; or



- iv. In whole or in part, on the basis that the information is exempt subject to section 7 or section 16, in which the notice shall specify the exact exception, relied upon and specifying details regarding the right of the applicant to appeal against this decision”
  - v. Failure in following the timeline for responding to the information requests as required under Section 14 (1) and (2) of the Act as the PIO did not respond to the information request at all.
19. The PIO not only delayed and denied access to the requested information, the PIO also failed to comply with the duly sent notices of the commission.
  20. Had the Respondent gone through the Act after receiving request for information of the citizen and notices of this commission, clearly referencing the Act, it would have saved time and resources of this Commission. It also demonstrates that the Respondent has not taken any steps for the implementation of the Act. It demonstrates 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.
  21. This commission is of the view that the wilful 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.
  22. 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.
  23. 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.
  24. If directions of the commission in this Order are not followed, it will be left with no option but to invoke Section 20 (f) of the Right of Access to Information Act 2017.

#### **D. Order**

25. The appeal is allowed. The Respondent is directed to provide the requested information to the Appellant About the deduction of contribution from bank employees, when did it start deducting contribution from the bank employees, total number of banks registered with EOBI along with the names of the banks, Total number of bank employees registered with EOBI and information about total number of bank employees being paid old age pension.
26. The information mentioned in para 25 be provided, with intimation to this office, at the earliest, but in any case, not later than 10 working days of the receipt of this Order.

27. The Respondent is directed to notify Public Information Officer, (PIO), under Section 9 of the Act, put the notification to this effect on its web site as required under Section 5 (1) (b) of the Act, put name, designation and contact details of the PIO on its web sites as required under Section 5 (1) (h) of the Act and submit compliance report to the commission within 10 working days of the receipt of this order.
28. 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 in the Template for the Compliance Report-Proactive Disclosure of Information under Section 5 of the Right of Access to Information Act 2017', as shared in para 12 of this Order, by 15/11/2020.
30. The Respondent is directed to determine the level of the accessibility of the information proactively published on its web site under Section 5 of the Right of Access to Information Act 2017 with regards to the special needs of the blind, low-vision, physically disabled, speech and hearing impaired and people with other disabilities and submit compliance report to this effect using 'Template for the Compliance Report for Determining Accessibility Level of Web Sites of Public Bodies', mentioned in para 17 of this Order by 15/11/2020.
31. Copies of this order be sent to Chairman, Employees Old Age Benefit Institute and the Appellant for information and necessary action.

Mohammad Azam  
Chief Information Commissioner

Fawad Malik  
Information Commissioner

Zahid Abdullah  
Information Commissioner

Announced on:  
October 13, 2020

This order consists of 10 (ten) pages, each page has been read and signed.