

Pakistan Information Commission

1st Floor, National Arcade, 4-A Plaza
F-8 Markaz, Islamabad
Website: www.rti.gov.pk
Phone: 051-9261014
Email: appeals@rti.gov.pk
@PkInfoComm



In The Pakistan Information Commission, Islamabad

Appeal No 483-08/20

Usman Maqbool

(Appellants)

Vs.

Intelligence Bureau

Through its Director General

(Respondent)

&

Appeal No. 485-08/20

Muhammad Sabir

(Appellants)

Vs.

Intelligence Bureau

Through its Director General

(Respondent)

Order

Date: October 27, 2020

Zahid Abdullah: Information Commissioner

A. The Appeal

1. The Appellants filed an appeal, dated August 17, 2020 to the Commission, stating that they submitted an information request to the Director General of Intelligence Bureau dated 25-07-2020 under the Right of Access to Information Act 2017.
2. The information sought by the Appellants is as follows:

یہ کہ سائل نے فیڈرل گورنمنٹ آرگنائزیشن میں بغرض ایڈورٹائزمنٹ لف درخواست کالم نمبر 1 بی ایس 04 سٹاف کار ڈرائیور ڈسپیچ رائیڈر نے لئے اپلائی کیا تھا۔

یہ کہ سائل کو مورخہ 17 ستمبر 2019 کو جناب کے ادارے نے ٹیسٹ کے لئے رول نمبر سلپ جاری کی جو کہ لف درخواست ہے۔

اس کے بعد سائل کو مورخہ 11 نومبر 2019 کو جناب ادارے نے سائن / سکل ٹیسٹ کے لئے رول نمبر سلپ جاری کی جو کہ لف درخواست ہے۔ جو کہ سائل نے مندرجہ بالا تمام ٹیسٹ میں 59 نمبر لے کر کامیاب قرار پایا جو کہ لف درخواست ہے۔

یہ کہ سائل کو مندرجہ بالا بھرتی پر پاس ہونے والے تمام افراد کی فہرست مہیا کیا جانا اس کا قانونی حق ہے جو کہ آئین پاکستان نے دے رکھا ہے۔

یہ کہ سائل کو 12 فروری کو انٹرویو کے لئے بلایا گیا جس کی فہرست لف درخواست ہے جس میں سائل کو مثبت رسپانس دیا گیا یہ کہ بعد ازاں سائل کو معلوم ہوا کہ سائل کو مندرجہ بالا بھرتی سیٹ پر بھرتی نہ کیا گیا ہے۔

سائل کو مندرجہ بالا بیٹ پر بھرتی کیے جانے والے تمام افراد کی لسٹ مہیا کی جائے نیز لاہور سے ریفر کئے جانے والے افراد کی لسٹ مہیا کیا جانا آئین انصاف ہے جو کہ سائل کو جاننے کا قانونی حق ہے۔

B. Proceedings

3. Through a notice dated August 21, 2020 sent to The Director General, Intelligence Bureau the Commission called upon the Respondent to submit reasons for not providing the requested information.
4. In response to the notice of the commission, the Respondent through a letter vide No. 1/13/Lit dated September 11, 2020 stated that the documents as demanded by the appellants vide Para-6, 7 & 8 of their Appeals could not be provided under section-7 (e), (g) & (h) of the Right of Access to Information Act, 2017. Further, it was held by the Supreme Court of Pakistan in a case cited as PLD 1992 Supreme Court 492 that:-
“The Intelligence Bureau, being the civil Wing of the Intelligence, like the Military Intelligence, is a highly secret and sensitive agency, whose activities and internal working requires to be kept at the highest level of secrecy and confidentiality in the larger National Interest. Its information and documents, apart from any question of public interest, by practice and procedure require to be maintained in the strictest confidence, as an essential feature of the proper and efficient functioning of the Bureau itself and of the maintenance of the system. All unpublished records of the Intelligence Bureau therefore constitute a class of documents which by their very nature require to be maintained in the strictest secrecy in the highest interests of national security”.
5. The response was shared with the Appellants on September 22, 2020.
6. The Appellants through Advocate Moneeb Ahmed shared with with the commission that “exemption sought by the respondent under section 7 clause (e), (g) & (h) of the right of Access to Information Act, 2017 is incorrect, misconstrued and misconceived one, hence denied.

That the privileged sought by the respondent in the case cited as PLD 1992 Supreme Court 492 is only for unpublished documents whereas in the same judgment unpublished document is connotation as:

“The word “publish”, inter alia, means to make public; to divulge; to announce; to proclaim; to intimate to the public; to put forth and offer for sale books, magazines or newspapers; to put into circulation, etc. Thus, document which have been disclosed or communicated to a party, or are such as are open for inspection or information of office staff or public-at-large, or have been printed and published and are freely available outside the office or agency in whose custody they normally remains, or which requires to be notified or gazette, or which by law a party is entitled to receive, would not fall in the category of unpublished records. This list, however, is not exhaustive.”

It is also pertinent to mention here that “right to information” was instituted in the Constitution of Islamic Republic of Pakistan, 1973 as per Eighteenth Amendment Act, 2010.

Under the circumstances, it is therefore, most respectfully prayed that the exemption and privileged sought by the respondent is misconceived, misconstrued, ill-founded, claimed as a matter of routine and same may kindly be turned down in the interest of justice”.

7. The Appeal was fixed for hearing October 22, 2020 and both parties were informed accordingly through a hearing notice sent on October 13, 2020.
8. Ghulam Murtaza – Inspector Intelligence Bureau – appeared before the commission on behalf of Respondent while Moneeb Ahmed Advocate appeared on behalf of Appellants before the commission on October 22, 2020.

C. Discussion and Commission’s View on Relevant Issues

9. 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?
10. The representative of the Respondent argued in the hearing that the Intelligence Bureau is a sensitive organisation and its staff performs sensitive work involving matters of national security. The Respondent contended that the requested information could not be provided under Section 7 (e) “of the Act which is as under:

“Records relating to defense forces, defence installations or connected therewith and ancillary to defence an national security excluding all commercials and welfare activities”
11. The Respondent also contended that the requested information is exempted under Section 7 (g) of the Act which is as under:

“Record relating to the personal privacy of any individual”
12. The Respondent also maintained that the requested information is exempted under Section 7 (h) of the Act which is as under:

“Record of the private document furnished to a public body either on an express of implied condition that information contained in any such document shall not disclosed to a third party”
13. The requested information neither pertains to matters of national security nor likely to invade the personal privacy of the identifiable individuals. The Respondent is only required to provide the names as requested by the Appellant without divulging their personal details like contact details, CNIC numbers and addresses. Similarly, the Respondent is only required to mention against each name whether the person was an employee of the government at the time of his or her application.

14. It also transpired during the hearing that the Respondent is unaware about the Right of Access to Information Act 2017. As such, no steps have been taken by the Respondent for the implementation of the Act.
15. This commission has observed umpteenth time through its various judgements that federal public bodies have not implemented provisions of the Act. As a result, the stated purposes of the Act “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” have largely remain elusive.
16. The significance of proactive disclosure of information as required under Section 5 of the Act by federal public bodies can hardly be exaggerated.
17. If public body publishes directory of its employees, with posts/ designation, filled/vacant, gender, disability status, pay scales, benefits, perks and privileges, it could lead to following advantages:
 - whether the public body is properly staffed to carry out its functions?
 - Whether quota reserved for people with disabilities is being followed?
 - Level of female participation in the workforce? and
 - Whether the benefits, perks and privileges of the employees are commensurate with their posts as well as justifiable.
18. Similarly, citizens should be informed by a body through its web site terms and conditions under which public can acquire any license, permit, consent, approval, grant, allotment or other benefits from a given federal public body. Citizens should be proactively informed how agreements and contracts, including, contracts of employment which can be entered into with a public body. At the same time, public bodies should display on their web sites lists of the recipients who are granted concessions, permits, licenses or authorizations.
19. This being the significance of the information made available proactively through the web sites of the federal public bodies as required under the Act, it would be obvious to state that public bodies need to prioritise publishing this information and fulfil their legal obligation.
20. 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 Template for the Compliance Report-Proactive Disclosure of Information under Section 5 of the Right of Access to Information Act 2017 to ensure proactive disclosure of information. This template can be retrieved from the web site of the commission www.rti.gov.pk In this template, the Pakistan Information Commission has explained as to how each category of information is to be proactively disclosed through web sites.
21. Pakistan has ratified UN Convention on Rights of Persons with Disabilities. Article 4: General Obligations lists obligations of the state 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.

22. 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 “.
23. 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.
24. Section 15 (5) of the ICT Rights of Persons with Disabilities Act 2020 makes it binding on the federal public bodies to ensure accessibility of their web sites, catering to the special needs of persons with disabilities and it is as under:

“(5) The government shall ensure that all websites hosted by Pakistani website service providers are accessible for persons with disabilities”.
25. 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.
26. The public bodies should ensure incorporation of web accessibility standards in the design of their web sites. ‘Web accessibility checklist’ can be retrieved from the web site of the commission www.rti.gov.pk

A quick reference guide for WCAG2.1 is available at this link: <http://www.w3.org/WAI/WCAG21/quickref/>

D. ORDER

27. The appeal is allowed. The Director General, Intelligence Bureau, is directed to provide certified list containing names of those who passed test for the post, (04) of staff car driver/dispatch rider and names of those who applied for the post from Lahore.
28. The information mentioned in para 27 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.
29. The Respondent is directed to ensure that any information of personal nature like health condition, financial details, personal communication, CNIC details, phone numbers and residential addresses of citizens is not made public while implementing directions of the commission in paras 17 and 18 of this Order.

30. 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.
31. 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'. This template is available under 'Information Desk' category at the web site of the commission www.rti.gov.pk. The compliance report be submitted to this commission by 27/11/2020.
32. Copies of this order be sent to Director General, Intelligence Bureau and the Appellants for information and necessary action.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on:
October 28, 2020

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