



In The Pakistan Information Commission, Islamabad

Appeal No 403-06/20

Faisal Manzoor Anwar

(Appellant)

Vs.

Ministry of Law and Justice

Through its Public Information Officer

(Respondent)

ORDER

Date: March 09, 2021

Zahid Abdullah: Information Commissioner

A. The Appeal

1. The Appellant filed an appeal, dated 20-05-2020, to the Commission, stating that he submitted an information request to Secretary, Ministry of Law and Justice on April 28, 2020 under the Right of Access to Information Act 2017 but did not received any response from the public body.
2. The information sought by the Appellant is as follows:
 - “Certified copy of BO/NIS forms for current budget for FY 2020-21 submitted to Finance Division by this ministry.”

B. Proceedings

3. Through a notice dated July 08, 2020, sent to Deputy Secretary / Public Information Officer, Ministry of Law and Justice, the Commission called upon the Respondent to submit reasons for not providing the requested information.
4. The Appeal was fixed for hearing on September 01, 2020 and both parties were informed according through a notice sent on August 26, 2020.
5. Mr. Ahmed Raza Khan, Deputy Director, Law Division attended the hearing and submitted written response which is as under:
“I am directed to refer to your letter Ref. No.RTI/BT/FED/JG/2020/11, 21 & 31, dated 28th April, 2020 on the subject cited above and to convey that the indicative budget ceiling, BO/NIS Forms for both current and development are intermediary recommendations which is excluded under the Provision of Section 7 (C) of the Right to Access of Information Act, 2017. It is also pertinent to mention here that Ministry of Law and Justice declared classified /secret by the Cabinet Division vide U.O No.5/16/90-Security, dated 4 April, 1993. Therefore, your request is regretted as per law.”

C. Discussion and Commission’s View on Relevant Issues

6. The Public Information Officer submitted that “the indicative budget ceiling, BO/NIS Forms for both current and development are intermediary recommendations which is excluded under the Provision of Section 7 (C) of the Right of Access to Information Act 2017, henceforth referred to as Act.”

7. As is evident even from the plain reading of its text, Section 7 (c) accords qualified and not absolute exemption to intermediary opinions. In fact, Section 7 (a), (b) and (c) suggest that 'noting on the files', 'minutes of the meeting' and intermediary opinions are given qualified and not absolute exclusion from disclosure.
8. The disclosure of intermediary opinions during the deliberative process is protected to ensure that outside influence does not create hindrances in the deliberative process. However, once a public body has taken a final decision, intermediary opinions cannot be treated as excluded records.
9. Intermediary opinions, once final decision has been taken, reflect the quality of input by different officers which become basis for the final decision. Therefore, citizens of Pakistan have the right to have access to 'intermediary opinions' contained in the relevant 'noting on the files' and 'minutes of the meetings' once final decisions have been taken so that citizen could know about the input by different officers which contributed to the approval of the final budget.
10. By the time the Respondent, Ministry of Law and Justice submitted its arguments for the denial of requested information in the hearing on September 01, 2021, 'BO/NIS Forms had become public documents as the final budget had already been approved by the National Assembly. These documents could only be protected from disclosure till the final approval of the budget.
11. This commission is of the view that the disclosure of 'BO/NIS Forms', once final budget has been approved, would serve public interest, as citizens would be able to know about the level of quality input by officials gone into the allocation as well as utilisation of public funds.
12. The commission is of the view that the reliance of the Respondent on Cabinet Division' notification U.O No.5/16/90-Security, dated 4 April, 1993 for denial of access to requested information is in conflict with Article 19-A of the Constitution of the Islamic Republic of Pakistan.
13. The commission holds that as right to information in matters of public importance is a fundamental constitutional right. Article 8 of the Constitution which aims at curbing practices which thwart efforts of the citizens in the exercise of their fundamental rights and freedoms renders Cabinet Division' notification issued on 04/04/1993 void ab initio. Furthermore, Section 25 of the Act also overrides the said notification.

D. Order

14. Pakistan Information Commission declares Cabinet Division' notification U.O No.5/16/90-Security, dated 4 April, 1993 declaring Ministry of Law and Justice to be classified /secret as null and void. Public Information Officer, Ministry of Law and Justice is directed to provide following requested information to the Appellant within 7 days of the receipt of this Order with intimation to this office:

Certified copy of BO/NIS forms submitted to the Finance Division by the Ministry of Law and Justice during the process of the budget for FY 2020-21.

15. Copies of this order be sent to Public Information Officer, Ministry of Law and Justice and the Appellant for information and necessary action.

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on:
March 09, 2021

This order consists of 02 (two) pages, each page has been read and signed