

Pakistan Information Commission

Government of Pakistan

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In The Pakistan Information Commission, Islamabad

Appeal No 664-10/20

Tahseen Ahmed H. Qureshi

(Appellant)

Vs.

**Directorate General of Immigration & Passports
Ministry of Interior**

(Respondent-I)

(Respondent-II)

ORDER

Date: March 19, 2021

Zahid Abdullah: Information Commissioner

A. The Appeal

1. The Appellant filed an appeal, dated 03-10-2020, to the Commission, stating that he submitted an information request to Director General, Directorate General of Immigration and Passport and Secretary, Ministry of Interior on 17-09-2020 under the Right of Access to Information Act 2017. He received the response from the Respondents but the information shared with him was incomplete. He did not received information requested in Para-3 of his information request.
2. The information sought by the Appellant is as follows:
 - i. *“Provide the copy of Policy - Letter No: 4/ 28/91- PAAS (INT) - 1 Dated: 30-11- 1994 issued by the Ministry of Interior, Government of Pakistan.*
 - ii. *Whether the Government of Pakistan has been pleased to issue the Pakistani Passports to different persons who are Burmese Muslims, at any time, presently or in past, by the different abroad Embassies, Missions, Consulates of Pakistan or inland Passport offices in Pakistan? or not? under which law/ Policy framed by the Government of Pakistan for them? and at present what is the existing policy in vogue for renewal of issued Pakistan Passports for that Burmese Muslims?*
 - iii. *What is the national status of the Pakistani Passport holder (old and new) of Burmese Muslims issued by different abroad Embassies, Missions, Consulates of Pakistan offices in Pakistan or inland Passport under the law/ Policy framed by the Government of Pakistan for them?*
 - iv. *Provide the Policy for Black-Listing (BL) for issuance of Pakistani Passports”*

B. Proceedings

3. Through notices dated October 26, 2020, sent to Director General, Directorate General of Immigration and Passport and to the Deputy Secretary (Law-II) / Public Information Officer, Ministry of Interior the Commission called upon the Respondents to submit reasons for not providing the requested information.

4. The Appeal was fixed for hearing on November 19, 2020 and both parties were informed accordingly through a notices sent on November 09, 2020.
5. Mr. Mian Aurangzeb, Director (HQ), Mr. Sted Azhar Hussain, Assistant Director and Mr. Usman Nawaz, Assistant Director, Directorate General of Immigration and Passport attended the hearing and submitted response.
6. The response of the Respondent-I was shared with the appellant.
7. The Appellant submitted his response to the information shared with him, which is as under:

“I, Tahseen Ahmed H. Qureshi, Advocate Supreme Court of Pakistan, the Appellant in the above appeal, submit my written objections on the response / information shared by the Directorate General of Immigration & Passports (Headquarters), through the Assistant Director (Policy) vide his Letter No: 6 / 194 / 94- Policy (Pt) Dated: 06-11-2020 to the Honourable Information Commission of Pakistan, in the above referred appeal against them.

It is pertinent to mention here that your kind Letter Dated: 25-11-2020 in the appeal has dispatched to me from Islamabad on Dated: 09-12-2020 by Registered Post and received / delivered me on Dated: 12-12-2020, hence I am sending my objections within time of (07) days to your kind honour.

Moreover, Sir, I am not satisfied from the reply of the Mr. Azhar Hussain Shah, Assistant Director (Policy), Directorate General of Immigration & Passports (Headquarters), Government of Pakistan, Islamabad.

PRELIMINARY OBJECTIONS:

The Letter of Mr. Azhar Hussain Shah, Assistant Director (Policy), Directorate General of Immigration & Passports (Headquarters), Government of Pakistan, Islamabad, vide No: 6/194/94-Policy (Pt) dated: 06-11-2020 which has addressed to your kind honour along with its un-authenticated and incomplete information / papers / enclosure documents without signatures and official stamps of the Department.

Sir, kindly take note that any record/information to be provided to the applicant / Appellant has to be certified under Section 13 (3) of your Act, which is as under:

“ Where information or a record is provided in accordance with clause (a) of sub-section (2), it shall be accompanied by a certificate which may be affixed to the information or record at the foot thereof, or as appropriate, to the effect that the information is incorrect or, as the case may be, copy is a true copy of the original records and such certificate shall be dated and signed by the designated official.”

This has not done by thee said officer, and sent the incomplete information / documents to you. This is against the law as referred above, and not permissible. It is settled principle of law that a thing is to be done in particular manner and not as the otherwise.

MAIN OBJECTIONS:

My first request is this:

- i. Provide the copy of Policy – Letter No: 4 / 28 / 91- PAS (INT) – 1 Dated: 30-11- 1994 issued by the Ministry of Interior, Government of Pakistan.

Reply of the Directorate General of Immigration & Passports (Headquarters), Government of Pakistan, in this regard as under:

1. Letter No: 4 / 28 / 91- PAS (INT) – 1 Dated: 30-11- 1994 comprises *minutes* of Cabinet meeting. Section: 7 (b) of the Right of Access to Information Act, 2017, bars provision of such record.

My Reply on this basic objection of the Department is as under:

Sir, Article 85 of the Qanoon-e-Shahadat Order-1984 deals with public documents and reads as follows:-

“85. Public documents. The following documents are public documents.

(1) documents forming the acts or records of the acts.

(i) of the sovereign authority.

(ii) of official bodies and tribunals, and

- (i) of public officers, legislative, judicial and executive, of any part of Pakistan, or of a foreign country,
- (2) Public records kept in Pakistan of Private documents.
- (3) Documents forming part of the records of judicial proceedings.
- (4) documents required to be maintained by a public servant under law, and
- (5) registered documents the execution whereof is not disputed.
- (6) *Certificates deposited in a repository pursuant to the provisions of the Electronic Transactions Ordinance 2002*”.

Sir, I being the appellant is seeking letter dated 30.11.1994 of the Government of Pakistan (Ministry of Interior) through which the decisions have taken and policy has been framed and delegated the powers to the Directorate of Immigration & Passports along with the minutes of meetings. This is category of record that ought to have been disclosed and published including uploading over the internet to the availability of the citizens and since decision has been finalized therefore the minutes of the meeting through which it is finalized are also public record within the meanings of the Act. The noting and minutes of meetings of the matter that has been finalizes are the category of record that make part of the public record.

Sir, the Article 10-A of the Constitution of Pakistan-1973 provides the right of fair trial to the citizens.

Further, the Article 19-A of the Constitution of Pakistan-1973 and Right of Access to Information Act, 2017 has provided the citizens the fundamental and statutory rights respectively to have the access to the public record and information which cannot be denied or delayed at the whims of the Government hierarchy.

Sir, in the similar type identical matter, this Honourable Information Commission of Pakistan have been delivered / passed the *Order dated: 21-10-2020 (Appeal No: 522-8-2020) Re: Ch. M. Ashraf Gujjar ...Vs.. Zarai Tarqiati Bank Limited*. Such decision is available on your official website for information of the public.

Sir, therefore, the objections of the Department is not tenable under the law, and based on malafide, and they are suppressing the documents / information on their own whims and wishes.

Further, the Government of Pakistan (Ministry of Interior) who is the custodian / issuing authority of the said document / letter is not offering their reply / comments on my above appeal, and choose to remain silent / absent in the matter.

My second request is this:

- ii. Whether the Government of Pakistan has been pleased to issue the Pakistani Passports to different persons who are Burmese Muslims, at any time, presently or in past, by the different abroad Embassies, Missions, Consulates of Pakistan or inland Passport offices in Pakistan ? or not ? under which law / Policy framed by the Government of Pakistan for them? and at present what is the existing policy in vogue for renewal of issued Pakistan Passports for that Burmese Muslims ?

Reply of the Directorate General of Immigration & Passports (Headquarters), Government of Pakistan, in this regard as under:

- 2. Non-issuance of passport to Burmese Muslims holding series passport is enclosed.

My Reply on this information of the Department is as under:

Sir, the Department has not offered / given proper and complete information to me / reply like-wise as under:

- 1. Whether the Government of Pakistan has been pleased to issue the Pakistani Passports to different persons who are Burmese Muslims, at any time, presently or in past, by the different abroad Embassies, Missions, Consulates of Pakistan or inland Passport offices in Pakistan? or not ?
under which law / Policy framed by the Government of Pakistan for them ?
- 2. and at present what is the existing policy in vogue for renewal of issued Pakistan Passports for that Burmese Muslims ?

Therefore, information is based on vague and based on incomplete reply / information to me.

My third request is this:

- iii. What is the national status of the Pakistani Passport holder (old and new) of **Burmese Muslims** issued by different abroad Embassies, Missions, Consulates of Pakistan or inland Passport offices in Pakistan under the law / Policy framed by the Government of Pakistan for them ?

Sir, the Department has not offered / given the proper and complete information in this regard and they choose remain silent about the information. Therefore, their official act in this regard is illegal and un-constitutional.

My fourth request is this:

- v. Provide the Policy for **Black-Listing (BL)** for issuance of Pakistani Passports.

Sir, the Department has not offered / given the proper and complete information in this regard with proper policy documents and they choose remain silent about the information. Therefore, their official act in this regard is illegal and un-constitutional.

My fifth request is this:

- v. Complete **Passport and Visa Manual, 2006** issued by the Govt. of Pakistan.

Reply of the Directorate General of Immigration & Passports (Headquarters), Government of Pakistan, in this regard as under:

- iv. Complete Passport and Visa Manual 2006, issued by the Government of Pakistan will be provided to the applicant on realization of cost as described in Sections: 13 92) (a) and 15 of the Act *ibid*.

My Reply on this reply of the Department is as under:

Sir, the Department has not been informed me till date about the official costs as described in Sections: 13 92) (a) and 15 of the Act *ibid* of the documents (i.e. Complete Passport and Visa Manual 2006) in writing to me, and in this regard, I am ready to pay the official costs to the Department and they may provide the same in shape of hard copy as well as through e-document (USB- CD) etc.

It is therefore requested to your kind Information Commission of Pakistan kindly allow my above appeal as prayed, and necessary directions may be issued to thee Departments / respondents.”

6. Response of the Appellant was shared with the Respondent and appeal was again fixed for hearing on January 28, 2021.
7. Mr. Azhar Hussain, Assistant Director and Mr. Usman Nawaz, Assistant Director, Directorate General of Immigration and Passport attended the hearing and requested for time. The hearing was adjourned for February 18, 2021.
8. The commission through a letter vide No 6/194/94-Policy(pt) dated January 26, 2021 received response of Respondent – I which is as under:

“I am directed to refer to Interior Divisions letter no.10/1/2020/-Pass (P&C) dated 18.11.2020 on the subject noted above and to say that M/s Qureshi Law Associates, Sindh, had sought following information/ documents, through Pakistan Information Commission, Islamabad

Letter no. 4/28/91-PAS(INT)-I dated 3.11.1994, issued by Ministry of Interior. Policy for issuance of passport to Burmese Muslims. National Status of the Burmese Muslims holding BM special series Passport. Policy for Black listing for issuance of Pakistani Passport.

Complete Passport and Visa Manual 2006, issued by the Government of Pakistan.

In response, the information mention below contained in Passport and Visa Manual 2006, was provided to the Pakistan Information Commission, Islamabad Vide this Directorate General letter dated 24.11.2020 (Copies enclosed), under intimation to

Ministry of Interior as well as to M/s Qureshi Law Associates, Sindh, which is also available on the official website of the department:-

- i. SOP for issuance of Passport*
- ii. SOP for issuance of Emergency Travel Documents (ETD)*
- iii. List of Passport Offices.*
- iv. Passport Act 1974*
- v. Passport Rules 1974*
- vi. Naturalization Act 1926*
- vii. Naturalization Rules 1961 & 1973*
- viii. Pakistan Citizenship Act 1951*
- ix. Pakistan Citizenship Rules 1952*

3. Mr. Tehseen Ahmed H. Qureshi, Advocate supreme Court of Pakistan has sent an email regarding objections on the report submitted by this office to the Pakistan information Commission, which states that:

“The Department has not been informed me till date about the official cost as described in Section: 13 (2) (a) and 15 of the Act ibid of the documents (i.e. Complete Passport and Visa Manual 2006) in writing to me, and in this regard I am ready to pay the official costs to the Department and they may provide the same in shape of hard copy as well through e-document (USB-CD) etc.”

4. Whereas, the Information contained in para(2) has already been provided under letter referred to above and the complainant is insisting for provision of copy of Passport and Visa Manual 2006 which is meant for official use only as described on the front page of the Manual.

5. In view of the above, it is proposed that the matter may be taken up with Law and Justice Division for guidance whether Passport and Visa Manual 2006 which contains classified information (i.e. Covert Passport) may be provided to the appellant after realization of cost or otherwise.”

9. The response of the Respondent-I was again shared with the Appellant on February 18, 2021.
10. The Appellant on February 25, 2021 again filed objection over the response of the Respondent-I which is as under:

“I, Tahseen Ahmed H. Qureshi, Advocate Supreme Court of Pakistan, the Appellant in the above appeal, submit my written objections on the response / information shared by the Directorate General of Immigration & Passports (Headquarters), through the Assistant Director (Policy) vide his Letter No: 6 / 194 / 94- Policy (Pt) Dated: 26-01-2021 addressed to the Section Officer (P&C) Ministry of Interior, Govt. of Pakistan @ Islamabad as well as to the Registrar, Honourable Information Commission of Pakistan, in the above referred appeal against them.

It is pertinent to mention here that your kind Letter Dated: 18-02-2021 in the appeal has dispatched to me from Islamabad by UMS and received / delivered me on Dated: 22-02-2021, hence I am sending my objections within time of (07) days to your kind honour.

Moreover, Sir, I am not satisfied from the reply of the Mr. Azhar Hussain Shah, Assistant Director (Policy), Directorate General of Immigration & Passports (Headquarters), Government of Pakistan, Islamabad. He is misguiding the Information Commission of Pakistan and twisted the facts and things, and his reply is evasive and against the law / questions raised by me in my earlier objections through e-mails as well as main complaint.

The Information Commission of Pakistan ought to kindly peruse my earlier objections dated: 15-12-2020, which I have replied properly.

The Directorate General of Immigration & Passports (Headquarters), Government of Pakistan, Islamabad as well as Ministry of Interior have not given proper specific reply / information / supply of documents in accordance with the law, and have made delaying tactics. It means they are not ready to give response and have not performed their functions honestly, fairly, and transparent manner.

It is pertinent to mention here that the complete Passport & Visa Manual-2006 is public document, which I have replied earlier, and now they have turned their version by taking summersault pleas that the said document is containing the classified information (i.e. Covert Passport). This is against the directions of this Information Commission of Pakistan as per their Letter dated: 24-11-2020 addressed to the ministry of Interior.

Moreover, I again requested to the Information Commission of Pakistan that kindly pass the order in the matter, and request for early disposal / decision in my above appeal.”

C. Discussion and Commission’s View on Relevant Issues

11. The Appellant has exercised his constitutional right of access to information in a matter of grave public importance as he has sought details about policy and status of passports issued to Rohingya Muslims whose issues pertaining to getting Pakistani nationality and passports have been widely documented in public domain. The Respondent has denied him access to certified copy of Policy – Letter No: 4 / 28 / 91- PAS (INT) – 1 Dated: 30-11- 1994 issued by the Ministry of Interior, Government of Pakistan on the ground that it is exempted under Section 7 (b) of the Right to Information Act 2017, henceforth referred to as Act. The Respondent 2, the Ministry of Interior has neither responded to the information request of the citizen nor to the duly served notices of this commission.
12. This commission concurs with the Appellant that access to certified copy of Policy – Letter No: 4 / 28 / 91- PAS (INT) – 1 Dated: 30-11- 1994 issued by the Ministry of Interior, Government of Pakistan cannot be denied seeking exemption under Section 7 (b) of the Act as the issue has already been resolved and the policy has been framed.
13. This commission has already determined through its different Orders that Section 7 (a), (b) and (c) ‘noting on the files’, ‘minutes of the meeting’ and intermediary opinions are given qualified and not absolute exclusion from disclosure.
14. 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.
15. 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 and politicians which contributed to the approval of the final policy.
16. This commission holds that the response of the Directorate General of Immigration & Passports (Headquarters), to the request of the citizen seeking access to certified copy of Policy – Letter No: 4 / 28 / 91- PAS (INT) – 1 Dated: 30-11- 1994, issued by the Ministry of Interior, That the said letter is exempted from disclosure under Section 7 (b) of the Act as it comprises of the minutes of Cabinet meeting is legally untenable.
17. This commission is of the view that the disclosure or exemption from disclosure of information should be dictated by public interest. The disclosure of information which may harm national security, or, any other legitimate interests is not in public interest, and,

similarly, shrouding in the cloak of secrecy information which ought to be made public, in the name of national security on unjustifiable grounds, is not in public interest.

18. This commission is of the view that while threats to national security are clear, real and present from the inimical forces, misplaced and exaggerated threat perceptions expressed by the reluctance shown by officers in sharing information having no nexus with national security is not only indicative of the state of paranoia of officialdom but also a clear, real and present danger to the wellbeing of the citizens of Pakistan.
19. As the country graduates from post-colonial era where secrecy has been a norm and provision of information an exception after the insertion of Article 19-A into the Constitution and the enactment of the Right of Access to Information Act 2017, civil servants are expected to ensure that transparency becomes a norm and secrecy an exception, and that too on justifiable legal grounds.
20. Is this asking for moon from civil servants to apply their minds while deciding on requests for information filed by citizens of Pakistan? Section 24A (1) of the General Clauses Act 1897 requires civil servants to exercised their powers “reasonably, fairly, justly, and for the advancement of the purposes of the enactment”.
21. Is it reasonable, fair and just on the part of civil servants to refer only to Section (b), to exempt from disclosure minutes of the meetings recorded in 1991 but not to Section 16 (1) (k) of the Act declaring that “exemptions set out in section 16 shall cease to apply after every twenty years and that record of public bodies shall be made public”.
22. Is it reasonable, fair and just on the part of civil servants to withhold the disclosure of certified copy of the Passport and Visa Manual 2006 stating that it is “meant for official use only as described on the front page of the Manual”?
23. Is it reasonable, fair and just on the part of civil servants to withhold the disclosure of certified copy of the Passport and Visa Manual 2006 suggesting that opinion of Law and Justice Division be sought because it contains “classified information (i.e. Covert Passport)” in the presence of Section 16 (1) (a) (i) which states that “where only part of a record or the information falls within the scope of the exceptions provided for in this Act, that part shall be severed and the residual record or information shall be provided to the applicant”? In other words, an entire document cannot be classified because a part or some parts of the documents need to be classified because they contain sensitive information.
24. In the presence of the Right of Access to Information Act 2017, the days of kicking the can down the road in the name of seeking opinion of Law and Justice Division are over and provisions of the Act are sufficient enough for public officials to decide whether or not the requested information should be provided to citizens if they apply their minds reasonably, fairly and justly.
25. There is no absolute exemption from disclosure to any document in its entirety. Furthermore, public bodies cannot classify documents arbitrarily. if a document or a part of it is to be classified, the method of its classification is mentioned in Section 7 (f) of the Act.
26. To the question of the citizen as to whether or not “the Government of Pakistan has been pleased to issue the Pakistani Passports to different persons who are Burmese Muslims, at any time, presently or in past, by the different abroad Embassies, Missions, Consulates of Pakistan or inland Passport offices in Pakistan”, the Respondent has failed to provide even a simple ‘Yes’, or, ‘No’ answer. The Respondent should have provided answer in affirmative or in negative based on policies in this regard.

27. It is within the realm of reason to expect that matter of issuing passport and their renewal to Burmese Muslims must have been decided as a matter of policy and documents containing these decisions, applicable in the past and present, should have been provided to the citizen.
28. The radio silence maintained by the Respondent on the question of “What is the national status of the Pakistani Passport holder (old and new) of Burmese Muslims issued by different abroad Embassies, Missions, Consulates of Pakistan or inland Passport offices in Pakistan under the law / Policy framed by the Government of Pakistan for them “is baffling, to say the least.
29. The deafening silence on the request to provide information about Black-Listing (BL) for issuance of Pakistani Passports is not understandable. Through this silence, the Respondent has neither confirmed nor denied the existence of such a policy. The silence is baffling as the question here is not of merit as to whether or not the state should have the power to blacklist certain individuals from holding passport on certain justifiable grounds and thus infringing their right to travel and neither is it within the domain of this commission to comment on the merits of such a policy. The question is whether or not such a policy exists and whether or not citizens of Pakistan are blacklisted from holding passport and on what grounds which is a matter of public importance under Article 19-A of the Constitution and citizens of Pakistan have every right to know about the existence or otherwise of such a policy.
30. The birth-pangs, resulting from the emergence of new era of transparency out of the secretive modes of functioning of public bodies, as light seeks to shine on official files, hitherto kept in the dark from the citizens of Pakistan, because of sunshine Article 19-A and the Right of Access to Information Act 2017 is understandable as the old habits die hard. Emerge we shall from the dark days of secrecy to the brightened days of openness and transparency for so is the will of the citizens of Pakistan expressed through their chosen representatives in the shape of sunshine Article 19-A of the Constitution and the Right of Access to Information Act 2017.

D. Order

31. The Ministry of Interior is directed to provide certified copy of Policy - Letter No: 4/ 28/91- PAAS (INT) - 1 Dated: 30-11- 1994 issued by the Ministry of Interior, Government of Pakistan.
32. The Respondents are directed to provide information, based on the available record as to whether or not “the Government of Pakistan has been pleased to issue the Pakistani Passports to different persons who are Burmese Muslims, at any time, presently or in past, by the different abroad Embassies, Missions, Consulates of Pakistan or inland Passport offices in Pakistan. Also provide certified copy of the policy pertaining to the renewal of passports issued to Burmese Muslims.
33. The Respondents are directed to provide requested information about the “national status of the Pakistani Passport holder (old and new) of Burmese Muslims issued by different abroad Embassies, Missions, Consulates of Pakistan offices in Pakistan or inland Passport under the law/ Policy framed by the Government of Pakistan for them”
34. The Respondent are directed to provide certified copy of policy for blacklisting of the issuance of Pakistani passports.
35. Information mentioned in paras 31 to 34 be provided to the Appellant, with intimation to this commission, within 10 working days of the receipt of this Order.

36. The Respondents are directed to make arrangements for the classification, if required, of the sensitive parts of the Passport and Visa Manual under Section 7 (f) of the Right of Access to Information Act 2017 and provide certified copy of the Passport and Visa Manual to the Appellant within 20 working days of the receipt of this Order.
37. Copies of the Order be sent to the Respondent and the Appellant for information and necessary action.

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on:

March 19, 2021

This order consists of 09 (nine) pages, each page has been read and signed