

## **Pakistan Information Commission**

**Government of Pakistan**

1<sup>st</sup> Floor, National Arcade, 4-A Plaza

F-8 Markaz, Islamabad

Website: [www.rti.gov.pk](http://www.rti.gov.pk)

Phone: 051-9261014

Email: [appeals@rti.gov.pk](mailto:appeals@rti.gov.pk)

  @PkInfoComm



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

#### **Appeal No. 635-09/20**

Shireen Aijaz Vs Ministry of Law and Justice

#### **Appeal No. 629-09/20**

Hilda Saeed Vs Ministry of Law and Justice

#### **Appeal No. 627-09/20**

Anees Haroon Vs Ministry of Law and Justice

#### **Appeal No. 625-09/20**

Nazish Brohi Vs Ministry of Law and Justice

#### **Appeal No. 626-09/20**

Nazish Brohi Vs Ministry of Law and Justice

#### **Appeal No. 623-09/20**

Kausar S. Khan Vs Ministry of Law and Justice

#### **Appeal No. 621-09/20**

Nasreen L. Siddiqui Vs Ministry of Law and Justice

#### **Appeal No. 617-09/20**

Memoona Rauf Khan Vs Ministry of Law and Justice

#### **Appeal No. 614-09/20**

Memoona Rauf Khan Vs Ministry of Law and Justice

#### **Appeal No. 613-09/20**

Maria Rashid Vs Ministry of Law and Justice

#### **Appeal No. 611-09/20**

Maria Rashid Vs Ministry of Law and Justice

#### **Appeal No. 606-09/20**

Nighat Said Khan Vs Ministry of Law and Justice

#### **Appeal No. 605-09/20**

Naila Nawaz Vs Ministry of Law and Justice

Uzma Norani Vs Ministry of Law and Justice  
**Appeal No. 603-09/20**

Rubina Saigon Vs Ministry of Law and Justice  
**Appeal No. 602-09/20**

Dr. Abdul Hameed Nayyar Vs Ministry of Law and Justice  
**Appeal No. 517-09/20**

Dr. Abdul Hameed Nayyar Vs Registrar, Islamabad High Court  
**Appeal No. 536-09/20**

Hilda Saeed Vs Registrar, Supreme Court of Pakistan  
**Appeal No. 542-09/20**

Nasreen Azhar Vs Registrar, Supreme Court of Pakistan  
**Appeal No. 601-09/20**

Nighat Said Khan Vs Registrar, Supreme Court of Pakistan  
**Appeal No. 604-09/20**

Naila Naz Vs Registrar, Supreme Court of Pakistan  
**Appeal No. 607-09/20**

Dr. Abdul Hameed Nayyar Vs Registrar, Supreme Court of Pakistan  
**Appeal No. 608-09/20**

Uzma Norani Vs Registrar, Supreme Court of Pakistan  
**Appeal No. 609-09/20**

Maria Rashid Vs Registrar, Supreme Court of Pakistan  
**Appeal No. 610-09/20**

Maria Rashid Vs Registrar, Supreme Court of Pakistan  
**Appeal No. 612-09/20**

Memona Rauf Khan Vs Registrar, Islamabad High Court  
**Appeal No. 615-09/20**

Memona Rauf Khan Vs Registrar, Supreme Court of Pakistan  
**Appeal No. 616-09/20**

Tauseef Hyat Vs Registrar, Supreme Court of Pakistan  
**Appeal No. 618-09/20**

Tauseef Hyat Vs Registrar, Supreme Court of Pakistan  
**Appeal No. 619-09/20**

Nasreen L. Siddiqui Vs Registrar, Supreme Court of Pakistan  
**Appeal No. 620-09/20**



*Information Commission. Attached to this is a letter dated September 30, 2014, from the worthy Registrar, Supreme Court of Pakistan, to the Secretary, Ministry of Law, Justice and Human Rights.*

*In your letter, you state "if you are not satisfied with the response, please contact Pakistan Information Commission in writing within 07 days of the receipt of this letter...."*

*"I am writing to bring to your attention that I find the response furnished unsatisfactory as it is unconnected and not relevant to my right to information request or appeal. Rather, the response of the worthy Registrar is to appeals No. No.055-06/19 and 060-06/19, whereas mine were filed in 2020.....As per Section 14 of the Right of Access to Information Act 2017, the information was to be provided within ten (10) working days. However, despite the lapse of stipulated time, the requested information was not provided to me. As per Section 17 of the Right of Access to Information Act 2017, I filed an appeal with the Pakistan Information Commission for the non-provision of information on 01-09-2020....*

*Other than the response by the worthy Registrar being unconnected and not relevant to my request and appeal, I would like to draw your attention to the letter sent by Mr Muhammad Tauseef Khan, A.P.S to Justice Qazi Faez Isa, Judge of the Supreme Court of Pakistan. Dated October 21, 2020, ....*

*This disclosure is welcome as it upholds the true letter and spirit of Article 19-A of the Constitution and fulfils the statutory obligation under the Right of Access to Information Act, 2017, applicable to all public officials.*

*In light of the following, you are requested to kindly:*

- 1. Provide the number assigned to my appeal*
- 2. Share a copy of this response with the worthy Registrar*
- 3. Seek a response to my appeal from the worthy Registrar*
- 4. Inquire whether details provided by any other Honourable Justice of the Supreme Court have been received and ask the worthy Registrar that they be included with his response to my appeal.*
- 5. Through a notice dated February 18, 2021, sent to Mr. Ahmed Raza Khan, Deputy Director / Public Information Officer, Ministry of Law and Justice, the Commission called upon the Respondent to submit reasons for not providing the requested information.*
- 6. This commission through a letter vide No (112)/Conf./IHC/940 dated March 11, 2021 also received the Response of the Respondent-III, which is as under:*

*"Kindly refer to your letters/Appeals Nos. 056-06/19, 059-06/19, 066-06/19, 077-06/19, 611-09/19, 610-09/19, 615-09/19, 617-09/19, 536-08/19 dated: 07.10.2020 and Hon'ble Supreme Court of Pakistan letter No. F. 1/60/2019(220)-SCA dated: 08.08.2019.*

*I am directed to say that the Hon'ble Supreme Court of Pakistan has given Policy guidance on the matter of provision of information of Superior Courts; in its letter to Ministry of Law and Justice vide letter No. F.1/18/2009-SCA dated: 30.09.2014. The Information Commission through letter dated: 07.10.2020 has apparently accepted this response of Hon'ble Supreme Court of Pakistan. The policy of Hon'ble Supreme Court of Pakistan stated in letter dated: 30.09.2014 is as under:-*

*...the Preamble of the Constitution of the Islamic Republic of Pakistan, which is now a substantive part of the Constitution by virtue of Article 2A, envisages that the independence of judiciary shall be fully secured. The mandate of Article 175 regarding separation of the Judiciary from the Executive already stands fulfilled in light of judgment*

of the Supreme Court reported as *Government of Sindh v Sharaf Faridi (PLD 1994 SC 105)*. The Constitution has dedicated a full Part (Part VII) comprising 4 Chapters on "The Judiciary". The role of the Legislature in the appointment of Judges of the Superior Courts is delineated in the Constitution. Needless to mention that the Constitution contains a full-fledged mechanism of internal checks and balances on the working of the Courts in the form of appeal, review, etc. In this regard, Article 203 of the Constitution mandates the High Courts to supervise and control the Courts subordinate to them. As regards the working of the Superior Courts, the Constitution does not entrust such a function to any outside institution/other organ of the State, rather leaves it to such Courts themselves. It may be noted here that the Constitution does not envisage oversight in any form/manner by any other institution/organ of the State on the functioning of the Courts. This position may kindly be appreciated while dealing with the queries/questions received from the concerned quarters.

*It is added here that the Superior Courts do publish Annual Reports on their working giving, amongst other things, the details of year wise institution/disposal/pendency of cases for information of the general public. Such reports as well as other necessary information pertaining to the composition of Courts, etc., are also available on the websites of the respective Courts."*

*The Hon'ble Supreme Court of Pakistan has reiterated this position to the Pakistan Information Commissioner, Islamabad, vide letter No. F. 1/60/2019(220)-SCA dated 08.08.2019, which states as follows:- "With reference to your letter No. PIO47 dated: 16.07.2019, Appeal-055- 06/19 & Appeal-060-06/19 dated 26" July, 2019, I am directed to forward herewith copy of this Court's letter No. 1/18/2009-SCA dated 30 September, 2014 for your information and record.*

*I am further directed to say that the Hon'ble Competent Authority has been pleased to direct that while dealing with the queries/questions receiving from any quarter under Right of Access to Information Act, 2017", the Islamabad High Court is following the policy elucidated by the Hon'ble Supreme Court of Pakistan in its letter No. F.1/18/2009-SCA, dated 30.09.2014, and the same position is applicable to Islamabad High Court, Islamabad."*

7. The Appeal was fixed for hearing on April 15, 2021 and parties were informed on January 12, 2021.
8. Response of Respondent-III was also shared with the Appellants on April 15, 2021.
9. Mr. Ahmed Raza Khan – Public Information Officer, Ministry of Law and Justice and Abdul Hameed Nayyar, Ms. *Imaan Mazari-Hazir* Advocate and Maria Rashid on behalf of the Appellants attended the hearing held on April 15, 2021.
10. Appellants submitted their written arguments during the hearing and relevant portions are reproduced as under:
  - A. *"Women's Action Forum (WAF) and other citizens exercised their democratic, legal and Constitutional right to information, as enshrined in Article 19A of the Constitution of Pakistan, and requested disclosure of information for the following public offices:*
    1. *Chief Justice and Judges of the Supreme Court*
  - B. *That the information requested includes:*
    1. *Income and assets (including income and assets of their spouses and children)*
    2. *Perks and privileges*
    3. *Pension and post-retirement benefits*
    4. *Income tax paid by them during the Financial Years 2017-18, 2018-19 & 2019-20*



5. *Plots allotted in any scheme administered by the government or a state owned or controlled statutory body, foundation, company or agency received by them during the last five years.*

C. *That on 19.06.2020, vide short order in Constitutional Petition No. 17/2019 (Justice Qazi Faez Isa v. Federation of Pakistan), the Honourable Supreme Court of Pakistan effectively declared that financial matters of judges, their spouses and children (dependent or otherwise) are matters of public importance. In light of this and past precedent of the Constitutional Courts, it is concerning that WAF's RTI request has not received an adequate/appropriate response.*

D. *That in light of the short order dated 19.06.2020, the Honourable Supreme Court created a class of judges' spouses and other family members of judges' household. Ostensibly in the interest of judicial independence and accountability, it has been declared that the spouses and children of the judges are also obligated to account for their financial matters in order to ensure sanctity of the judiciary. In view of this principle laid down by the Supreme Court, it is essential that the same be applied across-the-board and equally to the entire class.*

***Reliance is placed on 2000 SCMR 1956, in which the Honourable Supreme Court of Pakistan confirmed that similarly placed persons must be treated equally, as is the dictate of Article 4 of the Constitution.***

***Reliance is further placed on the Code of Conduct for Judges, 2009, under which allegations of impropriety can be deemed to be violations of the Code, and a consequent violation of the oaths of judges under the Third Schedule of the Constitution, which can cast a dark cloud over the judiciary as a whole. Over 125 active judges of the High Courts and the Supreme Court all take the same oath under the Constitution and must abide by the same Code of Conduct.....That it is pertinent to clarify at the outset that judges, holding public/constitutional positions, do not have the same right to privacy accorded to private citizens by virtue of the positions they hold. That under the Code of Conduct for Judges of the Supreme Court of Pakistan and of the High Courts of Pakistan 2009 (herein "**Judicial Code of Conduct**"), judges are expected to keep their conduct in all areas – official and private – free from impropriety (Article III, Judicial Code of Conduct). That under Article VI of the Judicial Code of Conduct, it is explicitly stated that a judge must avoid incurring financial or other obligations to private institutions or persons such as may embarrass him in the performance of his functions. Accordingly, financial transparency in the judiciary is of the utmost importance and a matter of public importance.***

IV. *That the right to information (RTI) under Article 19A has been interpreted expansively by the Supreme Court of Pakistan and the High Courts. Accordingly, under the RTI laws, citizens have a right to access information from government and statutory bodies that receive public funds. The right to information is based on the principle that information belongs to the people, and that access to this information boosts transparency, which in turn strengthens accountability, reduces corruption and improves delivery of public services.*

***Reliance is placed on PLD 2020 Lahore 110***

***"3. Right to information (RTI) is the right that a citizen has, of access to information from the government and statutory bodies that receive public funds. RTI is based on the principle that information belongs to the people. It boosts transparency, which in turn strengthens accountability, reduces corruption and improves delivery of public services. Access to information was increasingly recognized as a prerequisite for transparency and accountability of governments, as safeguarding citizens against mismanagement and corruption. This has led to enact freedom of information legislation..***

*The preamble quoted above (from Punjab RTI law) would indicate that primary object of the said law is to make the government more accountable to citizens and to enforce their fundamental right*

*of access to information in all matters of public importance. The premise of such fundamental right is based upon the concept that the citizens being taxpayers are real owners of public information held by the public bodies or government departments. It is no doubt a modern device in the political history of civilized society rather a weapon against corruption, nepotism and arbitrary decisions by making any public document or public action transparent and open to public view. Any citizen without an obligation of explaining his interest can seek such information regarding any public matter/document from any public body/functionaries. His being only citizen of Pakistan is good enough to constitute his cause of action. The public body can also not ask the reason for seeking such public information.”*

*12. ...The RTI law being a special law takes precedence over all other laws. As such, it provides a powerful tool and mechanism to implement the objects of freedom of information.”*

- V. *That the right to information and access to information in all matters of public importance is indisputably a fundamental right guaranteed under Articles 19 and 19A of the Constitution as it stems from the requirement that members of a democratic society should be sufficiently informed that they may influence intelligently decisions which may affect them. Accordingly, the people of Pakistan have a right to know every public act, everything that is done in a public way, by their public functionaries and chosen representatives.*

***Reliance is placed on PLD 2018 Lahore 198***

*“61. Right to information and access to information in all matters of public importance is indisputably a fundamental right guaranteed under Articles 19 and 19-A of the Constitution. The right of information stems from the requirement that members of a democratic society should be sufficiently informed that they may influence intelligently the decision which may affect themselves. The people of Pakistan have a right to know every public act, everything that is done in public way, by their public functionaries and chosen representatives. People are entitled to know the particulars of every public transaction, acquire information in all matters of public importance and disseminate it. It enables people to contribute on debate on social and moral issues and matters of public importance. Without information, a democratic electorate cannot make responsible judgments about its representatives. Freedom of information is the only vehicle of political discourse so essential to democracy and it is equally important in facilitating artistic and scholarly endeavours of all sorts. In sum, the fundamental principle involved here is the people’s right to know and freedom of information and freedom of speech and expression should, therefore, receive a generous support from all those who believe in democracy and the participation of people in the administration and matters of public importance.”*

- VI. That the Honourable Supreme Court of Pakistan has, in the past, upheld the obligation of public bodies to disclose the nature and use of all funds allocated to public bodies, including secret funds.

***Reliance is placed on PLD 2013 SC 244, wherein the Ministry of Information and Broadcasting was obliged to disclose the nature and use of funds allocated to it, including secret funds.***

- VII. That the citizens of Pakistan, under the Constitution and the 2017 Act, have a right to know what is given to those in the service of Pakistan and holding constitutional positions. As the Supreme Court and High Courts find their basis in the Constitution of Pakistan, it is imperative that public trust in the judiciary be strengthened. The same can be ensured through disclosure of information and greater transparency. Accordingly, withholding such information from citizens is unconstitutional.

**Reliance is placed on 2021 SCMR 201**

*“33. ...The people have every right to know what is given to those in the service of Pakistan and holding constitutional positions. There is no quicker way to lose public trust than to shroud information in secrecy. To withhold such information from the people is unconstitutional. The ‘right to information’ is a fundamental right... The Report of the Hamoodur Rehman Commission of Inquiry into the 1971 War... reported that, ‘responsible service officers’ had asserted before the Commission that corruption resulting from lands and houses resulted in loss of will to fight and loss of professional competence. These disastrous consequences and the aphorism, those who do not learn from history are condemned to repeat it must be avoided.”*

- VIII. That the right to information has expansively been interpreted by the Honourable Supreme Court to include questions relating to the structure, command, governance and organization of the Armed Forces as the Pakistan Army is inextricably linked with the life, security and liberty of every citizen. Accordingly, this right to information is safeguarded with respect to the judiciary, as its organization and functioning has an impact on the fundamental rights of citizens. In fact, part of the function of the High Courts and Supreme Court is the interpretation of the Constitution, and application of the same for the resolution of disputes and public controversies.

**Reliance is placed on PLD 2021 Supreme Court .....**

- IX. That it is settled law that independence of judiciary and public faith in judiciary provide the Constitutional foundation to guarantee the fundamental rights of every citizen of Pakistan. Judicial independence is a foundational value of our Constitutional scheme. It is, therefore, of paramount importance that to ensure public faith in the integrity of the judiciary and to bolster the sanctity of the judicial office, members of the bench are beyond reproach and open to public scrutiny not only for their judicial actions but also affirm the probity of their financial affairs.

**Reliance is placed on 2014 SCMR 1289**, wherein the Honourable Supreme Court of Pakistan held that independence of the judiciary as an institution is “essential so that those who bring their causes/cases before the Judge and the public in general have confidence that their cases would be decided justly and in accordance with law.” That in the case, the Supreme Court held that “the fundamental rights guaranteed under the Constitution cannot be secured unless the judiciary is independent because the enforcement of these rights has been left to the judiciary in terms of Articles 184(3) and 199 of the Constitution and relevant law.”

- X. That there is a distinction between independence of the judiciary and accountability of the judiciary. Transparency does not undermine judicial independence and in fact, disclosure is a facet of public interest. Transparency in functioning of the judiciary would better secure the independence of the judiciary by placing any attempt made to influence or compromise the independence of the judiciary in the public domain.

**Reliance is placed on Civil Appeal No. 10044/2010 (Indian Supreme Court)**

*“9. ... Openness and transparency in functioning would better secure the independence of the judiciary by placing any attempt made to influence or compromise the independence of the judiciary in the public domain. Further, the citizens have a legitimate and constitutional right to seek information about the details of any such attempt. Thus, disclosure, and not secrecy, enhances the independence of the judiciary.”*

- X. That increasing transparency does not threaten judicial independence. The premise of judicial independence is security of tenure. Accordingly, safeguards are in place to guard against



interference by the legislature and executive. The right to information held by citizens is separate and distinct from this.

**Reliance is placed on Civil Appeal No. 10044/2010 (Indian Supreme Court)**

*“39. ... It becomes evident that judicial independence is secured through security over judicial tenure. The edifice of judicial independence is built on the constitutional safeguards to guard against interference by the legislature and the executive. Judicial independence is not secured by the secrecy of cloistered halls. It cannot be said that increasing transparency would threaten judicial independence.”*

- XI. The purpose of Section 6 of the 2017 Act is clear: to ensure that as much of the record of information maintained by a public body is brought into the ambit of ‘public record’ so that the public body remains accountable to the citizens of Pakistan, and so that the latter have access to all information and data which is of public importance and /or has a bearing on the public’s interests or rights.
- XII. That judicial independence is intended to serve certain purposes, including *inter alia* upholding of the rule of law, preservation of separation of powers and promotion of due process. If judges are free to disregard such ends in their conduct – private or official – then judicial independence serves no purpose. In other words, judicial independence too has its limits to the extent that it is a means to achieve other ends, i.e. judicial accountability is yin to the judicial independence yang.

**Reliance is placed on Civil Appeal No. 10044/2010 (Indian Supreme Court)**

*“42. Scholars caution that while judicial independence is important, one should not lose sight of the larger goals and purposes which judicial independence is intended to serve. Charles Gardner Geyh considers such ends to include upholding of the rule of law, preserving the separation of governmental powers, and promotion of due process amongst many others. Therefore, he believes that if judges are free to disregard such ends in their decision making, judicial independence serves no purpose.”*

- XIII. That the exemption clause under the 2017 Act is to be construed strictly, in accordance with the intention of the legislature. The intention of the legislature can be ascertained through a holistic examination of the 2017 Act - in its entirety - and in light of its object and purpose, i.e. securing greater transparency.
- XIV. That the Honourable Supreme Court of Pakistan has clarified what independence of the judiciary entails, i.e. first, that every judge is free to decide matters before him in accordance with his assessment of facts and his understanding of the law without improper influences, inducements or pressures (direct or indirect) from any quarter or for any reason; and second, that the judiciary is independent of the executive and legislature and has jurisdiction, directly or by way of review, over all issues of a judicial nature.

**Reliance is placed on PLD 1994 Supreme Court 105**

*“Now, according to the consensus of jurists, the independence of the judiciary means: (a) that every judge is free to decide matters before him in accordance with his assessment of facts and his understanding of the law without improper influences, inducements or pressures (direct or indirect) from any quarter or for any reason; and (b) that the judiciary is independent of the executive and legislature and has jurisdiction, directly or by way of review, over all issues of a judicial nature.”*

- XV. That judicial independence cannot be used as a byword for avoiding the accountability and criticism that accompanies transparency. Accountability and transparency are necessary not just vis-à-vis upholding the Constitution but with respect to ensuring public trust and

confidence in the judiciary. Without the latter, the independence of the judiciary itself is undermined.

- XVI. WAF and pro-democracy citizens have requested this information in the public and national interest of Pakistan, and it is our duty as citizens to do so. People's interests lie in safeguarding the Constitution, the fundamental and equal rights of all citizens and the separation of state powers. All principles, rights and rewards must be legally specified and applied and awarded in a transparent manner as acceptable to the citizenry of Pakistan. In order to ensure that justice prevails and history bears testament to state accountability, no head or senior officials of state institutions should be exempted from such inquiry and the information we seek must be fully accurate, freely available and not withheld under any pretext. Public and national interest require that this information be disclosed to affirm public faith in state institutions so the citizenry has reason to believe that the accountability agenda in today's Pakistan is not selective, and that a uniform standard exists and is applicable to all, without fear or favour.
- XVII. That the data requested should already be available on the Supreme Court website, in accordance with Section 5(1) of the 2017 Act. Under Section 2(ix)(e), the term "public body" includes "any court, tribunal, commission or board under the Federal law." Accordingly, the Honourable Supreme Court of Pakistan falls under this category.
- XVIII. That denial of information has to be "subject to reasonable restrictions under the law." While Section 16 lists certain restrictions, it is to be interpreted strictly and not used arbitrarily to defeat the object and purpose of the 2017 Act. Further, the Federal Government must have declared the said material as 'classified' as per Article 99(3) of the Rules of Business (1973), which states that the Cabinet Division is responsible for declaring material as classified. In issuing the declaration for information to be deemed classified, the Federal Government must under Section 24-A of the General Clauses Act 1897 provide justifications for the declaration. Only in limited circumstances where disclosure may cause more "harm than good" can such non-disclosure be justified. This requires a careful balancing exercise. Further, when citing greater harm than good as a reason for non-disclosure, the public body must provide justifications and cogent reasoning for the same.

#### **Reliance is placed on 2008 PTD 246**

*"9. It goes without saying that access to information is sine qua non of constitutional democracy. The public has a right to know everything that is done by the public functionaries. The responsibility of public functionaries to disclose their acts works both against corruption and oppression. Though this right has its limitations, but every routine business of the public functionary cannot be covered with the veil of secrecy or privilege. Only where disclosures would cause greater harm than good that the disclosures are to be disallowed. Therefore, as a rule, information should be disclosed and only as an exception privilege should be claimed on justifiable grounds permissible under the law."*

11. Through an E-mail dated April 15, 2021, Counsel of the Appellants Ms. Imaan Mazari-Hazir shared with the commission other jurisdictions in which asset and other financial disclosures are mandated with respect to members of the judiciary.

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

12. The questions for the consideration of this commission are as under:

- (a) Do Registrar offices of Honourable Islamabad High Court and Honourable Supreme Court of Pakistan come within the purview of the Right of Access to Information Act 2017, henceforth referred to as Act?;
- (b) Should the requested information be made available to citizens under the Act?; and

(c) What are the benefits of the proactive disclosure of the categories of information mentioned in Section 5 of the Act?

13. The Act does not accord blanket exemption to any public institution. This commission is of the view that Registrar offices of Honourable Islamabad High Court and Honourable Supreme Court of Pakistan come within the definition of public body under Section 2 (xi) (e) which is as under:

“Any court, tribunal, commission, or board under the Federal law;”

14. This commission holds that Honourable Justice Qazi Faez Isa and Mrs. Sarina Isa provided requested information the Appellants voluntarily and voluntary actions of one Justice cannot be equated with legally binding requirements for all justices under the Act.
15. The Registrar Office of Honourable Supreme Court of Pakistan has shared a letter which is of administrative nature and not a judgement.
16. In the absence of any judgement of the Supreme Court which bars citizens from seeking information from the Supreme Court under the Right of Access to information Act on the grounds that it is tantamount to curbing independence of the judiciary, this commission is left with no option but to determine likelihood of any such eventuality. In this context, it is important to understand the principle of separation of judiciary from executive oversight and public accountability through the exercise of the constitutional right of access to information.
17. In a democratic polity, roles and functions of the legislature, executive and the judiciary are clearly defined through certain principles. The principle of the separation of judiciary from executive oversight is one such principle to ensure that there is no interference from the executive in the judiciary. Independent judiciary is only possible when there is no executive oversight on the judicial functions of the judiciary and that when the judiciary has adequate funds to perform the judicial functions.
18. Democratic system of governance cannot survive if the principle of separation of judiciary from the executive oversight is compromised. This fact is not lost on the citizens of Pakistan who have always stood behind judiciary whenever there have been any attempts in the past to sabotage the principle of separation of judiciary from the executive oversight.
19. Public accountability through the exercise of the right to information means that citizens should be able to hold public functionaries and the elected representatives accountable by getting access to information held by public institutions. Right to information as a tool for public accountability is enunciated in the Preamble of the Act as well which is as under:

“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.

AND whereas it is expedient to provide for a law which gives effect to the fundamental right of access to information, as guaranteed under Article 19A of the Constitution of Islamic Republic of Pakistan and international law, whereby everyone shall have the right to have access to all information held by public bodies subject only to reasonable restrictions imposed by the law and for matters connected therewith or incidental thereto”.

20. The honourable Supreme Court of Pakistan as a public institution performs two kinds of functions i.e., a) judicial functions and b) administrative functions, like any other public institution.
21. This commission is of the view that the exercise of constitutional and statutory right of citizens in matters of public importance through the Act is neither likely to, nor, designed to curtail independence of the superior judiciary. This commission also believes that exercise of constitutional right of access to information in matters of public importance through the Act cannot be equated with executive oversight of superior judiciary.
22. The categories of information to be proactively disclosed under Section 5 of the Act have no bearing on the independence of the judiciary. Similarly, the information to be provided to the applicants under Section 6 of the Act is also not in conflict with the independence of the judiciary. Furthermore, the Public Information Officer to be designated under the Act will receive applications and can turn down any request for information which is likely to impact independence of the judiciary, relying on the relevant exemption clauses of Section 7 and 16 of the Act.
23. In the light of above arguments, this commission maintains that the exercise of constitutional and statutory right of citizens in matters of public importance through the Act and the principle of separation of judiciary from the executive oversight are not mutually exclusive to the extent of citizens seeking information and the Registrar office of the Honourable Supreme Court of Pakistan responding to these information requests under the provisions of the Act.
24. Each public institution performs certain core functions. This commission holds that if citizens' right of access to information in matters of public importance pertaining to superior judiciary is restricted on the grounds that it would impact its independence and core functions, the same grounds would be relevant in the case of all public institutions.
25. As the requested information pertains to the details of income taxes and assets of Honourable Justices, their spouses and off-spring, it needs to be determined on what grounds this information can be declared public.
26. The learned counsel has cited jurisprudence from different countries for declaration of assets of judges and their family members. It is prerogative of the Parliament to enact legislation to this effect as this commission can only decide the issue at hand within the provisions of this Act.
27. Under the Act, it can be made public only on the following grounds:  
Third party has consented to the disclosure of the information;  
The person making the request is the guardian of the third party or the next of kin or the executor of the will of the deceased; and  
The third party is or was an official of a public body and the information relates to his functions as a public official.
28. In the instant appeal, this commission is of the view that, none of the above-mentioned conditions has been satisfied to release private information of identifiable individuals i.e., details of income taxes and assets of Honourable Justices, their spouses and off-spring.
29. So far as access to the requested information about perks, privileges, Pension and postretirement benefits of Honourable Chief Justice and Honourable Judges of the Supreme Court of Pakistan and Islamabad High Court, and plots allotted in any scheme administered by the government or a state owned or controlled statutory body, foundation, company or agency received by the Honourable Chief Justice and Honourable Judges of

the Supreme Court of Pakistan and Islamabad High Court during the last five years is concerned, this commission holds that this information available with the Ministry of Law and Justice in the shape of notifications. Had the Ministry of Law and Justice carried out its obligation to ensure proactive disclosure of categories of information mentioned in Section 5 of the Act, this information would have already been published on its web site and easily accessible for citizens. Furthermore, had the Respondent Ministry of Law and Justice implemented provisions of this Act, including, but not limited to Section 4 and 5 of the Act, the unwarranted delay in providing requested information to the Applicants could have been avoided.

30. This commission has held through its different detailed judgements that federal public bodies are not giving primacy to proactive disclosure of information through their web sites and that proactive disclosure of information is not given serious consideration it deserves. Furthermore, this commission has maintained through its various judgements that categories of information mentioned in Section 5 of the Act are not only to be proactively published on the web site of public institutions but information thus published should be accessible to all citizens including the blind, speech and hearing impaired and persons with different disabilities, catering to their special needs.
31. Secretary, Ministry of Law and Justice, being the Principal Officer of the public body, was legally bound to complete the process of putting all categories of information mentioned in Section 5 of the Act on its web site within six months of the commencement of this Act, which was enacted on October 16, 2017.
32. Broadly speaking, categories of information to be proactively published on the web sites of the federal public bodies are as under:
  - directory of the officers of a public body, containing information about their responsibilities, organogram of the public body and the information about its functions and services provided by the public body;
  - Act and the Rules of the public body, its regulations, bye-laws, orders and notifications;
  - manuals and policies of the public body;
  - relevant facts and background information relating to important policies and decisions undertaken by a public body;
  - statement of policies adopted by the public body;
  - criteria, standards or guidelines under which officers of the public body exercise their discretionary powers;
  - terms and conditions for acquiring any license, permit, consent, approval, grant, allotment or other benefits;
  - terms and conditions for all kinds of agreements and contracts;
  - particulars about the recipients of any concession, permit, license or authorization granted by the public body;
  - information about decision making processes of the public body and information about how citizens can provide their input to the public body;
  - 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 methods for seeking information from the public body;
  - Schedule of costs, developed by Pakistan Information Commission for seeking information from federal public bodies;
  - name, title, E-mail and telephone number of the Public Information Officer;
  - Performance reports, audit reports, evaluation reports, inquiry or investigative reports and other reports that have been finalized.



33. Even a cursory glance at these categories demonstrates that the significance of their proactive disclosure can hardly be exaggerated in terms of improving governance in the country.
34. Under staffing of officers is a perennial problem faced by public bodies. However, this issue does not get public attention it deserves. If a ministry keeps updated diary of its officers on its web site, citizens would know about total number of sanctioned posts and the details about sanctioned posts filled and lying vacant. This critical issue of under-staffing is not going to get public attention if this information is not brought in the public domain through proactive disclosure of directory of officers through web sites.
35. It is common knowledge that citizens face multiple barriers because of the lack of information about services being provided by a public body. For example, if particular sub-section about proactive disclosure of information is implemented, citizens would know about terms and conditions for acquiring any license, permit, consent, approval, grant, allotment or other benefits offered by a ministry.
36. Citizens would be able to know about terms and conditions for all kinds of agreements and contracts that are entered into by a federal public body.
37. Citizens would be able to know about the particulars of the recipients of any concession, permit, license or authorization granted by the public body because it is a legal requirement considering that all such grants are given through taxes of the citizens.
38. Citizens would have greater level of participation in the governance of the country if information about decision making processes of the public body and information about how citizens can provide their input to the public body is made available on the web site of the public body, as required under Section 5 of the Act.
39. There is need for improving availability of information in the public domain about the allocation and utilisation of public funds by federal public bodies so that citizens could know how their taxes are being put to use. This would only happen when public bodies put 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 on their web sites as required under Section 5 of the Act.
40. The implementation of Section 5 of the Right of Access to Information Act 2017 would help citizens exercise their constitutional right of access to information in matters of public importance if federal public bodies put details of the method methods for seeking information from the public bodies. In this connection, each federal public body is legally obligated to put Schedule of costs, developed by Pakistan Information Commission, (available on the commission's web site) for seeking information from federal public bodies on its web site. Furthermore, each federal public body is legally obligated to put name, title, E-mail and telephone number of the Public Information Officer notified under the Right of Access to Information Act 2017 on its web site, a crucial piece of information which few public bodies have put on their web sites.
41. Officers have to file information requests and then appeals with commission to get access to enquiry reports conducted against them. Similarly, candidates who apply for government jobs seek information by filing appeals with the commission to get access to information about criterion for jobs and marks allotted to successful candidates to gauge the level of fairness adopted by the public body in the recruitment process. Citizens will not have to go through the trouble of filing information requests and appeals with the commission if each public body ensures that all performance reports, audit reports, evaluation reports, inquiry or investigative reports and other reports that have been finalized are made available on the web sites of the public bodies.

42. This commission is of the view that trust of citizens in public institutions is irrevocably linked with timely and accurate flow of information between citizens and public institutions. However, this would only be possible when Principal Officers of federal public bodies would ensure implementation of the Right of Access to Information Act 2017 in letter and spirit.

#### **D. Order**

43. Appeals are partially allowed. Public Information Officer, Ministry of Law and Justice is directed to share with Appellants within 7 working days of the receipt of this Order all notifications pertaining to the following:

Perks and privileges of Honourable Chief Justice and Honourable Judges of the Supreme Court of Pakistan and Islamabad High Court.

Pension and postretirement benefits of Honourable Chief Justice and Honourable Judges of the Supreme Court of Pakistan and Islamabad High Court.

Plots allotted in any scheme administered by the government or a state owned or controlled statutory body, foundation, company or agency received by the Honourable Chief Justice and Honourable Judges of the Supreme Court of Pakistan and Islamabad High Court during the last five years.

44. Secretary, the Ministry of Law and Justice is directed to ensure implementation of Section 5 of the Act and submit compliance report to this effect to this commission within 30 days of the receipt of this Order.

45. Copies of this Order be sent to Secretary and PIO of the Ministry of Law and Justice, Registrar offices of Honourable Supreme Court of Pakistan, Honourable Islamabad High Court and the Appellants for information and necessary action.

**Mohammad Azam**

Chief Information Commissioner

**Fawad Malik**

Information Commissioner

**Zahid Abdullah**

Information Commissioner

Announced on:

June 02, 2021

This order consists of 15 (fifteen) pages, each page has been read and signed