

Pakistan Information Commission
Government of Pakistan

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In the Pakistan Information Commission, Islamabad

Appeal No 175-11/2019

Ms. Nadia Naeem

(Appellant)

Vs.

Pakistan Medical Commission

(Respondent)

Order

Date: July 15, 2021

Mohammad Azam: Chief Information Commissioner

A. The Appeal

1. The Appellant filed an appeal on November 09, 2021, to the Commission, stating that she submitted an information request to President, Pakistan Medical and Dental Commission in March 2019 under the Right of Access to Information Act 2017 for but did not receive the requested information from the public body.
2. The appeal filed by the Appellant is as under:

"The applicant / patient bearing MR # 11-1439 has approached to the respondents many time with the request to provide the requisite record to enable the undersigned to file proper rejoinder.

2. your good office has also issued direction to the respondent doctors to provide all the requisite record to the applicant but that too has not been complied with till date;

3. The Historic 18th Amendment (April 2010) by inserting a new Article 19-A in the Constitution has acknowledged the Citizens Right to Information. The Article 19-A about the Right to information says: -

"Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law".

IT IS, THEREFORE, RESPECTFULLY REQUESTED THAT the following record, in possession of Respondent Doctors, may graciously be provided enabling the applicant to file proper rejoinder as directed by your good office: -

- i. Certified copies of complete file/ hand written notes/opinion/check-up*
- ii. Certified copies of Examination notes/opinion/check-up/findings and management done at the time of admission Certified copies of delivery notes/opinion/checkup*
- iv. Certified copies of notes/opinion/checkup of PEADS doctors*
- V. Certified copies of notes/opinion/checkup by heart examination*

- vi. *Certified copies of registration of Healthcare of respondents, its legal status, NTN, GST*
- vii. *Camera recordings, Videos of patient bearing MR # 11-1439 dated 17/18 august, 2019*
- viii. *Copies of SoPs and Policies of healthcare duly approved by the regulator*
- ix. *Other relevant record CTGS, X Rays.*”

B. Proceedings

3. This commission through a notice dated November 13, 2019 sent to the Registrar, Pakistan Medical and Dental Commission called upon the Respondent to submit reasons for not providing the requested information.
4. The appeal was fixed for hearing on February 18, 2020 and both parties were informed through notices sent on January 30, 2020.
5. No one appeared in the hearing held on February 18, 2020 to represent the Respondent.
6. The appeal was again fixed for hearing on March 03, 2020 and both parties were informed through notices sent on February 19, 2020.
7. Through another notice dated July 22, 2020, the respondent was directed to submit written arguments within 15 days, otherwise the appeal will be decided Ex-Parte in the light of the record available on the file and the Right of Access to Information Act 2017.
6. Meanwhile, the Pakistan Medical and Dental Commission was converted into Pakistan Medical Commission.
9. The appeal was fixed for hearing on February 09, 2021 and the Appellant and Respondent were informed through the notices sent on January 27, 2021.
10. Through another notice dated March 30, 2021 the commission directed the Registrar, Pakistan Medical Commission, to submit written arguments within 15 days, otherwise the appeal will be decided Ex-Parte in the light of the record available on the file and the Right of Access to Information Act 2017.
11. The respondent on April 13, 2021 submitted its response which is as under:

“1. That according to the Right of Access of Information Act, 2017 every citizen can access the record from any department which falls in the category of public record, the section 6 of the Right of Access of Information Act, 2017 provides a list of documents which any person can demand from a public body. In this regard reference is made to section 6 of the Right of Access of Information Act, 2017.

(6) Declaration of public record,--Subject to the provisions of section 7, the following record of all public bodies is hereby declared to be the public record, namely: -

 - a) Policies and guidelines,*
 - b) Transactions involving acquisition and disposal of property and expenditure undertaken by a public body in the performance of its duties and function;*
 - c) Information regarding grant of licenses, allotments and other benefits. privileges, contracts and agreements made by a public body;*
 - d) Final orders and decisions, including decisions relating to members of public; and*
 - e) Any other record which may be notified by the Minister-in-charge of the Federal Government as public record for the purpose of this Act.*

2. That the Honourable Commission in the case of *Hamza Hassan Khan Vs. Security and Exchange Commission of Pakistan & Pakistan Mercantile Exchange* had already set a precedent that the commission can only exercise its powers to the matter of public importance, in this regard reference is made to the relevant paragraphs of the Order.

i. This Commission is of the view that it is the responsibility of the regulatory bodies to ensure that the respective entities disclose to citizens all information pertaining to matters of public importance.

ii. The Commission also held that the powers vested in this Commission can only be exercised to the extent of ensuring provision of information to citizens that is declared as public under the Right of Access of Information Act, 2017 and cannot be exercised to issue directions to the regulatory bodies pertaining to their other functions.

3. That the Pakistan Medical Commission established under the Pakistan Medical Commission Act, 2020, Pakistan Medical Commission (PMC) is a public body and responsible to provide its record which is public in nature and fall in the category of public record provided in section 6 of the Right of Access of Information Act, 2017.

4. That the above mentioned appeal is incomplete only one page is attached. Further the said incomplete appeal does not specify the public record required from the Pakistan Medical Commission in terms of the Right of Access of Information Act, 2017.

5. That the PMC are under obligation only to provide record that falls under the domain of public record and is in the custody of the Commission. That the Commission cannot take the responsibility of any record or provides any information which is not in the custody of Commission.

6. It is apprised that the above named Complainant filed a Complaint before Disciplinary Committee of the Pakistan Medical Commission against two doctors of a private Hospital namely M/S Medicsi, pak Saudi Tower, Jinnah Avenue, Blue Area, Islamabad which is under process and taken up and will be decided in due course of time. (Copy of Complaint filed before Disciplinary Committee is attached as "Annexure-A").

Prayer:

In view of the above, it is therefore, respectfully prayed that the Appeal of Appellant may graciously be dismissed accordingly. ”

12. Response of the public body was shared with the appellant on May 06, 2021.

13. The appellant through an email sent on May 25, 2021 submitted her response to the information shared by the public body, which is as under:

“We are not satisfied with the reply of PMC, the case is still pending at PMC’s end sine 15th July 2019 and at PIC end since 9th November 2019 despite as per PIC rule that case must be closed within 60 days after appeal.

Following information is required which is already requested to PIC ,PMC , DR Salma and Dr Yasmeen Mahmood since 9th November 2019 (Scanned request attached) :

That applicant is a citizen of Pakistan and patient bearing MR # 11-1439 who under the Right of Access to Information Act, 2017 and rules framed thereunder, and Article 19-A of the Constitution is entitled to know the following information which has not been provided to the applicant despite of the fact she went pillar to post for getting the same, hence this formal application:-

1. *Certified copies of complete file / hand written notes/opinion/checkup;*
2. *Certified copies of Examination notes/opinion/checkup/findings and management done at the time of admission;*
3. *Certified copies of delivery notes/opinion/checkup;*
4. *Certified copies of notes/opinion/checkup of PEADS doctors;*
5. *Certified copies of notes/opinion/checkup by heart examination;*
6. *Certified copies of registration of Healthcare of respondents, its legal status, NTN, GST;*
7. *Details of payments received;*
8. *Camera recordings, Videos of patient bearing MR # 11-1439 dated 17/18 august, 2019;*
9. *Copies of SoPs and Policies of healthcare duly approved by the regulator; and,*
10. *Other relevant record CTGS, X Rays.*

IT IS, THEREFORE, RESPECTFULLY requested that the above said information keeping in view the law of land and international protocol and the constitution may graciously be provided to the applicant in the interest of justice.”

14. The response of the appellant was shared with the Respondent on May 27, 2021 and was directed to respond to the queries of the appellant before June 09, 2021.
15. The respondent did not respond to the notice dated May 27, 2021.

C. Discussion and Commission’s View on Relevant Issues

16. This commission has to decide the following issues regarding the implementation of the Right of Access to Information Act, 2017 hereafter referred to as Act?
 - i. The information requested by the appellant falls within the ambit of public record?
 - ii. The Respondent has provided the relevant and complete information to the Appellant?
 - iii. Has the Respondent uploaded all categories of the information defined in the Section 5 of the Act on its website?
 - iv. Has the Respondent nominated the Public Information Officer as required under the Section 9 of the Act?
17. In the instant appeal, the appellant requested record related to her medical treatment and public bodies under Section 14 (3) of the Act are bound to provide such information within three working days.

Section 14 (3) is as under:

“(3) Information needed to protect life and liberty of any individual shall be provided within three working days.”

18. The respondent through a letter vide No. PF. 8-1845/2019-DC/3/9088 dated July 29, 2019 directed Dr. Yasmeen Mahmood, Medicsi, Pak Saudi Tower to provide the requested record within 12 days. Text of the said letter is as under:

“In continuation to this office letter No. PF.8-1845/2019/Dc/318866 dated 18th July,2019. Subject of the letter may be read as noted above. Please find enclosed self-explanatory complaint filed by Ms. Nadia Naeem against you.

You are directed to submit your comments, record of the patient along with copy of your registration certificate within (12) days, failing which the case will be placed before the Disciplinary Committee of the Council which shall initiate ex-parte proceedings against you.”

19. From the above mentioned letter of the Respondent, it is clear that the Respondent under Section 12 (b) of The Pakistan Medical Commission (Enforcement) Regulations, 2021 has the powers to direct the hospital to submit records. In this connection, Section 12 (b) is as under:

“(b) discovery and production of any document or other material object producible as evidence from any hospital or institution.”
20. While it is mandate of the Respondent to initiate appropriate proceedings against the hospital, the Appellant has fundamental and basic human right to have access to information held by the hospital. As such, the Respondent is required to use powers vested in the Respondent through the Act to ensure that requested information is provided to the Appellant at the earliest.
21. This commission holds that any record that can be submitted to a regulatory body, or, the regulatory body is empowered to get access to the record, is record/information for the purposes of this Act and can be shared with the applicants/appellants, if warranted by the provisions of the Act. The record requested in the instant appeal is a matter of public importance as it belongs to the life of a citizen and the quality of healthcare services provided to citizens.
22. This commission also holds that a patient does not only have the right to have access to records about the patient, but the patient has also the right of access to all information/records available with the hospital about the patient, including opinions of the medical staff/doctors.
23. The Respondent also failed to make sure the publication of the information determined in Section 5 of the Act on its website.
24. According to Section 19 (d) of the Act, this commission is bound to make sure that all information determined in Section 5 of the Act is made available on the website of the public bodies. In this regard, the Pakistan Information Commission has developed a template to ensure proactive disclosure of information. The template is available on the website of this commission i.e. www.rti.gov.pk
25. Moreover, according to Section 9 of the Act, each public body shall, within thirty days of the commencement of this Act, notify one or more designated officials, not below the rank of an officer in BPS -19 or equivalent; but the Respondent has not so far nominated any official to deal with the information request of the citizen.
26. If directions of the commission in this Order are not followed, it will be left with no option but to invoke Section 20 (f) of the Right of Access to Information Act 2017.

D. Order

27. The appeal is allowed. The Registrar, Pakistan Medical Commission is directed to provide the information requested in Para-2 with intimation to this office, at the earliest, but in any case, not later than 3 working days of the receipt of this Order.
28. The Respondent is directed to notify Public Information Officer, (PIO), under Section 9 of the Act, put the 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.
29. 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 by August 07, 2021.
30. Copies of this order be sent to the President and Registrar, Pakistan Medical Commission and also to the Appellant for information and necessary action.

Mohammad Azam

Chief Information Commissioner

Fawad Malik

Information Commissioner

Zahid Abdullah

Information Commissioner

Announced on:

July 14, 2021

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