

**IN THE PAKISTAN INFORMATION COMMISSION ISLAMABAD**

APPEAL NO. 818-01-2021

Pervaiz Said

Versus

Ministry of Information and Technology

Date:7.7.2021

Fawad Malik: Information Commissioner

**A. APPEAL.**

1. The Public Interest Law Association of Pakistan (PILAP), under the Right of Access to Information Act, 2017 has asked for the provision of the information from the office of the Secretary, Ministry of Information and Technology, Islamabad. The detail of the requested information is reproduced as under:

- i) *“Given that PECA 2016 has the requirement of issuing a warrant before removing any unlawful online content, why do the 2020 Rules not have this requirement and why is online content mandated to be arbitrarily removed by private service providers and Social Media Companies?”*
- ii) *How do the Rules seek to balance the Fundamental Rights to freedom of speech and expression, and the right to information under the Rules, especially as regards holding the Government and holders of public office accountable, particularly in light of Rule 4(1)(ii) which states that online content may be removed or blocked if the information “intimates or harms the reputation of Federal or Provincial Government or any person holding public office....or otherwise brings or attempts to bring into hatred or contempt, or excites or attempts to excite dissatisfaction towards the Federal Government or Provincial Government” ?*
- iii) *Why are the rules arbitrary in removing online content without allowing due process rights to be exercised or giving the content creator the right to be heard?*
- iv) *What is the reasoning behind the requirement for Service Providers and Social Media Companies to provide personal subscriber information,*

*traffic and content data of users to law enforcement agencies? How is this provision balanced with the right to privacy and the Fundamental Right to inviolability of dignity of man?”*

2. The application was not responded hence the appeal under section 17 of the Right of Access to Information Act, 2017 before the Pakistan Information Commission.

**B. PROCEEDINGS.**

3. Notice of the Commission issued to the Secretary, Ministry of Information and Technology, Islamabad was not responded therefore the appeal was fixed for hearing before the Commission on 7.7.2021 and both the appellant as well as the public body were informed accordingly. Mr. Sherdil Khan, Legal Executive appeared to represent the Ministry of Information and Technology. He argued and defended on the similar lines as earlier in the Appeal No. 705-11-2020 titled “Pervaiz Said versus Ministry of Information and Technology” filed by the appellant against the answering body and submitted that the reply filed by the ministry in the said appeal may be considered in the present appeal as well. The reply is reproduced as under:

**“PRELIMINARY SUBMISSIONS AND REPORT:**

- *That the Ministry of Information Technology & Telecom Division (MoIT & T) is the national focal ministry and enabling arm of the Government of Pakistan for planning, coordinating and directing efforts to initiate and launch information technology and telecommunications programs and projects aimed at economic development of the country. In November 2002 MOIT&T was created, and the IT & Telecommunications Division of the Government of Pakistan became a part of the MoIT & T. MoIT & T is working on national agenda to have a sound and sustainable Information Technology and Telecommunications base which will result in socio-economic development of the country and attainment of the vision for a better Pakistan. MoIT & T is maintaining consistency of policies as is evident from achievements made in IT & Telecommunication sector since its inception. MoIT & T strives to cope with challenges in meeting the evolving requirements of the IT and telecommunications.*
- *The Prevention of Electronic Crimes Act, 2016 (PECA) provides a complete framework for dealing with electronic crimes including removing or blocking of unlawful online content and powers of the Pakistan Telecommunication Authority (PTA) with respect to un-lawful online content management (Section 37 of PECA). A copy of the PECA is at Annex-I. Under section 37 of PECA, PTA is empowered to block or*

*remove unlawful online content. Under section 37 read with clause (h) of sub-section (2) of section 51 of PECA, PTA is empowered to prescribe rules, with the approval of the Federal Government, for blocking/ removal of unlawful online content and for enforcing national security measures in the telecommunication sector with the cooperation of law enforcement agencies.*

**REPLY ON FACTS:**

- *That right to information is not absolute one. There are certain reasonable restrictions have been imposed in Article 19 and 19-A of the Constitution of Islamic Republic of Pakistan, 1973, Nevertheless, Ministry of Information Technology & Telecommunication (MoIT&T) is not the custodian of the requested information rather the custodian of the relevant law i.e Prevention of Electronic Crimes Act, 2016 (PECA, 2016). However, Federal Investigation Agency (FIA) has been designated as an investigation agency by virtue of section 29 L PECA 2016. Further, Pakistan Telecommunication Authority is empowered to remove or block or issue directions for removal or blocking of access to an information thorough any information system if it consider necessary in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, public order, decency or morality, or in relation to contempt of court of commission of or incitement to an offence under this Act.”*

**C. COMMISSION’S VIEW**

4. The appellant has queried from the office of the Secretary, Ministry of Information Technology questions pertaining to the rules framed under the Prevention of Electronic Crimes Act, 2016. He wants to know the reasons for not providing the requirement of issuing warrant before the removal of unlawful online content and why the online content is mandated to be arbitrarily removed by private service providers and Social Media Companies, that how do the Rules seek to balance the Fundamental Rights to freedom of speech and expression, and the right to information, especially as regards holding the Government and holders of public office accountable, particularly in light of Rule 4(1)(ii) which states that online content may be removed or blocked if the information “intimates or harms the reputation of Federal or Provincial Government or any person holding public office or otherwise brings or attempts to bring into hatred or contempt, or excites or attempts to excite dissatisfaction towards the Federal Government or Provincial Government, that why are the rules arbitrary in removing online content without allowing due

- process rights to be exercised or giving the content creator the right to be heard and lastly that what is the reasoning behind the requirement for Service Providers and Social Media Companies to provide subscriber information, traffic and content data of users to law enforcement agencies and how is this provision balanced with the right to privacy and the Fundamental Right to inviolability of dignity of man.
5. The legal cell of MoIT&T has filed reply without touching and answering the queries asked by the appellant. In the reply it is stated that the Prevention of Electronic Crimes Act, 2016 provides a complete framework for dealing with electronic crimes including removing or blocking of unlawful online content and powers of the Pakistan Telecommunication Authority with respect to un-lawful online content management. It is further stated that the Federal Investigation Agency has been designated as an investigative agency under section 29 of the PECA and that PTA is empowered to remove/ block or issue directions for removal or blocking of access to a piece of information through any information system if it considers necessary in the interest of the glory of Islam or the integrity, security or defense of Pakistan or any part thereof, public order, decency or morality or about contempt of court or commission of or incitement to an offence under PECA.
  6. The reply is not specifically to the point and does not substantially address the questions asked by the appellant. The public body instead has countered the queries collectively in a general manner. Each and every question of the request must be construed and addressed to the satisfaction of the appellant and the Commission.
  7. The bare reading of the request depicts that the appellant has raised specific questions of public importance that need to be addressed specifically by providing the desired information. The respondent in the reply has not claimed the exemption of the requested information provided under the Act. The Commission is of the view that the information sought by the appellant is the category of record that ought to have been displayed proactively to the access of the public at large as mandated in the section 5 of the Act.
  8. It would not be out of place to mention here that the respondent body has categorically admitted in the reply that Pakistan Telecommunication Authority is empowered to remove/ block or issue directions for removal or blocking of access to an information through any information system if it consider necessary in the interest of the glory of Islam or the integrity, security or defense of Pakistan or any part thereof, public order, decency or morality, or in relation to contempt of court of commission of or incitement to an offence under this Act. The stance of the respondent is in contradiction to the reply.
  9. Article 19-A of the Constitution and the RTI Act 2017 has empowered the citizens to have access to the record held by the public body. Disclosure of the requested record

- will improve the participation of the people in public affairs which will be helpful in reducing corruption and inefficiency in the department and promote the good governance.
10. It is noticed that the respondent organization has not notified the designated officer as mandated in section 9 of the Act.

**D. ORDER**

11. The appeal is allowed. The Secretary, Ministry of Information and Technology is directed to provide the appellant the requested information mentioned in para 1 of this order, forthwith but not later than ten days of the receipt of this order. The response should be based on record available indicating measures taken or not taken as per legal obligations of the respondent.
- He is further directed to implement mandatory sections 5 & 9 of the Act in letter and spirit within one month of the receipt of this order, under intimation to this Commission.

Mohammad Azam  
Chief Information Commissioner

Fawad Malik  
Information Commissioner

Zahid Abdullah  
Information Commissioner  
Announced on 28.9.2021

Certified that this order consists of five (5) pages, each page has been read and signed.