

## Pakistan Information Commission

### Government of Pakistan

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### In the Pakistan Information Commission, Islamabad

#### Appeal No E85-02/21

**Muhammad Kashif**

**(Appellant)**

Vs.

**Ministry of Energy (Power Division)**

**(Respondent)**

#### **Order**

**Date:** November 04, 2021

**Mohammad Azam:** Chief Information Commissioner

#### **A. The Appeal**

1. The Appellant on February 10, 2021 filed an appeal through online appeal management system of this commission, stating that he Submitted an information request to the Deputy Secretary (Admin) / Public Information Officer, Ministry of Energy (Power Division) on December 28, 2021 under the Right of Access to Information Act 2017 but did not receive the requested information from the public body.
2. The information sought by the Appellant is as under:
  - i. The Summary dated 2 November 2020 put up by the Ministry of Energy (Power Division) to the Economic Coordination Committee of the Cabinet together with all supporting data and all documents and information on basis of which the said summary was prepared and moved;*
  - ii. Comments received from the relevant departments and divisions, including the Finance Division, Textile Division and the Law Division on the aforesaid Summary;*
  - iii. The decision/recommendations dated 2 November 2020 (Ref: Case No. CCE/61/19/2020) of the Economic Coordination Committee of the Cabinet, together with all supporting data and all documents and information on basis of which the said decision was reached;*
  - iv. The Decision made by the Cabinet on 6 November 2020 under Case No. 846/43/2020 pursuant to the recommendations dated 2 November 2020, together with all supporting data and all documents and information on basis of which the said decision was reached."*

#### **B. Proceedings**

3. This commission through a notice dated February 17, 2021 sent to Deputy Secretary (Admin) / Public Information Officer, Ministry of Energy (Power Division) this

Commission called upon the Respondent to submit reasons for not providing the requested information.

4. The Respondent through a letter vide No 10(5)/2021-Law-PIC dated April 05, 2021 submitted response which is as under:

*“ I am directed to refer to your Appeal No. E-85-02/21 dated 17<sup>th</sup> February, 2021 on the subject noted above and the response of Power Division to Information sought therein is given in the followed tabulated form.*

<b>Sr. No</b>	<b>Information Sought</b>	<b>Response</b>
i.	The summary dated 2 November 2020 put up by the Ministry of Energy (Power Division) to the Economic Coordination Committee of the Cabinet together with all supporting data and all documents and information on the basis of which the said summary was prepared and moved.	<ul style="list-style-type: none"> <li>• Summary of Power Division is declared as secret/classified by the Minister-in-charge of Federal Ministry of Energy in the light of Section-7 (f) of Right of Access to Information Act, 2017.</li> <li>• The sought documents do not fall under the purview of ‘public record’ as defined in section 6 of Right of Access to Information given above.</li> <li>• The Determination/Decision/policy of NEPRA on the direction of Cabinet is ‘public record’ and is available publically on its web-site.</li> </ul>
ii.	Comments Received from the relevant departments and divisions including the Finance Division, Textile Division and the Law Division on the aforesaid Summary.	
iii.	The Decisions/recommendations dated 2 November 2020 (Ref: Case No. CCE/61/19/2020) of the Cabinet together with all supporting data and all documents and information on the basis of which the said decision was reached.	Decision issued by Cabinet Committee on Energy (CCoE) of the Cabinet. For seeking decision, Cabinet Division may be approached.
iv.	The Decision made by the Cabinet on 6 November 2020 under Case No. 846/43/2020 pursuant to the recommendations dated 2 November 2020, together with all supporting data and all documents and information on the basis of which the said decisions was reached.	Decision issued by Cabinet. For seeking decision, concerned Divisions i.e. Cabinet Divisions, may be approached.

5. Response submitted by the department was shared with the appellant on April 14, 2021.

6. Appellant submitted rejoinder to the response of the public body, which is as under:

*“We had submitted an appeal dated 17.02.2021 (the "Appeal No: E85-02/2021), regarding the failure of the Ministry of Energy, Power Division to provide us with the information and documents sought under Section 11 of the Right of Access to Information Act, 2017 (as "2017 Act").*

*2. Through letter dated 14.04.2021 of this Commission, which was delivered to us on 24.04.2021, we have been asked to contact this Commission within seven working days of the receipt of the said letter, in relation to the comments/reply*

*(Ministry Reply") submitted by the relevant Public Body, i.e., the Ministry of Energy, Power Division.*

3. *We are submitting these objections to the Ministry Reply as follows:*

*a. At the outset, we would like to submit that the Ministry Reply is evasive, without legal and factual basis and must be discarded and that the Public Body should be directed to provide the information sought by us, through our letters dated 28.12.2020.*

*b. The Ministry Reply has put forth the following excuses for not providing the information and documents sought by us, none of which are legally sustainable:*

*i. In relation to the summary dated 02.11.2020, submitted by the Ministry of Energy, Power Division and allied documents, the Ministry Reply states that the same "is declared as secret/classified by the Minister-in-charge of Federal Ministry of Energy in the light of Section 7 () of the 2017 Act." However:*

*a. No order or other material has been placed on record regarding the declaration/classification of secrecy of the said documents.*

*b. A summary moved before the Cabinet cannot be treated as inherently secret, especially when it deals with fiscal matters and the grant of subsidy to the public. The documents in question are public documents within the meaning of Article 85 of the Qanoon-e Shahadat Order, 1984.*

*c. The documents in question relate to (a) policy of federal government; (b) the expenditure of public moneys as subsidies; (c) privilege granted by the Federal Government in form of subsidy; and (d) includes final decisions made by the Federal Government, a public body. The said documents therefore constitute public record in terms of section 6 of the 2017 Act.*

*d. The said documents cannot be deemed to be secret or confidential documents as parts thereof have already been placed before and considered by National Electric Power Regulatory Authority in its determination dated 01.12.2020. The very fact that these documents were made available to the said Authority belies the assertion that these are secret or confidential documents,*

*e. Important rights of public are dependent on the said documents and the decisions and considerations contained therein and there is no legal justification for classifying those documents as secret or confidential. It is well established that information relating to money spent from public exchequer is a matter of public importance and information requested in this case merits to be made public in terms of Article 19-A of the Constitution of Islamic Republic of Pakistan, 1973. 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 of Islamic Republic of Pakistan, 1973.2*

*f. To the extent that the Public Body claims that the documents are privileged in terms of section 7(f) of the 2017 Act, it is submitted that the Public Body has not placed on record the decision of the Minister in charge, recording reasons, as required by the Proviso to Section 7(1). It is pertinent to note that privilege can be claimed on justifiable grounds permissible under the law. Also, it is well*

*settled that the scales of justice have to tilt a bit towards permitting disclosures in order to balance the public right to information against the narrowly construed interests of the government agencies.*

*g. It is settled law that Courts lean in favour of disclosure rather than confidentiality of public records. The matter in issue deals with the grant of subsidies by the Federal Government from the exchequer and such matters cannot be confidential as the Government is bound to maintain financial discipline in matters of spending from the national exchequer. In addition to the above, it is well established that there is no contention between the parties that information relating to money spent from public exchequer is a matter of public importance.*

*ii. In relation to the decision/recommendations dated 02.11.2020 (Ref: Case No. CCE/61/19/2020) of the Cabinet Committee on Energy (CCOE) of the Cabinet, and the decision dated 06.11.2020 under Case No. 846/43/2020 of the Cabinet, and allied documents, the Ministry Reply states that "[f]or seeking decision, Cabinet Division may be approached." In this respect, it is submitted that:*

*a. We had initially made the request for provision of the said documents through our two letters, both dated 28.12.2020, one addressed to the Joint Secretary of the Cabinet Division and the other to the Senior Joint Secretary of the Cabinet Division, who were the designated "Principal Officers" in terms of Section 9 of the 2017 Act.*

*b. We received a response from the Cabinet Division (Cabinet Committees) dated 31.12.2020, stating that under Rules of Business, 1973, the Cabinet Division only provides secretariat support to different Committees including ECC. Therefore, the request for the said document may be submitted to the concerned sponsoring Ministry/Division.*

*c. It is clear that the two Public Bodies, i.e., the Cabinet Division and the Ministry of Energy Power Division are making the Applicants run from one department to the other, without taking any steps to address the grievance raised before them.*

*d. Since the Cabinet Division has taken the stance that the said documents are to be provided by the relevant Ministry, the Ministry of Energy Power Division cannot refuse to provide the said documents by referring the matter to the Cabinet Division.*

*4. In view of the above, it is requested that the Ministry Reply be ignored and the Ministry be directed to provide the information requested by us through our letters dated 28.12.2020, which is the subject matter of the present appeal."*

7. Rejoinder submitted by the appellant was shared with the public body on May 20, 2021 with the directions to address the queries raised by the Appellant within 5 working days.

8. The Respondent through letter vide No. 10(5)-2021-Law-PIC dated June 14, 2021 submitted response which is as under:

*"I am directed to refer to your Appeal No. E-85-02/21 dated 20.05.2021 on the subject noted above and to say that all decision of CCOE, ECC and the Cabinet are explicitly marked as secret and issued by Cabinet Division. Therefore, the sought information*

*cannot be shared in the light of sections 6 (E) and 7 (F) read with section 12 of the Right of Access to Information Act, 2017.”*

9. The Appeal was fixed for hearing on July 06, 2021 and both parties were informed through notices sent on June 18, 2021.
10. Mr. Nadeem Sabir, Deputy Secretary, Ministry of Energy attended the hearing and requested time for provision of the information to the appellant. Hearing was adjourned for August 03, 2021.
11. No one appeared before the Commission to represent public body in the hearing held on August 03, 2021. Appeal was again fixed for hearing on August 31, 2021.
12. Mr. Nadeem Sabir, Deputy Secretary, Ministry of Energy attended the hearing and again requested time for provision of the information to the appellant. On his requested hearing was adjourned for September 21, 2021.
13. No one appeared before the Commission to represent Respondent in the hearing held on September 21, 2021 and on October 12, 2021.

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

14. The commission has to decide that whether the information requested by the citizens falls within the ambit of the public record and whether the public body has responded or not to the information request and notices of the commission within time limit mentioned in the Right of Access to Information Act, 2017, hereafter referred as Act.
15. Mr. Nadeem Sabir, Deputy Secretary, Ministry of Energy attended the hearing held on July 06, 2021 and committed that the information that is not declared classified will be shared with the appellant with intimation to this commission. He also assured the commission that the certificate of the reasons by the Minister-in-charge will also be submitted to the commission within two weeks as required under Section 7(f) of the Act. Mere reference to the Exemption clause does not exclude the record from the definition of the “public record”. The Minister-in-Charge has to record reasons as to why harm from disclosure of the information outweighs public interest.
15. Section 7(f) of the Act is as under:

*“ (f) Records declared as classified by the Minister-in-charge of the Federal Government*

*Provided that the Minister-in-Charge of the Federal Government shall have to record reasons as to why the harm from disclosure of information outweighs public interest and further that information pertaining to allegation of corruption and violation of human rights shall not be excluded;”*
16. Hearing was adjourned for August 03, 2021, but no one appeared before the commission during the hearing held on August 03, 2021. The public body was given another opportunity to submit record before the commission, and the appeal was fixed for hearing on August 31, 2021.
17. Mr. Nadeem Sabir, Deputy Secretary, Ministry of Energy again appeared before the commission, and requested for more time for the provision of the record. His request was again considered and hearing was adjourned for September 21, 2021.

18. No one appeared before the commission to represent the respondent in the hearings held on September 21, 2021 and on October 12, 2021.
19. Purpose of the Act is to ensure the Transparency in the business of the Government, as the Preamble of the Act states,  
*“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”.*
20. The information requested by the appellant belongs to the Section 6 (d) of the Act, Section 6 (d) is as under:  
*“d) Final Orders and decisions, including decisions relating to members of public; and”*
21. The fact that the citizens are forced to exercise the Right of Access to Information Act 2017 and have to wait for many months even for the information that should be available on the websites of the public bodies. In the instant appeal, despite commitments by a senior officer of the public body during the hearings, the Respondent has neither provided the requested information nor submitted any record of declaration of the requested information as “Classified” by the Minister-in-Charge.
22. 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**

23. The appeal is allowed. The Public Information officer of Ministry of Energy (Power Division) Deputy Secretary Administration 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 10 working days of the receipt of this Order.
24. The public body is also 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 December 07, 2021.
25. Copies of this order be sent to the Secretary Ministry of Energy (Power Division) and Public Information Officer, Deputy Secretary (Admn) Ministry of Energy and the Appellant for information and necessary action.

**Mohammad Azam**

Chief Information Commissioner

**Zahid Abdullah**

Information Commissioner

Announced on:

November 04, 2021

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