

Pakistan Information Commission
Government of Pakistan

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In the Pakistan Information Commission, Islamabad

Appeal No 1490-11/21

Abdullah Rashed Waraich

(Appellant)

Vs.

Pakistan Housing Authority Foundation

(Respondent)

ORDER

Date: January 18, 2022

Zahid Abdullah: Information Commissioner

A. The Appeal

1. The Appellant filed Appeal on November 16, 2021 to the Commission, stating that he had submitted information requests to Managing Director, Pakistan Housing Authority Foundation, (PHAF), on November 01, 2021 under the Right of Access to Information Act 2017 but did not received any response from the public body.
2. The information sought by the Appellant is as follows:
 - “1. Agreement signed between PHA-F and COMSATS regarding recruitment against the posts of Assistant Directors (Civil)/(E/M) (BS-17) in the PHA-F alongwith scope of services to be provided by COMSATS
 2. Bank draft/demand draft deposited by the candidates who were shortlisted for interview for the posts of Assistant Directors (Civil)/(E/M) (BS-17) in the PHA-F
 3. Offer of appointment letters issued to the candidates selected against the posts of Assistant Directors (Civil)/(E/M)(BS-17) in PHA-F
 4. Office orders of appointment of candidates who joined the posts of Assistant Directors (Civil)/(E/M) (BS-17) in PHA-F
 5. Service Rules/Regulations of PHA-F for initial appointment to the post of Assistant Director (IT) (BS-17) in PHA-F at the time of initial appointment of Raja Abdul Monem Sabir
 6. Advertisement published in newspapers against which Raja Abdul Monem Sabir was appointed as Assistant Director (IT) (BS-17) in PHA-F.
 7. Master/Bachelor degree on the basis of which Raja Abdul Monem Sabir was appointed as Assistant Director (IT) (BS-17) in PHA-F
 8. Experience certificate(s) on the basis of which Raja Abdul Monem Sabir was appointed as Assistant Director (IT) (BS-17) in PHA-F.

9. *Minutes of the Selection Committee on the basis of which Raja Abdul Monem Sabir was appointed as Assistant Director (IT) (BS-17) in PHA-F.*
10. *Office order of appointment of Raja Abdul Monem Sabir as Assistant Director (IT) (BS-17) in PHA-F*
11. *Service Rules/Regulations of PHA-F for promotion to the post of Deputy Director (HR/T) (BS-18) in PHA-F at the time of promotion of Raja Abdul Monem Sabir,*
12. *Final seniority list of Assistant Directors (IT) (BS-17) in PHA-F at the time of promotion of Raja Abdul Monem Sabir alongwith circular issued amongst all concerned in this regard*
13. *Final seniority list of Assistant Directors (HR) (BS-17) in PHA-F at the time of promotion of Raja Abdul Monem Sabir along with circular issued amongst all concerned in this regard*
14. *Minutes of the Departmental Promotion Committee on the basis of which Raja Abdul Monem Sabir was promoted as Deputy Director (HRAT) (BS-18) in PHA-F.*
15. *Office order of promotion of Raja Abdul Monem Sabir as Deputy Director (HR/IT) (BS-18) in PHA-F*
16. *Service Rules/Regulations of PHA-F for initial appointment to the post of Deputy Director (HR) (BS-18) in PHA-F at the time of initial appointment of Mr. Abbas Ali Khan*
17. *Master/Bachelor degree on the basis of which Mr. Abbas Ali Khan was appointed as Deputy Director (HR) (BS-18) in PHA-F*
18. *Experience certificate(s) on the basis of which Mr. Abbas Ali Khan was appointed as Deputy Director (HR) (BS-18) in PHA-F*
19. *Advertisement published in newspapers against which Mr. Abbas Ali Khan was appointed as Deputy Director (HR) (BS-18) in PHA-F*
20. *Minutes of the Selection Committee on the basis of which Mr. Abbas Ali Khan was appointed as Deputy Director (HR) (BS-18) in PHA-*
21. *Office order of appointment of Mr. Abbas Ali Khan as Deputy Director (HR) (BS-18) in PHA-F*

It will be highly appreciated if the certified true copies of above record are provided to me within the stipulated period of ten (10) days in accordance with Section 14(1) of the Right of Access to Information Act, 2017, otherwise, I reserve the right to approach the Pakistan Information Commission for obtaining the same through legal proceedings at your risk and cost”.

B. Proceedings

3. In pursuance of the directions of the commission, the Respondent shared requested information with the Appellant. However, the Appellant submitted following rejoinder:

“Please refer to Pakistan Housing Authority Foundation (PHA-F)'s letter dated 28 10 2021 duly handed over to me after end of Pakistan Information Commission (PIC)'s hearing of subject appeal on 28.10.2021, on the subject noted above and to inform that I am not satisfied with the response of PHA-F as none of the record provided by them is complete as requested vide my applications dated 15 2 2021, 24 8 2021. 15.9.2021 and 14.10.2021 Instead of providing requested information/documents. PHA-F authorities have failed to provide certified true copies of the requested information/documents despite expiry of more than eight (8) month time

2. Remaining information/documents demanded by me. Provided by the PHA-F till date and deficiency thereof is submitted below for your kind perusal

S. no	Remaining Information documents demanded vide application dated 14.10.2021	Information documents provided by PHA-F Vide letter dated 28.10.2021	Deficiency
i	2021 Regional quota roster maintained for the posts of Assistant Directors (E/M) (B5-17) since establishment of the PHA-F	PHA-F has provided current distribution of regional quota for all posts of Assistant Director (Bs-17).	I had never demanded regional current distribution of sts of regional quota for all posts BS-17). of Assistant Directors (BS 17) rather demanded quota roster maintained for the posts of Assistant Directors (E/M) (BS-17) since establishment

			<p>of PHA-F in the year, 2012.</p> <p>Either PHA-F should have to provide above requested information or to admit in writing that no such information is maintained by them, which is prerequisite for such appointments as per ESTACODE-2015.</p>
ii.	Regional Quota roster maintained for the posts of Assistant Directors (Civil) (Bs-17) since establishment of the PHA-F	PHA-F has provided current distribution of regional quota for all posts of Assistant Directors (Bs-17)	<p>I had never demanded current distribution of regional quota for all posts of Assistant Directors (Bs-17) rather demanded quota roster maintained for the posts of Assistant Directors (E/M) (BS-17) since establishment of PHA-F in the year 2012</p> <p>Either PHA-F should have to provide requested information or to admit in</p>

			<p>writing that no such information is maintained by them, which is prerequisite for such appointments as per ESTACODE-2015</p>
iii	<p>Applications submitted online of all candidates who were shortlisted for interview against the posts of Assistant Directors (E/M)/(Civil) in PHA-F.</p>	<p>PHA-F has provided list of s who applications received online submitted by shortlisted candidates for interview against the posts Assistant Director (Civil/EM).</p>	<p>I had never demanded list of applications received online. I had demanded certified true copies of applications received to PHA-F online by due date. In this regard, copy my online application submitted to PHA-F is enclosed for ready reference</p>

iv	Answer sheets of all PHA-F candidates who were called for interview against the posts of Assistant Directors under (E/M)/(Civil) in PHA-F on of Ra 14.2.2021.	PHA-F has stated that provision of data/record pertains to 3 rd party falls under the exemption clause of Right of Access to Information Act, 2017	<p>PIC vide letter dated 15.6.2021 and Islamabad High Court vide order dated 12.7.2021 have upheld my appeal for provision requested of documents including answer sheets in question. Therefore, invoking exemption clause of Right of Access to Information Act, 2017 at this belated stage is irrelevant and uncalled for.</p> <p>PIC during hearing subject appeal of on 28.10.2021 has already directed to PHA-F to approach COMSATS (which is also a public body) with reference to PIC's order 15.6.2021 and Islamabad High Court's order dated 12.7.2021 to provide the copies of answer sheets in question to</p>
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			<p>PHA-F for onward submission before the PIC on next date of hearing i.e. 4.11.2021.</p> <p>PHA-F may obtain answer sheets of MCQs as well as descriptive part of the written test to address my legal demand.</p>
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4. In the hearing held on January 13, 2022, the Respondent submitted the following:

1. “That the constitution of Pakistan guarantees the Right to information to every citizen in Article 19-A which is reproduced here as under.

"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" This provision is also incorporated in the preamble of the Right to access to Information Act, 2017 which is also reproduced here as under:

"WHEREAS Government believes in transparency and the right to have access to information to ensure that the people of the Islamic Republic of Pakistan have improved access to records held by public authorities and promote the purposes 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 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 19-A of the Constitution of the 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 law, and to matters connected therewith or incidental thereto;"

2. That the provisions of right to information act is void and is liable to be declared as ultra vires of the basic provision of constitution Article 19-A.
3. That the right to access to information act, 2017 has not defined the word "Public Importance", which was the basic essence of Article 19-A.
4. That the Constitutional provision of Article 19-A directs the provision of information to be subjected to regulations and reasonable restrictions imposed by law but there are no reasonable restrictions in terms of showing "justified interest to know"
5. That the applicant seeks information regarding to the matter enunciated in section 7 of RTI, 2017 i.e. Minutes of meeting subject to a final decision by public body

6. That the matters of Public importance has been described in the judgment reported as PLD 2003 SC 74, wherein Five Honorable judges of the Supreme Court decided the question of Public Importance.

"The issues arising in a case, cannot be considered as a question of public importance if the decision of the issues affects only the rights of an individual or a group of individuals. The issue in, order to assume the character of public importance, must be such that its decision affects the rights and liberties of people at large. The adjective "public" necessarily implies a thing belonging to people at large, the nation, the State or a community as a whole. Therefore, if controversy is raised in which only a particular group of people is interested and the body of the people as a whole or the entire community has no interest, it cannot be treated as a case of public importance."

7. In the light of above judgment all the information requested by the appellant cannot be termed as information regarding matters of public Importance.

PRAYER:

It is therefore most humbly prayed that the appeal the appellant may kindly be dismissed being information not of public Importance”.

C. Issues:

5. The instant Appeal has brought to the fore following issues:

- (a) **Does the plea of the Respondent that the requested information Can not be disclosed as it is not a matter of public importance hold water?**
- (b) **Can the requested information be disclosed under the provisions of the Right of Access to Information Act, 2017, henceforth referred to as “the Act”?**

D. Discussion and Commission’s View on Relevant Issues

6. This commission holds that the access to the requested information in the instant Appeal is a matter of public importance. In fact, this commission issued a detailed Order in Appeal No. **942-03/21**, Abdullah Rashed Waraich Vs. Pakistan Housing Authority Foundation which was upheld by the Honourable Islamabad High Court. In this Order, the commission held that information such as regional quota roster maintained by a public body, consolidated result of written test of the posts, attendance sheet of written tests, online applications submitted by candidates who were shortlisted for interview, educational

certificates/degrees of the candidates who were shortlisted for interview, answer sheets of all candidates who were called for interview, attendance sheet of interviews, evaluation Proforma containing detail of academic records, marks obtained in written as well as in interviews by the candidates shortlisted for interview, duly signed by Departmental Selection Committee, recommendations of the Departmental Selection Committee regarding selection of candidates is a matter of public importance.

7. This commission holds that the disclosure of the requested information would shed light on the level of transparency adopted in the entire recruitment process and hence help achieve stated objectives of the Act enunciated in its Preamble which are as under:

a) Making government more accountable to citizens’;

- a. Greater level of participation of citizens in the affairs of the government’;
- b. ‘Reducing corruption and inefficiency’;
- c. Promoting sound economic growth’; and
- d. Promoting good governance and respect for human rights.

8. This Commission has observed that information of public importance mentioned in Section 5 of the Act is not being published through the web site of federal public bodies. In fact, the Web sites of federal public bodies contain generic information and not specific information as required under Section 5 of the Act. This is despite the fact that Principal Officer of each public body was required to ensure proactive disclosure of information through web site within 6 months of the commencement of the Right of Access to Information Act, 2017.

9. This commission has also noticed that even when Public Information Officer, (PIO) is designated under the Act, information to this effect is either not provided on the web site, or, if it is provided, it is not displayed at a prominent place on the web site.

10. This commission holds that the federal public bodies should ensure that the name, designation, telephone number and E-mail of the PIO is placed at top right corner of the home page of their web sites. Furthermore, as a PIO is designated by post, any change to this effect should be immediately updated on the web site.

11. This Commission maintains that the information proactively published under Section 5 of the Right of Access to Information Act 2017 should be ‘accessible’ for all citizens, including the blind, low-vision, physically disabled, speech and hearing impaired and people with other disabilities. Apart from the interpretation of ‘accessible’ in section 5 of the Act, section 15 (5) of the ICT Rights of Persons with Disabilities Act 2020 requires federal public bodies to ensure accessibility of web sites to the special needs of persons with disabilities and it is as under:

“The government shall ensure that all websites hosted by Pakistani website service providers are accessible for persons with disabilities”.

12. Entrusted with the solemn responsibility of protecting and promoting citizens’ constitutional right of access to information in matters of public importance, this commission will leave no stone unturned for the implementation of the Right of Access to Information Act 2017. Citizens of Pakistan through their elected representatives have included in the Act the provision of imposing fine on public official who wilfully delay or deny access to the requested information so that they do not have to pay the undue cost in terms of time and money in exercising their right of access to information because of the dereliction of the duty of a public official.

E. Order

13. Appeal is allowed. The Managing Director, Pakistan Housing Authority Foundation, (PHAF) is directed to provide information mentioned in para 2 of this Order to the Appellant, at the earliest but not later than 7 working days of the receipt of this Order, with intimation to this office.
14. The Managing Director, Pakistan Housing Authority Foundation, (PHAF) is directed to put name, designation, telephone number and E-mail of the PIO at top right corner of the home page of its web site and submit compliance report to this commission within 10 working days of the receipt of this Order. Put contact details of PIO on its web site 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.
15. The Managing Director, Pakistan Housing Authority Foundation, (PHAF) 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 in the Template for the Compliance Report-Proactive Disclosure of Information under Section 5 of the Right of Access to Information Act 2017’. This template is available under ‘Information Desk’ category at the web site of the commission www.rti.gov.pk. The compliance report be submitted to this commission within 10 working days of the receipt of this Order.
16. The Managing Director, Pakistan Housing Authority Foundation, (PHAF) is directed to ensure accessibility of the information proactively published on its web site under Section 5 of the Right of Access to Information Act 2017 for all citizens, including the blind, low-vision, physically disabled, speech and hearing impaired and people with other disabilities and submit compliance report to this effect using ‘Web accessibility checklist’. This checklist is available under ‘Information Desk’ category at the web site of the commission www.rti.gov.pk. The compliance report be submitted to this commission at the earliest but not later than 10 working days of the receipt of this Order.
17. Copies of this order be sent to The Managing Director, Pakistan Housing Authority Foundation, (PHAF) and the Appellant for information and necessary action.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on:
January 19, 2022

This order consists of 11 (eleven) pages, each page has been read and signed.