

Pakistan Information Commission

Government of Pakistan

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In the Pakistan Information Commission, Islamabad

Appeal No 1280-08/21

M. Ikram Shah

(Appellant)

Vs.

Federal Board of Revenue

(Respondent)

Order

Date: March 14, 2022

Mohammad Azam: Chief Information Commissioner

A. The Appeal

1. The Appellant on August 23, 2021 filed an appeal before this Commission, stating that he Submitted an information request to the Director General of Customs Intelligence and Investigation - Customs, Islamabad on July 25, 2021 under the Right of Access to Information Act 2017 but did not receive the requested information from the public body. The Respondent public body has not responded to the information request as required under section 13 of the Right of Access to Information Act, 2017. Therefore, the appellant has filed his appeal to the Commission.

2. The information sought by the Appellant is as under:

“Hence, in the first instance in the following information, for the last five years may kindly be provided as contemplated under Section (11) read with Section (14) of the At with regent to intelligence & investigation Customs (HQ), Islamabad and Intelligence & Investigation Customs Rawalpindi working under your kind and administrative control.

- a) Total number of vehicles (Make and Model) on the strength of your esteemed Directorate General being used for operational purpose or for any other purposes with Make; Model and date of allocation since last five years along with Log Books. (Complete list of vehicles).
- b) Sanctioned strength/ working strength of officers and staff of your esteemed Directorate General with Name, Designation, BPS and date of posting in your esteemed Directorate General since Five years.

- c) Total No. of regular drivers on the strength of your esteemed Directorate General for the last five years with date of appointment or posting, as the case may be and attached with the officers / staff.
- d) Name & Designation of officers / staff to whom official vehicles have been allocated during the last Five years with justification and date of allocation.
- e) Monthly expenditure incurred on fuel / maintenance of each vehicles on the strength of your esteemed Directorate General during the last five years.

2. **CONFISCATED / TEMPERED / NON DUTY PAID VEHICLES.**

- i. A list of total number of vehicles seized, confiscated during the last five years by all field formations under your kind control in the following format:-

S. No	Make & Model	Confiscated by filed formation. (Non-duty paid/duty-paid/tempered	Date of auction on/ allocated to field formation	To whom allocated.	Amount of reward claimed by officers / staff.	Amount of reward sanctioned and paid to officers & staff with Name & designation year wise.

- ii. A list of total No. of vehicles (Make, Model and Registration No.) During the last five years acquired by your esteemed Directorate General (Tempered / Non Duty Paid/ Confiscated) and allocated to officers / staff in all field formations working under your kind and administration control.
- iii. No. of vehicles allocated to all Government Departments including officers of Customs in Collectorates, Directorates, including in directorate of I&I , Rawalpindi / Islamabad and F.B.R. Islamabad for their personal use on token money basis with amount of token money. (Cash / Bank Draft / Pay Order etc. etc.)
- iv. Name of designation of officers with BPS of beneficiary officer and present place of posting with respect to the above.
- v. Amount of monthly deductions, if any, made from the salary of such beneficiary officers ever since allocation of vehicle.
- vi. Name and designation of competent Authority along with copy of recommendations, approval and final decision for allocation of said vehicles among officers of customs.

B. Proceedings

3. This commission through a notice dated August 26, 2021 sent to the Secretary (DT-FATE) / Public Information Officer, Federal Board of Revenue called upon the Respondent to submit reasons for not providing the requested information.
4. Through another notice dated September 15, 2021, the Respondent was directed to submit written arguments within 10 days, otherwise the appeal will be decided Ex Parte in the light of the record available on file and the Right of Access to Information Act, 2017.
5. The Respondent through a letter vide No 4(63)S(FOI-FATE)/2021/55503-R dated September 27, 2021 submitted its response which is as under:
“Please refer to your request vide letter No. RTI/VEH/(CUS.I&I, ISB/(10/2021/ dated 25.07.2021 on the subject noted above.

2. *Your subject request has been examined at this Directorate General. It may please be appreciated that this Directorate General is mandated to act against smugglers and unscrupulous elements of society involved in smuggling of contraband goods and prohibited drugs in accordance with the provisions of the Customs Act 1969 and allied laws. These smugglers are usually involved in other criminal activities too and they resort to use of force in case they become aware of anti-smuggling resources before time. Therefore, any information which compromises its security and safety is not covered under the domain of public information in terms of section 16 of the Right of Access to Information Act, 2017.*

3. *Besides, legal opinion was also solicited from the departmental legal counsel on the issue, who has also subscribed to the above-mentioned view. Therefore, this Directorate General is of the view that the information sought in the subject request is exempt from disclosure under Section 17 of the Right of Access to Information Act, 2017 and being.”*

6. Response submitted by the public body was shared with the Appellant on September 30, 2021.
7. The appellant on October 11, 2021 submitted rejoinder to the response of the public body, which is as under:
“Kindly refer to Pakistan Information Commission’s Islamabad’s “information sharing” letter dated. 30.09.2021 enclosing reply C.No.7(44)GGCI/Admn/2021/2779, dated 1.9.2021 of Deputy Director (Hqrs) Directorate General of Intelligence & Investigation-Customs, Islamabad routed through Secretary (DT-FATE) FBR’s letter dated 27.09.2021 in the instant appeal. The contention of the Respondent that subject request is exempt from disclosure under Section 16 of the “ACT” is highly miss-conceived inter alia on the following grounds:-

- (i) That **“Log Books”** of all the vehicles are properly maintained and presented to the A.G.P.R. for payment of Bills.
- (ii) That complete details and documents of vehicles (all types) are presented to the Audit team of Director of Revenue Receipt Audit (D.R.R.A), Lahore for audit on their visit to the formations.
- (iii) That the vehicles are sent to workshops for maintenance and repair under the work order with full particulars and its original number plates which also categorically mention Registration No of the vehicle.

- (iv) That the “vehicles” are parked after normal working hours in the “office premises’ which is “public place” freely accessibly to the “general public” and therefore any question of confidentiality of its Make, Model and Registration No. etc. etc. is out of question.
 - (v) That the “Vehicles” are sent for “petrol filling” at the different designated petrol Pumps and Gas Stations, hence its security and safety does not arise.
 - (vi) That the complete detail of the official vehicle is available with the workshops and petrol Pumps / Gas stations in their Books of Accounts permanently as their record.
 - (vii) That in the case of information oriented Anti-Smuggling activities in all the Contravention / Seizure Reports the Registration No of the Official Vehicle is expressly mentioned to have used.
 - (viii) That all such Contravention / Seizure Reports are sent for Adjudication purposes to the appropriate Adjudicating Officers of the Collectorates and copies thereof are given to the owners of goods, drivers and legal counsel under the law for offering defense explanation.
 - (ix) That notwithstanding the above the disclosure of information about vehicles at the disposal of FBR and its field formation has already been dilated in *Suo Moto* Case No.11/2018 of the Apex Court, Islamabad and in Appeal No.763-12/2020 titled “Abdullah Malik Vs: Federal Board of Revenue decided on 16.7.2021 by his Honorable forum.
 - (x) Hence the information requested by the Appellant is not exempted under Section of the “Act” as urged in the letter dated 01.09.2021 (*supra*). Nonetheless to mention that the information requested by the Appellant vide letter dated 25.7.2021 followed by reminder dated 1.8.2021 is akin to he already disclosure of information about vehicles (Non-customs paid and tempered vehicles) by FBR to the Honorable Supreme Court of Pakistan Islamabad.”
8. Rejoinder submitted by the Appellant was shared with the public body on October 12, 2021 with the directions to respond to the queries of the Appellant within 10 working days.
9. The Respondent on October 29, 2021 submitted its response to the queries of the Appellant, which is as under:
- “2. This Directorate General reiterates its earlier view forwarded vide letter No.7(44)DGCI/Admn/2021/2997 dated 22.09.29021 (copy enclosed). However, the queries raised by Mr. Muhammad Ikram Shah, Advocate High Court, (Rtd Superintendent Customs) vide letter dated 1.10.2021 have been examined in detail and para wise comments/replies thereon are as under:-*
- (i) *The provision of log books by this Directorate General to AGPR is in accordance with law and an inter-departmental matter. These log books are presented to AGPR for audit purpose in accordance with prescribed procedure. However, the same cannot be provided to any other person who is not authorized in this regard by law. Therefore, in*

- the instant Case, the request of the applicant being a private person cannot be treated as equivalent to other government agency.*
- (ii) The request of the applicant for providing him sensitive information/records of the Directorate General of Intelligence & Investigation-Customs, which is engaged in anti-smuggling operations, cannot be entertained being a private person as he cannot equate himself with other government departments/agencies.*
 - (iii) The vehicles are sent to workshops for maintenance and repair purposes, however, this Directorate General never shares details of all the vehicles with Registration numbers, make/models, confiscated/tempered status, date of auctions, date of allocation, to whom allocated, details of drivers, monthly expenditure incurred on fuel/maintenance etc; which were sought by the applicant in his earlier representations to the Directorate General dated 25.07.2021 and 11.08.2021.*
 - (iv) The contention of the applicant that the officer premises are a public place and is freely accessible for general public is incorrect. It is informed that her office premises i.e. office of the Directorate General, I&I-Customs, Hqrs office is not a place freely accessible for general public. Any person who has an official need-requirement to visit this office is allowed access only for that person or in his office and not to the entire office building. No private person is allowed to enter the Hqrs office building without due checking/security of office premises.*
 - (v) The fuel filling of government vehicles has no relevancy with the instant case wherein the applicant desired the information of vehicles already referred in para (iii) above.*
 - (vi) Incorrect. This Directorate General never shares the information which was sought by the applicant, as also referred in Para (iii) above, with the fuel filling stations or workshops.*
 - (vii) Regarding the applicant's referring of official vehicle in the seizure reports (involved in ASO cases), it is again informed that at times a Govt vehicles number is mentioned in the report. However, the applicant's request referred in Para (iii), was never mentioned in the seizure report.*
 - (viii) Same as in Para (vii).*
 - (ix) The Directorate General had already informed about its mandated functions, as assigned by the FBR to this organization. One of the mandated functions is to act against smugglers and unscrupulous elements of society involved in smuggling of contraband goods and prohibited drugs in accordance with the provisions of the Customs Act, 1969 and allied laws. These smugglers are usually involved in other criminal activities too and they resort to use of force where they become aware of anti-smuggling resources before time. Therefore, any information which compromises security and safety of the human and other important resources is not covered under the domain of public information in terms of section 16 of the Right of Access to Information Act, 2017. Therefore, this Directorate General is of the view that the information sought in the subject request is exempt from disclosure under the above referred sections of the Act.*
 - (x) Same as stated in Para (ix).*

3. Besides above, this Directorate General is of the view that the requisite information is not meant for public good and also not relevant to any of the purposes of the applicant, rather the applicant seems to resort it to serve some vested interested."

- 10. Response submitted by the public body was again shared with the Appellant on November 03, 2021.
- 11. The Appellant on November 09, 2021 again express his dissatisfaction to the response of the public body and submitted rejoinder again. Content of the rejoinder submitted by the Appellant is as under:

“Kindly refer to Pakistan Information Commission’s Islamabad’s “information sharing” letter dated 03.11.2021 enclosing reply C.NO.7(44)DGCI/Admn.3347, dated 24.10.2021 forwarded through Secretary (DT-FATE) FBR letter C.NO.4(63)S(FOI-FATE)2021/181922R, dated.29.10.2021 in the instant appeal. The applicant has requested the specific information as contained in Para (1) & (2) of the information request dated.27.7.2021 (**ANNEX-“A”**). Accordingly the information request was denied by the Public Body taking support from Section 16 of the “Act” being exempt from disclosure connected to the applicant vide Honorable Pakistan information Commission sharing information sharing letter dated 03.11.2021. Applicant being not satisfied with the aforesaid reply a number of reasons (as examples) were advanced in rebuttal thereof vide letter dated.11.10.2021 as to how it is ousted from the purview of Section 16 of the “Act” (**ANNEX-“B”**). The Directorate General of Intelligence and Investigation, Islamabad instead to reply the specific information requested by the Applicant vide letter dated.27.7.2021 (supra has made an irrelevant reply, rather did not answer to any of the queries, and also made a half-hearted effort to side track the issue. Conversely, no specific sub-section of Section (16) of the Act has also been mentioned in letter dated 25.10.2021 which places embargo to provide the request information. Hence he reply is erroneous in law, vague, sketchy, and also not in line with the provisions **“Right of access to information Act, 2017 read with information requested letter dated.27.7.2021 (ANNEX-“A”)**. Secondly, the applicant is in fix to understand what type of sensitivity as urged is attached to the information sought, if provided. Thirdly the information denied to the Applicant being a private person as the cannot equate himself with other government department / agency, as contended, does not appeal to reason. Kind attention is invited to Section (2) of the ”Act” defines Applicant in the following terms.

(2)...means a citizen of Pakistan, as defined in law, who lodges a request or “any person” who is acting for or on behalf of such a person.

Be perusal of the above definition makes the Applicant legally entitled to have the information under Section (3) of the “Act” which is not restricted under Section (16) of the “Act” *ibid.*”

12. Rejoinder submitted by the Appellant was again shared with the public body to respond to the queries raised by the appellant within 10 working days.
13. The Respondent through a letter vide No. 4(63)S(F)I-FATE)/2021/203778-R dated December 10, 2021 submitted its response to the queries of the appellant which is as under: *“.. The concerned field information has submitted in the above said letter that the desired information is protected under Section 16 of the Right of Access to Information Act, 2017 and is not meant for public good. Therefore the same cannot be shared.”*

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. The information requested by the appellant belongs to the Section 5 (e) and 6 (d) & (c) of the Act, Section 6(c) is as under:

“(c) Information regarding grant of licenses, allotments and other benefits, privileges, contracts and agreements made by a public body;”

16. Disclosure of this information will improve the check and balance on the performance of the public bodies and by practicing Right to Information laws the citizen will be able to make the public bodies accountable for their performance.
17. 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.
18. 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".

D. Order

19. The appeal is allowed. The Secretary (DT-FATE) / Public Information Officer, Federal Board of Revenue 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.
20. The Secretary (DT-FATE) / Public Information Officer, Federal Board of Revenue 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 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 30 days of the receipt of this Order.
21. Copies of this order be sent to the The Secretary (DT-FATE) / Public Information Officer, Federal Board of Revenue, Director General of Customs Intelligence and Investigation - Customs, Islamabad and the Appellant for information and necessary action.

Mohammad Azam

Chief Information Commissioner

Fawad Malik

Information Commissioner

Zahid Abdullah

Information Commissioner

Announced on:

March 14, 2022

This order consists of 7 (seven) pages, each page has been read and signed.