

## Pakistan Information Commission

### Government of Pakistan



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### In the Pakistan Information Commission, Islamabad

#### Appeal No 1466-11/21

**Saddia Mazhar**

**(Appellant)**

**Vs.**

**Pakistan Television (PTV)**

**(Respondent)**

### ORDER

Date: April 13, 2022

Zahid Abdullah: Information Commissioner

#### A. The Appeal

1. The Appellant filed an appeal, dated November 08, 2021, to the Commission, stating that he submitted an information request to the Managing Director, Pakistan Television on October 22, 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 follows:
  - i. *“Provide copy of the MOU/ agreement signed between PTV and TRT World to broadcast drama serial “ Dirilis Ertugrul”*
  - ii. *Total revenue generated from the YouTube channel created particularly for this drama serial, also provide details of the shares of TRT World and PTV in revenue generate by YouTube.*
  - iii. *Total revenue generated through advertisement aired during the time slot of drama serial “Dirilis Etrugrul”, also provide details of the shares of TRT World and PTV in revenue generate by YouTube.”*

#### B. Proceedings

3. Through a letter dated December 29, 2021, the Respondent submitted its response. The relevant portions are as under:

*“4. That appeal is against clause 16(d)(ii) & (iii) of Right to information Act, 2017, hence not entertainable under the relevant law.”*

That the titled appeal against the terms of condition of the agreement between PTV & TRT, thus liable to be rejected.

#### ON FACTS:

That the Clause 16 (a) (ii) of Right to Information Act 2017 are reproduced as under: ii) If its disclosure is likely to cause damage to the interest of Islamic Republic of Pakistan in the conduct of International Relations Explanation in this section, "International relations" means relations between Islamic Republic of Pakistan and (A) The Government of any other foreign state; and (B) Organization of which states are members.

The agreement of the drama series "Ertugral" has been signed between Pakistan Television Corporation and Turkish Radio and Television a legal entity duly organized under the laws of Turkey. After disclosure, agreement may go into the hands of the spoilers who could misuse the same and cause damage to the interest of the Pakistan in conduct of international relations with brother Islamic Country Turkey. It is further added that as per clause 4.7.5 of the agreement "All terms and conditions of the agreement are confidential" hence confidential terms of agreement could not be provided to anyone at any cost including the appellant. It is further submitted that clause 16(d) (i) & (iii) of Right to Information Act 2017 stipulates as under: (d) Information is exempted if and so long as its disclosure is likely to cause.

(ii) Damage to the financial interest of the public body by giving any unreasonable advantage to any persons in relation to a contract which that person is seeking to enter into with the public body for acquisition or disposal of property supply of goods or services; or Damage to lawful commercial activities of the public body;

It is pertinent to mention here that Dirillis Ertugrul has set a record of the biggest hit of Television Industry not only in Pakistan but world over and sharing its business can cause serious harm to PTV in many ways.

In the light of the above quoted clauses of Right to Information Act and terms and conditions of agreement between PTV & TRT is exempted from disclosure of requested information”.

4. Through a letter dated January 17, 2022, the Appellant submitted her response which is as under:

*“The public body in its response has addressed the information requested in Para 1 of my information request dated 22 Oct 2020, in which I have requested the MOU signed between PTV and TRT. As i don't have the copy of the agreement so I am not able to decide whether it can affect Pakistan and Turkey relationship or not, so the Commission is requested to decide whether declaring the whole agreement as classified document will be in public interest or not?*

*it is also requested to issue directions to the public body to respond to the following questions as well,*

- *Total revenue generated from the YouTube channel created particularly for this drama serial, also provides details of the shares of TRT World and PTV in revenue generated by YouTube*
- *Total revenue generated through advertisements aired during the time slot of drama serial "Dirilis Ertugrul, also provide details of the shares of TRT World and PTV in revenue generated by YouTube”.*

5. On the direction of the commission, the Respondent also sent letter to the third party seeking its permission to disclose the agreement.

### **C. Issues**

6. The instant Appeal has brought to the fore following questions for the consideration of the commission:
  - a) Did the Respondent followed procedure laid down in the Right of Access to Information Act, 2017 and the Right of Access to Information Rules, 2019 in responding to information/record pertaining to the third party, henceforth referred to as the Act, 2017 and the Rules, 2019 respectively?
  - b) Does the entire range of information requested by the Appellant belong to Turkish Radio and Television, or, some of its part belong to the Respondent?

#### **D. Discussion and Commission's View on Relevant Issues**

7. The Respondent stated that agreement cannot be disclosed because of the clause 4.7.5 of the agreement which states that All terms and conditions of the agreement are confidential”.
8. This commission maintains that the Respondent did not follow the procedure laid down in the Act, 2017 and the Rules, 2019 in responding to information/record pertaining to the third party. The Respondent was required to “inform the third party” about the information request under Rule 5 (1) (b) of the Rules, 2019. Furthermore, the Respondent was legally bound to provide “opportunity of hearing to both the applicant and the third party before recording decision on the application” under Rule 5 (1) (b) of the Rules, 2019.
9. As the Respondent did not follow the procedure laid down in the Act, 2017 and the Rules, 2019, the commission directed the Respondent to follow legal procedure.
10. In the instant Appeal, Turkish Radio and Television has not responded to the letter written to it by the Respondent on the directions of the Commission and has not shared its opinion with regard to the disclosure, or, otherwise of the agreement.
11. This commission maintains that the information pertaining to the third party can only be disclosed after the express consent of the third party under Section 16 (1) (c) (i) of the Right of Access to Information Act, 2017.
12. This commission maintains that agreement *signed between PTV and TRT World to broadcast drama serial “Dirilis Ertugrul* cannot be disclosed in the presence of the clause 4.7.5 of the agreement and the absence of express consent of the third party. The disclosure of the agreement is likely to have grave financial implication for the country if Turkish Radio and Television chooses the path of arbitration.
13. This commission holds that disclosure of the details of the shares of TRT World and PTV in revenue generated by YouTube cannot be disclosed as it is likely to adversely impact legitimate commercial interests of TRT World.
14. This commission maintains that the total revenue generated through advertisement aired during the time slot of drama serial “Dirilis Etrugrul” is not covered under the confidentiality clause of the agreement between the Respondent and TRT World. The commercial interests of the third party can be impacted by the disclosure of the details of the shares of TRT World and PTV in revenue and not through the disclosure of the total revenue generated through advertisements.
15. This commission holds that inclusion of such wide ranging and sweeping confidentiality clause in the agreement is tantamount to infringing upon citizens’ constitutional right of access to information. In the instant Appeal, even if revenue earned by PTV is disclosed and not the ratio of revenue to be divided between the two parties, it will hit the confidentiality clause of the agreement as ratio can be arrived at by juxtaposing it with the total revenue, which is public information.
16. This commission notes with concern that citizens of Pakistan will not be able to exercise their constitutional right of access to information pertaining to whether YouTube channel of drama serial “Dirilis Ertugrul is owned by PTV, or, TRT World, share of PTV in the revenue generated through this channel and share of PTV in the total revenue generated through advertisements because the third party may go for arbitration causing huge financial losses to the government of Pakistan.

17. The purpose of the confidentiality clause in contract is to protect legitimate commercial interests of the private entities and not shrouding in the cloak of secrecy entire range of information/records which have nothing to do with the commercial interests of the private entities. Especially, after the insertion of Article 19-A through 18<sup>th</sup> Amendment in the constitution, federal public bodies are expected to ensure that only reasonable restrictions are imposed on citizens' right of access to matters of public importance through the confidentiality clauses in the contracts.
18. This commission urges Principal Officers of federal public bodies to ensure balance between constitutional right of access to information and protecting legitimate commercial interests of third parties while signing commercial contracts. As such, contracts should exempt from disclosure certain specific commercial information and not the entire range of information through sweeping confidentiality clauses.

#### **E. Order**

19. The Appeal is partially allowed. The Respondent is directed to provide the Appellant information only about the total revenue generated through advertisements while broadcasting *drama serial "Dirilis Ertugrul. The certified copy of the agreement and the requested information about the ratio of revenue generated through advertisements and through YouTube channel is protected from disclosure because of the clause 4.7.5 of the agreement.*
20. Copies of this Order be sent to the Respondent, Secretary to Prime Minister and the Appellant for information and necessary action.

**Fawad Malik**

Information Commissioner

**Zahid Abdullah**

Information Commissioner

Announced on: April 13, 2022

This order consists of 4 (four) pages, each page has been read and signed