

**Pakistan Information Commission
Government of Pakistan**

1st Floor, National Arcade, 4-A Plaza
F-8 Markaz, Islamabad
Website: www.rti.gov.pk
Phone: 051-9261014
Email: appeals@rti.gov.pk
@PkInfoComm



In the Pakistan Information Commission, Islamabad

Appeal No 1893-04/21

M/S Nayatel (Pvt) Ltd. Through Muhammad Ahmad

(Appellant)

Vs.

Pakistan Telecommunication Authority

(Respondent)

ORDER

Date: August 16, 2022

Mohammad Azam: Chief Information Commissioner

A. The Appeal

1. This commission has received an appeal from Mr. Muhammad Ahmad dated 13th June, 2022, stating that he through his council submitted information request dated March 31, 2021 under the Right of Access to Information Act 2017 to the Director (Government & External Affairs), Pakistan Telecommunication Authority. The Respondent public body has not responded to his 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:

“As per sub sections (b) & (c) section 6 of the Act all Information pertaining to public body’s transactions and grant of licenses is public record. Therefore, we hereby request you to provide copies of following documents in ten working days as required in Section 14 of the Act:

- i. Approval of the Pakistan Telecommunication Authority (“Authority”) including minutes of the Authority meeting whereby the final decision was taken to grant Telecommunication Infrastructure providers license No. TIP-006-2014 dated 11.02.20214 to SCO.*
- ii. Approval of the Authority including minutes of the Authority whereby the final decision was taken to grant Commencement of above Telecommunication Infrastructure Provider License to SCO on 28.03.2019.”*

B. Proceedings

3. Through a notice dated May 10, 2022, sent to Director, Pakistan Telecommunication Authority the Commission stated that “Under Section 14 of the Right of Access to Information Act 2017, each federal public body is bound to respond to a request as soon as possible and in any case within ten working days of receipt of the request. You are directed

to provide reasons in writing within 7 working days of the receipt of this notice as to why the requested information has not been provided to the applicant, (copy of the information request and appeal thereon enclosed)”.

4. The appeal was fixed for hearing on July 05, 2022 and both parties were informed through notices sent on May 30, 2022.

5. The respondent through a letter vide No 7th June, 2022 submitted its response which is as under:

“It is to state that under section 2 (ii) of the Right of Access to Information Act, 2017 (“Information Act, 2017”), an ‘applicant’ means a citizen of Pakistan, as defined in law, who lodges a request or any person who is acting for on behalf of such person,. Furthermore, under section 11, under the heading of ‘requests’ it is stated that a citizen of Pakistan may make a request to a public body. Moreover in the preamble of Information Act, 2017 it is categorically mentioned that the Act ensures that the people of Islamic Republic of Pakistan have improved access to records held by public authority which gives effect to the fundamental right of access to information as guaranteed under Article 19A of the Constitution of Islamic Republic of Pakistan, 1973. It is relevant to note that the Article 19(a) (Right to Information) is available only to the citizens of Pakistan as defined under Article 260(1) of the Constitution of Islamic Republic of Pakistan, 1973.

2. Based on the forgoing, it can be concluded that only a citizen of Pakistan can request for nformation and the matter at hand, the said information has been sought by a company / legal person i.e. Nayatel (Pvt) Ltd which does not fall under the category of a citizen.”

6. Response submitted by the public body was shared with the appellant on June 16, 2022.

7. The appellant through a letter dated June 29, 2022 submitted rejoinder to the response of the public body which is as under:

“This is a formal reply to the above captioned letter/response of the revered Pakistan Telecommunication Authority (herein after “the PTA”), wherein, the respondent raised its concern with regards to the maintainability of the “Appeal No. 1893-05/2022” filed under the ‘Right of Access to Information Act, 2017’ (hereinafter “the Act”), through the undersigned duly authorized by Nayatel (Pvt) Ltd.

It is requested to kindly consider the following concerns of the Appellant.

1. That the respondent has raised an objection regarding the locus standi of the Appellant to file the captioned appeal and stated that as the appellant does not fall within the ambit of the definition of “citizen” as mentioned in the Act, therefore, the respondent is not bound to provide such information. This stance is vehemently denied because the appellant is being represented by the undersigned Mr. Muhammad Ahmed, who is a ‘citizen’ of Pakistan as defined under the law. As such, acting on behalf of a legal person does not preclude the undersigned from the definition of the citizen and his right of access to information under the Constitution, thus, being an actual citizen/person, the undersigned is fully entitled to be granted the information as sough in the appeal.

2. That there is no express bar in the Act, precluding any person to request for the grant of information under section 11 of the Act as well as to institute any appeal under section 17 of the Act. Thus, the above stance of the respondent hold- no ground for the denial of granting any information requested in the appeal instituted under the Act.
3. Even otherwise, a company, being a juristic person, has also similar rights as natural persons under the Constitution, that is, to conduct business and incur liabilities like that of a natural person and precluding such an entity from the ambit of the Act would amount to defeat the main objective of the Act, that is to “promote the purpose of making the government more accountable to its people” and “improving participation by the people in public affairs, of reducing corruption and inefficiency in Government, of promoting sound economic growth, of promoting good governance” as mentioned in the preamble of the Act.
4. That although the Act has emphasized upon the guarantee of the fundamental rights of access to information to people of Pakistan, there is no express bar upon legal entity to gain such relevant information of public records, for the betterment and understanding of its as well as the shareholders of such a legal entity, who individually as well as collectively have the right to undertake any business and form an association, in their own or any other name under the law.
5. That the respondent deliberately choose to ignore the fact that the appeal has been filed “through Mr. Muhammad Ahmed” who is no doubt a citizen of Pakistan and duly entitled to the fundamental right of access to information of the public records. This is a deliberate attempt on part of the Respondent to avoid the grant of the requested public record information as mentioned in the appeal that Respondent has, otherwise, no justification to deny the access to the record being sought by the Appellant.
6. That for the kind information of this Learned Forum, it is pertinent to state that the stance taken by the Respondent is against the spirit of the international norms and conventions. It has been held in various other legal jurisdictions of the international community that legal entities couldn't be precluded from the right of access to information, as held in.
 - i. *M/s Devas Multimedia (Pvt) Ltd., V/s Central Public Information Officer* it was held that
 - a. *The RTI Act gives the right to information any to citizens of India and not to corporations and companies etc., which are legal entities / persons, but not citizens. However, an officer bearer of a company can seek information under the RTI Act on behalf of the company, provided he is a citizen of India, identifying himself as office bearer of the company or filling the application on the letterhead of the company does not take away his right to raise queries under the RTI Act.*
 - b. *Since an office bearer, seeking information on behalf of his company, would be construed to be a citizen seeking information, he would need an authorization from the Board of the company to receive the information concerning its affairs from the respondent authority.*

7. Thus, keeping in mind the objectives of the Act, as well as the stance taken by the international jurisdiction on the similar legislation, it is prudent not to exclude any legal entity acting through a citizen of Pakistan from procuring any information regarding public records, particularly those which are, in accordance with section 6 of the Act, been declared as public record, which include but not limited to, licenses contracts and agreements etc., made by a public body.

Thus, it is respectfully prayed that this Learned Forum may take into account the considerations made by the appellant and direct the Respondent / PTA to furnish the record sought in the captioned appeal.”

8. The rejoinder submitted by the appellant was shared with the public body on July 04, 2022 with the directions to respond to the queries of the appellant within 10 working days.
9. Mr. Shahmeer Shahid, Council, Pakistan Telecommunication Authority attended the hearing held on July 19, 2022 and submitted its response which is as under:

1. *“That Pakistan Telecommunication Authority was established under section 3 of the Pakistan Telecommunication (Re-organization) Act, 1996 and is mandated to regulate the establishment, maintenance and operation of telecommunication systems and provision of telecommunication services in Pakistan. It has a statutory mandate and is duty bound inter-alia to promote, the availability of a wide range of high quality, efficient, cost-effective and competitive telecommunication services in Pakistan and to promote the rapid modernization of telecommunication systems and services.*
2. *That the maiden request for procurement of information dated 31.03.2022 as through a counsel acting on behalf of Nayatel (Private) Limited and not Mr. Muhammad Ahmed. Therefore, the initial request is itself tainted with flaws as the same has not been filed by a ‘citizen’ of Pakistan as per section 11 of the Right of Access to Information Act, 2017 (“Information Act, 2017”) and the titled appeal cannot go beyond the initial request as the same has emanated from it.*
3. *That it is to note that the case law as relied upon by the appellant is not applicable since request dated 31-03-2022 was not sought by legal entity acting through a citizen of Pakistan as no authorization whatsoever was attached. Thus, when the basic request is not in compliance with section of the Information Act, 2017 or as per the requirements laid down in the case law relied upon titled as ‘M/s Devas Multimedia (Pvt) Ltd., V/s Central Public Information Officer’ then the entire superstructure built on it falls on to the ground automatically i.e. the titled appeal.*
4. *It may also be appropriate to bring to the attention of this Hon’ble Commission that the exact same information, as sought vide letter dated 31.03.2022 by M/s Nayatel (Private) Limited, has been subsequently sought by Mr. Khawaja Saad Saleem (Managing Director/Co-founder of M/s Nayatel (Private) Limited vide letter dated 15.06.2022. Hence, it is apparent from the conduct of M/s Nayatel (private) Limited that after the receiving the reply of the Respondent pointing out the blatant violation of the section 11 of the Information Act, 2017, it has cured the said violation and has initiated a fresh request for the same information as sought previously. Therefore, the fate of the matter at hand is dismissal and the fresh request for the exact same*

information should prevail along with its ensuing proceedings as provided under the Information Act, 2017.”

C. Discussion and Commission’s View on Relevant Issues

12. The commission has to decide;
 - 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 to as Act.
 - Whether any office bearer of a company – who is a citizen of Pakistan - can file information request under the Act?
13. The information/documents requested by the Appellant in the instant appeal belong to the Section 6 (b) and (c) of the Act.
14. Section 6(c) of the Act is as under:

“6(c) Information regarding grant of licenses, allotments and other benefits , privileges, contracts and agreements made by a public body;
15. In the instant Appeal, the Respondent M/S Nayatel (Pvt) Ltd. Has clearly mentioned in their appeal that they are requesting information through Mr. Muhammad Ahmad who is a citizen of Pakistan. Filing information request for or on behalf of any organization do not preclude him from the definition of the citizen of Pakistan.
16. 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”.
17. 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

18. Appeal is allowed. Director (G&EA) / Public Information Officer, Pakistan Telecommunication Authority is directed to ensure provision of the complete 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.

19. The Respondent 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.
20. Copies of this order be sent to Director (G&EA) / Public Information Officer, Pakistan Telecommunication Authority and the Appellant for information and necessary action.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on: August 16, 2022

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