

Pakistan Information Commission
Government of Pakistan

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In the Pakistan Information Commission, Islamabad
Appeal No 1937-05/22

Bol Interprises

(Appellant)

Vs.

Special Technology Zone Authority

(Respondent)

ORDER

Date: October 03, 2022

Zahid Abdullah: Information Commissioner

A. The Appeal

1. The Appellant filed an appeal, dated May 24, 2022 to the Commission, stating that he submitted an information request to the Chairman, Special Technology Zone Authority on February 15, 2022 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:

1. *"By writing this letter/application, the Undersigned would like to request you to provide the following documents/information pertains to applications filed by any persons/organizations for obtaining Zone Developer License" before the Authority till the receipt of this letter/application*

- i. *Provide the list of applicants, who applied for obtaining "Zone Developer License" under STZA laws, till the receipt of this letter,*
- ii. *Provide copy of all applications along with requisite documents filed by the applicants in support of their applications,*
- iii. *Details of correspondence between Applicant and Authority regarding said purpose:*
- iv. *Provide the list of applicants to whom license has been granted.*

2 *Please note that the aforesaid documents/information are being demanded the Undersigned for exercising, enforcing and actualizing his Fundamental Right i.e. "Right of Access to Information" enshrined under Article 19-A of the Constitution of Islamic Republic of Pakistan 1973 [Constitution) read with Right of Access to Information Act, 2017*

3. *Moreover, the Honorable Supreme Court of Pakistan has held in a judgment reported at 2021 SCMR 201 Supreme Court that: "The right of information is a Fundamental Right and to withhold information from the people is unconstitutional.*

4. *Under the above laws, you are under legal obligation to provide the aforesaid information to Undersigned without any delay*

Therefore, you are requested to please provide the aforesaid information to Undersigned within (07) days. Failing which, we will have no option but to take appropriate legal action against you in the Court of law."

B. Proceedings

3. The record on the file shows that multiple hearings were conducted in the instant appeal. The Respondent submitted its detailed written response on the intervention of this commission on September 07, 2022 which is part of the record in the instant appeal. The learned counsel for the Respondent, Ms. Iqra Musaddak Argued that the request for information was filed with ill-intentions. The learned counsel also argued that requested information pertaining to entities which applied for a Zone Developer License is not public record which requires publication or declaration under Sections 5 and 6 of the Right of Access to Information Act, 2017 ("2017 Act") respectively. In fact, there are various exceptions envisaged under the 2017 Act which exempt this information. The learned counsel maintained that under Section 16(g) of the 2017 Act, information may be exempted if (i) "the information was obtained from a third party and on its communication would constitute an actionable breach of confidence"; or (ii) "information was obtained in confidence from third party and it contains a trade secret or, if communicated, may prejudice the financial interests of that party.

C. Issues

4. The instant appeal has brought to the fore the following issues:
 - (a) Can motives of the Appellant be a factor in deciding whether the requested information is to be provided or not?
 - (b) Can the requested list of entities who were issued Zone Developer Licenses, along with related documents submitted with their applications and correspondence of the Respondent with these entities be withheld from disclosure on the ground that its disclosure will constitute actionable breach of trust?

D Discussion and commission's views on relevant issues:

5. This commission holds that the Respondent, instead of dwelling upon the motives of the Appellant for seeking the information, should have decided on his request for information under the provisions of the Act, 2017.
6. This commission holds that every citizen of Pakistan has locus standi to seek information from public bodies and under Section 11 (5) of the Act, 2017, officials are specifically forbidden to ask the applicant to submit reasons for seeking information. This also means that the officers are not supposed to dwell upon the motives for seeking the information.
7. This commission holds that the disclosure of requested "list of applicants, who applied for obtaining "Zone Developer License" under STZA laws, till the receipt of this letter" is not permissible under the Act, 2017. This list cannot be disclosed as mere filing of an application by an entity for any License does not mean that it becomes a beneficiary. Similarly, the related documents submitted by entities cannot be disclosed for merely applying for a License.
8. This commission holds that the disclosure of the list of entities who were issued Zone Developer Licenses, along with related documents submitted with their applications and correspondence of the Respondent with these entities is public information and its disclosure warranted under Section 5 (1) (e) of the Act, 2017 which is as under:

"The condition upon which members of the public body can acquire any license, permit, consent, approval, grant, allotment or other benefits of whatsoever nature from any public body or upon which transactions, agreements and contracts, including, contracts of employment which can be entered into with the public body, along with particulars about the recipients of any concession, permit, license or authorization granted by the public body".

9. This commission holds that the disclosure of the list of entities who were issued Zone Developer Licenses, along with related documents submitted with their applications and correspondence of the Respondent with these entities is public information and its disclosure warranted under Section 6 (c) of the Act, 2017 which is as under:
“Information regarding grant of licenses, allotments and other benefits, privileges, contracts and agreements made by a public body”.
10. This commission holds that the plea of the Respondent that the disclosure of records/information pertaining to entities which were issued Zone Developer Licenses will constitute actionable breach of trust and that the requested records/information cannot be disclosed on the grounds of confidentiality is legally untenable.
11. 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 documents which have nothing to do with the commercial interests of the private entities. Especially, after the insertion of Article 19-A through 18th 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.
12. This commission maintains that if the requested information/are withheld on the ground of actionable breach of trust, then citizens of Pakistan will be left with no choice but to rely on the word of the Respondent that Zone Developer Licenses were issued meeting all the requirements under the relevant laws, rules, regulations, terms and conditions.
13. This commission also maintains that requested records/information cannot be withheld in entirety on the ground of confidentiality. Only those records/information can be exempted from disclosure which is likely to harm legitimate commercial interests, or, privacy related interests of the entities.
14. This commission has observed that public officials have limited understanding about right to privacy when juxtaposed with the right of access to information held by public bodies. Privacy/personal information is understood to be, broadly speaking, information/data pertaining to access control (username and/or password), financial information such as bank account, credit card, debit card, or other payment instruments, and, passports, biometric data, and physical, psychological, and mental health conditions, medical records, and any detail pertaining to an individual's ethnicity, religious beliefs etc.
15. The Act, 2017 envisages a situation wherein a document, which should be otherwise be made public but its parts may contain private information, or, information pertaining to legitimate commercial interests of an entity. In such an eventuality, the part containing private, or, commercial information can be severed from the document as mentioned in Section 16 (1) (i) of the Act, 2017.
16. This commission also believes that the disclosure of the requested information will help achieve stated objectives of the Act enunciated in its Preamble which are as under:
 - a. Making government more accountable to citizens’;
 - b. Greater level of participation of citizens in the affairs of the government’;
 - c. ‘Reducing corruption and inefficiency’;
 - d. Promoting sound economic growth’; and
 - e. Promoting good governance and respect for human rights.

E. Order

- 17 The Appeal is partially allowed. The Respondent is directed to provide the Appellant list of entities who were issued Zone Developer Licenses, along with related documents submitted with their applications and correspondence of the Respondent with these entities, at the earliest but not later than 10 working days of the receipt of this Order, with intimation to this office.
- 18 Copies of this order be sent to the Respondent and the Appellant for information and necessary action.

Mohammad Azam

Chief Information Commissioner

Zahid Abdullah

Information Commissioner

Announced on:

October 03, 2022

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