

RTI Case Studies

*The Case Studies based on RTI Complaints: Compiled by
PILDAT using Orders by the Punjab Information Commission*



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Preface

PIL DAT has planned a series of capacity building sessions of Public Information Officers in collaboration with the Punjab Information Commission. These training sessions have been especially tailored for Public Information Officers (PIOs) and Heads of Departments (HoDs) of various district public bodies in Punjab with a view of improving the implementation of Punjab Transparency and Right To information Act 2013.

These case studies have been collected to use as examples of best practices from Pakistan and the region in the use of Right to Information Legislation. It is aimed that PIOs will be able to learn from these cases on the sorts of questions and concerns that arise when dealing with RTI requests and how other PIOs respond to these which result in the complainant resorting to the Information Commission in question.

Case Studies A-H are Orders on Complaints by the Punjab Information Commission (PIC) during the first two years of operation. These Case Studies are the property of the PIC and have been reproduced from the PIC website.

Case Studies I and J are experiences of the Chief Information Commission in India and have been sourced from the book, *RTI Use and Abuse* by Professor Madabhushi Sridhar, Chief Information Commissioner, India.

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Disclaimer

PIL DAT team has made every effort to ensure accuracy of the publicly-available data and analyses based on it. Any omission, or error, therefore, is not deliberate. These case studies do not necessarily represent the views of the Development Alternatives Inc. (DAI) or PIL DAT.

Islamabad
September 2015



Case Study A

**Mr. Abdul Waseem Abbasi (the Complainant)
Vs. Principal Secretary, Chief Minister
Secretariat, Lahore (the Respondent)**

A: The Complaint

1. The Complainant sent three complaints to the Commission, one on December 31, 2014 and two on January 21, 2015, alleging that the Respondent had not responded to his applications for access to information within the time period specified in the Punjab Transparency and Right to Information Act 2013 (the Act). The information sought by the Complainant, through his applications dated 18/0/2014 and 28/10/2014, is as follows: First Application, dated 18/09/2014:

“1. Certified information about month wise expenditures of Chief Minister House from August 1, 2013 to August 31, 2014.

2. Certified information about month wise expenditure of bakery items procured for Chief Minister House from August 1, 2013 to August 31, 2014 (different bakery items and expenditures incurred).

3. Certified information about gifts/ presents given by Chief Minister to people from August 1, 2013 to August 31, 2014 (name/ description of the gift/presents, price and name of the individual each present was given to by the Chief Minister).”

Second Application, dated 28/10/2014:

“1. Certified information about the number of flights taken by the official helicopter of the Chief Minister of the Punjab from 1 July 2013 to 1st October 2014.

2. The expenses incurred on fuel of the official helicopter of the Chief Minister during the period from 1 July 2013 to October 1, 2014;

3. List of passengers who travelled on Chief Minister's official helicopter during the above mentioned period along-with their portfolios and designations.”

Third Application, dated 28/10/2014: 2

“1. Certified information about the number of official overseas visits of Chief Minister Punjab Mr. Shahbaz Sharif from July 1, 2013 to October 1, 2014.

2. Details of overseas visits by the Chief Minister Punjab during the above mentioned period along with the expenses incurred on each visit.”

B. Proceedings

2. Through letters dated 23/01/2015, 18/02/2015 and 19/02/2015, the Commission called upon the Respondent to either immediately provide the requested information to the complainant or explain the reasons, including rebuttal if any, of alleged non-response or delay in deciding the matter. However, no response was received. In respect of the first application dated 18/09/2014, the Commission also sent a reminder to the Respondent on 18/02/2015 whereby he was again called upon to provide the requested information to the complainant or explain the reasons of not doing so until 27/02/2015. Through this reminder, he was also called upon to designate public information officer u/s 7 of the Act for the Chief Minister Secretariat and establish a mechanism to efficiently respond to all pending or future information requests received under the Act. Yet again, no response was received.

C. Discussion and Commission's View on Relevant Issues

3. As per section 10 & section 11 of the Act and the Rules notified thereunder, it was a responsibility of the Respondent to acknowledge the receipt of applications and then transfer them to the relevant designated public information officer (PIO) for the Chief Minister Secretariat. However, the applications were apparently never acknowledged. It also seems that the

Respondent, for being the administrative head of the Chief Minister's Secretariat, hasn't yet designated any officer as a PIO; or at least the Commission has not yet been informed about it. Nor did the Respondent ever inform the Commission, despite letters and a reminder, whether the instant applications had been transferred to a designated PIO, if at all an officer had already been designated as a PIO u/s 7 of the Act. In this situation, the Respondent is to be considered a deemed PIO, as per the principles set in earlier decisions of the Commission and Rules 3(4) & 6(2) of the Punjab Transparency and Right to Information Rules 2014.

4. The Respondent also didn't respond to letters and reminders issued by the Commission in relation to the instant complaints and for designation of public information officer u/s 7 of the Act. Nor were the applications submitted by the complainant decided within the time period prescribed in section 10 of the Act. The persistence of this kind of disregard or non-responsive attitude on part of the highest executive office of the province can seriously erode public confidence in the Commission and the usefulness of the Act, which has otherwise been rated very high in view of its promise of maximum transparency and access to information. If the Chief Minister Secretariat does not diligently implement the 3 Act in relation to its own functions, it is almost certain that other departments and offices would also disregard it. It is, therefore, of paramount important that the Chief Minister Secretariat gives high priority to the implementation of Act not just in relation to its own functions but also regarding all other public bodies in the province. The Act became possible because of the vision of the current political leadership, which recognized the importance of transparency and right to information for peoples' empowerment and accountable governance. However, any lapses in implementation, especially on the part of highest offices, would render the Act ineffective and would deprive the citizens of their fundamental right to information.

5. The requested information is generally about the use of public funds and resources, or about the past travel related to the official work being performed by the Chief Minister. As the information being sought relates to past travels or transactions and about official work involving use of public funds, it is not likely to be hit by the considerations of privacy or security of persons. Other exceptions provided in the Act also seem to be of no relevance to the information being sought. The Commission, therefore, holds that the requested information is not hit by any of the exceptions u/s 13 of the Act and, therefore, it must be provided to the

Complainant without further delay. In fact, some of the information sought by the complainant (e.g. about expenditures, etc.) is already covered by section 4 of the Act, which is about proactive disclosure.

D. Order

6. The complaints are allowed. The Respondent is directed to provide all the requested information to the Complainant as soon as possible but not later than 16/03/2015, and submit a compliance report to the Commission.

7. The Respondent is directed to take immediate steps to fulfill his responsibilities under, inter alia, sections 4, 7, 8 & 10 of the Act, especially in terms of designating one or more public information officers for the Chief Minister Secretariat and putting up their contact details on the website.

8. The Respondent is also directed to ensure that any pending or future applications under the Act are efficiently acknowledged for their receipt and are decided upon or transferred, as required u/s 10 or 11 of the Act.

9. Copy of this order may be sent to the Complainant for information.

Case Study B

Mr. Zahid Abdullah (the Complainant) Vs. Secretary Information, Civil Secretariat, Lahore (the Respondent)

A. The Complaint

1. The Complainant sent a complaint to the Commission on June 18, 2014, alleging that the Respondent had not responded to his application for access to information within the time period specified in the Punjab Transparency and Right to Information Act 2013 (the Act). The information sought by the Complainant, through his application dated 06/01/2014 is as follows:

“1. List of advertisements issued by the Information, Culture & Youth Affairs Department to print media from July 01, 2013 to December 31, 2013.

2. Total funds released for advertisements to print media by Information, Culture & Youth Affairs Department from July 01, 2013 to December 31, 2013.

3. Criteria of advertisements to print media by Information, Culture & Youth Affairs Department”

B. Proceedings

2. Through a letter dated 06/08/2014, the Commission

called upon the Respondent to redress the grievance or explain the reasons, including rebuttal if any, of alleged non-response or delay in deciding the matter. However, no response was received. The Commission also sent a reminder to the Respondent on 03/12/2014, whereby he was again called upon to either immediately provide the requested information to the complainant or explain the reasons of not doing so until 15/12/2014. Yet again, no response was received.

C. Discussion and Commission's View on Relevant Issues

3. As per section 10 & section 11 of the Act and the Rules notified thereunder, it was a responsibility of the Respondent to transfer the application to the relevant public information officer (PIO) designated for the Information, Culture and Youth Affairs Department. However, the application was apparently never acknowledged in accordance with section 10(1) of the Act; nor was the 2 Commission ever informed whether the instant application had been transferred to a PIO designated u/s 7 of the Act. In this situation, the Respondent is to be considered a deemed PIO in accordance with section 11 of the Act, read with Rule 3(4) & Rule 6(2) of the Punjab Transparency and Right to Information Rules 2014.

4. The Commission notes it with concern that the Respondent didn't respond to letters issued by the Commission in relation to the instant complaint, nor



Civil Secretariat Lahore building

was the application submitted by the complainant decided within the time period prescribed in section 10 of the Act. This kind of non-responsive attitude is in violation of explicit and mandatory provisions of the Act. Being an administrative department of the Commission, the Information Department is expected to set high standards of implementation of the Act and then support the work and initiatives of the Commission involving other public bodies. As of now, the Information department has not only delayed, for too long, decisions on information requests that it received but has also not given due attention to implementation of section 4 & 8 of the Act. In this regard, it may be noted that the department has not yet established its website, which is an important media for sharing information and which is now a legal requirement in view of section 4 and section 8 of the Act, and the Rules made thereunder.

5. The information being sought relates to the use of public funds on advertisements published in print media. Disclosure of requested information is not likely to harm privacy or security of persons involved. Other exceptions provided in the Act also seem to be of no relevance to the information being sought. The Commission, therefore, holds that the requested information is not hit by any of the exceptions u/s 13 of the Act and, therefore, it must be provided to the Complainant without further delay. In fact, most of the information sought by the complainant (e.g. about expenditures, etc.) is covered by section 4 of the Act, which should be proactively disclosed through websites or other appropriate media.

D. Order

6. The complaint is allowed. In exercise of its powers u/s 6(1)(a) of the Act, the Commission directs the Respondent to provide the requested information to the Complainant as soon as possible but not later than 13/07/2015, and submit a compliance report to the Commission. Furthermore, the Respondent must take immediate steps to proactively disclose maximum information about advertisements and media campaigns released by or through the Information and Culture Department by regularly posting it on the website and noticeboards.

7. The Respondent is also directed to take immediate steps to fulfill his responsibilities under, inter alia, sections 4, 7, 8 & 10 of the Act, especially in terms of computerization of records, setting up a website, and publicizing contact details of designated public information officers.

8. The Respondent is further directed to ensure that any pending or future applications under the Act are efficiently acknowledged for their receipt and are decided upon in accordance with section 10 of the Act.

9. Copy of this order may be may be sent to the Complainant for information.

Case Study C

Mr. Waseem Abbasi (the Complainant) Vs. Mr. Tariq Shahzad, Deputy Secretary (Coord.)/ Public Information Officer (the Respondent)

A. The Complaint

1. The Complainant sent a complaint to the Commission, alleging that he had sought information from Principal Secretary to the Governor of Punjab but it was not provided to him within the time period prescribed in the Punjab Transparency and Right to Information Act 2013 (the Act). The information sought by the Complainant, through his application dated 18/09/2014, is as follows:

“1. Certified information about month wise expenditure of Governor House from August 1, 2013 to August 31, 2014;

2. Certified information about month wise expenditure of bakery items procured for Governor House from August 1, 2013 to August 31, 2014 (different bakery items and expenditure incurred); and

3. Certified information about gifts/ presents given by Governor to people from August 1, 2013 to August 31, 2014 (Name/ description of the gifts / presents, price and name of the individual each present was given to by the Governor).

B. Proceedings

2. Through a letter dated 23/01/2015, the Commission called upon the Principal Secretary to the Governor to “either immediately provide the requested information to the complainant or explain the reasons, including rebuttal if any, of alleged non-response or delay in deciding the matter”. The Respondent, who is a designated public information officer, through his letter No. SOA/GS(ESTT.)1- 11/2013 dated 06/02/2015, referred to Article 121 of the Constitution of the Islamic Republic of Pakistan, whereby the remuneration payable to the Governor and other expenditures relating to his office are treated as expenditures charged upon the Provincial Consolidated Fund. He also quoted Article 121(1) of the Constitution as follows: “So much of the Annual Budget Statement as relates to expenditure charged upon the Provincial Consolidated Fund may be discussed in, but shall not be submitted to vote of, the Provincial Assembly”.

3. He then rejected the application for access to information by arguing that “any request for information relating to expenditures of Governor's House cannot be entertained, the same expenditure being charged expenditure as stipulated in the aforementioned Articles of the Constitution of the Islamic Republic of Pakistan, and can only be discussed by the elected members of the Treasury in Provincial Assembly.”

4. The Respondent didn't deny the receipt of application dated 18/09/2014 from the complainant, nor did he explain why the same was not decided in a timely manner in accordance with section 10 of the Act and prior to the intervention of the Commission.

C. Discussion and Commission's View on Relevant Issues

5. The first point that becomes clear from the record is that both the Principal Secretary to the Governor and the Respondent, for being a public information officer, violated several provisions of the Act relating to the disposal of an application for access to information. The application for access to information was submitted to the Principal Secretary to the Governor, who should have transferred it to the relevant public information officer under intimation to the applicant, as required by section 11(1) of the Act. However, it seems that he never bothered to inform the applicant about it and, hence, acted in violation of section 11(1) of the Act. On the other hand, after the receipt of the transferred application, it was a duty of the Respondent to acknowledge its receipt to the complainant u/s 10(1) of the Act and then decide it within 14 working days u/s 10(7) of the Act. However, it appears from the material on the record that the Respondent neither acknowledged the receipt of application nor acted on it as per section 10 of the Act for more than four months starting from the submission of application. The explanation furnished to the Commission by the Respondent doesn't suggest that he had done anything to acknowledge or decide the application prior to the intervention of the Commission. Hence, the Respondent has acted in violation of explicit provisions such as section 10 of the Act, and can be punished u/s 15 of the Act for, among others, delaying decision on the application for access to information.

6. Following the intervention of the Commission, the Respondent has rejected the application for access to information by referring to Article 121 of the Constitution and by stating that application for information about charged expenditures cannot be

entertained. This understanding of Article 121 is incomprehensible, and it is hard to believe that any responsible officer who applies his mind can really reach such a conclusion. All that Article 121 suggests is that charged expenditures would not be put to vote in the Assembly. No where it is mentioned in the Constitution that information about charged expenditures has to be treated as secret. In fact, it is evident from Article 121 that, while charged expenditures cannot be voted upon, these can be discussed in the Provincial Assembly. So, when representatives of people are allowed under the Constitution to openly discuss the charged expenditures in the Assembly, how the same information can be treated as secret or restricted. The respondent has not only wrongly interpreted Article 121 but has also conveniently ignored 3 Article 19A of the Constitution whereby right to information has been declared a fundamental right. He has also ignored section 2(h)(iii) of the Punjab Transparency and Right to Information Act 2013, which explicitly covers the office of Governor under the definition of public bodies on which the Act applies. Exceptions from right to information are provided in section 13 of the Act, but this section makes no direct or indirect reference to charged expenditures or office of Governor. The Commission is of the view that the respondent has made a wrongful refusal, prima facie, with the malafide intension of obstructing access to information. The Respondent, for being a designated public information officer, is required by law to facilitate access to information, not obstruct it by offering frivolous excuses. This kind of obstructive conduct is not to be tolerated in future and may result in initiation of proceedings to impose penalties u/s 15 of the Act.

7. The Commission holds that the information requested by the complainant is not hit by section 13 of the Act and, therefore, cannot be denied to any citizen. In fact, section 4 of the Act requires that information about expenditures should be proactively disclosed, which can be and should be done through publications as well as websites.

D. Order

8. The complaint is allowed. The Respondent is directed to provide the requested information to the Complainant as soon as possible but not later than 20/02/2015, and submit a compliance report to the Commission.

9. The Respondent as well as the Principal Secretary to Governor are directed to take immediate steps to

establish an effective mechanism to fulfill their responsibilities under, inter alia, sections 4, 7, 8, 10, 11 & 12 of the Act, especially in terms of proactive disclosure and disposal of all pending and future applications for access to information within the prescribed time limits. Contact details of designated public information officers must be made available on the website of the Governor House, as required by section 4 of the Act.

10. Copy of this order may be sent to the Respondent, Complainant, and Principal Secretary to Governor for information and necessary action.

Case Study D

Mr. Waseem Abbasi (the Complainant) Vs. Executive District Officer (EDO), Health, Khanewal (the Respondent)

A. The Complaint

1. The Complainant sent a complaint to the Commission, alleging that the Respondent had not responded to his application for access to information within the time period specified in the Punjab Transparency and Right to Information Act 2013 (the Act). The information sought by the Complainant, through his application dated 2/9/2014, is as follows:

“1. Certified information about total number of applications submitted against illegal clinics and medical stores in the district from January 1, 2013 to September 1, 2014?

2. Total number of raids made against illegal clinics and medical stores in the district from January 1, 2013 to September 1, 2014?

3. Total number of drugs inspectors appointed in the district.”

B. Proceedings

2. Through a letter dated 30/10/2014, the Commission called upon the Respondent to “either immediately provide the requested information or explain the reasons, including rebuttal if any, of alleged non-response or delay in deciding the matter”. The Respondent, through his letter No. 31616/EDO(H)Khanewal dated 06/11/2014, provided the following explanation: “It is stated that this office directed to the Drug Inspector Khanewal to submit the required information vide letter No. 6072 dated 05-10-2014. The Drug Inspector Khanewal submitted report vide his letter No. 729/DIK dated 06- 11-2014 that: “According to the Punjab Drugs Rules, 2007, Rule 8, which states that, except for the purpose of official business or when required by a Court, an Inspector or a Government Analyst shall not disclose to any unauthorized person any information acquired by him in the course of his official duties (copy enclosed). 2 It is further stated that, if you require such kind of information you can collect from Chairman Provincial Quality Control Board (Secretary Health), Secretary Provincial Quality Control Board and the Chief Drug

Controller's office Lahore.”” The Respondent didn't deny the receipt of application dated 2/09/2014 from the complainant, nor did he explain why the same was not decided in a timely manner and in accordance with section 10 of the Act.

C. Discussion and Commission's View on Relevant Issues

3. The Respondent was required to either acknowledge the receipt of complainant's application for access to information sent on 2/9/2014 u/s 10(1) of the Act and then decide it within 14 working days u/s 10(7) of the Act; Or if he was not the designated public information officer u/s 7 of the Act, he should have immediately transferred it to the concerned public information officer under intimation to the applicant/ complainant. However, it appears from the material on the record that the Respondent neither acknowledged the receipt of application nor acted on it as per section 10 or section 11 of the Act for more than a month starting from the submission of application. He directed the Drug Inspector to submit the required information but only after the Commission had sought the explanation through its letter dated 30/10/2014. The explanation of the Respondent in response to the Commission's letter doesn't suggest that the Respondent had made any serious effort to decide the application within 14 working days or to communicate his decision of rejecting the application to the complainant. Hence, the Respondent has acted in violation of explicit provisions, such as section 10, of the Act. Such careless and negligent attitudes on the part of concerned officers and public bodies are in violation of the letter and spirit of the Act and are not acceptable. The public bodies, in this instance the department of health, need to take effective and proactive steps to ensure that relevant officers are well versed with the Act, and process and decide the applications for access to information within the prescribed time limits.

4. Following the Commission's intervention, the Respondent has refused the access to requested information by relying on Rule 8 of the Punjab Drugs Rules, 2007, which states that: “...except for the purpose of official business or when required by a Court, an Inspector or a Government Analyst shall not disclose to any unauthorized person any information acquired by him in the course of his official duties.” The Respondent has taken this stance despite the fact that section 24 of the Punjab Transparency and Right to Information Act 2013 explicitly and unambiguously states that the provisions of this Act “shall take precedence over the provisions of any other law”.

Section 24(2) also states that: “An exception mentioned in section 13 shall take precedence and any exception or limitation in any other law on right to information may not be construed to extend the scope of the exception in this Act...” Therefore, the Commission is of the view that provisions in other laws and rules (e.g. Rule 8) that restrict citizens' access to information cannot be relied upon to refuse disclosure of information sought under the Punjab Transparency and Right to Information Act 2013. In fact, the said Rule 8 of the Punjab Drugs Rules 2007, for being in direct contradiction of the explicit provisions of the Punjab Transparency and Right to Information Act 2013, has become outdated and redundant, and should no longer be retained or allowed to guide the conduct of inspectors, analysts or other officers in the health department. The Commission is of the view that the Department of Health should take immediate steps to review its rules, procedures, manuals and other materials that guide the conduct of staff on the ground, and amend or modify them to bring them in conformity with the requirements of citizens right to information, as guaranteed through Article 19-A of the Constitution and the Punjab Transparency and Right to Information Act 2013.

D. Order

5. The complaint is allowed. The Respondent is directed to provide the requested information to the Complainant as soon as possible but not later than 24/11/2014, and submit a compliance report to the Commission.

6. The Respondent as well as the Secretary Health Department are directed to take immediate steps to fulfill their responsibilities under, inter alia, sections 4, 7, 8 & 10 of the Act, especially in terms of proactive disclosure and designating public information officers in all of their relevant offices.

7. The Respondent is also directed to ensure that any pending or future applications submitted under the Act are efficiently acknowledged for their receipt and are decided upon or transferred, as required u/s 10 or 11 of the Act.

8. In view of its mandate and responsibilities u/s 6(5) of the Act, the Commission advises the Secretary, Health Department, to take steps to review, inter alia, relevant rules (e.g. Rule 8 of Punjab Drugs Rules 2007), procedures, manuals and guides of the department to bring them in conformity with Article 19-A of the Constitution and provisions of the Punjab

Transparency and Right to Information Act, 2013.

9. Copy of this order may be sent to the Respondent, Complainant, and Secretary Health for information and necessary action.

Case Study E

Mr. Muhammad Arif Noor EST (E), Govt. Islamia High School, Vehari (the Complainant) Vs. Executive District Officer (EDO), Vehari (the Respondent)

A. The Complaint

1. The Complainant sent a complaint, dated 02/07/2014, to the Commission, alleging that the Respondent had not responded to his application for access to information within the time period specified in the Punjab Transparency and Right to Information Act 2013 (the Act). The information sought by the Complainant, through his application dated 14/06/2014, is as follows:

“1. Copy of inquiry report against Mr. Muhammad Arif Noor, EST (E), Govt. Islamia High School Vehari, which has been conducted in March 2013.

2. Copy of seniority list of ESTs of District Vehari.”

B. Proceedings

2. Through a letter dated 22/07/2014 and, later, through a reminder dated 25/08/2014, the Commission called upon the Respondent to redress the complaint and submit his reply including rebuttal or explanation, if any. However, the Respondent didn't respond to the said letters. The Commission, therefore, issued a show cause notice on 18/09/2014 and directed him to explain why penalties should not be imposed under sections 15 and/or 16 of the Act. Still, the Commission received no reply from the Respondent. In the meanwhile, through a letter dated 27/09/2014, the Complainant alleged that the Respondent had started intimidating him for



Government Islamia High School, Vehari

lodging the complaint to the Commission; and that the District Education Officer (DEO - E.E.M) Vehari had directed him to appear for hearings on 3/9/2014 and later on 26/09/2014. He alleged that the DEO had verbally told him to withdraw the complaint against the Respondent or he will be taught him a lesson. His complaint included a copy of the document whereby he had been called for personal hearings, allegedly on the direction of the Respondent.

3. A second show cause notice was issued on 30/09/2014, and its service to the Respondent was ensured through the District Coordination Officer (DCO), Vehari. Through this notice, the Respondent was again directed to explain why penalties should not be imposed on him under sections 15 and/or 16 of the Act; and that he should personally appear before the Commission on 13/10/2014. A copy of the complaint of intimidation dated 27/09/2014 was also attached with the notice to allow him an opportunity to rebut the allegations or explain his position.

4. The hearing was held at 3:00am on 13/10/2014. Mr. Muhammad Maroof, District Education Officer-Elementary, appeared for the hearing to represent the Respondent (Mukhtar Hussain Chawan, EDO, Education, Vehari), although the Respondent had been directed to personally appear before the Commission. Mr. Maroof did not submit any written explanation or reply to the show cause notice issued to the Respondent. He, however, submitted the attested copies of the requested documents, and said that the Respondent had no objection to provision of the said documents to the Complainant. The Commission directed that the submitted documents should be dispatched to the Complainant. Mr. Maroof was not aware whether any officer had been designated as public information officer for the education department in district Vehari.

5. When asked during the hearing why the Respondent had not provided the requested information within the time duration prescribed u/s 10 of the Act, Mr. Maroof said that the Respondent had asked the Complainant to himself get photocopies made of the requested documents, which he agreed to at the time but didn't appear for the same again. When questioned, he confirmed that the Respondent had passed no written order to provide the requested information to the Complainant, nor was the Complainant ever informed about the acceptance of his request in writing. The complainant, when contacted on phone, vehemently denied that the Respondent had ever told him to get the requested documents photocopied. When asked why

the Respondent didn't respond to the letters issued by the Commission, Mr. Maroof failed to provide any satisfactory explanation. He, however, requested the Commission to take a lenient view, as the EDO is a very busy person.

6. When questioned about the complaint of intimidation and inquiry against the Complainant, Mr. Maroof said that the inquiry was initiated on the direction of a member of the Punjab Services Tribunal (PST) during a hearing held on 5/9/2014. However, he failed to produce any written order of the PST to substantiate this claim. During the hearing, when contacted on phone, the Complainant categorically denied that the PST had passed any such order. He said that the notice for personal hearing had, in fact, been issued to him before the hearing of the tribunal. He alleged that the Respondent had actually issued direction for inquiry against him on the same letter, which the Commission had written to the Respondent to seek redress of the complaint. He urged the Commission to get hold of a copy of letter No. 7807/lit by the Respondent to DEO issued on 1/9/2014, while expressing concern that if the Commission doesn't do so right away, the Respondent may change the record. The Complainant was told to furnish all the relevant details or evidence in support of his allegation of intimidation in view of his complaint of intimidation to the Commission. Mr. Maroof later changed his stance and said that the PST had, in fact, issued verbal orders to hold inquiry against the Complainant.

7. When confronted with contradictions in his stances, Mr. Maroof said that he was not fully aware of the facts and sought adjournment so that the Respondent could personally appear along with all the relevant record. The Commission accepted the request and, in consultation with Mr. Maroof, fixed next hearing at 2:30PM on 23/10/2014. Mr. Maroof was told that the Respondent must submit a written reply to the show cause notice and personally appear for hearing along with relevant record. He signed a note to this effect, which is a part of the record. He was clearly told that no more adjournments would be allowed. However, the Respondent did not appear for hearing on the date fixed; nor was any written reply to the show cause notice submitted to the Commission.

8. In the meanwhile, through a letter dated 15/10/2014, the Complainant further explained his allegations and rebutted the stance taken on behalf of the Respondent that the inquiry had been ordered by the PST. He also shared a copy of the order sheet of FST, which shows that no order for inquiry had been issued by the FST. C.

Discussion and Commission's View on Relevant Issues

9. The application sent on 02/07/2014, as claimed by the Complainant and supported by courier receipts, should have been first acknowledged for its receipt, and later should have either been transferred to the relevant public information officer u/s 11 or decided within 14 working days u/s 10 of the Act. But the evidence before the Commission shows that the Respondent failed to act on the application for more than 3 months from the date of its submission. Given his failure to act as per sections 7 and/or section 11 of the Act, he himself is to be deemed as the public information officer and is, therefore, liable for any penalties under sections 15 or 16 of the Act.

10. The evidence before the Commission clearly shows that the application had been received in the office of the Respondent. During the hearing, the receipt of application was not denied. In fact, the receipt of application was admitted when it was claimed on behalf of the Respondent that the Complainant had been asked to himself get photocopies of the requested information made. In any case, the Respondent was required u/s 10 of the Act to inform the applicant in writing and provide certified (dated, signed and stamped) information. Hence, the Respondent clearly deviated, through his acts of omission and commission, from the explicit provisions of the Act. This view is also substantiated from the fact that he failed to respond to repeated letters from the Commission and did not appear for hearing fixed on 23/10/2014.

11. The Commission's inquiry into the complaint of intimidation suggests that the Respondent acted in a malafide manner. During the hearing, no satisfactory explanation of the cause of inquiry against the Complainant was furnished. The claim that it had been ordered by the PST has been proven wrong on the basis of documents furnished by the Complainant and contradictory stances taken on behalf of the Respondent during the hearing. It is evident that the Respondent acted with malafide intentions to first delay and then obstruct access to the requested information by intimidating the Complainant to withdraw the complaint filed to the Commission. He also disregarded repeated letters and calls for grievance redress from the Commission. The Commission holds that the Respondent and the EDO (E.E.M) need to be held accountable for their acts of omission and commission to send a clear message to all and sundry that delays and obstruction in the way of citizens' legal and constitutional right to information will not be tolerated.

D. Order

12. In exercise of its powers u/s 15 of the Act, the Commission directs the Respondent (i.e. Mr. Mukhtar Hussain Chawan, EDO, Education, Vehari) to pay fine equal to 60 of his salary for delaying the access to requested information to the Complainant for more than 3 months. The fine may be deducted from the salary of the Respondent by the relevant accounts office or treasury under intimation to the Commission.

13. It is recommended that Secretary, School Education Department, may initiate departmental action against the Respondent and District Education Officer (E.E.M) for directing and conducting inquiry against the complaint in order to coerce him to withdraw his complaint submitted to the Commission for non-provision of information under the Act.

14. The Respondent is directed to take immediate steps to fulfill his responsibilities under, inter alia, sections 4, 7, 8 & 10 of the Act, especially in terms of designating public information officers in all the offices or public bodies that he heads or is responsible for.

15. The Respondent is also directed to ensure that any pending or future applications under the Act are efficiently acknowledged for their receipt and are decided upon or transferred, as required u/s 10 or 11 of the Act. 8. Copies of this order may be sent to the Complainant, District Coordination Officer Vehari, District Accounts Officer Vehari, Secretary School Education Department Lahore and Chief Secretary Punjab for information and necessary action.

Case Study F

Complaint dated 13-10-2014 filed by Mr. Faiz-ul-Basit, Additional Secretary, Provincial Assembly of Punjab.

Order

1. Mr. Faiz-ul-Basit Additional Secretary (B & A)/DDO, Punjab Provincial Assembly, here-in-after called complainant, on 28-07-2014 moved application to the Senior Secretary, Provincial Assembly Punjab, here-in-after called the respondent, to provide the following documents pertaining to the promotion of Hafiz Muhammad Shafique Adil, Special Secretary Provincial Assembly Punjab...

- i. Copy of the notification/order of promotion.
- ii. Copy of working paper.
- iii. Copy of the minutes of the DPC meeting.
- iv. Grounds/Reasons of his supersession.

2. His request was partly allowed vide letter no. PAP/Estb/E- 705/4301 dated 27th August 2014 issued by Deputy Secretary (Admn) and copy of promotion notification was issued. However, copies of working paper and minutes of DPC meeting were not issued on the ground that the same were classified and privileged documents in terms 2 of 13 of The Punjab Transparency and Right to Information Act, 2013.

3. Feeling dissatisfied, the complainant filed internal review under section 12 of the Act *ibid* before the respondent, which was disallowed vide letter No. PAP/Estb/E- 705/4941 dated 23rd September 2014 issued by Deputy Secretary (Admn). Hence, he has approached Punjab Information Commission through instant complaint.

4. In response to the notice issued by Information Commission, the respondent has submitted para-wise comments reiterating his earlier position that the working paper as well as the minutes of DPC meeting are classified and privileged documents and are exempt from disclosure in terms of section 13 read with section 24 of the Act *ibid*. Issuance of copies of appointment order of Mr. Muhammad Shafique Adil, as junior clerk and his matriculation certificate, requested for in the instant complaint, has been opposed on the ground that the request has not been made to the Public Information Officer for obtaining these documents.

5. Main issue involved in this case is as to whether working paper and minutes of the Departmental

Promotion Committee are classified and privileged documents, or not. Prior to the enactment of the Punjab Transparency and Right to Information Act, 2013, a person was not entitled to have access to any public information unless it was specifically allowed by the competent authority, but through the Act *ibid* position has entirely changed. Now there is nothing confidential or secret from the public who are owner of every information and a citizen of Pakistan can have access to any public information unless it is exempt under section 13 of the Act *ibid*. Section 2(f) of the Act defines "Information" as any information held by a public body and includes any memo, book, design, map, contract, representation, pamphlet, brochure, order, notification, document, plans, letter, report, accounts statement, project proposal, photograph, audio, video, drawing, film, any instrument prepared through electronic process, machine readable documents, and any other documentary material regardless of its physical form or characteristics. The working paper as well as the minutes of the meeting of DPC are recorded in due process of law and are fully covered by the definition of "information" reproduced above and are not hit by any of the exceptions contained in section 13 of the Act *ibid*. Under section 24 the provisions of this Act have precedence over the provisions of all other laws, therefore, even if the documents in question have been declared classified in any other law, that prohibition is of no legal effect. The Information Commission is of the view that plea taken by the respondent for refusing complainant's request is not tenable, and is against transparency and freedom of information which is the basic object of this law.

6. As regards the request for the copies of matriculate certificate of Mr. Muhammad Shafique Adil submitted at the time of his appointment as junior clerk, the complainant did not seek this document from the PIO in original application, but the respondent being head of the public body may issue orders for issuance of this document which is part of the record. Complainant's request should not be refused on this hyper technical ground. The complaint is accordingly disposed off with a direction to the respondent to provide the requisite information to the complainant within seven days of receipt of this order 4 under intimation to the Information Commission. Copies of order be sent to the parties for information and compliance.

Case Study G

Mr. Amer Ejaz (the Complainant) Vs. Secretary, Punjab Assembly, Lahore (the Respondent)

A. The Complaint

1. The Complainant sent a complaint to the Commission on 8/12/2014, alleging that the Respondent had refused to provide the requested information under section 13(1)(b) of the Punjab Transparency and Right to Information Act 2013 (the Act). In his letter (No. PAP/PIO-1/2014/6384 dated 01/12/2014) addressed to the complainant, the designated public information officer, Mr. Haroon Ahmad Khan, stated as follows:

“I am directed to inform you that the competent authority has withheld the said information under section 13(1)(b) of the Punjab Transparency and Right to Information Act 2013”.

2. The information sought by the Complainant, through his application dated 26/11/2014, is as follows: “Certified copies of the attendance record along with names of members of Assembly of 10th session (separately for each day of session) of the Punjab Assembly.”

B. Proceedings

3. On 26/12/2014, the Commission sought explanation from the public information officer about the following points: “In your response to the complainant, you have referred to decision by the “competent authority” to withhold the requested information under section

13(1)(b) of the Act; whereas it appears from section 7 or 10 of the Act that a Public Information Officer is the competent authority to decide information requests submitted under the Act. Furthermore, your letter doesn't explain how exactly the disclosure of requested information will cause harm to the “legitimate privacy interest” of members or any other party. In the light of the Act, you are called upon to explain or justify the following: Why a decision to withhold the requested information was made by the “competent authority”, and NOT by you in your capacity as a designated Public Information Officer (PIO) u/s 7 of the Act? Also please share with the Commission all the related 2 documentation including the relevant noting by officers involved, arguments furnished and decision as recorded on the file. How and whose privacy would be harmed if the requested information was disclosed to the complainant? Can the information related to official functions of a person involving use of public funds be treated as personal information or related to privacy of a person?”

4. Through a letter number PAP/PIO-1/77 dated 2/1/2015, the public information officer stated as follows: “So far as your query regarding the decision to withhold the requested information by the competent authority and not by the undersigned in my capacity as PIO is concerned, it is submitted that the requested information was not available with the undersigned and the same was sought from the concerned section. The concerned section sought permission from the competent authority who decided to withhold the requested information. The decision of the competent authority was conveyed to the undersigned and the same was communicated to the person requesting the information. As regards the second query about the legitimate privacy right, it may be explained that this was the stance taken by the competent authority in the same backdrop in a similar case which is substantiated from the noting portion of the relevant file (copy attached).”

C. Discussion and Commission's View on Relevant Issues

5. In view of the above-referred facts, correspondence and the information shared with the Commission, the following questions/issues need to be decided:

- Whether the information requested by the complainant can be refused under section 13(1)(b) of the Act?
- Whether the public information officer, while dealing with the instant information request,



Building of Provincial Assembly of the Punjab, Lahore

fulfilled his responsibilities in accordance with the provisions of the Act?

Whether the respondent or other senior officer(s), other than the designated public information officer, had any role in deciding the information request?

6. In his response to the complainant dated 1/12/2014, the public information officer simply stated that the “competent authority” had withheld the requested information under section 13(1)(b). The noting portion of the relevant file, a certified copy of which was later submitted to the Commission, also doesn’t explain how exactly the requested information about attendance of the members of the Assembly is related to the privacy of relevant persons and is, therefore, exempt from disclosure under section 13(1)(b) of the Act. In fact, the note written by Mr. Khalid Mahmood (Deputy Secretary, Legislation) effectively made a convincing case in favour of disclosure of requested information by referring to (a) Article 19-A of the Constitution, (b) example of India where attendance data is posted on the website and 3 (c) an earlier decision of Federal Ombudsman in favour of disclosing attendance record of members of the National Assembly. Despite this, it is strange that, at the end of his note, he thought it appropriate and legally justified to recommend refusal of requested information as one of the options. He quoted section 13(1)(b) of the Act but failed to explain how it could be relied upon to exclude the attendance record. Hence, it appears that the refusal of requested information is not really based on legal but other, possibly malafide, considerations. The Punjab Assembly, which has itself enacted the law, is expected to set very high standards of transparency and implementation of peoples’ right to information; whereas refusal of information on frivolous and legally untenable counts, as in this instance, is likely to harm the image and credibility of Assembly as an esteemed elected institution of people.

7. The requested information is about the attendance record of elected representatives who perform a public function within their constitutional mandate and are accountable to citizens. They are also compensated in the form of salary, allowances and other perks or privileges for the work they undertake and the functions they perform; whereas the attendance record provides a basis for documenting performance, processing compensation and administering legislative business – all of these relate to official or public, not their personal domain. It is for these very reasons that the attendance is taken and maintained as record under Rule 37 of the Rules of Procedure 1997 of the Punjab

Assembly. By no stretch of imagination, the attendance record can be treated as exempt information whose disclosure might harm „legitimate privacy interest? of members under section 13(1)(b) of the Act. In fact, the maximum disclosure of information, such as the requested one, is of paramount importance for effective functioning of a democratic system so that voters could track the performance of their elected members and make informed political choices.

8. The complainant had sent his information request to the respondent, who apparently transferred the application to the public information officer u/s 11 of the Act. Later on, as per the material on the record, it is the designated public information officer, who processed the application, proposed refusal on the basis of denial of a similar information request earlier, sought approvals and then responded to the complainant by referring to the decision of the „competent authority?. However, as provided in sections 7, 10 and 11 of the Act, after the respondent had transferred the application to the public information officer, it was an exclusive responsibility of the public information officer to decide the application in the light of, inter alia, section 13 of the Act and, if necessary, seek assistance from any other officer [u/s 7(3) of the Act], who may be holding the record, for providing access to requested information. But, it appears from the record that the public information officer failed to assert his lawful authority, which amounts to abdication of responsibility. Instead of deciding the application himself, he proposed refusal of instant application on the basis on earlier denial, which too was arrived at without following the prescribed procedure, and then sought approvals from his seniors. Hence, the process that was adopted to process and decide the application for access to information was without lawful authority, involved abdication of authority on the part of the public information officer, and amounted to interference in the functions of public information officer by other senior officers including the respondent. Under the Act, such an unlawful practice can result in penalties not just against the public information officer but also 4 others who may unlawfully interfere in or obstruct the work of a designated public information officer.

9. In his response to the Commission, the public information officer has argued that he didn’t hold the requested information and, therefore, he sought it from the concerned section, which sought approval from the „competent authority?. However, the record shows that the public information officer had, in fact, sought „certified copy of requisite information? from the legislation branch in relation to an earlier application,

and not in relation to the instant applicant/ complaint. In any case, the Commission is of the view that the officer from whom the public information officer seeks assistance/ information u/s 7(3) of the Act is duty bound to provide that information to the public information officer. If such an officer fails to provide the required assistance/ information, he shall be deemed to be a public information officer u/s 7(4) of the Act and can be held accountable under section 15 or 16 of the Act. In view of the foregoing discussion in this para and above, it appears that Mr. Khalid Mahmood (Deputy Secretary, Legislation) failed to fulfill his responsibility in his capacity as a deemed public information officer. When the public information officer sought certified copy of requisite information, he was duty bound to provide it to the public information officer without seeking approvals from his seniors including the respondent. He, prima facie, abdicated his responsibility and can be proceeded against under section 15 or 16 of the Act for withholding the information sought by the public information officer and, as a result, causing wrongful refusal, obstruction or delay in providing access to information. In such a scenario, it would not be a legally valid excuse that he had to or that he could not get consent or approval of his seniors.

10. Various sections of the Act such as 7, 10 and 11 make it clear that, after the respondent had transferred the application to the public information officer, the respondent or other officers, including the ones senior to the public information officer, had no legal authority in deciding the application for access to information. It is a responsibility of the head of the public body to designate any officer as a public information officer but, thereafter, the Act only recognizes the designated public information officer as the competent authority for deciding information requests. It needs to be understood that, if head of the public body (i.e. respondent in this instance) gets involved in the decision making of public information officer, it would not be possible for him to fulfill his legal responsibility regarding internal review u/s 12 of the Act. Therefore, the officers who required the public information officer to seek their consent, endorsement or approval or gave their consent, endorsement or approval exceeded their lawful authority and acted in violation of explicit provisions of the Act, and they could be held accountable for doing so.

11. It is evident from the discussion in above paragraphs that the Punjab Assembly secretariat as a public body and the respondent as its head have a long way to go in terms of developing a good understanding

of the letter and spirit of the Act and ensuring its effective implementation. They need to recognize that the Act demands a major shift from the prevailing culture of secrecy towards a culture of transparency and that information has to be disclosed as a rule in view of the Act and Article 19-A of the Constitution. The handing of the information requests so far also shows that effective steps are yet to be taken to streamline the procedure of deciding information requests and allow adequate space to the public information officers for performing their functions independently, as required by the Act. 5

D. Order

12. The complaint is allowed. The respondent is directed to provide the requested information to the complainant as soon as possible but not later than 20/01/2015, and submit a compliance report to the Commission.

13. In exercise of its powers u/s 6(1)(a) of the Act, the Commission also directs the respondent to establish a mechanism for proactively disclosing the attendance record of members of the Assembly for each of its sittings by posting it on the website soon after a sitting ends, as it is done in other countries like India.

14. The respondent and the public information officer are directed to streamline the procedure of deciding the future information requests in accordance with sections 7, 10, 11 and 12 of the Act. This should be done by keeping in mind that, under the Act, the designated public information officer alone is the competent authority for deciding the information requests, whereas head of the public body is responsible for the internal review, where applicable.

15. Copy of this order may be sent to the complainant for information.

Case Study H

Dr. Karman Abid Additional Registrar - II
Designated PIO
Quaid-i-Azam Campus University of Punjab
Lahore

Subject:- COMPLAINTS REGARDING NON-PROVISION OF INFORMATION UNDER THE PUNJAB TRANSP AGENCY AND RIGHT TO INFORMATION ACT, 2013

ORDER: Please refer to the attached complaint dated 15/7/2015 submitted by Dr. Naveed Ahmad (the complainant) under the Punjab Transparency and Right to Information Act, 2013.

2. The complainant has submitted that your office has provided him incomplete information, and that your reliance on section 13(b) of the Act to withhold requested information (i.e. qualification marks etc.) about eight other candidates considered by the Selection Board is based on wrong interpretation of the law. The Commission has reviewed your response (D/414/R dated 06/07/2015) to the complainant, besides considering the points that you raised through a telephonic discussion on the subject at 10:50AM on 07/08/2015. The Commission is of the view that the refusal of a part of the requested information cannot be justified by referring to section 13(b) of the Act. The very purpose of the Act is to promote transparency and accountability in the conduct of official business and, in this particular instance, the denial of requested information is likely to result in failure of the very purpose of the Act. The record pertaining to other eight candidates, who competed for an official position involving use of public authority and resources, cannot be treated as excluded from public access due to the privacy interest of relevant candidates. The candidates have competed for a public office and the public interest demands that the relevant records are made accessible to ensure transparency, fairness and public accountability. It may be noted here that, on a complaint of a similar nature (Mr. Faiz-ul-Basit, Additional Secretary Vs. Senior Secretary Punjab Assembly), the Punjab Information Commission had directed the Secretary, Punjab Assembly, on 2111/2014 to provide the requested information to the aggrieved candidate. The public bodies must realize that the Punjab Transparency and Right to Information Act 2013 provides for maximum disclosure of information, and information can only be withheld when it could be unambiguously established that its disclosure will harm one or more of the protected

interests mentioned in section 13 of the Act.

3. In view of the above, the complaint is allowed and, in exercise of its powers u/s 6(l)(a) of the Act, the Commission directs you to provide complete information to the complainant without further delay. Your compliance report must reach the Commission latest by 17/08/2015.

Case Study I

Abuse of RTI by PIO's

A majority of Information Officers are inattentive and uncaring in replying to information requests, forcing the information seekers to resort to first appeals which in turn has them searching further for an answer to their information requests. In the case of *Arun Kumar Dubey v. Central Board of Excise and Customs (CBEO)*,¹ the public body provided a deliberately ambiguous reply to a request for information about certain departmental appointments. In response, the public body directed the information seeker to submit an application to the “Administrative Ministry”, which is a term not widely used by the public.

The PIO from aforesaid public body and the first appellate authority were equally ambiguous in their replies. Public bodies are routinely bureaucratic in their approach, not reaching out to the citizen requesting information by phone or letter to help clarify what he needed exactly. The RTI Act mandates that the PIO guide and help the citizen in seeking information.

The CIC censured the public body for providing an ambiguous reply and not contacting the information seeker directly for clarification of the information request.

1. Madabhushi Sridhar (2015): pg. 421-422, “RTI Use and Abuse”, Haryana, India.

Case Study J

Right to ACR through RTI

In *Sunanda vs. Directorate of Education, Delhi*,² a second appeal was filed with the Chief Information Commission when the respondent Ms. Ram Devi, Principal GGSS School Puri did not satisfactorily reply to the information request regarding the status of Sunanda's ACR.

The hearing of the case in front of the Commission showed evidence of hostilities between the Head of the School and the appellant, the latter claiming that her ACR of four years and consequently her career were in jeopardy because of the adversarial attitude of the Head of School. She alleged that she was being harassed in the four years for which her ACR was pending and feared for an adverse report pending the filing of the RTI request. The HOS in question also made serious allegations against the appellant, claiming to file RTI requests and petitions with the National Commission for SC/ST against her.

In view of the threats made by each party against the other, it was clear that all chances of objective assessment of performance were now closed and proper preparation of the appellant's ACR could not be undertaken by the HOS. The Chief Information Commissioner directed the respondent to inform the appellant about the status of her ACR, which if could not be made available as the case seemed, the respondent is required to initiate alternative measures within 15 days of receipt of the order to allow the appellant to stand in competition for her promotion.

Under Section 19 (8) (a) of the RTI Act, the CIC asked the Directorate of Education to revise the method of preparing ACRs, keeping in view that it had become a tool for harassment in the hands of the superiors, which was compelling subordinates to please them, at the cost of good governance, for the purpose of promotion.

2. Madabhushi Sridhar (2015): pg. 115-117, "RTI Use and Abuse", Haryana, India.



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