

[AS PASSED BY THE MAJLIS-E-SHOORA (PARLIAMENT)]

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BILL

to provide for the right to information in transparent and effective manner, subject only to reasonable restrictions imposed by law

WHEREAS Government believes in transparency and the right to have access to information to ensure that the people of the Islamic Republic of Pakistan have improved access to records held by public authorities and promote the purposes 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;

AND WHEREAS it is expedient to provide for a law which gives effect to the fundamental right of access to information, as guaranteed under Article 19A of the Constitution of the Islamic Republic of Pakistan and international law, whereby everyone shall have the right to have access to all information held by public bodies subject only to reasonable restrictions imposed by law, and for matters connected therewith or incidental thereto;

It is hereby enacted as follows:-

1. Short title, application and commencement.- (1) This Act may be called the Right of Access to Information Act, 2017.

(2) It shall apply to all public bodies of the Federal Government.

(3) It shall come into force at once.

2. Definitions.- In this Act unless there is anything repugnant in the subject or context,

(i) "appeal" means any grievance lodged in writing by an applicant with the Information Commission in accordance with section 17;

(ii) "applicant" means a citizen of Pakistan, as defined in law, who lodges a request or any person who is acting for or on behalf of such a person;

(iii) "designated official" means an official of a public body designated in accordance with section 9;

- (iv) "Information Commission" means the Pakistan Commission on Access to Information established in accordance with section 18;
- (v) "information" means information based on record;
- (vi) "national security" means the matters pertaining to the integrity, security or defence of Pakistan or any part thereof;
- (vii) "prescribed" means prescribed by rules or regulations made under the Act;
- (viii) "principal officer" means-
 - (a) in case of the Federal Government's Ministries and Divisions, the Secretary thereof; and
 - (b) in all other cases, the head or chief executive of the public body by whatever designation identified;
- (ix) "public body" means-
 - (a) any Ministry, Division, attached department or subordinate office, including autonomous bodies of the Federal Government;
 - (b) any Federal and any municipal or local authority set up or established by or under any Federal law;
 - (c) the National Assembly and the Senate including their secretariats, committees and members;
 - (d) any statutory corporation or other body corporate or institution set up or established or owned or controlled or funded by the Federal Government;
 - (e) any court, tribunal, commission or board under the Federal law;

- (f) any incorporated or unincorporated body of the Federal Government functioning under the control or authority of another public body or wherein one or more public bodies own or have controlling interest or provide substantial funding;
- (g) any other organisation which undertakes a public function, to the extent of that function; and
- (h) a non-governmental organisation which directly or indirectly receives or has received public funds, subsidy, tax exemption, piece of land or any other benefit involving public funds and any other non-governmental organisation or body registered under any law for the time being in force;
- (x) "record" means a public record as defined in section 6;
- (xi) "request" means a request for access to information and includes a request for access to a specific record; and
- (xii) "right of access to information" means the right of access to information accessible under this Act which is held by or under the control of any public body and includes the right of access to information, documents or record in digital or printed form, as the case may be.

3. Right to have access to information not to be denied.- (1) Subject to the provisions of this Act, no applicant shall be denied access to information or record held by a public body.

(2) This Act shall be interpreted so as to advance its purposes as set out in the preamble and to-

- (a) promote the right of access to information; and
- (b) facilitate and encourage promptly the disclosure of the information at the lowest and reasonable cost.

4. Maintenance and indexing of record.- (1) Subject to the provisions of this Act and rules made thereunder, the principal officer of each public body shall ensure that the record held by that body is properly maintained, so as to enable it to comply with its obligations under this Act.

(2) Each public body shall bring its record management practices in line with the Secretariat Instructions, 2004 or any other instructions of the Federal Government.

5. Publication and availability of record.- (1) The principal officer of each public body shall, within six months of the commencement of this Act, ensure that the following categories of information and record are duly published including uploading over the internet in a manner which best ensures that these are accessible subject to reasonable restrictions based on limited resources:-

- (a) description of the public body's organisation and functions, duties, powers and any services it provides to the public, including a directory of its officers and employees, indicating their duties and functions and their respective remunerations, perks and privileges;
- (b) statutes, statutory rules, regulations, bye-laws, orders and notifications, etc. applicable to the public body disclosing the date of their respective commencement or effect;
- (c) substantive or procedural rules and regulations of general application evolved or adopted by the public body, including any manuals or policies used by its employees;
- (d) relevant facts and background information relating to important policies and decisions which have been adopted, along with a statement of the policies adopted by the public body and the criteria standards or guidelines upon which discretionary powers are exercised by it;
- (e) the conditions upon which members of the public can acquire any licence, 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, licence or authorisation granted by the public body;

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- (f) a description of its decision making processes as defined in the Federal Government's Secretariat Instructions, 2004 and any instructions for the time being in force for public to provide input into or be consulted about decisions;
- (g) detailed budget of the public body, including proposed and actual expenditures, original or revised revenue targets, actual revenue receipts, revisions in the approved budget and the supplementary budget;
- (h) the methods whereby information in the possession or control of the public body may be obtained and the prescribed fee required along with the name, title and contact details of the designated officials;
- (i) reports including performance reports, audit reports, evaluation reports, inquiry or investigation reports and other reports that have been finalised;
- (j) such other matters which the principal officer of the public body deems fit to be published in the public interest;
- (k) such other information as may be prescribed; and
- (l) Camera footages at public places, wherever available, which have a bearing on a crime:

Provided that if the information or record pertains to a period earlier than the year 2008, the same shall be published within reasonable time.

6. Declaration of public record.- Subject to the provisions of section 7, the following record of all public bodies is hereby declared to be the public record, namely:-

- (a) policies and guidelines;
- (b) transactions involving acquisition and disposal of property and expenditure undertaken by a public body in the performance of its duties and functions;

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- (c) information regarding grant of licences, allotments and other benefits, privileges, contracts and agreements made by a public body;
- (d) final orders and decisions, including decisions relating to members of public; and
- (e) any other record which may be notified by the Minister-in-charge of the Federal Government as public record for the purpose of this Act.

7. Exclusion of certain record.- Nothing contained in section 6 shall apply to the following record of all public bodies, namely:-

- (a) noting on the files, subject to a final decision by the public body;
- (b) minutes of meetings, subject to a final decision by the public body;
- (c) any intermediary opinion or recommendation subject to a final decision by the public body;
- (d) record of the banking companies and financial institutions relating to the accounts of their customers;
- (e) record relating to defence forces, defence installations or connected therewith and ancillary to defence and national security excluding all commercial and welfare activities;
- (f) record declared as classified by the Minister-in-charge of the Federal Government:

Provided that the Minister in-charge of the Federal Government will have to record reasons as to why the harm from disclosure of information outweighs public interest, and further that information pertaining to allegation of corruption and violation of human rights shall not be excluded;

- (g) record relating to the personal privacy of any individual; and
- (h) record of private documents furnished to a public body either on an express or implied condition that information contained in any such documents shall not be disclosed to a third party.

8. Computerisation and voluntary disclosure of record.- Each public body shall endeavour to ensure within the time prescribed in section 5 and, that all record accessible under this Act is computerised and is available online so that authorized access to such public records is facilitated.

9. Designated official.- Each public body shall, within thirty days of the commencement of this Act, notify one or more designated officials, not below the rank of BPS-I9 or equivalent:

Provided that where no designated official has been notified or he is absent or not available, principal officer of the public body shall be the designated official:

Provided further that in case of non-governmental organization, it may designate a senior officer as per its organizational structure.

10. Functions of designated official.- (1) Subject to the provisions of this Act and the rules made thereunder, the designated official shall be responsible for ensuring that requests are dealt with promoting full compliance by the public body of its obligations under this Act.

(2) A designated official shall, as may be prescribed, assist applicant who is having problems due to any disability in describing the information sought in sufficient detail to enable the public body to locate that information.

11. Requests.- (1) Subject to the provisions of this Act and the rules made there under a citizen of the Islamic Republic of Pakistan may make a request to a public body through the designated official.

(2) A request under sub-section (1) shall be in writing and made in any manner in which the public body has the facilities to receive it, including in person, by mail, fax, online or e-mail.

(3) Any written request which identifies the information or record sought in sufficient detail to enable the public body to locate it, and which includes a complete address and contact details for delivery of the information or record, shall be treated as a request.

(4) Subject to sub-section (3), a public body may provide a prescribed form for making requests.

(5) In no case shall an applicant be required to provide reasons for his request.

12. Where information requested for is not held.- Where a public body does not hold information or record, the applicant shall be informed accordingly within ten working days of the receipt of the request.

13. Procedure for acceptance and refusal of requests.- (1) The designated official shall provide a written acknowledgement in response to a request.

(2) The designated official shall process the request and by notice in writing inform the applicant that-

(a) the request has been acknowledged and the applicant is entitled to receive the information or record, subject to the payment of prescribed fee. On payment of the fee the designated official shall provide the requested record; or

(b) the request has been rejected-

(i) on the basis that it does not comply with the provisions of this Act and the rules made thereunder but only after requisite assistance has been offered to the applicant as mentioned in sub-section (2) of section 10;

(ii) on the basis that the information is already available in a generally accessible form in which case the notice shall indicate to the applicant the place from where the information may be found;

(iii) on the basis that it is incorrect, because it relates to information which is substantially the same information that has already been provided to the same applicant during last six months; or

- (iv) in whole or in part, on the basis that the information is exempt, subject to section 7(f), in which case the notice shall specify the exact exception relied upon and specifying details regarding the right of the applicant to appeal against this decision.

(3) Where information or a record is provided in accordance with clause (a) of sub-section (2), it shall be accompanied by a certificate which may be affixed to the information or record at the foot thereof, or as appropriate, to the effect that the information is correct or, as the case may be, the copy is a true copy of the original record and such certificate shall be dated and signed by the designated official.

(4) Where the designated official refuses a request, he shall, before informing the applicant of such refusal, obtain written approval of the principal officer of the public body.

14. Time limit for responding.- (1) Subject to the provisions of this Act, a public body shall be required to respond to a request as soon as possible and in any case within ten working days of receipt of the request.

(2) The period stipulated in sub-section (1) may be extended by maximum of further ten working days where it is necessary when the request requires a search through a large number of records or records located in different offices or consultation is required with third parties or other public bodies.

(3) Information needed to protect the life and liberty of any individual shall be provided within three working days.

15. Fee for requests.- Prescribed fee may be charged for the cost of reproducing information and sending it to the applicant.

16. Information exempt from disclosure.- (1) Subject to the provisions of this Act,-

- (a) a public body shall not be required to disclose exempt information,-
 - (i) provided that where only part of a record or the information falls within the scope of the exceptions provided for in this Act, that part shall be severed and the residual record or information shall be provided to the applicant;

- (ii) if its disclosure is likely to cause damage to the interests of the Islamic Republic of Pakistan in the conduct of international relations.

Explanation- In this section, "international relations" means relations between Islamic Republic of Pakistan and-

- (i) the government of any other foreign State; and
- (ii) organisation of which only States are members.

- (b) information may be exempt if its disclosure is likely to-

- (i) result in the commission of an offence;
- (ii) harm the detection, prevention, investigation or inquiry in a particular case;
- (iii) reveal the identity of a confidential source of information;
- (iv) facilitate an escape from legal custody; or
- (v) harm the security of any property or system, including a building, a vehicle, a computer system or a communication system;

- (c) information is exempt if its disclosure under this Act would involve invasion of privacy of an identifiable individual, including a deceased individual, other than the applicant. This exception shall not apply where-

- (i) the third party has consented to the disclosure of the information;
- (ii) the person making the request is the guardian of the third party or the next of kin or the executor of the will of a deceased third party; or
- (iii) the third party is or was an official of a public body and the information relates to his functions as a public official;

- (d) information is exempt if and so long as its disclosure is likely to cause-
 - (i) damage to the economy as a result of premature disclosure of a proposed introduction, abolition or variation of any tax, duty, interest rate, exchange rate or any other instrument of economic management;
 - (ii) damage to the financial interests of the public body by giving an unreasonable advantage to any person in relation to a contract which that person is seeking to enter into with the public body for acquisition or disposal of property or supply of goods or services; or
 - (iii) damage to lawful commercial activities of the public body;
- (e) information may be exempt if its disclosure is likely to cause serious prejudice to the-
 - (i) defence or security of Pakistan; or
 - (ii) the capability, effectiveness of armed forces of Pakistan or other law enforcement agencies;
- (f) information may be exempted if its disclosure is likely to endanger life, liberty, health or safety of any individual;
- (g) information may be exempted if-
 - (i) the information was obtained from a third party and on its communication it would constitute an actionable breach of confidence; or
 - (ii) the information was obtained in confidence from a third party and it contains a trade secret or if communicated it may prejudice the commercial or financial interests of that third party;
- (h) information may be exempt if it is privileged from production in legal proceedings, unless the person entitled to the privilege has waived it;

- (i) information may be exempt if its disclosure is likely to-
 - (i) cause prejudice to the effective formulation or development of government policy;
 - (ii) frustrate the success of a policy, by premature disclosure of that policy;
 - (iii) undermine the deliberative process in a public body by inhibiting the free and frank provision of advice or exchange of views;
 - (iv) undermines the effectiveness of a testing or auditing procedure used by a public body;
 - (v) prejudice the proceedings in a court or a tribunal; and
 - (vi) privileged information shared between counsel and the client;
- (j) information in respect of a crime may not be exempt, except the information relating to-
 - (i) the prevention or detection of crime;
 - (ii) the apprehension or prosecution of offenders;
 - (iii) the administration of justice;
 - (iv) the operation of the immigration controls excluding ECL;
 - (v) the maintenance of security and good order in prisons or in other institutions where persons are lawfully detained; and
 - (vi) any civil proceedings which are brought by or on behalf of a public body or arise out of an investigation conducted;
- (k) the exemptions set out in section 16 of this Act shall cease to apply after every twenty years and that record of public bodies shall be made public.

17. Appeal.- (1) An applicant who is not satisfied by decision of the designated official or where no decision has been communicated to him within the time fixed for such decision, he may, within a period not exceeding thirty days after either receiving a decision or after the time-limit for such a decision has passed, prefer an appeal to the Information Commission.

(2) An appeal under sub-section (1) shall be free of charge.

(3) The Information Commission established under section 18 shall decide an appeal under sub-section (1) within a period of sixty days.

(4) The public body shall, in an appeal under sub-section (1), bear the burden of proof of showing that it acted in accordance with the provisions of this Act.

18. Information Commission.- (1) Within six months of the commencement of this Act, the Prime Minister shall establish Pakistan Commission on Access to Information to be known as the Information Commission.

(2) The Information Commission shall enjoy operational and administrative autonomy, except as specifically provided for by this Act.

(3) The Information Commission shall comprise three Commissioners to be appointed by the Prime Minister, with the following composition:

(a) One member shall be qualified to be a Judge of a High Court;

(b) One member who has been in the service of Pakistan in BS-22 or equivalent;

(c) One member shall be from civil society having a degree based on sixteen years of education from a recognized institution and experience of not less than fifteen years in the field of social sciences; and

(d) The Information Commissioners shall be of less than 65 years of age at the time of appointment.

(4) The Information Commission shall be headed by the Chief Information Commissioner, who shall be appointed by the Prime Minister from amongst the Commissioners.

(5) The Chief Information Commissioner and the Commissioners shall hold office for a term of four years from the date on which they assume charge of their office and shall not be eligible for re-appointment.

(6) The Chief Information Commissioner and the Commissioners shall not hold any other public office or be connected with any political party at the time of or during their appointment to the information Commission and, once appointed, they shall work on full time basis and may not run any business or pursue any profession during their tenure as the Chief Information Commissioner and Commissioners.

(7) The Chief Information Commissioner and Commissioners shall be removed if there are serious complaints of mental and physical incapacity and misconduct against them, which are materially inconsistent with the status of being Chief Information Commissioner or, as the case may be, a Commissioner. The complaint shall be lodged before a five-member Parliamentary Committee comprising two Senators nominated by the Chairman Senate and three Members of National Assembly nominated by the Speaker National Assembly. The Speaker National Assembly shall nominate one of the five members as the Chairperson of the said Parliamentary Committee:

Provided that where the National Assembly stands dissolved the Parliamentary Committee shall comprise five Senators and the Chairman Senate shall nominate one of the five Senators as Chairperson of the Parliamentary Committee.

(8) The Parliamentary Committee shall consider the complaint record reasons and present its recommendations to the Prime Minister who shall implement the recommendations within thirty days from the date of receipt of such recommendations.

19. Functions of the Information Commission.- (1) The Information Commission shall have the primary responsibility to receive and decide on appeals under section 17.

(2) The Information Commission shall, in addition to its functions under sub-section (1), perform the following functions, namely:-

- (a) compile a user-friendly handbook in Urdu and English describing in easily comprehensible form the rights established by, and how to make a request under this Act;
- (b) have an accredited accountant to conduct an audit of its accounts on an annual basis;
- (c) compile a comprehensive bi-annual report both describing its own activities, including an overview of its audited accounts and providing an overview of the activities undertaken by all public bodies to implement this Act. This report will be laid before the Parliament;
- (d) ensure that all the information under section 5 is made public; and
- (e) ensure implementation of this Act and the record to be made public under this Act.

20. Powers of the Information Commission.- (1) The Information Commission shall have all the powers, direct or incidental, as are necessary to perform its functions as provided for in this Act and the power to acquire, hold and dispose of property including the power to-

- (a) monitor and report on the compliance by public bodies with their obligations under this Act;
- (b) co-operate with or undertake training activities for public officials on the right of access to information and the effective implementation of this Act;
- (c) publicise the requirements of this Act and the rights of individuals thereunder;

- (d) conduct inquiries in relation to an appeal and for this purpose shall have the powers of a civil court in respect of the following matters:-
 - (i) summoning and enforcing the attendance of witnesses and compelling them to give oral or written evidence on oath; and
 - (ii) requiring public bodies to produce records as defined in section 6 pertaining to the appeal;
- (e) order a public body to disclose information to an applicant or to take such other reasonable measures as it may deem necessary to remedy any failure to implement the provisions of this Act;
- (f) impose on the official a fine equivalent to his salary for one day, for a maximum of one hundred days, who has acted willfully to obstruct any activity which is required to be undertaken by this Act, including preventing or delaying the disclosure of information to an applicant;
- (g) appoint its employees in prescribed manner; and
- (h) the Information Commission after determination of willful destruction of record shall refer such matters to the relevant agencies.

(2) Non-compliance of a decision of the Information Commission under clauses (e) and (f) of sub-section (1) may, if it has not been appealed against within thirty days, be dealt with in the same way as contempt of court.

21. Funding for the Information Commission.- The Federal Government shall make annual budgetary allocation to the Information Commission to discharge its functions under this Act.

22. Offences.- (1) Any person who acts willfully to obstruct the implementation of this Act including by-

- (a) obstructing access to any information or record with a view to preventing the exercise of a right provided for in this Act;
- (b) obstructing the performance by a public body of a duty under this Act;

- (c) interfering with the work of the Information Commission; or
- (d) destroying a record without lawful authority, shall be punishable with a fine not exceeding fifty thousand Rupees.

(2) In addition to any other action under any other law for the time being in force, any person who willfully destroys a record which at the time it was destroyed was the subject of an application for access to information or appeal or otherwise obstructs access to information which is the subject of an application or appeal, with the intention of preventing its disclosure under this Act, commits an offence punishable with imprisonment for a term which may extend to two years or with fine which shall not be less than one hundred thousand Rupees or with both.

23. Indemnity.- No suit, prosecution or legal proceedings shall lie against the principal office, designated official or any other person of a public body in respect of anything which in good faith is done or purported to have been done under this Act and the rules made thereunder.

24. Recruitment in Information Commission.- Excluding the Chief Information Commissioner and Commissioners, appointment of officers and staff in Information Commission from BS-16 and above shall be made through Federal Public Service Commission in line with Federal Public Service Commission Ordinance, 1977.

25. Act to override other laws.- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

26. Power to make rules.- The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act within 120 days.

27. Power to make regulations.- The Information Commission may make regulations, not inconsistent with the provisions of the rules made under section 26, regarding its internal procedures and, without limiting the generality of the foregoing, it may make regulations regarding-

- (a) record management standards; and
- (b) fee that may be charged for requests; and
- (c) procedure for processing of appeals.

28. Power to remove difficulty.- If any difficulty arises in giving effect to any of the provisions of this Act, the Federal Government may make such order, not inconsistent with the provisions of this Act, as deemed necessary for the purpose of removing the difficulty:

Provided that no such order shall be made after expiry of one year from the commencement of this Act.

29. Repeal.- The Freedom of Information Ordinance, 2002 (XCVI of 2002) is hereby repealed.

STATEMENT OF OBJECTS AND REASONS

The proposed Bill is intended to promote a two way flow of Information i.e. from the government to the people and vice versa for strengthening and safeguarding the public's "Right to know", especially in the back drop of Article 19A of the Constitution, which explicitly recognizes this right as a fundamental human right.

WHEREAS, Right to know is an inalienable birth right of an individual and is universally recognized in a democratic dispensation. In a constitutional governance, public officials are the custodians of the public records and documents, and the people, the real sovereigns, have the right of access to all public records, subject to law and except the material disclosure of which may be harmful to national security, relations with the friendly countries and privacy of the life, home, family and honour of the citizens of Pakistan.

WHEREAS, access to information is an essential pre-requisite to the people's realization of their ideals of good and transparent governance and for which it is necessary to ensure that the citizens of Pakistan should have the fullest possible access to public records.

Therefore, in pursuance of the aforesaid objectives, this Bill is being introduced to ensure that the citizens of Pakistan may have the fullest possible access to public records.

MARRIYUM AURANGZEB
Minister of State for Information and
Broadcasting.