

**PUNJAB INFORMATION COMMISSION
LAHORE**

Mr. Amer Ejaz (the Complainant)
H. 370, St. 75, E-11/3, Islamabad

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

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, 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

(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

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.

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.

(Mukhtar Ahmad Ali)
Information Commissioner
Lahore

Announced on:
12/01/ 2014