

**Punjab Information Commission,
Government of Punjab,
Lahore.**

Subject: **COMPLAINT UNDER SECTION 6 (1) (a) OF THE PUNJAB
TRANSPARENCY AND RIGHT TO INFORMATION ACT, 2013**

Order

Mr. Niaz Ali Sheikh (hereinafter called the complainant), moved an application dated 23rd -September 2013 to the Secretary Services and General Administration Department, Government of Punjab, Lahore (hereinafter called the respondent) seeking following information pertaining to Mr. Javed Nisar Syed (PAS/BS-20) former Member Board of Revenue, Lahore:-

- i. Copy of NOC dated 07-11-1995 granted to engage in his family concern and for settlement of his assets and liabilities.
- ii. Copy of application filed by Mr. Javed Nisar Syed for issuance of aforesaid NOC.
- iii. Copy of letter of the officer informing the government of Punjab on 16-2-2000 of the acquired assets/liabilities after settlement.
- iv. Whether NOC was to be issued by the Establishment Division and not by Secretary Services as being a DMG Officer they were the controlling authority on the subject.

2. The respondent did not provide the requisite information upon which the complainant filed a writ petition No. 26895/2013 titled “ Mr. NIaz Ali Sheikh versus Secretary Services, S & G.A.D. , Government of Punjab, which was disposed of vide order dated 23-10-2013 with a direction to the respondent to decide the pending application of complainant/ petitioner through a speaking order within one month.

In compliance with the order of Honorable Lahore High Court, Lahore the respondent vide order dated 25-11-2013 disallowed the application with the observations that the information sought for does not pertain to any matter of public importance; that it falls within the exceptions provided in clause (b) of section 13 of the subject cited act; and that it pertains to the legitimate privacy interest of the officer and cannot be provided unless he has consented to the disclosure of the information. It has been further observed that the petitioner has no locus standi to object to the issuance of NOC in favor of the officer on the plea that it ought to have been issued by Federal Government, and that it was a transaction which long stands passed and closed and cannot be reopened at the instance of the petitioner.

3. Aggrieved by the aforesaid order passed by the respondent, the complainant has approached the Punjab Information Commission through the instant complaint for redressal of his grievance and has provided the relevant documents. Mr. Javed Nisar Syed, Former

Member Board of Revenue has also been provided an opportunity to put in his point of view before the Information Commission vide letter dated 11-06-2014 through the Secretary S&GAD Lahore, but he has not responded.

4. The Information Commission have gone through the record and have conscientiously considered the request of the complainant. Before discussing the merits of the case, we deem it appropriate to mention the background of the law of Access to Information.

Through Eighteenth Amendment, Article 19-A has been inserted in the Constitution of Pakistan, 1973, which is reproduced as under:-

“19-A Right to Information:- Every citizen shall have the right to have access to information in all matters of public importance subject to regulations and reasonable restrictions imposed by law.”

By incorporating the above Article in the constitution, Right of Access to Information in all matters of public importance has been declared a fundamental right of every citizen of Pakistan. In pursuance of this provision, the Punjab Transparency and Right to Information Act, 2013 has been enacted which ensures the Right of Access to Information of a citizen, held by the public bodies in province of Punjab. Under the provisions of Act Ibid, a citizen is entitled to get any information from a public body unless it falls

within the exceptions contained in section 13 and by virtue of section 10 (3) he is not required to provide reasons for request to obtain the requisite information.

The Superior Courts of the country have also shed light on the right of access to information in various judgments. In case titled **Indus Battery Industries (Pvt.) Ltd. Vs Federation of Pakistan and others (PLD 2008 Karachi 68)** it has been observed, “ it goes without saying that access to information is sine qua non of constitutional democracy. The public has right to know everything that is done by the public functionaries. The responsibility of public functionaries to disclose their acts works both against corruption and oppression. Though this right has its limitations but every routine business of the public functionary cannot be covered with the veil of secrecy or privilege. Only where disclosures would cause greater harms than good then the disclosures are to be disallowed. Therefore, as a rule information should be disclosed and only as an exception privilege should be claimed on justifiable grounds permissible under the law.”

In **Watan Party and others case (PLD 2012 Supreme Court 292)** also the Honorable Supreme Court of Pakistan has also observed that citizens of Pakistan, through Article 19-A of the constitution have been freed from the caprice of a sorry fate and have become independent of whistle-blowers in foreign lands or the magnanimity of the likes of wikileaks or biographies of political

actors, to get to the information they are now entitled to as of right under the constitution, which provides for and makes good a crucial missing element of responsible state governance in the scheme of the constitution.

High Court of Delhi, vide their judgment dated 12-01-2010 in case **Secretary General, Supreme Court of India vs Subhash Chandra Agarwal**, also observed that The Chief Justice of India cannot be fiduciary vis-à-vis Judges of the Supreme Court. The Judges of the Supreme Court hold independent office and there is no hierarchy, in their judicial functions, which places them at a different plane than the C.J.I. The declarations are not furnished to the C.J.I. in a private relationship or a trust but in discharge of the constitutional obligations to maintain higher standards probity of judicial life and are in the large public interest. In these circumstances, it cannot be held that the asset information shared with the C.J.I., by the Judges of the Supreme Court, are held by him in the capacity of fiduciary, which if directed to be revealed, would result in breach of such duty.

In this judgment it has been held that the respondent had right to information regarding making of declarations by the Judges of the Supreme Court voluntarily, pursuant to the 1997 resolution.

5. Now we propose to discuss the merits of the request made by the complainant on the touchstone of principles laid down in the above judgments.

Although it is evident from the record that the complainant and Mr. Javed Nisar Syed are entangled in some litigation, but the complainant cannot be deprived of right to information requested for on this ground, unless it is hit by the exceptions contained in section 13 of the Act *ibid*. His request cannot be turned down on the ground that he has no *locus standi* because as already mentioned, under section 10 (3) he is not required to show the purpose or reason for seeking the requisite information.

6. Under Rule-12 of the Punjab Government Servants (Conduct) Rules, 1966, every government servant is required to submit the declaration of all immovable and movable properties including shares, certificates, securities, insurance policies, cash and jewelry etc to the government at the time of entering service and subsequently on 31st December of every year he is required to submit a return showing the increase or decrease in his assets during the previous year. Mr. Javed Nisar Syed being a government servant also submitted the statement of his assets to the respondent in normal course of business under the aforesaid rules. Therefore, the statement submitted by him is a document falling within the definition of "information" given in section 2 (f) of the Act *ibid*. It is neither a legally privileged information nor any legitimate privacy interest of the officer is involved in it. Therefore, he cannot claim exemption under clauses (b) & (c) of section 13 (1) of the Act.

The argument of respondent that NOC was issued to the complainant long ago and it was a past and closed transaction, is also without any substance. The relevant record is still in the custody of the respondent, therefore, he cannot refuse issuance of its copies to the complainant.

The Information Commission is of the view that the public interest in disclosure of the requisite information outweighs the harm likely to be caused to the officer by such disclosure. Therefore, the complaint is allowed and the respondent is directed to provide the information requested for, to the complainant forthwith under intimation to this commission.

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

Announced on
19th August 2014.

Chief Information Commissioner,
Punjab Information Commission,
Lahore.