

**PUNJAB INFORMATION COMMISSION
LAHORE**

1. Mr. Waseem Abbasi
40 Jang Plaza, Blue Area, Islamabad
2. Ch. Siraj Din
48, Gulshan Hayat Colony, Factory Area, Near DHQ Hospital,
Sargodha
3. Mr. Muhammad Waseem Elahi
Bait-ul-Raza, Civil Lines, Akram Colony, Gujranwala

(the Complainants)

Vs.

1. Mr. Tariq Shahzad
Deputy Secretary (Coord.)/ Public Information Officer, Governor
House, Lahore

(the Respondent)

ORDER:

1. On September 18, 2014, the complainant No. 1 filed an application to Principal Secretary to the Governor to seek information, *inter alia*, about (a) month wise expenditures of Governor House from August 1, 2013 to August 31, 2014; (b) month wise expenditures of bakery items procured for Governor House from August 1, 2013 to August 31, 2014; and (c) information about gifts/ presents given by Governor to people from August 1, 2013 to August 31, 2014, including description of gifts/presents, price and names of individuals who received the gifts/ presents. The requested information was not provided and, consequently, the complainant No. 1 filed his complaint to the Commission. When the Commission sought explanation from the Principal Secretary to the Governor, the Respondent, who is a designated public information officer, contended vide his letter No. SOA/GS(ESTT)1-11/2013 dated 6/2/2015 that the information relating to expenditures of the Governor House cannot be provided, as these expenditures are charged upon the provincial consolidated fund as per Article 121 of the Constitution and that these can only be discussed by the elected members in the Provincial Assembly. The Information Commissioner, Mr. Mukhtar Ahmad Ali, passed an order on 12.02.2015, whereby the contention of the Respondent was declared to be devoid of any

legal merit and the Respondent was directed to provide the requested information to the complainant No. 1 as soon as possible but not later than 20/2/2015. However, the said order was not implemented and when this was brought to the notice of the Commission, a show cause notice was issued to the Respondent on 03.03.2015.

2. The Respondent didn't respond to the show cause notice, but a letter No. SOA/GS(Estt.)1-11/2013 dated 09.03.2015 was received from the Secretary to Governor, Mr. Farhan Aziz Khawja, whereby he raised the following points/ objections:
 - a. That the Punjab Information Commission and the Information Commissioner are two distinct and separate entities under the Act; and that all the functions and powers under the Act are reserved for the Punjab Information Commission and not for an Information Commissioner in his individual capacity. In this regard, he referred to section 2(b) & (c) and section 5 of the Act. He also referred to Rule 11 of the Punjab Transparency and Right to Information Rules 2014 arguing that it provides that two commissioners shall constitute quorum for a meeting of the Commission, and that the said order and show cause notice were apparently issued by the Information Commissioner in his individual capacity. In view of this, he further argued that the said order suffers from the jurisdictional error.
 - b. That the Information Commissioner didn't undertake a proper scrutiny of the complaint, as the order was passed in favour of Mr. Waseem Abbasi, whereas in the complaint, his name is mentioned as Abdul Waseem. In view of this, he argued that "variation of the name as well as signature of the complainant has rendered the entire proceedings doubtful and the same merits to be reviewed."
 - c. That the Information Commissioner passed the said order "without affording an opportunity of personal hearing to the representative of the Secretariat."
 - d. That, keeping in view the aforementioned, the order dated 12.02.2015 and show cause notice dated 03.03.2015 may be withdrawn and the case may be re-examined by the Punjab Information Commission.
3. The Commission took up the submissions of Secretary to Governor on 15.04.2015 and, after detailed deliberations, unanimously rejected the objections petition moved by the Secretary to the Governor, and endorsed the earlier order dated 12.02.2015 passed by the learned Information Commissioner, Mukhtar Ahmad Ali, and again directed the Respondent to immediately provide the requested information to the complainant No. 1. However, the Respondent continued to defy

the orders of the Commission. Through its letter dated 1/07/2015, the Commission sought a compliance report from the Respondent but he didn't respond. Consequently, another show cause notice was issued on 20/8/2015 and a hearing was fixed on 31/8/2018. The hearing fixed for 31/8/2015 was, however, rescheduled due to leave of absence of the Respondent. The hearing was finally held on 15/9/2015 and was attended by the Respondent as well as Mr. Subhan Butt, Deputy Secretary, Governor House.

4. In the meanwhile, on 9/2/2015, the Complainant No. 2 approached the Commission and complained that the Governor House had refused to provide him noting sheet/ comments of the judicial office/ branch of Governor's Secretariat Punjab on the basis/ grounds of which the petition of Mr. Bashir Ahmad Lodhi & others was disposed of vide Order No. SO(OMB-II)GS-Misc/2014 dated 5/8/2014. In response to the Commission's letter dated 12/2/2015, the Respondent stated through a letter dated 20/2/2015 that a certified copy of Governor's order dated 5/8/2014 had already been provided to the complainant No. 2. However, regarding the noting sheet/ comments of the judicial officer, he argued that the request had been regretted, as the same was not covered by the Punjab Transparency and Right to Information Act 2013. He also stated that the proceedings under section 32 of the Punjab Office of the Ombudsman Act, 1997 are not judicial proceedings and there is no post of judicial officer in the Secretariat. He further submitted that the information sought by the complainant No. 2 does not exist, and that the only legal document / information available is the order of the Governor passed on 5/8/2014, which had already been provided to the complainant. The complainant No. 2, through his letter to the Commission dated 21/2/2015, alleged that the Respondent had sent a misleading report and, among others, argued that:

- the order dated 5/8/2014 was not a well reasoned or a self-speaking order;
- the Governor shall have certainly sought comments from legal cell or law officer before passing the *ex-parte* order of 5/8/2014; and
- Since the order of the Governor is not well reasoned, the complainant has the right to ask for the relevant information.

5. Through letters dated 23/2/2015 and 6/4/2015, the Commission wrote to the Respondent as follows:

“Mr. Siraj Din has alleged that you have provided him incomplete, misleading and irrelevant information, which is an offence under the Act and can result in penalties. The Commission also considers your

response unsatisfactory. It is not conceivable that Governor's Secretariat doesn't hold any record other than the final order on a representation. If no judicial officer exists in the Secretariat, some other officers would still have prepared the file, examined it, wrote their opinions etc. -- all of which should exist in the form of noting or other documentation in the file."

The Commission further wrote that:

"You are once again called upon to either immediately address the grievance of the complainant by providing him complete and relevant information in relation to each of his questions/ points (i.e. if not hit by section 13 of the Act), and/ or explain the reasons, including rebuttal if any, of (a) first delaying access to information; and then (b) allegedly providing incomplete and irrelevant information even after Commission's intervention. Your report along with relevant supporting documents regarding this complaint should reach the undersigned latest by 02/02/2015."

6. The Respondent didn't respond to the above referred letters of the Commission. Instead, the Secretary to Governor, Mr. Farhan Aziz Khawja, addressed a letter to Secretary, Information & Culture Department, on 01/04/2015, who forwarded it to the Commission. In this letter, the Secretary repeated the stance earlier taken by the Respondent and again raised objections identical to the ones raised through his letter No. SOA/GS(Estt.)1-11/2013 dated 09.03.2015 in the matter of the Complainant No. 1 Vs. the Respondent and which the Commission rejected vide its Order dated 15/04/2015. Through letters dated 1/7/2015, 20/8/2015 and 1/9/2015, the Commission called the Respondent for hearings, who attended the one held on 15/09/2015.

7. On 13/07/2015, the Complainant No. 3 filed a complaint to the Commission alleging that the Respondent had not provided him complete information. The Commission sought explanation from the Respondent vide its letter dated 27/07/2015. This time around, Mr. Muhammad Hamza, Section Officer (OMB-II) sent the response to the Secretary, Information & Culture Department, who forwarded it to the Commission. Through this letter, it was argued that names of applicants/ complainants, who challenged the orders of Ombudsman before the Governor, and the names of relevant official departments were not provided to the Complainant No. 3, as such information was exempt u/s 13(b) &(c) of the Act. As regards the details of relief provided by the Governor, it was argued that the Governor decides representations u/s 32 of the Punjab Office of the Ombudsman Act 1997; and that the "Provincial Ombudsman is the original/ substantive office whose activities including appellate work are duly reflected in an Annual Report available in public domain". On this complaint as well, the Commission called the Respondent for hearing, who attended the one held on 15/9/2015.

8. Since the issues raised by the Respondent & Mr. Subhan Butt, Deputy Secretary before the Commission as well as the submission made through above mentioned letters are identical, therefore the Commission proposes to decide all the three complaints through this single order.

9. It was argued that, under Article 19A of the Constitution, the right to information is restricted to matters of “public importance” and it is further subject to “regulation and reasonable restrictions imposed by law.” In this regard, the Respondent has relied upon the judgment of the Honourable Supreme Court passed in the Constitutional Petition No. 5 of 2013 titled Dr. Muhammad Tahir-ul-Qadri Vs. Federation of Pakistan, whereby it has been observed:

“(a) The term ‘public’ is invariably deployed in contradistinction to the terms private or individual and connotes, as an adjective, something pertaining to or belonging to the people; relating to a nation, State or community. In other words, it refers to something which is to be shared or participated in or enjoyed by the public at large, and is not limited or restricted to any particular class or the community.

(b) The phrase ‘public purpose’, ‘whatever else it may meet must include a purpose, that is an object or aim, in which the general interest of the community as opposed to the particular interest of individuals is directly and vitally concerned’.

(c) It is quite clear that whether a particular case involved the element of ‘public importance’ is a question which is first to be determined by this Court with reference to the facts and circumstances of each case.

(d) The public importance should be viewed with reference to freedom and liberties guaranteed under Constitution, their protection and invasion of these Rights in a manner which raises a serious question regarding their enforcement irrespective of the fact whether such infractions of right, freedom or liberty is alleged by an individual or a group of individuals.

(e) The issues arising in a case cannot be considered as a question of public importance if the decision of the issues affects only the Rights of an individual or a group of individuals. The issue, in order to assume the character of public importance, must be such that its decision affects the rights and liberties of people at large.

(f) The objective “public” necessarily implies a thing belonging to people at large, the nation, the State or a community as a whole.

(g) If a controversy is raised in which only a particular group of people is interested and the body of the people as a whole or the entire community has no interest, it cannot be treated as a case of public importance.

(h) In all systems of law which cherish individual freedom and liberty and which provide Constitutional safeguards and guarantees in this behalf, any invasion of such freedom in circumstances which raise serious questions regarding the

effectiveness and availability of those safeguards, must be regarded as a matter of great public importance.”

10. The Commission is of the view that the above-referred judgment is primarily and specifically about the question of admissibility of petitions directly filed in the Supreme Court of Pakistan under Article 184(3) of the Constitution. Since in case of such petitions, the petitioners directly approach the Honorable Supreme Court of Pakistan to invoke its original jurisdiction without first exhausting other remedies available through the judicial system, it is logical and necessary that not only a specific meaning is ascribed to the term but also a higher threshold or a stringent criteria for determining ‘public importance’ is established. Even so, the said judgment itself recognizes the limitations of any definition of ‘public importance’ by stating that “whether a particular case involved the element of ‘public importance’ is a question which is first to be determined by this Court with reference to the facts and circumstances of each case.” In view of this, the term ‘public importance’, as interpreted in the context of the question of admissibility under Article 184(3), may not be exactly applicable in the context of its usage in Article 19A of the Constitution. In the context of right to information regarding official records, the term ‘public importance’ has to be understood in terms of what records should be accessible to each and every member of the public vis-à-vis the records which are of personal nature and whose disclosure may amount to invasion of privacy of a specific individual.

11. Furthermore, while interpreting the term ‘public importance’ in the context of Article 19A of the Constitution, it has to be kept in mind that right to information is now universally recognized as a human right, which can be exercised to access information about matters of individual, community or public interest. In fact, in a democratic society wherein fundamental rights of each individual are guaranteed, the right to information serves as an enabler or as a pre-requisite in the realization of other fundamental rights. It is for this reason that the United Nations General Assembly, in its Resolution No. 59(1) of 1946, has termed it as “the touchstone for all other freedoms to which the UN is consecrated”. Therefore, when information is denied to a individual in relation to his personal or any other matter of larger community or public interest, it creates hurdles in most cases in the realization of human rights, not just for that particular individual but, in view of the aggregate affect of such a situation, for the whole nation. The right to information is one such right, which in view of its enabling role for other rights and freedoms, has to be interpreted in a manner that it contributes to create conducive conditions for the realization of democratic ideals and fundamental rights. Hence, the use of the term ‘public importance’ in the context of right to information of all citizens, as provided in Article 19A of the Constitution, cannot be equated with the meanings ascribed to the term for the very limited purpose of the question of admissibility of petitions under Article 184(3) of the Constitution. In fact, the higher courts in Pakistan as well as in India have held in a several cases

that maximum official information should ordinarily be disclosed. Relevant extracts from some of the cases are quoted as below:

...the Government is the major source of information, which in a democratic setup, it is duty bound to disseminate for public awareness, to enable them to adjudge the conduct of those who are in office and the wisdom and follies of their policies.

(PLD 1993 SC 746)

... access to information is sine qua non of constitutional democracy. The public has a 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. [...] Therefore, as a rule information should be disclosed and only as an exception privilege should be claimed on justifiable grounds...

(PLD 2008 Karachi 68)

In a government of responsibility like ours where the agents of the public must be responsible for their conduct there can be a few secrets. The people of this country have a right to know every public act, everything that is done in a public way by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing.

(State of UP vs. Raj Narain, SC of India, 1975)

12. It is further argued that, while no authoritative reference from any of the judgments of the superior judiciary about the meaning of the term 'public importance' in the context of Article 19A has been presented before the Commission, the Punjab Assembly has effectively interpreted it by enacting the Punjab Transparency and Right to Information Act 2013. In its preamble, the Act explicitly refers to Article 19A of the Constitution and states that one of its objectives is "to enforce the fundamental right of access to information in all matters of public importance." In view of this, it can be safely presumed that, during the enactment process, the legislators and the Honourable Governor knew very well the meaning and implications of various provisions of the Act. Under section 2(a) of the Act, any citizen of Pakistan can apply for access to information, whereas the term 'information' has been so broadly defined in section 2(f) that it doesn't exclude any official record from its purview. The Act provides a clear and a robust mechanism for the regulation of the fundamental right of access to information, *inter alia*, by establishing the Punjab Information Commission, whereas the requirement of 'reasonable restrictions', as mentioned in Article 19A, has been elaborated in section 13 of the Act. Hence, the Act is based on the interpretation of Article 19A of the Constitution by the chosen representatives of the people of the Punjab, which has also been duly assented to by the Honourable Governor without any reservations. In this backdrop, it doesn't seem reasonable to expand the scope of exceptions

provided in section 13 of the Act, especially when its section 22 states as follows:

22. Interpretation.— This Act, the rules and regulations shall be interpreted so as to advance the purposes of this Act and to facilitate and encourage, promptly and at the lowest reasonable cost, the disclosure of information and effective implementation of right to information.

13. Another argument made by the Respondent is that the oath taken by the Governor under the Constitution puts an obligation upon him in the following terms:

“I will not directly or indirectly communicate or reveal to any person any matter which shall be brought under my consideration or shall become known to me as Governor of the Province of Punjab except as may be required for the discharge of my duties as Governor.”

The Commission is not convinced that the above-referred part of the oath of the Governor can be used to claim exemption from the purview of Article 19A of the Constitution or the provisions of the Punjab Transparency and Right to Information Act 2013, which was assented by the Governor himself without expressing any reservations. In fact, the Governor is duty bound to disclose information, when it is required by the Constitution or law, and the underlined part of the above-referred quote from the oath refers exactly to such like situations. The insistence of the office of the Governor on maximum secrecy, as evident from the responses, not only disregards the explicit provisions of the Act but is also in deviation from the spirit of a democratic order, wherein information must flow freely to inform and empower the voters, who are the real and the ultimate stakeholders in the affairs of the State.

14. It has been also argued that the requested information cannot be provided in view of Articles 6 & 7 of the Qanun-e-Shahadat Order 1984 and the Official Secret Act 1923, which are Federal laws and, in terms of Article 143 of the Constitution, prevail over the provincial laws.

Section 6 of the Qanun-e-Shahadat reads as follows:

“No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.”

Article 7 of the Qanun-e-Shahadat Order 1984 stipulates that:

“No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interest would suffer by the disclosure.”

It has been further argued that the bar on disclosure of information “can only be waived by Head of Department or Public Officer in terms of Article 6 & 7 of the Qanun-e-Shahadat Order, 1084.”

15. The arguments presented in the above para need to be examined in the light of Article 19A of the Constitution and whether the cited Federal laws really conflict with the provisions of the Punjab Transparency and Right to Information Act 2013. As regards the section 6 and section 7 of the Qanun-e-Shahadat Order 1984, these provisions are about the presentation of evidence in the courts of law and, hence, are not relevant to the disclosure of information to the general public under the Punjab Transparency and Right to Information Act 2013. While the courts have a limited function of deciding cases brought before them, the objectives of the Punjab Transparency and Right to Information Act 2013 are much broader and include transparency, government accountability and improved access to public information. In addition, even if it is accepted for the sake of argument that the restriction imposed on presentation of evidence in the courts also means such information should not be disclosed to the general public as well, the question remains whether the heads of departments really enjoy absolute discretion in such matters. In this context, it may be argued that the functions and discretion of the heads of provincial public bodies is regulated through laws and rules enacted by the provincial government and, therefore, the relevance of the Punjab Transparency and Right to Information Act cannot be disregarded or down-played.

16. As for the Official Secrets Act 1923 is concerned, it doesn't specifically list documents, which are to be treated as secret, and instead leaves such a function to be performed through other statutes or rules enacted or notified by the respective Federal or a provincial government. Hence, while the Official Secrets Act 1923 is a Federal law, it leaves it to the respective provincial governments to decide scale or scope of secrecy, as it was earlier done through, *inter alia*, the relevant provisions of the Punjab Government Rules of Business 2011. The Punjab Transparency and Right to Information Act 2013 has now specifically declared the kind of information that can be kept secret, and that all other information must be disclosed proactively or in reaction to applications filed by citizens. Therefore, the Punjab Transparency and Right to Information Act 2013 has no conflict with the Official Secrets Act 1923 and, in fact, both complement each other.

17. Furthermore, the Official Secrets Act 1923 is about unauthorized disclosure or leakage of information and does not apply to the information, which is provided to citizens through a mechanism established by an Act – which provides a clear criteria and a mechanism instead of leaving such important decisions to the discretion of individual officers. In this regard, it

is relevant to refer to the Section 5(1) of the Official Secrets Act 1923, especially the underlined part, which states as follows:

“If any person having in his possession or control any secret official code or pass word or any sketch, plan, model, article, note, document or information which relates to or is used in a prohibited place or relates to anything in such a place, or which has been made or obtained in contravention of this Act, or which has been entrusted in confidence to him by any person holding office under [Government], or which he has obtained or to which he has had access owing to his position as a person who holds or has held office [Government], or as a person who holds or has held a contract made on behalf of [Government], or as a person who is or has been employed under a person who holds or has held an office or contract –

(a) willfully communicates the order or pass word, sketch, plan, model, article, note, document or information to any person other than a person to whom he is authorized to communicate it, or a Court of Justice or a person to whom it is, in the interest of the State, his duty to communicate it; or...”.

Hence, it is clear that an authorized person can disclose or communicate information and the question of who is authorized for such a purpose is to be decided by the government, which holds such information or records. Until the enactment of the Punjab Transparency and Right to Information Act 2013, the power to authorize lay with the heads of public bodies in accordance with, *inter alia*, the Punjab Government Rules of Business 2011. However, the Punjab Transparency and Right to Information Act 2013, which overrides all other laws and rules in view of its section 24, has now established a different mechanism. Section 7 of the Punjab Transparency and Right to Information Act 2013 requires the heads of public bodies to designate public information officers but the authority to decide, in the first instance, whether the information is ‘secret’ or exempt from disclosure now lies with the public information officers. The final authority in this regard lies with the Punjab Information Commission under section 10 of the Act. In view of the foregoing discussion, the Commission holds that none of the provisions of the Punjab Transparency and Right to Information Act 2013 is repugnant to the Official Secrets Act 1923, nor any disclosure made by public information officer, after giving due consideration to section 13 of the Act, can be construed as violation of the Official Secrets Act 1923. In any case, the secrecy regime established by the colonial masters to exclude people from governance cannot continue in the wake of Article 19A of the Constitution.

18. The Respondent further argued that the “noting portion of a file is a confidential document/ communication, and being privileged information, the same is protected from disclosure under Section 13 of the Punjab Transparency and Right to Information Act 2013.” In this regard, it is to be

noted that section 13 doesn't specifically provide that noting portion of file is exempt from disclosure. Instead, it provides that information can be withheld if its disclosure is likely to harm certain interests such as national defence or privacy of a person etc. In view of this, noting portion of file per se is not exempt, although exception can be claimed if it could be established that disclosure of a part of noting portion would harm one or more of the protected interests in section 13 of the Act.

19. The Respondent also referred to Rule 46 of the Punjab Government Rules of Business, 2011, which stipulates that a government servant shall not communicate any information acquired directly or indirectly from official documents or relating to official matters. Similarly, it was argued that Para 5:20 of the Manual of Secretariat Instructions, 1988, stipulates that all papers received or dealt within the Secretariat are of confidential nature and their contents should not be divulged to or discussed with unauthorized persons. The Commission holds that, the Punjab Transparency and Right to Information Act 2013, in view of its section 24, has an overriding effect and all such rules or instructions, which are inconsistent with the Act, are of no legal relevance or consequence. The government needs to take steps to reform such rules and manuals to bring them in conformity with the provisions of the Punjab Transparency and Right to Information Act 2013 to avoid any misunderstanding.

20. Another issue raised by the Respondent is that the information requests may be based on "mala fide in order to malign the department or to have political mileage or for any other ulterior motive." He also stated that, by asking such information, the complainants are 'creating hurdles in the smooth working of the offices' and that 'what useful purpose will be achieved by the complainants who ask for such information'. He further stated that *bona fide* of the applicants should be first determined. The arguments about possible *malafide* usage of right to information are hypothetical and conjectural in nature, and are not based on any evidence or specific instances. It also seems that the Respondent has not fully understood the Act, which empowers each and every citizen of Pakistan to exercise his or her right to information in an easy and cost effective manner. Section 10(3) provides that an "applicant shall not be required to provide reasons for request for information and shall only be required to provide an adequate description of the information and the details necessary to provide the requisite information." Section 22 of the Act also provides the principles, which should be used for its interpretation, which reads as follows:

"22. Interpretation.— This Act, the rules and regulations shall be interpreted so as to advance the purposes of this Act and to facilitate and encourage, promptly and at the lowest reasonable cost, the disclosure of information and effective implementation of right to information."

21. In view of the above quoted provisions of the Act and the letter and spirit of Article 19A of the Constitution, it is amply evident that a public

body cannot ask an applicant the purpose of his or her request for information, nor can it require an applicant to first establish his *bona fide*. Any citizen can file an application for access to information and he will not be required to provide any information other than the description of the information that he needs and his address. As for as the assertion that requests for access to information will create 'hurdles in the smooth working of the offices', this too has not been backed by evidence, specific examples or any legal arguments. If the concern is about increased workload, the public bodies can deal with it by expediting the much-delayed computerization of records and proactive disclosure of maximum information. In general, the implementation of peoples' right to information and the consequent transparency and enabling environment for public accountability are universally acknowledged as essential elements for transparent and accountable governance.

22. As far as the facts of the complaints are concerned, the Commission has already examined the same in relation to the complaint of Complainant No. 1, and has held vide its Orders dated 12/02/2015 and 15/04/2015 that arguments furnished to claim exception from disclosure as well as the objections raised by Secretary to Governor through his petition dated 09/03/2015 are devoid of any legal merit. The said orders were not implemented and new issues of legal nature were raised, as discussed in this order above, which reflect a lack of enthusiasm, even resistance, towards an Act, which seeks to improve transparency in official working and ensure public participation in governance.

23. The facts related to complainant No. 2 show that the Respondent provided incomplete, rather misleading, information when he claimed through his letter dated 20/02/2015 that "Ch. Siraj Din is seeking information which does not exist", while simultaneously arguing that the requested information about noting sheet etc. was not covered by the Act. It is amply evident from the record and the proceedings during the hearing that all out efforts have been made to withhold requested information on one pretext or the other. In simple terms, the complainant No. 2 wanted to have access to the background documents, which could show the reasoning or the deliberative process, which the Governor relied upon to decide the instant representation against the recommendation of the Ombudsman. However, the Respondent chose to state that no judicial officer, as assumed by the complainant, existed in the Governor House and, therefore, the existence of noting/ comments on or relevant to the representation was denied. In such a situation, the Respondent, being a designated PIO, was duty bound to extend assistance to the complainant in terms of section 10(4) of the Act, so as to have access to the information that he exactly needed, instead of hiding behind a minor error that the complainant made by referring to the relevant officer as 'judicial officer'. Furthermore, the argument that the noting portion or comments written by various officers on files or representations are excluded from public access under section 13 of the Act is not legally tenable. The Act provides no absolute exceptions. Each and every piece of information has to be examined in the light of

section 13 of the Act, and it is to be established that its disclosure will cause harm. In relation to the complaint No. 2, no substantive argument has been furnished before the Commission as to why the relevant noting or comments on the file can't be disclosed to the complainant. The Commission holds that the complainant has the right to know the basis on which the instant representation was rejected and, in any case, the disclosure is not likely to cause harm to any of the interests mentioned in section 13 of the Act.

24. As regards the complaint of complainant No. 3, the Respondent has argued that the "names of litigants being a privileged information is protected from disclosure under Section 13 of the Punjab Transparency and Right to Information Act, 2013, read with enabling provisions of other laws/ rules/ instructions issued from time to time. The said privilege can be waived only by the litigants." It was further argued that some of the requested information should be accessed from the Ombudsman office, whose annual report also includes information about the representations made to the Governor. The Commission is of the view that the disclosure of names of litigants is not likely to cause any harm under section 13 of the Act. In fact, in our judicial system, the whole adjudication process take place in the open courts and cause lists, including the names of litigants, are publicly displayed. There is no reason why the Governor House should treat information about litigants as well as about the orders passed by the Governor as privileged or confidential. Instead, the Governor House must establish a Management Information System (MIS) to document, manage and ensure easy public access to the records relating to, *inter alia*, representations filed against the recommendations of various Ombudsmen. Furthermore, it makes no sense to refer the applicants/ complainants to the Ombudsman for accessing information, which essentially relates to the office of the Governor and is available in its records. Such attitudes towards citizens reflect endemic malaise in our governance, which can be significantly tackled by establishing transparent systems and implementing the Act in its letter and spirit.

25. As a sequel of above discussion, the objections in all the three complaints are dismissed and the Respondent is directed to provide the requested information to the complainants latest by 23/10/2015 under intimation to the Commission.

In exercise of its powers u/s 8 read with section 6(5)(a) of the Act, the Commission further directs the Secretary to the Governor to establish an online Management Information System (MIS) for, among others, budget management, procurements and representations filed against the recommendations of Ombudsmen. Such a system should ensure easy data management and retrieval, and include features of public access to, *inter alia*, final orders of the Governor and budget utilization.

26. In view of its mandate under section 6(5)(c) of the Act, the Commission advises the Chief Secretary of the Government of Punjab to constitute a committee of senior officers and other stakeholders to review and then develop recommendations for the amendment of laws, rules and

manuals, which include provisions contradictory to the provisions of the Punjab Transparency and Right to Information Act 2013 and which create confusion in the minds of public information officers. Removal of such redundancies and contradictions would facilitate public officers as well as the general public, and is urgently needed for the smooth operation of the Punjab Transparency and Right to Information Act 2013.

27. Copies of this Order be sent to the complainants, the Respondent, the Secretary to the Governor and the Chief Secretary of the Government of Punjab.

(Mazhar Hussain Minhas)
Chief Information Commissioner

(Mukhtar Ahmad Ali)
Information Commissioner

Announced on:
14/10/2015

(Ahmad Raza Tahir)
Information Commissioner