

PUNJAB INFORMATION COMMISSION
GOVERNMENT OF THE PUNJAB
LAHORE

Mr. Zahid Abdullah (the Complainant)
Vs.

District Coordination Officer (DCO), Chiniot (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 2/1/2014, is as follows:

“Certified copy of the log book of each vehicle under the use of the District Coordination Officer from January 1, 2013 to December 31, 2013.”

B. Proceedings

2. Through a letter dated 8/8/2014, the Commission called upon the Respondent to redress the complaint and submit his reply including rebuttal or explanation, if any. It lead to exchange of a few letters including a letter by the Respondent [No. 14353/DCO-C/Misc/PA-14, dated 19/8/2014], the Commission’s response dated 21/8/2014 and yet another letter by the Respondent [No. 14597/DCO-C/Misc/PA-14, dated 25/8/2014]. Key points raised through these letters are presented as follows:

#	Respondent letter dated 19/8/2014	Commission’s Letter dated 21/8/2014	Respondent letter dated 25/8/2014
1	It is submitted that the complainant never approached this office as regards to the copy of documents (Log Book) asked by him. The complainant in his request, provided through your office, has demanded certified copy of the Log Book for the period 1 st January, 2013 to 31 December, 2013.	The arguments furnished to deny access to requested information are not based on correct understanding of the Act, which is not prospective in its application but is applicable to all records held by a public body, including the ones created before the enactment of this law. Section 2(f) clearly reads “...any	No argument was furnished to deny access to requested information. In fact, the complainant neither appeared in the office for his access to Log Book of vehicle with DCO nor a document falling under section 2(j) of the Punjab transparency and Right to Information Act, 2013.

	<p>It is pertinent to mention here that the Punjab Transparency and Right to Information Act, 2013 was published on 16.12.2013 and as per section (1)3 “It shall come into force at once”. Thus the complainant may seek copies related to the documents finalized after the date of promulgation of the Act.</p>	<p>information held by a public body...”. Section 1(3) is, <i>inter alia</i>, about the commencement of the Act, and cannot be relied upon to argue exclusion of records that were created before the commencement of the Act. Nowhere in the Act it is mentioned that records created before a certain date are exempt from disclosure. Exceptions, however, can be claimed under Section 13 of the Act by providing sound justification through a speaking order.</p>	
2	<p>Moreover, under section 3 of the Act “Access to information - subject to the provisions of this Act, an applicant may, <u>in the prescribed manner</u>, exercise the right to information. Therefore, complainant should be asked to apply in prescribed manner.</p>	<p>It is not clear from your response how exactly the applicant has deviated from the ‘prescribed manner’, which makes his application inadmissible. No application under this Act can be dismissed on such vague or frivolous grounds, especially in the presence of sub-sections 1, 2, 3 & 4 of Section 10 and Section 11 of the Act.</p>	<p>The exact prescribed manner to collect copies/ information and access to record is firstly to apply to the department concerned on the printed application form (Sawal Nama) and if no printed form in any department then to apply on simple plain paper. Certain copies for example related to DC/ DCO Office and revenue agency cannot be issued without fee and copying fee. Secondly, lodging a complaint before the Commission depends upon the grounds given in the definition in section 2(d) of the Punjab Transparency</p>

		<p>and Right to Information Act, which is as under:</p> <p>“(i) wrongful denial of access to information; (ii) non provision of information within the stipulated time; (iii) refusal to receive and process the request from an applicant; (iv) furnishing false, misleading or incomplete information; (v) charging fee or cost for provision of information in excess of the requisite fee; (vi) deliberate destruction of information to avoid its disclosure; (vii) failure of a public body to implement the provisions regarding proactive disclosure; or (viii) violation of any other provision of the Act by a public body.”</p> <p>As the applicant even still has not knocked the door of relevant authority, he is not justified in making this complaint before your honour. In fact, he is misunderstanding the Punjab Transparency and Right to Information Act, 2013 and misusing the channel of Commission at a stage where he</p>
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			himself has not approached personally and directly to the office concerned.
3	Furthermore, it is requested that his complaint which relates to the period prior to the promulgation of Punjab Transparency and Right to Information Act, 2013 may be filed.	Please process the application and redress the complaint as per the letter and spirit of the Act and in the light of above observations, and submit a report to this office not later than 2/09/2014.”	It is requested that complainant may kindly be directed to himself approach the office concerned and in case of any ground as mentioned under section 2(d) comes up as a result then he may file a complaint under the Act.

3. In order to allow another opportunity to the parties to present their respective points of view, a hearing was held at 11:00am on 23/8/2014. In the meanwhile, a copy of the TCS receipt had also been received from the Complainant, as an evidence to support his stance that the application had been submitted. This receipt was also sent to the Respondent on 16/10/2014, urging him to further look into the matter in the light of the evidence furnished by the Complainant.

4. Mr. Nazar Abbas Baloch, DO (Coordination), Chiniot, appeared on behalf of the Respondent, Dr. Irshad Ahmad, DCO, Chiniot. Complainant was not present. Mr. Baloch submitted a written note signed by the Respondent, which included responses to four applications for information pending with the Respondent. The response relevant to the instant complaint was as follows:

“It [Log Book] is available in the office of District Coordination Officer Chiniot. As the access to record and receipt of copies require the personal appearance of applicant, and there is no provision in the Act for dispatching the copies of government Books to any applicant on state cost, the applicant may kindly be directed to appear in DCO office for the purpose of **Access**.

2. It is worth mentioning here, that neither the Commission has issued “Set Schedule of Costs”, as required U/S 10(6) of the Act, nor the Government has made Rules U/S 19 of the Act for carrying out the purposes of the Act.”

5. The above mentioned note submitted by Mr. Baloch during the hearing listed three other applications by the complainant of which none had been responded to or decided upon within the time limit prescribed u/s 10, and the Commission after receiving the complaints had already sought explanation from the Respondent about two of them. The fourth one, dated

2/9/2014 had not yet become a complaint but the Respondent still chose to share his views about it with the Commission through the said note.

6. The important points that were raised and presented before the Commission during the hearing were the following:

a) The DCO Office had not designated any public information officer (PIO) until 21/09/2014, and that the Respondent was himself dealing with the applications being submitted under the Act.

b) Mr. Baloch said that the Respondent did not receive the application related to the instant complaint, allegedly submitted by the Complainant, as it was not on the record. When asked whether the matter had been investigated in the light of the copy of TCS receipt submitted by the Complainant and shared with the Respondent, he said that it was not.

c) It was argued on behalf of the Respondent that 'access' mean physical appearance of applicant himself or through his representative u/s 3. He also referred to section 2(j) to suggest that the definition of "right to information" doesn't include the option of sending information by post. Mr. Baloch said that the applicant needs to first inspect the record and then he may identify the documents that he needs. He said that we may send information by post but the applicant will have to first appear personally. A public body is not required to send the information by post until the applicant has inspected and identified the record required by him. After the applicant has personally identified the requested record, we can send it by post but it needs to be determined who will pay the cost. Otherwise, he said, it would become highly unmanageable, as people in large numbers may start demanding voluminous records.

d) It was further argued that, as the Commission had not notified the Schedule of Costs, a public body couldn't provide the information in view of the costs involved for photocopying or postage. It was also argued that access couldn't be given until the Rules are framed and notified u/s 19 of the Act.

e) Mr. Baloch, however, stated that the Respondent was willing to give access to requested information to the complainant, if he personally appears. No exception under section 13 was claimed.

C. Discussion and Commission's View on relevant Issues

7. In view of the above-described facts and the stances taken by the Complainant and the Respondent, the following questions/issues need to be decided:

- Whether the Respondent's view that application was not submitted or not submitted in the prescribed manner is correct and acceptable as a legally and factually valid justification for not providing information to the applicant?
- Whether the Respondent in the instant case is to be deemed as the public information officer?
- Whether the information and records created before the notification of the Act are accessible to citizens?
- Whether it is mandatory for an applicant to personally appear before a public body for, *inter alia*, identifying or collecting information?
- Whether a public body is required to provide information or bear cost of providing access to information in the absence of the Schedule of Costs to be notified by the Commission?
- Whether a public body is required to provide access to information in the absence of Rules, which are yet to be framed and notified by the Government?
- Whether the Respondent in the instant case acted in good faith and whether he should be directed to provide the requested information to the Complainant?

8. The Respondent first took the stance, among others, that the application was not submitted as per the 'prescribed manner' and later on further clarified, through his letter dated 25/8/2014, that the said application was not received by his office. It was, however, admitted that a copy of original application was received for being attached with the letter whereby Commission sought redress of grievance or rebuttal/explanation from the Respondent. The Complainant, in the meanwhile, submitted a TCS receipt as an evidence claiming that he had, indeed, submitted the application. The Respondent didn't provide a satisfactory response to this evidence and, during the hearing, the Commission was told that the matter had not been further investigated by the Respondent in the light of the evidence submitted by the Complainant. It may also be noted that, if application had indeed not been received by the Respondent, it was sufficient for the Respondent to simply say so, instead of also presenting several technical grounds and arguments about why the requested information cannot or should not be provided and why the complaint should be filed. Hence, it is quite evident from the material on record that, even after the Commission required grievance redress, the Respondent showed utmost reluctance to provide the requested information, citing technical grounds, without paying adequate attention to the purposes and substance of the Act. In the circumstances, it is hard to rule out the possibility that the application was indeed received and the Respondent chose not to admit it; or at the least he made no serious

efforts to trace it through his office records. The Commission notes that the Act requires public bodies and PIOs to be proactive (u/s 4) and helpful to applicants [u/s 10(4)]. Section 22 of the Act also requires that it should be interpreted 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”. In this background, it is not sufficient that a public body or a public information officer simply denies the receipt of application without substantiating such a denial or without reaching out to the applicant/complainant to collect additional information to find out about his application, reassure him about its seriousness or to redress his complaint. Therefore, it is held that the response of the public body was inadequate and that, even if the Respondent had not received the application or had not been able to trace it, he should have treated the copy of the application attached with the Commission’s letter (dated 8/8/2014) as a transferred application in terms of section 11 of the Act.

9. The Respondent in the instant complaint is DCO, who heads not only his own office but also various departments including revenue and other devolved offices in the absence of elected local governments. Hence, the Respondent is a head of public body or bodies and is responsible for designating public information officers (PIOs) in all the relevant “administrative units or offices” u/s 7(1) of the Act. However, the Respondent had not designated any PIO until 21/09/2014. So, when the instant application was received directly and/or later through the Commission, he himself dealt with it, including when he responded to the Commission, whereas the possibility of transferring the same to the relevant PIO had been precluded due to his act of omission or commission i.e. non-designation of PIO(s). In any event, the requested information in this instance was about the vehicles under his own use and, therefore, it is clear that the relevant record was in the custody of officers or officials directly working under him or in his office. The Commission is of the view that in a situation where a head of the public body has failed to perform his responsibility u/s 7(1) and, as a result or otherwise, he can’t or doesn’t transfer the application, whether received directly or indirectly, to relevant PIO within the public body u/s 11, such a head of the public body shall be deemed to be the public information officer and, hence, shall be liable under the Act, including under its section 15.

10. In his letter dated 19/8/2014, the Respondent argued that the Act doesn’t apply to the records created before its enactment and, therefore, the complaint should be filed. The Commission rejected this argument through its letter to the Respondent dated 21/08/2014. The Respondent didn’t insist on this stance in its subsequent letter or during the hearing. It is reiterated here for clarity and future guidance of public bodies and PIOs that this Act is not prospective in its application but is applicable to all records held by a public body, including the ones created before its enactment. Section 2(f) clearly reads “...any information held by a public body...”. Section 1(3) is, *inter alia*, about the commencement of the Act, and cannot be relied upon to argue exclusion of records that were created before the commencement of the Act.

Nowhere in the Act it is mentioned that records created before a certain date are exempt from disclosure. Exceptions can, therefore, only be claimed under Section 13 of the Act by providing sound justification through a speaking order.

11. The Respondent repeatedly argued in his written submissions as well as during the hearing that the Complainant is required to personally appear in the office of the public body to identify and/or collect the requested information. It was stated that u/s 2(j), a public body is not required to send information by post to the applicants, as the definition of “right to information” provided in this sub-section doesn’t specifically say so. However, the Commission holds that personal appearance is clearly not required when section 2(j) is read along with sections 10(5) and 10(6), and when it is interpreted in the light of section 22. Under Section 10(5), an applicant can indicate a preferred form of access, whereas the option of sending information [i.e. inclusive of by post or even by other means] is explicitly mentioned in section 10(6). If the argument that the ‘personal appearance is required’ is accepted, it would make it extremely difficult and expensive for the non-local applicants to access information from public bodies, which would be a clear violation of the letter and spirit of the Act, as made explicit in, *inter alia*, section 22 of the Act. Furthermore, the requirement of personal appearance would also add to the work of public bodies. As regards the instant complaint, the Complainant had clearly identified the record and there was no need for him to personally come, inspect the record and identify what he needed. Even when requested information is a bit vague and needs to be more clearly identified, it is a responsibility of PIO to help the applicant u/s 10(4) in the most convenient, efficient and cost effective manner e.g. by making a phone call or seeking clarity through email or by post.

12. The Respondent also argued that there is no provision in the Act about dispatching information to the applicants by using public funds, and that the Commission had not yet stipulated or notified a schedule of costs u/s 10(6) of the Act. This argument, like some of the ones mentioned and dismissed above, reflects a certain mindset, which fails to recognize the fact that people are real owner of public funds, and what else would be a better use of public funds other than to implement a fundamental right to information recognized not just under the Act but also under Article 19-A of the Constitution. Furthermore, the non-existence of schedule of costs cannot be used as an excuse to deny or restrict fundamental right of citizens’ to information in view of the overall emphasis of the Act on facilitating citizens. A careful reading of section 10(6) also suggests that it is meant to facilitate applicants and protect them from imposition of arbitrary or prohibitive costs, and not to restrict their right on the ground of costs involved. And that is why it starts with the words: “The public body shall not charge...”. It is also worth mentioning here that at no point the Respondent contacted the Complainant to suggest that he is willing to provide the information subject to payment of actual costs of photocopying or post. In any case, the cost involved in providing the required information is not expected to be high by any definition, and there is no evidence that the public body is receiving too many

applications to make the overall costs prohibitive. This indicates that real motive was not to save public funds or recover the cost of providing the information but to delay or deny the requested access to information by citing as many excuses as possible. Given this context, the Commission holds that public bodies are required to bear the costs of reproducing or sending the requested information to the applicants under the Act, until the schedule of costs is issued. Costs, however, may be recovered if the same have been prescribed by or under other laws for the time being in force. Non-existence of schedule of costs is not a valid excuse or a justification to delay, restrict or deny provision of information in accordance with the preferred form of access, as indicated by the applicant u/s 10(5).

13. The Respondent further argued that Government has not yet framed the Rules, as provided in section 19, to carry out the purposes of the Act. It was, however, not clearly stated how the non-existence of Rules was disabling, preventing or obstructing the public bodies, or the Respondent in this instance, from playing an effective role to implement the Act. The Commission holds that the framing of Rules is not a mandatory requirement and that the non-existence of Rules cannot be cited as a valid justification to hold in abeyance other substantive and mandatory provisions of the Act and the fundamental right to information under Article 19A of the Constitution. If non-existence of Rules were to be accepted as a ground to practically render the law non-operational, it would effectively mean that executive could veto a legislation passed by the legislature by simply not framing the Rules. Hence, the non-existence of Rules as an argument to deny information is rejected for being devoid of any merit.

14. From the discussion above, it appears that, while dealing with the instant complaint, the Respondent didn't act in good faith and used all kinds of excuses to delay, wrongfully deny or even obstruct the requested access to information in relation to instant complaint as well as other applications that were sent to him. The Commission, however, has decided to exercise restraint in this case but, if such attitudes persisted, it may be compelled to use its powers under section 15 and/or 16 of the Act to ensure that the Act is effectively implemented in its letter and spirit. As for the requested information, the Respondent did not claim any exception under section 13 of the Act. The Commission is also of the view that the information sought by the Complainant doesn't fall under exceptions, as it relates to the use of public funds and resources and, therefore, must be disclosed in the interest of transparency.

D. ORDER

15. The complaint is allowed and the Respondent is directed to send the requested information to the Complainant by 17/10/2014, and submit a compliance report to the Commission.

16. The Respondent is also directed to ensure that all pending or future applications for access to information are promptly acted upon and/or decided within the timelines prescribed in sections 10 or 11 of the Act.

17. The Respondent is further directed to take immediate and serious steps to fulfill his responsibilities under, *inter alia*, sections 4, 7, 8 & 10 of the Act in relation to all the public bodies that he heads or is responsible for.

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

(Mukhtar Ahmad Ali)
Information Commissioner
Lahore

Announced on:
2nd October 2014