ORDER SHEET
PUNJAB INFORMATION COMMISSION

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(rti.punjab.gov.pk).
64-Nursery Lane, Lawrence Road, Lahore.

RTI APPEALS TITLED

(I) Shahbaz Akmal vs ACE LHR regarding "Judicial Action"
(II) Shahbaz Akmal vs ACE LHR regarding "Source Report"
(III) Abdullah Malik vs ACE LHR regarding "Details of Inquires etc"
(IV) Nadeem Umer vs ACE RWP regarding "Details of FIRs, recoveries, etc"

ORDER

07.05.2021 The Commission while dealing with four above-titled RTI Appeals, separately passed an order dated 05.05.2021 (copy enclosed) analyzing only legal provisions of RTI Act, 2013 and of ACE Rules which constitute as exceptions or limitations for ACE to decide the disclosure of requisite information. This order is being passed in continuation of said separately passed order dated 05.05.2021, evaluating each requisite information on the touch-stone of such exceptions & limitations and positive directions for ACE to proceed accordingly.

2. "Corruption" is a criminal offence undertaken at private or public level, by a person or organization, exploiting a position of authority, to acquire illicit benefits through abuse of power for private gain. It is an endemic phenomenon which inhibits national growth by siphoning of public funds of vital social services relating to health, education, development etc. It also erodes the credibility and institutional capacity of public bodies undermining their legitimacy and causes damage to democratic values as well. Thus, Public has genuine concerns and stakes in the performance of ACE because at the end of day it is the public which suffers with robbed off public funds and poor-quality services left for them.

3. RTI law, with Article 19/A its mother provision and the Punjab Transparency & Right to Information Act, 2013 providing implementing

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mechanism, has two major objects of *transparency* and *accountability by public at large*. Public bodies are run with the taxes collected from citizens, therefore, RTI law is based on presumption that the citizens are owners of information held by public bodies as such they have fundamental right to ask any question about the functions of public body carried out with such funds. The obligation of proactive disclosure of all basic information fulfils the requirement of transparency whereas prompt response to the queries of citizens fulfils the object of public accountability.

4. Police Order, 2002

The Police Order 2002 is like magna-carta for all law enforcement agencies including ACE and its preamble vividly declares inter-alia "*to be accountable to the people*" as one of the mission statements. This declaration makes *transparency & public accountability* indispensable for law enforcement agencies.

5. Spirit of Cr. P.C. 1898 and Police Rules, 1934

Under the Punjab ACE Rules, 2014 both Cr. P.C 1898 & Police Rules, 1934 are applicable to the proceedings of preliminary inquiries, investigations and judicial actions conducted by ACE. Both ensure at every stage of the proceedings to follow the principles of natural justice that no one should be condemned unheard or taken by surprise.

6. Rule 5 (4) of the Punjab ACE Rules, 2014

This rule provides that after initiation of a preliminary enquiry, the concerned public servant (accused), on the first date of hearing, shall be provided, free of cost, a copy of the complaint along-with annexures, if any.

7. Rule 10 (6) of Punjab ACE Rules, 2014

This rule also provides the procedure for furnishing of copies of final report to anyone concerned.

In-short both Rules 5 (4) & 10 (6) of Punjab ACE Rules, 2014 are permissive for disclosures and no rule restricting information or acting as absolute exemption for ACE is available in ACE Rules 2014.

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8. Rule 14 of Punjab ACE Rules, 2014 r/w Rule 11.63 of Police Rules, 1934

Rule 14 of the Punjab ACE Rules, 2014 directs that the establishment shall possibly follow the provisions of Punjab Police Rules, 1934 for the purposes of inquiry and investigations. It was much emphasized by the officers appearing on behalf of ACE that Rule 11.63 of Police Rules, 1934 prevents disclosure of any document/record or its extract which is in the custody of Police, to provide to any private individual or to any government servant, thus there is absolute exemption to share or disclose any part of proceedings conducted by ACE as well. However, a careful examination of same provision falsifies such interpretation in the light of proviso contain at the end of same provision in words "*Save under the authority of an express provision of law*". It is clear that the same Rule 11.63 does acknowledge any authority created under the law to disclose public information obviously subject to exemptions contained in Sec-13 of RTI Act, 2013. Sec-7 of RTI Act, 2013 does create a legal authority of Public Information Officer (PIO) to share public information accordingly. Thus, to interpret Rule 11.63 of Police Rules, 1934 as an absolute exemption from disclosure is a misconception and misinterpretation of Rule 11.63 of Police Rules, 1934.

9. Sec-24 of RTI Act, 2013

This section declares that the provisions of RTI Act, 2013 take precedence over the provisions of any other law and like-wise any exception mentioned in Sec-13 shall also take precedence over exception or limitation available in any other law. The limitation available in other law can be used only to elaborate the exception contained in Sec-13 of RTI Act, 2013 and not to expand on it.

10. Exceptions contained at sub-clause (c) and sub-clause (h) of clause (1) of Sec-13 of RTI Act, 2013

Since entire requisite information in above-mentioned RTI Appeals relate to the record of preliminary enquiries, investigations and judicial actions by

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ACE, therefore, only following exceptions out of numerous exceptions of Sec-13 of RTI Act, 2013 are relevant for the disposal of said appeals.

(i) ***Legally privileged information or of the rules of relating to breach of confidence*** contained in sub-clause (c) of clause (1).

(ii) ***The prevention or detection of crime, the apprehension or prosecution of offenders or the administration of justice*** contained in sub-clause (f) of clause (1);

(iii) ***Premature disclosure*** as contained in sub-clause (h) of clause (1).

11. The practice of Pro-active Disclosure already followed

ACE Punjab is already disclosing considerable information similar to the requisite information on its dedicated website (https://ace.punjab.gov.pk/) which is summarized as follows;

The data of number of complaints, inquires, cases, challan, acquittal, convictions, person arrested and raids conducted for the years 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017 & 2018. The information relating to recoveries and proclaimed offenders is available only for the years 2016, 2017 and 2018.

It appears that ACE is already RTI compliant department for proactive disclosure u/s 4 of RTI Act, 2013 to a large extent though PIOs and officers appearing on its behalf have been arguing in favour of absolute exemptions contrary to the practice of ACE.

12. Conclusions

Briefly, submitting for the accountability by people is one of the mission statements of law enforcement agencies vide preamble of Police Order 2002. The myth of absolute exemption in favour of ACE is completely shattered in the light of tendency of ACE Rules, 2014 and the practice of proactive disclosure already in-vogue. The spirit of Punjab ACE Rules, 2014 are permissive for disclosures though keeping in view the limits imposed by law i.e. exemptions contained in Sec-13 of RTI Act, 2013.

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13. **Decisions as to each piece of requisite information**

(i) Copies of FIR

FIRs are public documents according to the definition of public document provided at Article 85 of QSO 1984. Secondly Hon'ble Superior Courts have already held that FIR is not a privileged document under the Evidence Act, thus there can be no trace of doubt that FIR is a public document.

(ii) Details of arrested accused

Disclosure of details of arrested accused persons is not approved in the light of two exemptions provided under Sec-13 of RTI Act, 2013. First under sub-clause (f) of clause (1) of Sec-13 categorically restricts the disclosure about "apprehension". This exemption is based on principles of policy of protecting the honour of those who could be acquitted at the end of day. The second is sub-clause (h) of clause (1) which allows refusal for effective formulation of or success of a policy by its premature disclosure. This exemption is obviously based on the principle of policy to ensure successful investigation or prosecution.

(iii) Detail of arrested before or after Judicial Action

The disclosure of such information is also not approved on the basis of same arguments or exemptions relating to "apprehension/arrest" of accused and against premature disclosures.

(iv) Detail of Pending Inquires

Public can be genuinely interested in knowing the quantity of pending work of ACE to find out the rationality of expenditures and staff provided to the establishment. Secondly when FIRs are considered public document, the basic particulars of inquiries should logically be also disclosed. However, day to day proceedings during the course of inquiries and investigations like arrest and recoveries shall stand exempted under aforementioned exemptions contained in sub-clauses (f) & (h) of clause (1) of Sec-13 until their conclusion. Such

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exemptions would come to an end with the conclusion or completion of inquiries/investigations making the final reports sharable information under Rule 10 (6) of Punjab ACE Rules, 2014.

(v) Inquires based on source report

The appellant has not demanded the disclosure of source report which under the law and so held by Hon'ble superior courts is privileged material but the details of inquiries, to the extent of their number, title, etc must be disclosed like FIR. However during the pendency of proceedings the detail of actions shall remain privileged and final report is sharable document.

(vi) Detail of accused (name, date of registration, nature of offence amount attributed, finding, relevant district)

Again a careful analysis of exemption contained at sub-clause (c) for privileged information, exemption contained in sub-clause (f) for overall administration of justice and exemption contained in sub-clause (h) for premature disclosure only initial details as reflected in FIR are sharable being public document. But the information of actions taken during the course of inquires and investigations shall undoubtedly be privileged during the course of such legal proceedings. However, during the course of inquiries and investigation disclosure of diaries or other information is regulated under Section-172 of Cr. P.C read with Sec-145 of old Evidence Act and not otherwise.

Directions for DG ACE Punjab

Foregoing in view, DG ACE Punjab being head of the establishment, is directed to personally oversee the exercise of sorting out validly sharable information out of the detailed list of requisite information sought through four above-titled RTI Appeals, in the light of above analysis of relevant provision of law and findings and to ensure the pro-active disclosure of sorting out validly sharable, on the website of ACE, within 14 working days, after receipt of this order, failing which he shall be

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liable for award of penalty u/s 15 of RTI Act, 2013 for not following the mandatory obligation of proactive disclosure u/s 4 of RTI Act, 2013, for not being compliant to the exercise of fundamental right of citizens under Article 19/A of the Constitution and for disregard to the order of Punjab Information Commission. The partial pro-active disclosure already made by ACE is appreciated and in future such disclosure as detailed in this order may continue for public to quell the concerns of civil society. A copy of this order be served upon DG ACE Punjab through special messenger. All four RTI appeals are finally decided through this single order.

(Mahboob Qadir Shah)
Chief Information Commissioner

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