**ORDER SHEET**

**THE PUNJAB INFORMATION COMMISSION**

64 Nursery Lane, Near China Chowk, Lahore, Punjab.

**Case Tracking Portal:** https://rti.punjab.gov.pk/cases

042-99205794

1. Imran Shaukat vs Punjab Judicial Academy (PJA) LHR (Appeal # 12-7-2023-8)
2. Awais Riaz vs Punjab Judicial Academy (PJA) LHR (Appeal # 12-7-2023-7)

**Subject:** **RTI Complaint Regarding Non-Disclosure of Public Information under Article 19/A of the Constitution and the Punjab Transparency and Right to Information Act, 2013**

Order

21.12.2023 Mr. Ashiq Ali / PIO PJA is present along with his privately engaged counsel Mr. Rao Aurangzeb Advocate.

2. Our earlier orders dated 16.11.2023, 30.11.2023 and 07.12.2023 be considered part of this order whereby both above-captioned RTI Complaints being identical are clubbed together.

3. On last date of hearing when PIO appeared alone, he declined to respond to any query to explain his purported misleading replies i.e., "**record is not available**" saying that he will make submissions only through his privately engaged counsel. The Commission thus failed to ascertain that whether publishing of advertisement for recruitment of Mr. Hanan Asghar, his police verification report and other matters actually took place as matter of facts or not. Even today learned private counsel of PIO submits that PIO made replies according to the record and he cannot contribute anymore.

4. Learned private counsel further objects that the Commission cannot take up the matter of misleading or incomplete questions on its own. He also argues that PJA is an autonomous body so perhaps not amenable to RTI law. We have concluded from said submissions that learned private counsel for PIO has yet to acquaint himself with the basic concepts of RTI law which distinguish it from general civil law.

5. It is clarified at outset that proceedings before Commission are not adversarial rather inquisitorial involving the role of PIO & Commission to ensure complete & equivocal disclosure of



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information in the light of provisions of RTI Act 2013. That is why RTI law enjoins upon both to conduct proactive proceedings while assisting the citizens to the extent of drafting RTI requests on their behalf, if need be. Since the proceedings are conducted before Commission in absence of citizens, therefore, Commission is supposed to watch their interest.

6. The Commission has to ascertain mainly three things (i) whether requisite information is held by public body vide Section 2(f), (ii) whether it is not hit by any of 8 exceptions vide Section 13(1) and (iii) whether the information disclosed is complete and not misleading vide Section 15 of the Act.

7. A PIOs' authority of disclosure of information is creation of law vide Section 7 of RTI Act 2013 and he is bound to make disclosure on behalf of public body. That is why the concept of engaging private counsel without approval of authority does not reconcile with the spirit of law. A PIO is legally bound to disclose correct & complete information as per record avoiding misleading or incomplete replies as envisaged u/s 15 of the Act. Since law assigns a responsibility of disclosure of information on PIO, he must at first instance disclose certified copies of information and in case it is not available in record then he must explain that whether it was ever in the custody of office along-with reasons for non-availability. If the information is available in some other office of the same department than u/s 11 of the Act he is bound to transfer the RTI request to said quarter intimating the complainant accordingly. In case such information was never held by public body then he must make a statement to said effect and pass on a speaking order to the citizen concerned or Commission as the case may be. In short, PIO cannot be absolved of his responsibility by just saying that information is not available which amounts to making mockery of law. RTI Act effectively addresses such situation u/s 15 of RTI Act 2013, whereby a PIO if he, without any reasonable cause, refuses to furnish complete information including the whereabouts of requisite information, making him liable for award of penalty.



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8. The procedure provided under RTI Act 2013 must be distinguished from the procedure provided under CPC as concept of dismissal in default is alien to RTI law, PIO/Commission are bound to dispatch information at the given address of complainant at state expense, personal appearance of citizen cannot be enforced, PIO/Commission are restrained to inquire from citizen the reason for seeking information, mere citizenship of the applicant constitutes his/her locus standi to exercise fundamental right to information from any public body and his/her nexus with the information is neither required nor can be inquired, filling of RTI request does not require any court fee and finally the information upto 20 pages is provided free of cost.

9. Section 2(h) of RTI Act 2013 includes even non-governmental organizations or private bodies in the definition of public body amenable to RTI Law provided substantially financed by public funds. Punjab Information Commission based on same principle ensured disclosure of information from Sheikh Zayed Hospital, Shaukat Khanum Hospital and Lahore Gymkhana Club (LGC). LGC though admittedly a registered company as such a private body yet for availing of 117 acres commercial state land worth billions of rupees only in lieu of lease Rs. 5000/- per annum, was declared by the Commission a public body for the purposes of RTI Law for being substantially financed with public assets. The order dated 08.11.2022 of Commission was upheld by Hon'ble Lahore High Court Lahore in W.P. # 73648/2022 vide order dated 16.12.2022. PJA might be autonomous but being run with public funds is by all means a public body for the purposes of RTI Act 2013.

10. A misconception be also removed that the Commission by itself does not carry out accountability of public bodies though mentioned as such in the *Preamble* of Act. RTI law ensures only transparency & disclosure of information on the basis of which the citizen can approach any legal forum or initiate public interest litigation based on authenticated & certified copies of public information. The essence of RTI Law is *transparency* but



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unfortunately it is not part of our value system and the governance of public bodies marred with secrecy & one man / authority's rule.

11. In the light of above narrated principles of RTI law, we have once again, carefully & consciously, re-evaluated the requisite information sought by complainant in this case and have found the same as sharable public information by PIO of PJA. We have reason to believe that the disclosure of complete information is being resisted by incumbent PIO as well by making misleading replies under the influence of Mr. Hanan Asghar / ex-PIO who initially jumped to present himself as PIO with similar misleading replies i.e. "**record is not available**" though the information related to his own appointment. In view of his conflict of personal interest he should have avoided. The replies in shape of "**record is not available**" are patently incomplete & misleading, consequently, the contention of learned private counsel that PIO is functus-officio by submitting said replies is dispelled. If Commission starts accepting such misleading replies, the whole edifice of freedom of information standing on the pillar of Article 19/A of the Constitution shall be razed to the ground by mischievous PIOs.

12. As a sequel to above discussion / findings, we dispel the arguments of learned private counsel of PIO and require the disclosure of complete information as early as possible. We however leave the implementation of our order to the good conscience and sagacity of Hon'ble DG PJA. This RTI Complaint is consequently disposed of with said observations. File be consigned to record room. Copies of this order be served upon DG PJA.

ANNOUNCED.

**(Mahboob Qadir Shah)**
Chief Information Commissioner

**(Mr. Shaukat Ali)**
Information Commissioner

**(Dr. Arif Mushtaq Chaudhary)**
Information Commissioner



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