

ORDINANCE NO. XCVI OF 2002

AN ORDINANCE:

to provide for transparency and freedom of information;

WHEREAS it is expedient to provide for transparency and freedom of information to ensure that the citizens of Pakistan have improved access to public records and for the purpose to make the Federal Government more accountable to its citizens, and for matters connected therewith or incidental thereto;

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999, and the Provincial Constitution Order No. 1 of 1999, read with the Provisional Constitution (Amendment) Order No. 9 of 1999, and in exercise of all powers enabling him in that behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance:-

1. Short title, extent and commencement.- (1) This Ordinance may be called the Freedom of Information Ordinance, 2002.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. Definition.- In this Ordinance, unless there is anything repugnant in the subject or context,-

(a) "complainant" means

(b) (i) a requester, or

(ii) any person acting for and on behalf of requester;

(b) "complaint" means any allegation in writing made by a complainant;

(i) where he is a requester, that access to record has been wrongfully denied to him by a public body;

(ii) where he is a requester, that access to and/or correction of his personal information

has been wrongfully denied to him by a public body having the custody or control of the record;

(iii) where is a requester that the information requested by him has been unduly delayed by a public body;

(c) "designated official" means an official of a public body designated under section 10;

(d) "employee", in relation to a public body, means a person employed in a public body whether permanently or temporary;

(e) "Federal Tax Ombudsman" means Federal Tax Ombudsman under section 3 of the Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000 (XXXV of 2000);

(f) "Mohtasib" means the Wafaqi Mohtasib (Ombudsman) appointed under Article 3 of the Establishment of the office of the Wafaqi Mohtasib (Ombudsman) Order, 1983 (P.O.NO. I of 1983);

(g) "prescribed" means prescribed by rules made under this Ordinance;

(h) "public body" means;

(i) any Ministry, Division or attached department of the Federal Government;

(ii) Secretariat of Majlis-e-Shoora (Parliament)

(iii) any office of any Board, Commission, Council, or other body established by, or under, a Federal law;

(iv) courts and tribunals;

(i) "record" means record in any form, whether printed or in writing and includes any map, diagram, photography, film, microfilm, which is used for official purpose by the public body which holds the record;

3. Access to information not to be denied.- (1) Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Ordinance, no requester shall be denied access to any official record other than exemptions as provided in section 15.

(2) This Ordinance shall be interpreted so as

(i) to advance the purposes of this Ordinance, and

(ii) to facilitate and encourage, promptly and at the lowest reasonable cost, the disclosure of information;

4. Maintenance and indexing of records.- Subject to provisions of this Ordinance and in accordance with the rules that may be prescribed, each public body shall ensure that all records covered under clause (i) of section 2 of this Ordinance are properly maintained.

5. Publication and availability of records.- The acts and subordinate legislation such as rules and regulations, notifications, by-laws, manuals, orders having the force of law in Pakistan shall be duly, published and made available at a reasonable price at an adequate number of outlets so that access thereof is easier, less time-consuming and less expensive.

6. Computerisation of records.- Each public body shall endeavour within reasonable time and subject to availability of resources that all records covered by the provisions of this Ordinance are computerised and connected through a network all over the country on different system so that authorised access to such records is facilitated.

7. Declaration of public record.- Subject to the provision of section 8, the following record of all public bodies are hereby declared to be the public record, namely:-

(a) policies and guidelines;

(b) transactions involving acquisition and disposal of property and expenditure undertaken by a public body in the performance of its duties;

(c) information regarding grant of licenses, allotments and other benefits and privileges and contract and agreements made by a public body;

(d) final orders and decisions, including decisions relating to members of public; and

(e) any other record which may be notified by the Federal Government as public record 'for the purposes of this Ordinance,

8. Exclusion of certain record.- Nothing contained in section 7 shall apply to the following record of all public bodies, namely:-

(a) nothing on the files;

(b) minutes of meetings;

(c) any intermediary opinion or recommendation;

(d) record of the banking companies and financial institutions relating to the accounts of their customers;

(e) record relating to defence forces, defence installations or connected therewith or ancillary to defence and national security;

(f) record declared as classified by the Federal Government;

(g) record relating to the personal privacy of any individual ;

(h) record of private documents furnished to a public body either on an express or implied condition that information contained in any such documents shall not be disclosed to a third person; and

(i) any other record which the Federal Government may, in public interest, exclude from the purview of this Ordinance.

9. Duty to assist requesters.- A public body shall take necessary steps as may be prescribed to assist any requester under this Ordinance.

10. Designation of official.- (1) A public body shall designate and notify an officer or employee to whom requests under this ordinance are to be made. These officials will be designated to ensure easy public access to information.

(2) In case no such official has been designated or in the event of the absence or non-availability of the designated officials, the person in-charge of the public body shall be the designated official.

11. Functions of designated official.- Subject to the provisions of this Ordinance and the rules made thereunder and the instruction if any, of the Federal Government, the designated official shall provide the information contained in any public record or, as the case may be, a copy of any such record.

12. Applications for obtaining information, etc.- (1) Subject to the sub-section (2), any citizen of Pakistan may make an application to the designated official in the form as may be prescribed and shall with his application, furnish necessary particulars, pay such fee and at such time as may be prescribed.

(2) Nothing contained in sub-section (1) shall apply to such public record as has been published in the official Gazette or in the form of a book offered for sale.

13. Procedure for disposal of applications.- (1) Subject to sub-section (2), on receiving an application under section 12, the designated official shall, within twenty-one days of the receipt of request, supply to the applicant the required information or, as the case may be, a copy of any public record.

(2) In case the designated official is of the opinion that-

- (a) the application is not in the form as has been
- (b) the applicant has not furnished necessary particulars or has not paid such fee as has been prescribed;
- (c) the applicant is not entitled to receive such information;
- (d) the required information or, as the case may be, the required record does not constitute a public record under section 7;
- (e) the required information or, as the case may be, the required record constitutes -a record which is excluded under section 8;

He shall record his decision in writing and the applicant shall be informed about such decision within twenty-one days of the receipt of the application.

(3) The information from, or the copy of, any public record supplied to the applicant under sub-section (1), shall contain a certificate at the foot thereof that the information is correct or, as the case may be, the copy is a true copy of such public record, and such certificate shall be dated and signed by the designated official.

14. Exempt information from disclosure.- Subject to the provisions of this Ordinance, a public body shall not be required to disclose exempt information.

15. International relations.- (1) Information may be exempt if its disclosure would be likely to cause grave and significant damage to the interests of Pakistan in the conduct of international relations.

(2) In the Section, "international relations" means relations between Pakistan and

- (a) the government of any other foreign State; or
- (b) an organisation of which only States are members.

16. Disclosure harmful to law enforcement.- Information may be exempt if its disclosure is likely to

- (a) result in the commission of an offences
- (b) harm the detection, prevention, investigation or inquiry in a particular case;
- (c) reveal the identity of a confidential source of information;
- (d) facilitate an escape from legal custody;

(e) harm the security of any property or system, including a building, a vehicle, a computer system or communications system.

17. Privacy and personal information.- Information is exempt if its disclosure under this ordinance would involve the invasion of the privacy of an identifiable, individual (including individual) other than the requester.

18. Economic and commercial affairs.- Information is exempt if and so long as its disclosure

(a) would be likely to cause grave and significant damage to the economy as a result of the premature disclosure of the proposed introduction, abolition or variation of any tax, duty, interest rate, exchange rate or any other instrument of economic management;

(b) would be likely to cause significant damage to the financial interests of the public body by giving an unreasonable advantage to any person in relation to a contract which that person is seeking to enter into with the public body for the acquisition or disposal of property or the supply of goods or services, or

(c) by revealing information to a competitor of the public body, would be likely to cause significant damage to the lawful commercial activities of the public body.

19. Recourse of the Mohtasib and Federal Tax Ombudsman.- (1) If the applicant is not provided the information or copy of the record declared public record under section 7 within the prescribed time or the designated official refuses to give such information or, as the case may be, copy of such record, on the ground that the applicant is not entitled to receive such information or copy of such record, the applicant may, within thirty days of the last date of the prescribed time for giving such information or, as the case may be, of such record, or the communication of the order of the designated official declining to give such information or copy of such record, file a complaint with the head of the public body and on failing to get the requested information from him within the prescribed time may file a complaint with the Mohtasib and in cases relating to Revenue Division, its subordinate departments, offices and agencies with the Federal Tax Ombudsman.

(2) The Mohtasib or the Federal Tax Ombudsman, as the case may be, may, after hearing the applicant and the designated official, direct the designated official to give the information or, as the case may be, the copy of the record or may reject the complaint.

20. Dismissal of frivolous, vexatious and malicious complaint.- Where a complaint instituted is found to be malicious, frivolous or vexatious, the complaint may be dismissed by Mohtasib, and a fine may be imposed on the complainant up to an amount not extending ten thousand rupees.

21. **Offence.** Any person who destroys a record which at the time it was destroyed was the subject of a request, or of a complaint with the intention of preventing its disclosure under this Ordinance, commits an offence punishable with imprisonment for, a term not exceeding two years, or with fine, or with both.

22. **Indemnity.-** No suit, prosecution or other legal proceedings shall lie against any person for anything which is done in good faith or intended to be done in pursuance of this Ordinance or any rules made thereunder;

23. **Ordinance not to derogate other laws.-** The provisions of this Ordinance shall be in addition to, and not in derogation of, anything contained in any other law for the time being in force.

24. **Power to remove difficulties.-** If any difficulty arises in giving effect to the provisions of this Ordinance, the Federal Government may, by order in the official Gazette, make such provisions not inconsistent with the provisions of this Ordinance as appear to it to be necessary or expedient for removing the difficulty.

25. **Power to make rules.-** (1) The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for-

(a) the fee payable for obtaining information from, and copies of the public record;

(b) the form of application for obtaining information from, and copies of, the public record; and

(c) the form in which information from public record shall be furnished.