



1st September 2022

TIP22/0901/1C

Honorable Justice Umar Ata Bandial,
Chief Justice of Pakistan,
Supreme Court of Pakistan,
Islamabad.

**Subject: Publication of the Audit Report of the Honorable Supreme Court of Pakistan and the
Provision of Information under Federal RTI Act 2017**

Honorable Chief Justice,

Transparency International Pakistan has received a complaint on the allegation of the refusal to provide information under the Right of Access to Information Act, 2017.

The order of Pakistan Information Commission (PIC) dated August 24, 2022 is enclosed (Annex-A).

The complainant has made the following allegations,

That;

1. A request was submitted to the SC Registrar on November 29, 2021 under the Right of Access to Information Act, 2017 for providing copies of relevant rules, regulations, orders and audit reports of the Supreme Court's accounts for the last five years.
2. The Registrar Supreme Court of Pakistan informed the complainant of the following:

The Registrar Supreme Court of Pakistan through a letter dated 14th January 2022, informed the applicant of the following:

"With reference to your request dated 29.11.2021, I am directed to inform you that right to seek information has been granted under Section 3 of the Act, 2017. According to the said provisions of the Act, information and record held by a public body. It is evident that only information and record held by a public body is accessible under the Act, 2017. As "Public Body" is a defined term under the Act, 2017 only public bodies falling within the ambit of the said definition can be required to provide the information under the provisions of the Act, 2017. Although the definition of the "Public Body" provided in the Act, 2017 is very exhaustive, yet the legislature in its wisdom did not include this Court within the folds of said definition and excluded it from the purview of the Act, 2017"

1. *In view of above, request for information received vide your request dated 29.11.2021 being outside the purview of the Right of Access to Information Act, 2017 cannot be entertained under the law and accordingly regretted*
2. *These issues with the approval of the Competent Authority".*
3. Not being satisfied with the reply of the Registrar, Supreme Court of Pakistan, the applicant filed an Appeal No 1706-01/22 dated January 01, 2022 with the Pakistan Information Commission (PIC) under Right of Access to Information Act 2017, to provide the requested information as the Act does not accord blanket exemption to any public institution. This commission has already held vide its order dated 12th July 2021, Appeal No 060-06/19, that the Registrar office of Honourable Supreme Court of Pakistan comes within the definition of public body under Section 2 (xi) (e) which is as under: "Any court, tribunal, commission, or board under the Federal law.



4. Honorable Supreme Court of Pakistan may be requested to provide the information as per law.

TI Pakistan has examined the complaint and following are its comments and recommendations.

TI Pakistan Comments and Observations:

A. Pakistan has come a long way to ensure that effective RTI laws are in place both at the federal and provincial levels. Since 2002, TI Pakistan has been at the forefront to lead advocacy for the enactment of Access to Information laws in Pakistan. Now that improved version of RTI laws are in place, it is imperative that the institutions make efforts to improve the implementation of RTI laws by adopting its true essence of openness and transparency in the matters of governance.

B. The Auditor General of Pakistan is bestowed the task to conduct annual audit of all government departments, including the Supreme Court of Pakistan and Islamabad High Court, and the annual audit report is sent to the Public Accounts Committee.

C. The Islamabad High Court in May 2021 also took action on the audit of IHC Accounts by the Auditor General Pakistan and to enhance judicial accountability, made the findings of the audit report public. Chief Justice of the Islamabad High Court (IHC), Justice Athar Minallah has revived the process of judicial accountability after a gap of over a decade, enabling the auditors to examine financial affairs of the judiciary. The first audit conducted by the Auditor General of Pakistan has accused former chief justice of the IHC Anwar Khan Kasi of misusing public funds for personal use. According to the minutes of a meeting of the Departmental Audit Committee (DAC), comprising officials of the IHC, finance ministry and auditors, a sum of Rs1.89 million was “excess payment of rent of house” where retired Justice Kasi resided while he was serving as a judge and chief justice of the IHC.

D. RTI Act 2017 specifies the following:

1. The law (RTI ACT 2017)

The Constitution of Pakistan recognises the right to information as a fundamental right: “Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law”

2. Scope of the law:

The scope of the RTI Act 2017 is sufficiently broad as it covers all branches of power and a wide range of further bodies. These include the executive (cabinet) and administration, including all ministries, departments, federal, municipal and local authorities, courts, tribunals, commissions under federal law, “statutory corporation or other body corporate or institution set up or established or owned or controlled or funded by the Federal Government” and “non- governmental organisation which directly or indirectly receives or has received public funds, subsidy, tax exemption, piece of land or any other benefit”. However, the defence forces and anything connected to national security are already excluded at the level of definition of records.

E. In this regard, **Section 5 of Federal Right of Access to Information Act 2017** also requires all federal public bodies to ensure proactive disclosure of information including Reports such as performance reports, audit reports, evaluation reports, inquiry or investigative reports and other reports, on the website.

F. The annual audit reports are required to be provided when request is received, by the Honorable Supreme Court of Pakistan under Federal Right of Access to Information Act 2017.



G. It is to be noted that the Federal Right of Access to Information Act 2017 bounds the public bodies to provide information to the applicants within stipulated time as quoted in Section 14 of the Federal Right of Access to Information Act, 2017.

Section 14: Time-limit for responding (1): stipulates that the public body shall provide information as soon as possible. In any case within 10 working days of the receipt of the request. The period stipulated in sub-section (1) may be extended by a maximum of a further 10 working days.

Similarly, Section 20 of the Federal Right of Access to Information Act 2017 empowers the Information Commission to penalize the officials for not providing requested information.

Section 20: Powers of the Information Commission (1): (f): “impose on the official a fine equivalent to his salary for one day, for a maximum of one hundred days, who has acted willfully to obstruct any activity which is required to be undertaken by this Act, including preventing or delaying the disclosure of information to an applicant”

TI Pakistan Recommendations

Transparency International Pakistan requests the Registrar Supreme Court of Pakistan to look into this complaint, and if found correct, order the publication of the audit reports of the Supreme Court of Pakistan and provide other requisite information requested under the Federal Right of Access to Information Act 2017.

Transparency International Pakistan is striving for across the board application of Rule of Law, which is the only way to stop corruption.

With Regards,

Ms. Yasmeen Lari
Sitar-e-Imtiaz, Hilal-i-Imtiaz
Chairperson
Transparency International Pakistan

Jus (R) Nasira Iqbal
Sitar-e-Imtiaz
Vice Chair
Transparency International Pakistan

Copies forwarded for the information under their mandate to:

1. Pakistan Information Commission, Islamabad.
2. Prime Minister Inspection Commission, Islamabad

Note:

TI Pakistan act as whistleblower and operate under Article 19-A, of the Constitution of Pakistan which gives the right to public to know how government is being run by public officers. Article 19-A makes the right to access of information pertaining to a public authority a fundamental right, Justice Syed Mansoor Ali Shah in his landmark judgment in case of Ataullah Malik v. Federation of Pakistan includes following order;

Right to information is another corrective tool which allows public access to the working and decision making of the public authorities. It opens the working of public administration to public scrutiny. This necessitates transparent and structured exercise of discretion by the public functionaries. Article 19-A empowers the civil society of this country to seek information from public institutions and hold them answerable. PLD 2010 Lahore 605.



In the Pakistan Information Commission, Islamabad

Appeal No 1706-01/22

Mukhtar Ahmed Ali

(Appellant)

Vs.

Registrar, Supreme Court of Pakistan

(Respondent)

ORDER

Date: August 24, 2022

Zahid Abdullah: Information Commissioner

1. The Appellant filed an appeal, dated January 01, 2022, to the Commission, stating that he submitted an information request to the Registrar, Supreme Court of Pakistan on November, 29, 2022 under the Right of Access to Information Act 2017 and that he was not satisfied with the response of the public body.

2. The information sought by the Appellant is as follows:

“Copies of relevant rules, regulations, orders and decisions which provide guidance/ direction about how the Supreme Court’s accounts should be audited;

1. *Audit reports of the Supreme Court’s accounts for the last five years including FY 2019-20, FY 2018-19, FY 2017-18, FY 2016-17, and FY 2015-16; and*
2. *Details of any fee, compensation or charges paid to audit firms for the conduct of audit of Supreme Court accounts for the last five years i.e. if the audits were conducted by private firms and no by the Auditor General of Pakistan”.*

B. Proceedings

3. Through a letter dated January 14, 2022, the Respondent provided the following response to the Appellant:

“With reference to your requested dated 29.11.2021, I am directed to inform you that right to seek information has been granted under Section 3 of the Act, 2017. According to the said provisions of the Act, information and record held by a public body. It is evident that only information and record held by a public body. It is evident that only information and record held by a public body is accessible under the Act, 2017. As “Public Body” is a defined term under the Act, 2017 only public bodies falling within the ambit of the said definition can be required to provide the information under the provisions of the Act, 2017, Although the definition of the “Public Body” provided in the Act, 2017 is very exhaustive, yet the legislature in its wisdom did not include this Court within the folds of said definition and excluded it from the purview of the Act, 2017

1. *In view of above, request for information received vide your request dated 29.11.2021 being outside the purview of the Right of Access to Information Act, 2017 cannot be entertained under the law and accordingly regretted*
2. *These issues with the approval of the Competent Authority”.*

C. Issues

- 4 The instant appeal has brought to the fore the following issues:
 - (a) Do proceedings on the instant appeal warrant sine die adjournment?
 - (b) has the legislature in its wisdom included this Court within the folds of the definition of public body and excluded it from the purview of the Right of Access to Information Act, 2017, henceforth referred to as the Act, 2017?

D Discussion and commission’s views on relevant issues:

5. The record on the file pertaining to Appeal No 060-06/19 in the case titled Mukhtar Ahmed Ali vs Supreme Court of Pakistan suggests that the maintainability of the Writ Petition No. 4284/2021 is under consideration of Honourable Islamabad High Court which means that it is at pre-admission stage. The question in this petition under consideration is whether the Registrar of the Honorable Supreme Court of Pakistan is competent to invoke the jurisdiction of the court and whether the same falls within the definition of aggrieved person in the context of Article 199 of the Constitution and not the Order of the Commission itself, at least at this stage.
6. This commission maintains that the pendency of a writ petition regarding the admissibility of another matter cannot be a valid ground to stop the Commission from performing its functions in other appeals before it.
7. The Act does not accord blanket exemption to any public institution. This commission has already held that Registrar office of Honourable Supreme Court of Pakistan comes within the definition of public body under Section 2 (xi) (e) which is as under: “Any court, tribunal, commission, or board under the Federal law;”.
8. In the absence of any judgement of any of the High Courts, or, of the Supreme Court which bars citizens from seeking information from the Registrar, Supreme Court, under the Right of Access to information Act on the grounds that it is tantamount to curbing independence of the judiciary, this commission is left with no option but to determine likelihood of any such eventuality.
9. The honourable Supreme Court as a public institution performs two kinds of functions i.e., a) judicial functions and b) administrative functions pertaining to procurements and recruitments, involving public funds, like any other public institution.
10. This commission is of the view that the exercise of constitutional and statutory right of citizens in matters of public importance through the Act is neither likely to, nor, designed to curtail independence of the superior judiciary. This commission also believes that exercise of constitutional right of access to information in matters of public importance through the Act cannot be equated with executive oversight of superior judiciary.
11. The categories of information to be proactively disclosed under Section 5 of the Act have no bearing on the independence of the judiciary. Similarly, the information to be provided to the applicants under Section 6 of the Act is also not in conflict with the independence of the judiciary. Furthermore, the Public Information Officer to be designated under the Act

will receive applications and can turn down any request for information which is likely to impact independence of the judiciary, relying on the relevant exemption clauses of Section 7 and 16 of the Act.

12. This commission is of the view that the constitutional right of access to information in matters of public importance can only be restricted on reasonable grounds supported by law. This commission holds that only provisions of this Act can restrict disclosure of any information.
13. This commission maintains that the disclosure of the requested information is permissible under the provisions of the Act, 2017.
14. This commission maintains that the Respondent was legally bound to proactively publish the requested information about “Copies of relevant rules, regulations, orders and decisions which provide guidance/ direction about how the Supreme Court’s accounts should be audited”, on its web site as required under Section 5 of the Act, 2017.
15. Similarly, the Respondent was legally bound to proactively publish the requested information about “Audit reports of the Supreme Court’s accounts for the last five years including FY 2019.20. FY 2018-19, FY 2017-18, FY 2016-17, and FY 2015-16”, through its web site as required under Section 5 of the Act, 2017.
16. This commission also holds that the requested information about “Details of any fee, compensation or charges paid to audit firms for the conduct of audit of Supreme Court accounts for the last five years i.e., if the audits were conducted by private firms and no by the Auditor General of Pakistan”, is permissible under Section 6 (b) and (c) of the Act, 2017.
17. It is pertinent to mention here that this commission has maintained through its different Orders that the information, proactively published under Section 5 of the Right of Access to Information Act 2017, should be ‘accessible’ for all citizens, including the blind, low-vision, physically disabled, speech and hearing impaired and people with other disabilities. Apart from the interpretation of ‘accessible’ in section 5 of the Act, section 15 (5) of the ICT Rights of Persons with Disabilities Act 2020 requires federal public bodies to ensure accessibility of web sites to the special needs of persons with disabilities and it is as under: “The government shall ensure that all websites hosted by Pakistani website service providers are accessible for persons with disabilities”.

E. Order

18. The Appeal is allowed. Worthy Registrar, Supreme Court of Pakistan is directed to provide the Appellant the requested information in para 2 of this Order, at the earliest, but not later than 7 working days of the receipt of this Order, with intimation to this commission.
19. Worthy Registrar, Supreme Court of Pakistan is directed to take immediate steps to proactively share through the web site all categories of information mentioned in Section 5 of the Right of Access to Information Act 2017, ensuring accessibility of the information proactively published on its web site for all citizens, including the blind, low-vision, physically disabled, speech and hearing impaired and people with other disabilities.
20. Worthy Registrar, Supreme Court of Pakistan is directed to ensure accessibility of the information proactively published on its web site under Section 5 of the Right of Access to Information Act 2017 for all citizens, including the blind, low-vision, physically disabled, speech and hearing impaired and people with other disabilities and submit compliance report to this effect using ‘Web accessibility checklist’. This checklist is available under

'Information Desk' category at the web site of the commission www.rti.gov.pk. The compliance report be submitted to this commission at the earliest but not later than 10 working days of the receipt of this Order.

21. Copies of this Order be sent to the Respondent and the Appellant for information and necessary action.

Mohammad Azam
Chief Information Commissioner

Fawad Malik
Information Commissioner

Zahid Abdullah
Information Commissioner

Announced on: August 24, 2022

This order consists of 4 (four) pages, each page has been read and signed.