

Absence of Rules is No Excuse to Deny Information under the Freedom of Information (FOI) Ordinance 2002, Declares Wafaqi Mohtasib

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Islamabad: On a complaint lodged by Consumer Rights Commission of Pakistan (CRCP), the Wafaqi Mohtasib has declared that absence of rules is no excuse to deny information to citizens under the Freedom of Information Ordinance 2002. The Mohtassib order states: "a similar case has already been investigated at length in which it was concluded that the implementation of the Ordinance could not be deferred due to delay in promulgation of Rules, which is mal-administration itself". The Order further states that "the Commerce Division should provide the requisite information to the applicant within 21 days as required by the law" and that "the implementation report should be submitted" to the Wafaqi Mohtasib.

The Wafaqi Mohtasib passed this order on a CRCP complaint (No. B/00001/2004), wherein CRCP complained that the Ministry of Commerce had failed to provide the requested information under the Freedom of Information Ordinance 2002. The information and documents that the CRCP had requested were related to the GATS negotiations and the WTO meeting at Cancun. The Ministry had taken the position that the Freedom of Information Ordinance 2002 was not operational, as the Cabinet Division had not notified the Rules of Business for the Ordinance.

However, in its complaint to the Mohtassib, CRCP had disagreed with the Ministry's position and had argued that:

- a. Section 1(3) of the Ordinance clearly and unambiguously states that it will come "into force at once".
- b. Nowhere in the Ordinance it is provided that citizens access to information would be deferred until the relevant Rules are formulated and notified. Instead, Section 10(2) of the Ordinance states that if a Ministry has not designated an official to deal with information requests, citizens can file requests directly to the head of the public body or ministry.
- c. If citizens cannot make information requests in the absence of Rules, while it is expressly provided in the Ordinance, it would effectively mean that the Executive has put the Ordinance to disuse by not notifying the Rules. This obviously cannot be done in a country where Legislative functions are separate from the executive ones, and it is the responsibility of the Executive to implement the laws of the land.
- d. Ordinance is a superior legislation and cannot be rendered dysfunctional because Rules, which may be described as sub-ordinate legislation, do not exist, unless it is expressly provided in the Ordinance itself.
- e. In any case, notification of Rules is responsibility of the government; and if the same have not been notified even 15 months after the promulgation of the Ordinance, it only shows weakness on the part of the relevant ministry/ authorities. The question is: why citizens' right to information be restricted because a particular Ministry has failed to efficiently deliver in terms of making Rules, where required?

The Wafaqi Mohtasib has accepted the CRCP's arguments, and hence left the federal departments with no excuses now to start efficiently responding to citizens' requests for information under the Ordinance. It may be noted that the Freedom of Information ordinance (2002) makes it mandatory for all federal public departments to provide timely information to any party seeking it. Until now, however, some departments had been denying information on the pretext that Cabinet Division had not yet notified the Rules.

(Copy of Mhtasib's decision can be obtained from CRCP's office on request)

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