

# **FREEDOM OF INFORMATION**

**by Brigadier ( R ) Ahmed Salim**

Freedom of information is an internationally recognized human right. As far back as 1946, the United Nations General Assembly recognized that “*Freedom of Information is a fundamental human right and the touchstone for all freedoms to which the United Nations is consecrated*”. Subsequently, the right to information was referred to in two key international human rights instruments: the 1948 UN Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights of 1966, which came into force in 1978. Many countries explicitly recognize this fundamental right in written constitutions or in specific legislation. Over 60 states have passed access to information legislation at national level till 2005, while many more had drafts pending approval by parliament or have sub-national level legislation in place.

Article 19 of the Universal Declaration of Human Rights (1948) defines the right to access information in the following terms:

*“Everyone has the right to freedom of opinion and expression: this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”.*

Having access to information plays a key role in efforts to curb corruption and control its impact. By facilitating such access and making more information related to the operations of the public sector available in the public domain, the Government introduces greater transparency and accountability, which in turn help curb , corruption. . . Ensuring access to information is therefore a fundamental requirement for establishing an effective system of national integrity.

## **The Freedom of Information Ordinance 2002**

The Constitution of Pakistan does not expressly give a right of access to information, Article 19 states:

*“Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, commission or incitement to an offence”.*

The Supreme Court ruled in 1993 that Article 19 includes a right of citizens to receive information.

Pakistan was the first country in South Asia to frame a law on freedom of information, when it promulgated the Freedom of Information Ordinance in 1997 through a presidential order. The Ordinance, however, lapsed and was neither re-promulgated nor placed before the next elected parliament for legislation. The present Freedom of Information Ordinance was also enacted by a Presidential Ordinance in September 2002; however, since it was provided cover under the 17th Amendment to the Constitution, it now has the legal status of a law and does not need ratification by Parliament. .

### **The Freedom of Information Rules, 2004**

Pursuant to the powers conferred by Section 25 of the Freedom of Information Ordinance 2002, the Federal Government of Pakistan promulgated the Freedom of Information Rules 2004 on 18<sup>th</sup> February, 2004. These apply to all public bodies and lay out the procedure for filing requests for information or records—including the fee payable--as well as for filing complaints under the Freedom of Information Ordinance 2002. Under the Rules, the head of every public body shall designate a Senior Officer under his administrative control for the purpose of providing duly attested copy or receipt of the application for information. In case the requisite information is not provided within 21 days, the applicant may file a complaint under Rule 6 with the head of the public body who is required to dispose of the complaint under intimation to the complainant within 30 days.

In case the requisite information is not provided to the applicant by the head of the public body, as provided vide Section 19 of the Ordinance, he may file a complaint with the Wafaqi Mohtasib (Ombudsman), and in cases relating to Revenue Division, with the Federal Tax Ombudsman after expiry of 30 days of lodging of complaint with the head of the public body.

### **Principles, Objectives and Scope of the Ordinance**

The framing of the Freedom of Information Ordinance 2002, appears to have been guided by several principles of public policy, most notably a recognition of greater public disclosure as a cornerstone of good governance and public accountability; furthermore, principles of confidentiality (section 17), safeguards against misuse of information (section 18) and balancing

between public right to information and protection of national interests (sections 15 and 16) are evident from provisions of the Ordinance.

The primary objectives of the Ordinance are providing for transparency and freedom of information and ensuring that the citizens of Pakistan have improved access to public records, thereby making the Government more accountable to its citizens. The Ordinance provides citizens of Pakistan with the right to access public records, as defined under section 7 of the Ordinance, held by a public body for official use and in any form, including printed, written, maps, films and photographs. However, it applies only to the Federal Government organizations including Ministries, Divisions, attached departments, Secretariat of Majlis-e-Shoora (Parliament), any office of any Board, Commission, Council, or other body established by, or under, a Federal law; it also extends to courts and tribunals.

### **Provisions of the Ordinance**

The provisions of the Ordinance cover a broad area, including laying stress on an adequate record maintenance, indexation and computerization mechanism by the public bodies (sections 4 and 6); identification of the kind of records that must be published and made available to the public (section 5); definition of ‘public records’ and laying out an exemption regime (sections 7 and 8); outlining a process for filing of requests for information under the Ordinance, disposal of such requests by the public bodies and a grievance redress mechanism for the general public in case of denial of such requests by a public body (sections 12,13 and 19-21); the Ordinance also contains a provision for framing of Rules in accordance with and subject to the provisions of the Ordinance (section 25).

It is pertinent to point out that “public records” are defined as policies and guidelines; transactions involving acquisition and disposal of property; licenses and contracts; final orders and decisions; and other records as notified by the government. The declaration of ‘public records’ however is subject to exemptions that includes notings on files; minutes of meetings; any intermediary opinion or recommendation; individuals’ bank account records; defense forces and national security, classified information; personal privacy; documents given in confidence; other records decreed by the government.

## **Responsibilities of the Public Bodies**

The Freedom of Information Ordinance 2002 lays out several key responsibilities of the public bodies with regard to introducing greater transparency in their operations and enhanced public disclosure. In addition to an overarching responsibility to facilitate and encourage, promptly and at the lowest reasonable cost, the disclosure of information, the Ordinance stresses on the public bodies to take all necessary steps for assisting the requestors of information; specifically, it calls upon the public bodies to organize their records both manually and in computerized form, making the information and records accessible through a networked facility throughout the country. They also have a duty to publish acts, regulations, manuals, orders and other rules that have a force of law. In addition, public bodies are also directed to appoint a Designated Officer under the Ordinance, who shall be responsible for ensuring easy public access to information. The Freedom of Information Rules 2004 direct that the Designated Officer shall be shall be a senior officer of the public body not below BPS-19. In case no such official has been designated or in the event of the absence or non-availability of the designated official, the person in charge of the public body shall be deemed to be the designated official.

## **Role of the Wafaqi Mohtasib (Ombudsman)**

Since the Freedom of Information Ordinance 2002 has been framed with the express purpose of enhancing public access to information, compliance with its provisions needs to be facilitated with appropriate mechanisms for redress of any public grievances in relation to access to public records and information. With this in mind, the Ordinance provides for a complaints handling system by assigning specific responsibilities to the Wafaqi Mohtasib (Ombudsman) of Pakistan and the Federal Tax Ombudsman of Pakistan, to redress such public grievances, with the latter's jurisdiction limited to the Revenue Division and its subordinate departments, offices and agencies. The two Ombudsmen have thus been assigned the legal role of what are known in other countries as information commissioners and serve as independent agencies charged with the responsibilities of upholding citizen's rights for accessing public records and information.

The Ordinance provides that requestors of information under the Ordinance, when aggrieved by either the denial of their request within the prescribed time or outright refusal by the Designated Officer on the basis of the requestor not being entitled to gain access to information requested, can file a complaint within 30 days of such denial or refusal to provide requested

information, with the head of the public body; if the head of the public body fails to provide the requested information within the prescribed time, the complainant can file a complaint with the Wafaqi Mohtasib (Ombudsman) or the Federal Tax Ombudsman, for redress of his grievance. The Wafaqi Mohtasib (Ombudsman) or the Federal Tax Ombudsman, 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 copy of the record or may reject the complaint. Complaints which are deemed by the Ombudsmen to be frivolous, vexatious or malicious, can not only be dismissed but the complainant in such cases may also be subjected to a fine of up to Rs. 10,000 (ten thousand).

Between 2003 and 2007, a total of 51 complaints were received by the Wafaqi Mohtasib (Ombudsman) in his role as an information commissioner, details of which are provided in Table 1. A few indicators evident from the data are relevant: one, very few complaints have been lodged, averaging less than 13 complaints per year. The extremely low number of complaints points to a low level of awareness amongst the general public about their right to approach the Ombudsman for redress of grievances related to accessing public records and information. Second, the majority of the complaints have been disposed of in favor of the complainant, thus pointing to either an absence of effective grievance redress mechanisms within the public bodies themselves or of continuation of bureaucratic tendencies to withhold information and records; the absence of details about the complaints handling mechanisms within public bodies and the reasons for rejection of complaints by the head of public bodies, makes it difficult to identify specific and common issues; perhaps this could form the subject of a detailed research and analysis of the structures and issues related to the role of public bodies and its officials under the Ordinance. Third, small as the number of complaints is, the fact that only one complaint is pending with the Ombudsman for disposal, points to efficient handling by the Ombudsman.

Further analysis of the complaints reveal that out of the 51, only eight were lodged by members of the general public, while the rest were filed by individuals associated with civil society organizations, most prominently the Consumer Rights Commission of Pakistan—a Islamabad based NGO working on transparency and consumer rights issues—and Shehri, a Karachi based NGO that focuses on consumer rights within urban development contexts. This again points to the need to create greater public awareness about the provisions of the Ordinance and specially about the role of the Ombudsman as an information commissioner; coupled with the

need to analyze the performance of the public bodies in relation to their prescribed roles under the Ordinance, they provide an agenda for the Ombudsman to take forward in the near future.

**Table 1**

<b>Complaints Handling Data of Freedom of Information Cases</b>							
<b>Year</b>	<b>Received</b>	<b>Rejected in limine</b>	<b>Admitted</b>	<b>Relief</b>	<b>Reject</b>	<b>Close</b>	<b>Pending</b>
2003	4	1	3	1	1	1	0
2004	41	3	38	28	4	6	0
2005	4	3	1	1			0
2006	0	0					
2007	2	1	1				1
<b>Total</b>	<b>51</b>		<b>43</b>	<b>30</b>	<b>5</b>	<b>7</b>	<b>1</b>

*Source: MIS of the Wafaqi Mohtasib (Ombudsman)'s Secretariat*