

Much ado about notings on the file

By Zahid Abdullah

Freedom of Information Ordinance 2002 (FOIO 2002) was ostensibly promulgated to give citizens better access to information. Its preamble states: "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". Indeed a very noble sentiment and the explicit understanding of the link between the accountability and access to information is, no doubt, a major development, especially when seen in the context of plethora of laws aimed at denying the information to the citizens.

However, the good intentions alone are not enough and what needs to be looked into is the implementation mechanism put in place to translate these seemingly good intentions into an environment in the corridors of power wherein the citizens actually have 'improved access to public records'. It is in this connection that the FOIO 2002 leaves much to be desired and that too on many counts. However, necessitated by the space constraints and for the purpose of focus, we will only be debating as to whether or not the noting on the file and the minutes of the meeting should be made available to the public. In its present shape, the ordinance does not allow citizens to have access to these two public documents. What are the pros and cons of making these documents public and what are the trends in the world in this regard?

As we all know, when a public authority reaches a decision, it goes through a process wherein a file moves from official to the other and each one gives his opinion on the matter at hand which is referred to as 'noting on the file'. In other words, file notings are "a generic term used to refer to the opinions, advice and recommendations recorded on file by officers involved in the process of decision-making on any matter under the consideration of government offices". Those who want noting on the file to be exempted from public disclosure maintain that the bureaucrats should be judged by the decisions taken by them rather than the process adopted to reach the decision.

It is argued that disclosure of notings would inhibit officers from expressing themselves freely and frankly. As a result, it would slow down the official machinery as the officials would hesitate to take positions on contentious matters. On the other hand, those who maintain that file notings should be made accessible to public argue that people have the right to know as to what transpired between the decision and the proposal. Their argument is premised on

the assertion that noting on files, minutes and interim orders are important to find out as to who opposed a certain project on what grounds and who overrode the objections and on what grounds. Where does the truth lie and what are international best practices in this regard?

In Albania, India, Germany, Israel, South Africa, Turkey, Uganda and several other countries with functional information access laws, file notings have not been given a blanket exemption. The rationale behind disclosing the file noting is that people have a right to know whether the government had the benefit of accurate and legally defensible opinion from its own officers while formulating a policy or contemplating action. Furthermore, access to file notings and minutes of the meetings can go a long way in fixing accountability on a public official and determining whether he was above board or whether he was acting on extraneous considerations while taking a particular decision. Take for example what Barrister Zafar Ullah Khan had to say in a seminar on freedom of information in Islamabad on September 20, 2006.

He said that his law firm was associated with the Pakistan Steel Mill case, we tried to get meaningful information from the government of Pakistan but we could not. Stressing the need for declaring file notings and minutes of the meetings as public documents, he shared with the participants that, "in Steel Mill case, on April 10, 2005, there was a special meeting headed by the Prime Minister of Pakistan in his chamber wherein a new board was constituted, instructions were given to dissolve the old board and decision pertaining to the full privatisation of the mill was made". He argued that the document containing the minutes of that meeting was a public document and people should have access to it. Imagine if that document were accessible, we could have known as to what really had transpired in that meeting, or for that matter, in all such meetings.

Not only this, disclosure of these documents would provide a support mechanism to honest officials and serve as deterrent against corrupt practices. There is a strong likelihood that the possibility of such a disclosure would serve as deterrence as the dishonest and corrupt officials would fear that there was a mechanism put in place through which their actions could eventually come under public scrutiny. Similarly, the honest officials would exercise their opinions freely as they would always feel the presence of support mechanism in the shape of possible disclosure of file notings which is not the case at the present.

It is often said that if the file notings were to be made available for public gaze, the officials would hesitate to take unpopular decisions on contentious matters. Matters pertaining to defence and security of the country are understandably exempted under this ordinance, and if we are going to exempt file notings and minutes of the meetings under this pretext, it would only mean that we are patronising inefficiency and lack of sound judgment on the part of our officials.

Freedom of Information Ordinance 2001 is a very diluted one in its present shape and if we want to move from rent seeking and patronage based government to one based on rule of law wherein officials give primacy to public interest and adhered to principles, we will have to make file notings and minutes of the meetings public documents. The way forward could be debate on this issue in the national media. This piece is an attempt to break the deafening silence on this issue and the writer invites the opinion leaders, especially former bureaucrats turned columnists to refute and reject or accept and agree to arguments made in favour of disclosing file notings and minutes of the meetings in this article.

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