

RECEIVED 28 JUN 2008

A BILL
to provide for access to public documents and records

WHEREAS it is expedient to provide a law for the access of the people of Pakistan to public documents and records for the purposes stated in the Objects and Reasons of this Bill:

It is hereby enacted as follows:

1. Short title, extent and commencement-

1. This Act shall be called the Freedom of Information Act, 2008;
2. It shall extend to the whole of Pakistan;
3. It shall come into force at once.

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

- a. "complainant" means a requester or any person acting for and on behalf of a requester;
- b. "complaint" means any grievance registered in writing by a complainant to the effect that:
 - i. access to record has been wrongly denied to a requester; or
 - ii. access to the requisite documents, information or record has been wrongfully denied to a requester by a public body having custody or control of the record; or
 - iii. the information sought by a requester has been unduly delayed by a public body.
- c. "designated official" means an official of a public body designated to provide information sought by a requester;
- d. "information" means the public documents and records required by the requester under this Act, but does not include the records exempted under section 8 of this Act or disclosure of which may infringe upon the right of privacy of any individual;
- e. "Mohtasib" means the Wafaqi Mohtasib (Ombudsman), appointed under P.O. No.1 of 1983

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"prescribed" means prescribed by rules made under this Act;

"national security" means and includes the matters pertaining to the integrity, security or defence of Pakistan or any part thereof.

"Principal Officer" means:

- i. in the case of Federal or Provincial Ministries/Departments the Secretary of the Ministry, Division or Department; and
- ii. in all other cases, the head or chief executive of the public body by whatever designation he may be identified;

"Public record" means:

- (i) record mentioned in Section 7, in any form, whether printed or in writing or in any form such as map, diagram, photograph, Film, video, microfilm;
- (ii) transactions involving acquisition and disposal of property and expenditure undertaken by a public body;
- (iii) information regarding grant of licences, approvals, consents, allotments and other benefits and privileges, and contracts made, by a public body;
- (iv) correspondence, summaries and notes relating to any of the above matters;
- (v) any information required to be furnished by a person to a public body under any law or furnished for the purpose of receiving my benefit or advantage;
- (vi) any information of whatsoever nature in possession of a public body in which members of the public may have a legitimate interest; but does not include the following:
 - (a) all internal working documents of a public body, including proposals for Cabinet decisions, proposals relating to management of the national economy, and other affairs of the Government, till such time that a final decision has been taken and implemented by the public body.

(Explanation: After a final decision has been taken and implemented in respect of any of the matters referred to in this clause, all documents, including summaries and proposals shall be deemed to constitute 'public record, available for access under this Act);

- (b) matters relating to law enforcement and public safety, including:

- (i) investigative reports undertaken by agencies for the prevention and detection of crime, and for the collection and assessment of taxes, including any information obtained or received in the course of any investigation;
 - (ii) any information about the existence or non-existence or identity of a confidential source of information in relation to the enforcement of any law;
 - (iii) any information the disclosure whereof would endanger the life or physical safety of any person, or prejudice the fair trial of a person or the impartial adjudication of a particular case before any court or tribunal;
- (c) any information relating to scientific or technical research the disclosure whereof would, or could reasonably be expected to, expose the concerned organization or project to disadvantage;
 - (d) any information the disclosure whereof would violate any intellectual property rights;
 - (e) any information the disclosure whereof is recognized to be detrimental to public interest;
 - (f) any information regarding defence planning, deployment of forces, defence Installations, and matters that can legitimately be related to national security.

j. "public body" means:

- i. any Ministry, Division, Department, or attached Department of the Federal or the Provincial Government;
- ii. any Federal or Provincial legislature, and any Municipal or Local authority set up or established by or under any law;
- iii. any statutory corporation or other body corporate or institution set up or established or owned or controlled or funded by the Federal or a Provincial Government;
- iv. any incorporated or unincorporated body or legal entity functioning under the control or authority of the Federal or a Provincial Government or wherein one or more of such Governments owns or has controlling interests, or which is funded by any such government;
- v. any court, tribunal, commission or board.

3. Access to information not to be denied.- (i) Notwithstanding anything contained in any other law for the time being in force, and subject to this Act, no requester shall be denied access to any public record other than exemptions mentioned in this Act.

(ii) This Act shall be interpreted so as:

- i. to promote the right to know, 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 Act and in accordance with the rules that may be prescribed, Principal Officer of each public body shall ensure that all records covered under clause (g) of section 2 of this Act are properly maintained.

5. Publication and availability of records.- (i) The Acts and subordinate legislation such as rules and regulations, notifications, by-laws, manuals, orders having the force of law in Pakistan as well as reports of legislative and municipal proceedings and boards and Commissions 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.

(ii) The Principal Officer of each public body shall, within six months of the commencement of this Act, cause to be published in the Official Gazette or special publications and shall immediately make available for inspection and copying, during office hours at each of its offices and branches, the following information:

- (a) description of the public body's organization and functions, indicating as far as possible the duties and functions of various officers of the body empowered to take decisions;
- (b) statutes, statutory rules, regulations, orders, notifications applicable to the public body disclosing the date of their respective coming into force or effect;
- (c) substantive or procedural rules and regulations of general application evolved or adopted by the public body;
- (d) statement of policies adopted by the public body and the criteria, standards or guidelines upon which discretionary powers are exercised by it;
- (e) the conditions upon which members of the public can acquire any licenses, permits, consents, approvals, grants, allotments or other benefits of whatsoever nature from any public body, or upon which transactions, and contracts including contracts of employment, can be entered into with the public body;
- (f) the methods whereby specific information in possession or control of the

public body may be obtained, and the basis of the fee required therefore;

- (g) such other matters which the principal officer of the public body deems fit to be published in the public interest;

Provided that no information otherwise already published in the Official Gazette shall be required to be so published under this sub-section.

(2) any amendment, alteration or modification relating to matters described in sub-section (i) shall also be published and made available for inspection and copying in the like manner, and no person shall be adversely affected by any amendment, modification or alteration of any matter other than a statute.

6. Computerization of records.- (1) Each public body shall endeavour within reasonable time and subject to availability of resources that all records covered by the provisions of this Act are computerized and connected through a network all over the country on different systems so that authorized access to such records is facilitated.

(2) The Federal Government shall maintain a website listing updated rules, application forms as well as the names and addresses of the designated officials.

7. Declaration of public records.- (1) Subject to the provisions of section 8, all record of public bodies mentioned in this Act is hereby declared to be the public record

(2) Notwithstanding anything contained in any law for the time being in force, all documents will become public record after 20 years of their initiation.

8. Exclusion of certain record.- (1) All exclusion and classification must be accompanied by a record of reasons for such exclusion.

(2) Nothing contained in this Act shall apply to the following record of public bodies, namely:

- a. record of the banking companies and financial institutions relating to the accounts of their customers;
- b. record relating to deployment of defence forces, defence installations or connected therewith or ancillary to national security will apply only when its threat to national security can be demonstrated;
- c. record relating to the personal privacy of any individual; and
- d. 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.

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

10. Designation of official.-(1) A public body shall designate and notify an officer on its staff to whom requests under this Act 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 official, the Principal Officer of the public body shall be the designated official.

11. Functions of designated official.- Subject to the provisions of this Act and the rules made thereunder, 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 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 or placed on website for general public consumption.

13. Procedure for disposal of applications:- (1) Subject to sub-section (2), on receiving an application under section 12, the designated official shall, not later than fourteen 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, on the authority of the Principal Officer, is of the opinion that –

- a. the applicant has not furnished necessary particulars or has not paid such fee as has been prescribed;
- b. the required information or, as the case may be, the required record does not constitute a public record;
- c. 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 fourteen days of the receipt of the application.

(3) The information, 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 Act, 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, but not without explaining why.

(2) In this section, "international relations" means relation between Pakistan and

- (a) the government of any other foreign State; or
- (b) an organization 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 offence;
- (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 a communication system.

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

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

- (a) 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) 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 of the supply of goods or services, or
- (c) significant damage to the lawful commercial activities of the public body.

19. Recourse to the Mohtasib and Federal Tax Ombudsman and the Judiciary:-(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, or if a public record is wrongly declared classified or exempted, 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, 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, as the case may be, the Federal Tax Ombudsman, 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. All such applications shall be disposed of within 14 days of being filed.

(3) The complainant may challenge the Mohtasib or the Federal Tax Ombudsman's decision to classify or exempt a record in the High Court of competent jurisdiction and in the event of an adverse decision appeal to the Supreme Court.

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

21. Offences.- (1) 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 Act, commits an offence punishable with imprisonment for a term not exceeding two years, or with fine, or with both.

(2) The designated officer who without reasonable excuse, fails or refuses to provide inspection or disclose records under Section 9,10,11,12 and 13 of this Act shall be liable on summary conviction to a fine not exceeding twenty five thousand.

22. Access not to Constitute Offence.- Notwithstanding anything contained in any other law for the time being in force, any access to public information granted by any officer under this Act, or any action taken in good faith in the exercise or purported exercise of powers and duties conferred under this Act, shall not constitute an offence under the Official Secrets Act, 1923, or any other law for the time being in force.

23. Indemnity.- (1) No official shall be subject to any legal, administrative or employment related sanction, as long as he acted in good faith and in the reasonable belief that the information was substantially true and within the parameters of this Act.

24. Act to Over-ride other laws.-The provisions of this Act shall over-ride, anything contained in any other law for the time being in force.

25. Repeal- The Freedom of Information Ordinance 2002 (XCVI of 2002) stands hereby repealed.

26. Power to remove difficulties.- If any difficulty arises in giving effect to the provisions of this Act, the Federal Government may, by order in the official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty, subject to ratification by National Assembly within 120 days.

27. Power to make rules.- (1) The Standing Committee of the National Assembly on Information and Broadcasting shall, by notification in the official Gazette, within one month of the enforcement of the Act, make rules for carrying out the purposes of this

Act.

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

- (a) the fee payable for obtaining information and copies of the public record;
- (b) the form of application for obtaining information and copies of the public record; and
- (c) the form in which information from the public record shall be furnished.

MINISTER IN CHARGE

STATEMENT OF OBJECTS AND REASONS

- **Whereas** Right to know is an inalienable birth right of an individual and is universally recognized. In a democratic dispensation, where the public officials are the custodians of the public records and documents, the people, the real sovereigns, have the right of access to all public records, subject to law and except the material disclosure of which may be harmful to national security, relations with the friendly countries and privacy of the life, home, family and honour of the citizens of Pakistan.
- **Whereas**, access to information is an essential pre-requisite to the people's realization of their ideals of good and transparent governance and for which it is necessary to ensure that the citizens of Pakistan should have the fullest possible access to public records.
- **And whereas** The Freedom of Information Ordinance, 2002, one of the nightmares of the despotic rule of strangulation of information and denial of fundamental rights to the people of Pakistan, served as a suppressor and blocker of the information and has thus failed to achieve its declared objectives.
- **Therefore**, with a view to opening up 'so-called' secrets to the general public, the elected government intends to substitute the black and anti-information "Freedom of Information Ordinance 2002 (XCVI of 2002)", by a more democratic and people friendly Act of Parliament, "Freedom of Information Act, 2008" to ensure comfort and convenience for the people, openness and transparency in public offices and accountability of the public sector organizations.

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