

EXTRAORDINARY
GOVERNMENT



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KHYBER PAKHTUNKHWA

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GOVERNMENT OF THE KHYBER PAKHTUNKHWA
LAW, PARLIAMENTARY AFFAIRS AND HUMAN
RIGHTS DEPARTMENT

NOTIFICATION

Peshawar, dated the 13.8.2013.

No. **ALD-II/LEGIS: 1 (5) 2000.**-The following Ordinance by the Governor of the Khyber Pakhtunkhwa is hereby published for general information:

THE KHYBER PAKHTUNKHWA RIGHT TO INFORMATION ORDINANCE, 2013.

(Khyber Pakhtunkhwa Ord. No. VII of 2013)

AN ORDINANCE

*to provide for ensuring transparency and access to
information in the Province of the Khyber Pakhtunkhwa.*

WHEREAS Article 19A of the Constitution of the Islamic Republic of Pakistan provides that every citizen shall have the right to access to information in all matters of public importance, subject to regulation and reasonable restrictions imposed by law;

AND WHEREAS transparency of information is vital to the functioning of democracy and also to improve governance, reduce corruption, and to hold Government, autonomous and statutory organizations and other organizations and institutions run on Government or foreign funding, more accountable to its citizens and for matters connected therewith and incidental thereto;

AND WHEREAS it is essential that citizens shall have right to information to participate meaningfully in a democratic process and further to improve their involvement and contribution in public affairs;

AND WHEREAS the Provincial Assembly is not in session and the Governor of the Khyber Pakhtunkhwa is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 128 of the Constitution of the Islamic Republic of Pakistan, the Governor of the Khyber Pakhtunkhwa is pleased to make and promulgate the following Ordinance:

1. Short title, extent and commencement.---(1) This Ordinance may be called the Khyber Pakhtunkhwa Right to Information Ordinance, 2013.

(2) It extends to the whole of the Province of the Khyber Pakhtunkhwa.

(3) It shall come into force at once.

2. Definitions.---In this Ordinance, unless there is anything repugnant in the subject or context,-

(a) "complaint" means any allegation in writing made by or on behalf of a requester that his request for information has not been dealt with by a public body in accordance with the rules and procedures set out in this Ordinance, including where he has been wrongfully denied access to all or part of that record;

(b) "designated officer" means an officer of a public body designated under section 6 of this Ordinance;

(c) "employee or official" in relation to a public body means a person employed in a public body whether permanently or temporarily and includes consultants;

(d) "Government" means the Government of the Khyber Pakhtunkhwa;

(e) "information" means material which communicates meaning and which is held in recorded form;

(f) "Information Commission" means the Khyber Pakhtunkhwa Information Commission established under section 24 of this Ordinance;

(g) "prescribed" means prescribed by rules made under this Ordinance;

(h) "Province" means the Province of the Khyber Pakhtunkhwa;

(i) "Public body" means:

- (i) any department or attached department of the Government;
 - (ii) Secretariats of Chief Minister and Governor of the Khyber Pakhtunkhwa;
 - (iii) Secretariat of the Provincial Assembly, Khyber Pakhtunkhwa alongwith the Members of the Assembly and the Assembly itself;
 - (iv) any Office, Board, Commission, Council or any other Body established by, or under, any law;
 - (v) subordinate judiciary i.e. Courts of District and Sessions Judges, Courts of Additional District and Sessions Judges, Courts of Senior Civil Judges, Courts of Civil Judges and Courts of Magistrates;
 - (vi) Tribunals;
 - (vi) anybody which is owned, controlled or substantially funded by one of the above, including enterprises owned by the Province; and
 - (vii) any other body which undertakes a public functions;
- (j) "record" means information which is recorded in any form;
 - (k) "request for information" shall include a request for information and a request for a specific record;
 - (l) "requester" means any citizen, who has made a request for information under this Ordinance; and
 - (m) "third party" means a person other than the person making a request for information or a record.

3. Right to information.---(1) Every citizen shall subject to the provisions of this Ordinance and any rules made under it, have the right to access any information or record held by a public body.

(2) Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Ordinance, no requester shall be denied access to any information or record.

(3) This Ordinance shall be interpreted so as,-

- (a) to advance the purposes of this Ordinance; and
- (b) to facilitate and encourage, promptly and at the lowest reasonable cost, the disclosure of information.

4. Maintenance and indexing of records.---Subject to the provisions of this Ordinance and in accordance with the rules as may be prescribed, each public body shall ensure that all of the records which it holds are properly maintained, including so as to enable it to comply with its obligations under this Ordinance, and in accordance with any relevant rules or standards established by the Information Commission.

5. Publication and availability of records.---(1) The following categories of information shall be duly published by public bodies in an up-to-date fashion and in a manner which best ensures that they are accessible to those for whom they may be relevant, including over the Internet, subject to reasonable restrictions based on limited resources:

- (a) Acts and subordinate legislation such as rules, regulations, notifications, bye-laws, manuals and orders having the force of law in the Province, including being made available at a reasonable price at an adequate number of outlets to ensure reasonable access by the public;
- (b) information about the public body, including its organization, functions, duties, powers and any services it provides to the public;
- (c) a directory of its officers and employees, including a description of their powers and functions and their respective remunerations, perks and privileges;
- (d) norms and criteria set by the public body for the discharge of its functions, including any rules, manuals or policies used by its employees to this end;
- (e) a description of its decision making processes and any opportunities for the public to provide input into or be consulted about decisions;
- (f) relevant facts and background information relating to important policies and decisions which are being formulated or have been made and which affect the public;
- (g) a detailed budget of the public body, including proposed and actual expenditures;
- (h) details about any subsidy or benefit programmes operated by the public body, including details about the amount or benefits provided and the beneficiaries;

- (i) particulars of the recipients of concessions, permits, licences or authorizations granted by the public body;
- (j) the categories of information held by the public body;
- (k) a description of the manner in which requests for information may be made to the public body, including the name, title and contact details of all designated officers; and
- (l) such other information as may be prescribed.

(2) Public body shall also publish an annual report on what they have done to implement their obligations under this Ordinance, which shall include detailed information about the requests for information which they have received, and how they have processed these requests.

(3) The annual report under sub-section (2) shall be formally forwarded to the Chief Secretary, Khyber Pakhtunkhwa and to the Information Commission, who shall take such action on the report as they may deem appropriate.

6. Designation of official.---(1) On commencement of this Ordinance, a public body shall within a period of one hundred and twenty (120) days, designate and notify an officer to act as designated officer for the purposes of this Ordinance, with whom request for information under this Ordinance may be lodged.

(2) In case no such official has been designated or in the event of the absence or non availability of the designated officer, the person in charge of the public body shall be the designated officer.

(3) The designated officer shall be responsible for ensuring that requests for information are dealt in accordance with this Ordinance and generally for promoting full compliance by the public body with its obligations under this Ordinance.

7. Request for information.---(1) Subject to the provisions of this Ordinance, every citizen may lodge a request for information with a public body through the designated officer.

(2) A request for information shall be made in writing and lodged in any manner in which the public body has the facilities to receive it, including in persons, by mail, by fax or by e-mail.

(3) Any written request for information which identifies the information or record sought in sufficient detail to enable the public body to locate it, and which includes an address for delivery of the information or record, shall be treated as a request for information.

(4) Subject to sub-section (3), a public body may provide an optional form for making requests for information, with a view to assisting requesters to make request.

(5) In no case shall a requester be required to provide reasons for his request.

(6) Where a request for information is received by a public body, the requester shall be provided with a receipt acknowledging the request, including the date and name of the official responsible for processing it.

8. Assistance to requesters.---(1) A designated officer shall take all reasonable steps to assist any requester who needs such assistance.

(2) In particular, a designated officer shall assist any requester who is having problems describing the information sought in sufficient detail to enable the public body to locate that information, or who needs help due to disability.

(3) Where a requester is unable to provide a written request, a designated officer shall reduce the request into writing, and provide the requester with a signed, date copy of it.

9. Where information is not held.---(1) Where a public body does not hold information or records which are responsive to a request, and it is aware of another public body which does hold the information, it shall forward the request to that public body, and it shall inform the requester of this.

(2) Where a public body does not hold information or records which are responsive to a request, and it is not aware of any other public body which does, it shall return the request to the requester, informing him of this.

10. Procedure for disposal of requests.---(1) A designated officer shall provide a written notice in response to a request for information.

(2) The notice shall indicate that:

(a) the request has been accepted and the requester is entitled to receive the information or record, subject to the payment of any applicable fee; or

(b) the request has been rejected on the basis that it does not comply with the rules relating to such requests, but only after assistance has been offered to the requester in accordance with section 8; or

(c) the request has been rejected on the basis that the information is already available in published form, including in the official Gazette or in another generally accessible form, such as a book, in which case the notice shall direct the requester to the place where the information may be found; or

- (d) the request has been rejected on the basis that it is vexatious, including because it relates to information which is substantially the same as information that has already been provided to the same requester; or
- (e) the request has been rejected, in whole or in part, on the basis that the information is exempt, in which case the notice shall specify the exact exception relied upon and include details regarding the right of the requester to appeal against this decision.

(3) Where information or a record is provided in accordance with clause (a) of sub-section (2), it shall be accompanied by a certificate, which may be affixed to the information or record at the foot thereof, as appropriate, to the effect 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 officer.

11. Time line for responding.---(1) Subject to the provisions of this Ordinance, a public body shall be required to respond to a request for information in accordance with section 7 as soon as possible and in any case within ten working days of the receipt of request.

(2) The period stipulated in sub-section (1), may be extended by a maximum of a further ten working days where this is necessary because the request requires a search through a large number of records or records located in different offices, or consultation with third parties or other public bodies.

(3) Information needed to protect the life or liberty of any individual will be provided within two working days.

12. Form for providing information.---Where an applicant has indicated a preferred means for accessing information, such as a physical copy (attested), an electronic copy or an opportunity to inspect certain records, the public body shall provide access in that form unless to do so would unreasonably interfere with its operations or harm the document.

13. Fees for requests.---(1) It shall be free to lodge requests for information.

(2) Fees may be charged for the actual costs of reproducing information and sending it to the requester, in accordance with any schedule of fees which may be adopted by the Information Commission.

(3) No fee shall be charged for the first twenty pages of information provided, or where the requester is below the poverty line.

14. Exempt information.---A public body shall not be required to disclose information which falls within the scope of the exceptions provided for in sections 15 to 21 of this Ordinance, provided that:

- (a) exceptions in other laws (secrecy provisions) may not extend the scope of the exceptions in this Ordinance, although they may elaborate on an exception that is provided for in this Ordinance;
- (b) the fact that information has been classified is irrelevant to the question of whether or not it falls within the scope of the exceptions provided for in this Ordinance, which must always be accessed directly, at the time of a request, based on clear and objective considerations;
- (c) where only part of a record or the information falls within the scope of the exceptions provided for in this Ordinance, that part shall be severed and the rest of the record or information shall be provided to the requester;
- (d) even where information falls within the scope of an exception provided for in this Ordinance, the information shall still be provided to the requester where, on balance, the overall public interest favours disclosure of the information;
- (e) for the purposes of clause (d), there shall be a strong presumption in favour of the disclosure of information that exposes corruption, criminal wrongdoing, other serious breaches of the law, human rights abuse, or serious harm to public safety or the environment; and
- (f) the exceptions set out in sections 15 to 18 of this Ordinance, shall cease to apply after a period of twenty years, provided that this may be extended, in exceptional cases, for up to a maximum of another fifteen years, with the approval of the Information Commission.

15. International relations and security.---A public body may refuse a request for information the disclosure of which would be likely to cause grave and significant harm to international relations or national security.

16. Disclosure harmful to law enforcement.---A public body may refuse a request for information the disclosure of which would be likely to:

- (a) result in the commission of an offence;
- (b) harm detection, prevention, investigation, inquiry or prosecution in relation to an offence, or the apprehension of an offender;
- (c) reveal the identity of a confidential source of information in relation to an investigation;
- (d) facilitate an escape from legal custody; or

- (e) harm the security of any property or system, including a building, a vehicle, a computer system or a communication system.

17. Public economic affairs.---A public body may refuse a request for information the disclosure of which would be likely to:

- (a) cause 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; or
- (b) cause significant damage to the legitimate financial interests of the public body, including 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 or by revealing information to a competitor of the public body.

18. Policy making.---A public body may refuse a request for information the disclosure of which would be likely to cause serious prejudice to the deliberative process in a public body by inhibiting the free and frank provision of advice or exchange of views, or cause serious prejudice to the success of a policy through premature disclosure of that policy.

19. Privacy.---(1) A public body may refuse a request for information the disclosure of which would encroach on the privacy of an identifiable third party individual, other than the requester, including an individual who has been deceased for less than twenty years.

(2) The exception in sub-section (1) shall not apply where:

- (a) the third party has effectively consented to the disclosure of the information; or
- (b) the person making the request is the guardian of the third party, or the next of kin or the executor of the will of a deceased third party; or
- (c) the third party is or was an official of a public body and the information relates to his function as a public official.

20. Legal privilege.---A public body may refuse a request for information which is privileged from production in legal proceedings, unless the person entitled to the privilege has waived it.

21. Commercial and confidential information.---A public body may refuse a request for information if the information:

- (a) was obtained from a third party and to communicate it would constitute an actionable breach of confidence; and

- (b) was obtained in confidence from a third party and it contains a trade secret or to communicate it would be likely to seriously prejudice the commercial or financial interests of that third party.

22. Third parties.---(1) Where a request for information relates to information or a record provided on a confidential basis by a third party, the public body shall endeavour to contact that third party with a view to obtaining either his consent to disclosure of the information or record or his objections to disclosure.

(2) Where a third party objects to disclosure, his objections shall be taken into account, but the decision as to whether or not the information falls within the scope of the exceptions in this Ordinance shall be assessed by the public body on the basis of objective considerations.

23. Complaints.---(1) Anyone who believes that his request has not been dealt in accordance with the provisions of this Ordinance has the right to lodge a complaint with the Information Commission to this effect.

(2) Complaints under sub-section (1) shall be free of charge.

(3) The Information Commission shall decide any complaint within a period of sixty (60) days.

(4) In an appeal, the public body shall bear the burden of proof of showing that it acted in accordance with the provisions of this Ordinance.

24. Information Commission.---(1) On the commencement of this Ordinance, Government shall within a period of one hundred and twenty (120) days, establish a Information Commission to be known as the Khyber Pakhtunkhwa Information Commission.

(2) The Information Commission shall be an independent statutory body, which shall enjoy operational and administrative autonomy from any other person or entity, including Government and any of its agencies, except as specifically provided for by law.

(3) The Information Commission shall be headed by the Chief Information Commissioner, who shall be a retired Senior Government Servant and shall be appointed by Government.

(4) The Information Commission shall comprise of three other Members to be known as Commissioners, who shall be appointed in the following manner:

- (a) one retired judge of the High Court, to be appointed by the Chief Justice Peshawar High Court;

- (b) one Advocate of High Court or Supreme Court, to be appointed by the Bar Council; and
- (c) one respected representative of civil society, to be appointed by the Human Rights Commission.

(5) The Chief Information Commissioner and the Commissioners shall hold office for a term of four years from the date on which they assume office and shall not be eligible for re-appointment.

(6) Notwithstanding anything contained in sub-section (5), the Chief Information Commissioner and Commissioners shall not hold office after they have attained the age of sixty-six (66) years.

(7) A Commissioner may not hold any other public office, or be connected with any political party or be running any business or pursuing any profession at the time of or during their appointment to the Information Commission.

(8) A Commissioner may be removed by a positive vote of not less than two of the other Commissioners on grounds of failure to attend three consecutive meetings of the Information Commission without cause, inability to perform the duties of a Commissioner, falling foul of the conditions for being a Commissioner as set out in sub-section (6), or conduct which is materially inconsistent with the status of being a Commissioner, provided that a Commissioner who has been removed pursuant to this sub-section shall have the right to appeal that removal before the courts.

25. Functions of the Information Commission.---(1) The Information Commission shall have a primary responsibility to receive and decide on complaints.

(2) The Information Commission shall, in addition to its complaints function, conduct the following activities:

- (a) set rules and minimum standards regarding the manner in which public bodies are required to manage their records, in accordance with section 4 of this Ordinance;
- (b) designate further categories of information which may be subject to proactive disclosure, in accordance with sub-section (l) of section 5 of this Ordinance;
- (c) adopt a schedule of the fees that public bodies may charge for providing information to requesters, in accordance with sub-section (2) of section 13 of this Ordinance;
- (d) approve or reject extensions to the maximum period that information may be kept confidential, in accordance with clause (f) of section 14 of this Ordinance;

- (e) compile a user-friendly handbook, in Urdu and English, describing in easily comprehensible form the rights established by, and how to make a request for information under, this Ordinance;
- (f) refer to the appropriate authorities cases which reasonably disclose evidence of criminal offences under this Ordinance;
- (g) compile a comprehensive annual report both describing its own activities, including an overview of its audited accounts, and providing an overview of the activities undertaken by all public bodies to implement this Ordinance, taking into account the information provided by individual public bodies pursuant to sub-section (2) of section 5 of this Ordinance; and
- (h) have an accredited accountant conduct an audit of its accounts on an annual basis, and provide a copy of its audited accounts to the Provincial Assembly and the Department of Finance.

(3) The Information Commission shall have the power to:

- (a) monitor and report on the compliance by public bodies with their obligations under this Ordinance;
- (b) make recommendations to Government for reform both of a general nature and in relation to specific public bodies;
- (c) make formal comments on any legislative or other legal proposals which affect the right to information;
- (d) co-operate with or undertake training activities for public officials on the right to information and the effective implementation of this Ordinance; and
- (e) publicize the requirements of this Ordinance and the rights of individuals under it.

26. Powers of the Information Commission.---(1) The Information Commission shall have all powers, direct or incidental, as are necessary to undertake its functions as provided for in this Ordinance, including full legal personality, and the power to acquire, hold and dispose of property.

(2) The Information Commission shall also have the power to conduct inquiries, in relation to either a complaint or other matters connected with the proper implementation of this Ordinance, and when conducting such an inquiry, the Information Commission shall have the powers of a Civil Court under Code of Civil Procedure (CPC), 1908 in respect of the following matters:

- (a) summoning and enforcing the attendance of witnesses and compelling them to give oral or written evidence under oath;

- (b) requiring public bodies and to produce documents or things;
- (c) inspect the premises of public bodies; and
- (d) examining and inspecting information.

(3) When deciding a complaint, the Information Commission shall have the following powers:

- (a) to order a public body to disclose information to a requester or to take such other reasonable measures as it may deem necessary to compensate a requesters for any failure to respect the provisions of this Ordinance;
- (b) to impose a daily fine of up to Rs. 250 per day, up to a maximum of Rs. 25,000, on any official who has acted wilfully to obstruct any activity which is required to be undertaken by this Ordinance, including with a view to preventing or delaying the disclosure of information to a requester; and
- (c) to require a public body to take such general measures as may be required to address systematic failures to respect the provisions of this Ordinance, including by appointing a designated officer, by conducting training for its employees, by improving its record management, by publishing information on a proactive basis and/or by preparing and publishing an annual report.

(4) A decision of the Information Commission under sub-section (3) shall, if it has not been appealed against within 30 days, be registered with the court and any failure to respect the decision shall be dealt with in the same way as any contempt of court.

27. Funding for the Information Commission.---(1) Government shall make such a budgetary allocation to the Information Commission as it may require to discharge its responsibilities effectively, including by establishing a secretariat and hiring the requisite staff to enable it to conduct its business properly, and shall provide the funds indicated through a reasonable schedule of payments throughout the year.

(2) For purposes of implementing sub-section (1), the Information Commission shall present a budget proposal to Government.

(3) The remuneration and other monitory benefits of the Chief Information Commissioner and Commissioners shall be set at the equivalent level of a Judge of High Court.

28. Offence.---(1) It is a criminal offence willfully to:

- (a) obstruct access to any record with a view to preventing the exercise of a right provided for in this Ordinance;

- (b) obstruct the performance by a public body of a duty under this Ordinance;
- (c) interfere with the work of the Information Commission; or
- (d) destroy a record without lawful authority.

(2) Anyone who commits an offence under sub-section (1), shall be liable to a fine not exceeding rupees five thousand (5000) or imprisonment for a period not exceeding two years.

29. Indemnity.---No one may be subject to any legal, administrative or Employment-related sanction for anything which is done in good faith or intended to be done in pursuance of this Ordinance or any rules made there under.

30. Whistleblowers.---(1) No one may be subject to any legal, administrative or employment-related sanction, regardless of any breach of a legal or employment obligation, for releasing information on wrongdoing, or which would disclose a serious threat to health, safety or the environment, as long as they acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing or a serious threat to health, safety or the environment.

(2) For purposes of sub-section (1), wrongdoing includes the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious maladministration regarding a public body.

31. Power to remove difficulties.---If any difficulty arises in giving effect to the provisions of this Ordinance, Government may, by order in the official Gazette, make such provisions not inconsistent with the provisions of this Ordinance as appear to it to be necessary or expedient for removing the difficulty.

32. Power to make rules.---Government in consultation with the Information Commission may, by notification in the official Gazette, make rules for carrying out the purposes of this Ordinance.

Peshawar,
dated the 13th August, 2013.

ENGR. SHAUKAT ULLAH
Governor of the Khyber Pakhtunkhwa

MUHAMMAD ARIFEEN
Secretary to Government,
Law, Parliamentary Affairs and Human
Rights Department.