

14
BRIEFING PAPER NO.

PILDAT

JUNE 2004

BRIEFING PAPER

FOR PAKISTANI PARLIAMENTARIANS

Strengthening National and Provincial Legislative Governance

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Pakistan Institute of
Legislative Development
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Prepared By

Pakistan Institute of Legislative Development And
Transparency - PILDAT



As a Part of
Pakistan Legislative Strengthening
Consortium - PLSC



This publication was made possible through support provided by the U.S. Agency for International Development, under the terms of Award No.391-A-00-03-01012-00. The opinions expressed herein are those of the author(s) and do not necessarily reflect the views of the U.S. Agency for International Development.



Published by

Pakistan Institute of Legislative Development And Transparency - PILDAT
5 - A, Zafar Ali Road, Gulberg V, Lahore-54000, Pakistan.

June 2004

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Abbreviations and Acronyms

APNS	All Pakistan Newspapers' Society
CPNE	Council of Pakistan Newspaper Editors
FOI-2002	Freedom of Information Ordinance 2002
MNA	Member National Assembly
NEPRA	National Electric Power Regulatory Authority
OGRA	Oil and Gas Regulatory Authority
PEMRA	Pakistan Electronic Media Regulatory Authority
PPPP	Pakistan Peoples Party-Parliamentarian
SAARC	South Asian Association for Regional Cooperation
SAFMA	South Asian Free Media Association
UN	United Nations

FOREWORD

Right to information is a basic human right that obligates every country to put in place effective mechanisms to assure to every citizen its fullest realisation. Not only this, it is also a practical solution to the all too evident systematic governance problems that beset most developing countries today. An information sharing regime guaranteed by law is the practical answer to a deeper democracy and people-centred development. This briefing paper, commissioned by PILDAT, as a part of the Pakistan Legislative Strengthening Consortium - PLSC, supported by the USAID, aims to cover the ambit of the Freedom of Information in Pakistan and its associated ordinances and laws.

The purpose of this briefing paper is to orient Parliamentarians on the Issue of Freedom of Information in Pakistan, details about the current ordinances dealing with freedom of information and media and how media, civil society and experts on the issue view the situation as it prevails in the country. As always, PILDAT, as a non-partisan organisation, endeavours to provide all available perspectives to Parliamentarians on the issue thereby enhancing their knowledge and understanding of the issue.

The author, PILDAT and its team of researchers have made every effort to ensure the accuracy of the contents of this paper. PILDAT, its associates and supporters, however, do not accept any responsibility of any omission or error as it is not deliberate.

The views expressed in this paper belong to the author and are not necessarily shared by PILDAT, PLSC or USAID.

Lahore
June 2004

PROFILE OF THE AUTHOR



Mr. Zafarullah Khan is an Islamabad-based Political and Media Analyst with specialisation in political communication, political parties strategy, and delivering governance. Mr. Khan has moderated number of workshops/courses on democracy, political leadership and communication arranged by national, regional and international organisations. Mr. Khan initiated State of Media and Press Freedom Report in Pakistan in 1995. In 2002 he authored State of Political Parties Report: Struggling for Survival. Mr. Khan has worked as journalist for country's leading newspapers and electronic media. Presently he is a part of the team that has established Power-99 FM Radio station in Islamabad besides working as Honorary Director of Centre for Civic Education Pakistan and Project Coordinator at Friedrich Naumann Foundation-Pakistan. Mr. Khan holds a masters degree in Media and Communication from London School of Economics and Political Science, United Kingdom.

1. INTRODUCTION

*Freedom of Information is a fundamental Human Right and the touchstone of all freedoms.
United Nations General Assembly-1946*

The Parliament, press and the public need information to follow and scrutinise the actions of the government. Accurate and timely information enables them to play a meaningful role in decision-making processes and enhances their ability to hold the government accountable.

The rationale of freedom of information is primarily related to concept of government accountability to an electorate. In the contemporary governance environment a number of non-state actors such as international financial and development institutions and public and private corporations also influence societies and citizens. Free flow of information helps citizens to articulate their informed political and economic choices.

Globally the idea of citizens' right to know is gaining grounds as a proactive concern and more than 57 countries of the world, including Pakistan, have formally acknowledged this right by adopting Freedom of Information Laws.ⁱ Pakistan is also the first among the SAARC countries to have introduced Freedom of Information Laws.

A democracy is expected to function in a transparent fashion to enable its citizens to keep a check on the executive and legislative powers and assess the efficiency of these vital pillars of governance. Information as the 'oxygen of democracy' is not only essential for citizens in a democracy but is also an essential part of good government. Bad government needs secrecy to survive. It allows inefficiency, wastefulness and corruption to thrive."ⁱⁱ

Legislatures require access to all information to oversee the executive and to hold it accountable to democratic authority. Access to information is essential for Parliamentarians for creating effective policy options and legislating for the common good. Without access to information, Parliaments cannot perform their responsibilities of representation, legislation and oversight. On the basis of information, Parliamentary Opposition can hold the treasury and its executive branch accountable besides suggesting policy alternatives. Owing to this rationale the Question Hour is embedded into the proceedings of almost all Parliaments of the World.

Freedom of information has a special significance for the media as better access to information adds to its credibility, facilitates in-depth analysis and encourages investigative reporting. Through a timely access to accurate information, media can perform its role both as a vigilant watchdog and a whistleblower in democratic societies.

Above all, the freedom of information has a special significance for the civil society which can only play a more constructive and a vibrant role through having a broader picture based on information.

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2. State of Freedom of Information in Pakistan

The governance pattern in Pakistan appears to be a lingering legacy of the colonial mindset of keeping people in the dark by denying them information that shapes their lives and destiny. The odd practice has eclipsed the citizens' ability to monitor and assess the performance of their government, excluded them from participating in decision-making and in articulation of informed public-policy choices. A major by-product of this closed system is an all-encompassing public cynicism and apathy towards political process, system and structures.

3. Freedom of Information Ordinance-2002

The President of Pakistan promulgated the Freedom of Information Ordinance on October 26, 2002 that came into force at once.ⁱⁱⁱ The Ordinance was enforced exactly after the general elections of October 10, 2002 before the meeting of the National Assembly and the formation of the new government and hence, was not passed by the Parliament.

On October 26, 2002, the Press Council of Pakistan Ordinance-2002, Defamation Ordinance-2002, and Press, Newspapers, News Agencies and Books Registration Ordinance-2002 also came into force. These laws, protected first under the Legal Framework Order and later the 17th Constitutional Amendment remained unimplemented due to lack of Rules which the Government did not formulate and notify until June 21, 2004 - almost twenty-months after the introduction of these Ordinances.

The manifested purpose of the Freedom of Information Ordinance-2002 was 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.' But apart from recognising citizens' right to information, the ordinance details an exhaustive list of information about home, foreign and defence affairs which is exempted from disclosure to public. The citizens are also not entitled to know the rationale behind administrative decisions and policies as the law bars the procurement of notings on the files;

minutes of meetings; any intermediary opinion or recommendation, etc. (See Appendix A for details)

The scope and scale of the FOI-2002 is limited to the Federal Government alone as it does not cover the private sector and the provincial departments and institutions. However the Local Government Ordinance-2001 contains certain enabling provisions to ensure access to information at the local level.

4. Stakeholders' Views

Since the introduction of the Freedom of Information Ordinance-2002, the stakeholders including media and civil society organisations have expressed their reservations on the contents, scope and the undemocratic enactment of these ordinances.

The representative organisations of media such as the All Pakistan Newspapers Society (APNS), the Council of Pakistan Newspapers Editors (CPNE), Pakistan Federal Union of Journalists (PFUJ) and South Asia Free Media Association (SAFMA) have voiced their reservations against the content and the executive issuance of these ordinances despite the elections of new Parliament.

These organisations, including those from the Civil Society, call for a parliamentary review of all media related laws and urge for formulation of progressive alternative policy options. The APNS and CPNE have formulated and demanded amendments to the Freedom of Information Ordinance-2002. These mainly include acknowledging the basic right of citizens to records and information pertaining to the affairs of government; widening the scope of FOI-2002 to Provincial, Local Bodies and Courts; listing and indexing of classes of records maintained by departments; removing arbitrary authority of the government, etc.

The APNS and the CPNE have been taking a continuous stand in the press on the reported 'indifference' of the Ministry of Information over their desired amendments to the Freedom of Information Ordinance and the formation of Press Council of Pakistan pertaining to umbrella of exclusions. The APNS maintains that its point of view was discussed in a joint meeting with the Minister for Information and Minister for Law on November 7, 2002,

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wherein after detailed deliberations and discussions, it was decided that the federal government will incorporate the proposals and observations of the APNS and the CPNE under the new rules. The APNS criticises what it terms as the 'apathy on the part of the Federal Information Ministry that despite the promulgation of the Ordinance in October 2002, no efforts were being made to form the Press Council of Pakistan. (*Daily The Nation, Islamabad August 1, 2003*).

On September 11, 2003 the Council of Pakistan Newspapers Editors formed its own Code of Ethics Committee to provide enabling environment for enforcement of the journalistic code of ethics as decided by the CPNE members.

5. Enabling and Disabling Legislative Regime

The stakeholders belonging to media believe that although FOI-2002 provides a small window of opportunity to embark on a new era of open governance but its scope is scuttled by around a dozen colonial and post colonial laws including the Official Secrets Act-1923, the Press and Registration of Books Act-1867, The Telegraph Act-1885, Press (Emergency Powers) Act-1931, Control of Essential Commodities Ordinance-1956, Newsprint Control Ordinance-1971, The Associated Press of Pakistan (taking Over) Ordinance-1961, Copyright Ordinance-1962, Pakistan Broadcasting Corporation Act-1973, the Maintenance of Public Order Ordinance 1960, Sections 124-A (sedition), 153-A & B (promoting enmity between different groups and inducing students to take part in political activity), 292 (sale of obscene books), 499 to 502 (defamation), 505 (statements conducting to public mischief) of Pakistan Penal Code-1860, section 99-A (power to declare certain publications forfeited and to issue search warrants for the same) of the Code of Criminal Procedure Act-1898 and the Contempt of Court Act etc.^{iv}

On January 2, 2004, the South Asian Free Media Association (SAFMA) offered a comprehensive critique on the Freedom of Information Ordinance-2002; the Press, Newspapers, News Agency and Books Registration Ordinance-2002; the Defamation Ordinance-2002 Press Council of Pakistan Ordinance-2002; the Electronic Media Regulatory Authority Ordinance-2002, etc. The declaration maintains that instead of removing the flaws and

deficiencies in the earlier drafts, FOI-2002 'makes access to information extraordinarily difficult. The definition of public records has been diluted, the right to know has been made subject to entitlements and government instructions, the right to appeal against refusal to provide information has been limited to instances of rejection of an applicant's entitlement, and no provision has been made for a challenge to decisions exempting public record from the principle of access to it or for a final appeal to a judicial forum against denial of information. In its present form the ordinance neither accords with the guarantees given in the Constitution nor with the international human rights standard.^v

6. Role of Parliament and Development of Freedom of Information Ordinance

Most of the media and information related laws, including that of Freedom of Information Ordinance-2002, have been designed and promulgated without the input of Parliament under military regimes or are a carry-over from the pre-independence British Colonial rule. The Pakistani Parliament has yet to initiate a full-fledged debate on country's information and media policy, more specifically on the citizen's right to know or obtain information.

The legislative movement for freedom of information began in the 1990s when Senator Prof. Khurshid Ahmad introduced a private member's bill on the subject. The Pakistani legislative institutions have a weekly private members' day but a very weak tradition of passing any private members' bill.

Later in 1993, the Supreme Court of Pakistan ruled in the Nawaz Sharif^{vi} case that the right to freedom of expression includes the right to receive information. It was on January 29, 1997 that the then President Mr. Farooq Ahmad Khan Leghari, during the period of caretaker government, promulgated the country's first Freedom of Information Ordinance. But none of its clauses was ever implemented. After 120 days, the ordinance lapsed.^{vii}

In August 2000, again during the military regime, the government circulated a new Freedom of Information Ordinance's draft to solicit public views but that debate remained inconclusive as its pilot, the then Federal Minister

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of Information and Media Development, Mr. Javed Jabbar resigned. On October 26, 2002, the Freedom of Information Ordinance was promulgated.^{viii}

Despite many deficiencies, this law is the first small step in the right direction. Well over a year and half after its promulgation, the executive arm of the government has, on June 21, 2004, framed and notified its required rules of business to make this law operational. Earlier, on April 6, 2004, on a complaint against the denial of information by the Federal Ministry of Commerce, the Federal Ombudsman-an appellate authority in FOI-2002, maintained that the implementation of the ordinance could not be deferred due to delay in rules of business and the public bodies are legally bound to provide the requested information.^{ix} *Appendix B* carries copy of the verdict.

On May 21, 2004, Ms. Sherry Rehman, MNA PPP, submitted another private member's bill on Freedom of Information to repeal the existing ordinance for an effective piece of legislation. Will this new initiative result in a Parliamentary debate on country's media laws? Only time will tell.

7. Modest Channels of Information

A number of modest channels of information flow already exists in Pakistan. Various departments have their designated officers to collect information to respond to Parliamentary questions besides their official spokespersons to attend media queries. If all the existing mechanisms are geared to ensure open access regime, the freedom of information can become a possible reality. However, one has to differentiate between real information and propaganda or mere bulk of data. Following is a brief list of existing information dissemination channels that the country follows:

1. Pakistan is a signatory to Universal Declaration of Human Rights adopted on December 10, 1948. Article 19 of this declaration explicitly establishes the right to access information
2. All the three constitutions of Pakistan: 1956, 1962 and 1973 recognised this significant right
3. The Auditor General of Pakistan's annual report is scrutinised by the Public Accounts Committee of

4. the National Assembly
5. Annual Budgets presented before the Federal and Provincial Legislatures
6. Economic Survey of Pakistan
7. Announcement of Trade Policy on Public Service Broadcast
8. Statistical Year Books of Statistics Division
9. National Archives
10. Weekly Briefing by the Foreign Office and the Briefings by the Information Ministry after cabinet meetings
11. Annual Reports and the Legal Literacy Programme of the Law and Justice Commission of Pakistan
12. Election Commission of Pakistan's Reports, Accounts of Political Parties and Assets of Parliamentarians
13. E-government: Websites of various Ministries and Divisions of Government: <http://www.pakistan.gov.pk>
14. Question Hour in Assemblies and the Senate
15. Open Sessions of the Legislatures at Federal and Provincial levels and the Sessions of District, Tehsil and Union Councils
16. Court Proceedings
17. Government Gazettes to notify Executive Orders
18. Reports of Ministries under Rule 25 and 26 of the Rules of Business for Federal Government
19. A Database and Information System for Tehsil Municipal Administration that provides access to Public on nominal charges along with maintaining Municipal Records and Archives
20. Tehsil Nazim's Performance Report at least once every six months

8. Global and Regional View

The concept of freedom of information is tied with the evolution of modern political institutions. The first formal law on freedom of information was passed in Sweden in 1766 to ensure freedom of press. In terms of open governance, Colombia's Code of Political and Municipal Organisation passed in 1888 was the first such law. The United States of America adopted a comprehensive law on freedom of information in 1967. After the end of cold war in 1980s, many more countries have joined the club.

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Table 1: ANALYSIS OF FREEDOM OF INFORMATION ORDINANCE-2002

S. no.	Article XIX Principle	Position in FOI Ordinance-2002
1	Maximum Disclosure	FOI Ordinance-2002 declares five types of information open to access and twenty types of information as exempted from access
2	Obligation to publish key information	Enabling provisions already exist in the Constitution and Rules of Business for the Federal Government (Rule 25 & 26). Government websites, reports, etc.
3	Promote Open Government	Government Commitments exist
4	Exemptions to be narrowly and clearly defined	The set of 20 exemptions is broad in the FOI-2002
5	Rapid process to entertain requests	FOI-2002 envisages 21-days for acceptance or rejection of any information request. The decision on appeal is not time bound.
6	Costs to obtain information should be reasonable	Reasonable costs introduced through the Rules of Business June 21, 2004
7	Meetings to be open/public hearings	Options exist (assembly session, court proceedings, public hearings) but law is silent in this regard
8	Laws inconsistent with access to be repealed or amended	FOI Ordinance 2002 does not derogate restrictive laws like Official Secrets Act etc.
9	Whistleblowers to be protected	FOI Ordinance 2002 is silent in this regard. However Article 5 of Official Secrets Act makes even the possession of secret information a crime

Sources: The Public's Right to Know: Principles on Freedom of Information Legislations (<http://www.article19.org>)

There are many internal and external factors that have accelerated the adoption of FOI laws in most countries. 2004-Global Survey on FOI^x enlists at least four (4) such factors including international pressures from the World Bank, International Monetary Fund and the Asian Development Bank to reduce corruption and to make

systems more accountable. Add to this the unprecedented developments and innovations in Information and Communication Technologies (ICTs) that have increased demand for information by the public, business and civil society groups. Inside governments, the concept of e-government has created constituency for modern and efficient government.

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9. Analysis of FOI Ordinance-2002

'Article XIX',^{xi} an international organisation working to promote access to information all over the world, outlined nine (9) principles on freedom of information legislations. These principles help determine the effectiveness of any FOI law. Table 1 carries the analysis of Pakistan's Freedom of Information Ordinance 2002 on the basis of these principles.

in Sri Lanka and quasi-judicial Press Council exists in India. In India many media organisations, such as Times of India, have outlined their own codes and internal complaints redress system. In Sri Lanka, a Parliamentary Select Committee suggested to repeal the Sri Lanka Press Council Law in 1997 and in 2000 the Editors Guild of Sri Lanka, together with the Newspaper (owners) Society of Sri Lanka and the Free Media Movement agreed upon a common professional code of practice for journalists and setting up

**Table 2: FREEDOM OF INFORMATION AND MEDIA LAWS:
A COMPARISON OF SOME SAARC STATES**

Name of the Country	Constitutional Guarantee on Freedom of Expression	FOI-Law	Official Secrets Act	Press Council	Press Registration Laws	Laws related to Journalists' wages
Bangladesh	Yes	No	Yes	Yes	Yes	Yes
India	Yes	Yes*	Yes	Yes	Yes	Yes
Pakistan	Yes	Yes	Yes	Yes	Yes	Yes
Sri Lanka	Yes	No	Yes	Yes	Yes	Yes

* Approved in January 2003 but not fully operational. To date eight states have separate FOI laws.
Sources: International Federation of Journalists' Reports (<http://www.ifj.org>) and (<http://www.presscouncils.org>)

The democratic transitions in many countries has also led to the recognition of FOI as a fundamental right. Corruption scandals plaguing various societies have stressed the need of transparency through FOI culture. In terms of exemptions for certain kinds of records, the Global Survey finds amazing commonalities to protect national security, international relations, personal privacy, commercial confidentiality, law enforcement and public order. A comparison between freedom of information laws of Pakistan, UK, USA and India shows that all these countries provide for exemption from disclosure of information when it is considered that the information may be withheld in public or national interests.^{xii}

Within South Asia, Pakistan is the first country to have adopted FOI laws, followed by India. In Sri Lanka, Bangladesh and Nepal, efforts are being made for creation of such laws as the constitutions of almost all these countries recognise freedom of expression. However, Official Secret Acts also remains a part of the constitutions of Bangladesh, India, Pakistan and Sri Lanka.

In the context of media related laws, an independent press complaints commission and voluntary code of ethics exist

of a voluntary Press Complaints Commission. In Bangladesh, Press Council was established and Code of Ethics were framed through an act of the Parliament in 1974. In Sri Lanka, a cabinet sub committee and a Parliamentary Select Committee also worked during 2002 to formulate a free media policy.

10. Role of Parliament and the Parliamentarians

In Pakistan, Parliament has rarely discussed and debated country's information and media policy. Three major attempts to change media related laws and to ensure freedom of information were made during either the non-elected caretaker governments or the military regime of President General Pervez Musharraf. The first radical change was the repeal of the black press law of 1963 with new law in September 1988 during the tenure of President Ghulam Ishaq Khan who served as chief executive without a Prime Minister between August 17 to December 2, 1988. The second change was the promulgation of short-lived Freedom of Information Ordinance in January 1997 and Electronic Media Regulatory Authority Ordinance on February 14, 1997.^{xiii}

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The third wave of changes in media laws started in March 2002 with the creation of PEMRA culminating in October 2002 when a package of media related laws including FOI-2002 were enacted through Executive Ordinances.

As the supreme legislative body of the country, Parliament is required to reclaim its turf by playing an active role in discussing and enacting a freedom of information and a comprehensive media policy of the country. A policy of consensus, arrived at by political debate and discussion of policy options, is the only viable policy alternative in the field of information and media, as in any other in this country.

11. Recommendations

- a) Legislation is a valuable first step towards putting in place an access regime but it is not enough. Parliament through its oversight functions also have to ensure fool-proof implementation of that legislation by the executive. Conflicting laws must be amended. Removing obstructions to open government needs independent arbiters to monitor performance, adjudicate conflict, educate the public and promote good practice and training within bureaucracies a process to be overseen by Parliament and Provincial Assemblies.
- b) The parliamentary institutions can begin with setting-up an example of proactive dissemination of information. The Parliament Secretariats and the Parliamentary Parties should guarantee media access to important documents and material. The culture of detailed briefings at the beginning and conclusion of every legislative session could be helpful in highlighting the performance of the Parliament and Parliamentary Parties.
- c) Parliament and the four Provincial Legislatures should also adopt the practice of formulating and issuing Annual Reports highlighting the activities of the year. Patterned after Annual Reports of other state and non-state institutions, these annual reports would serve as a useful interface between Parliament and the public and also highlight the performance of these legislatures

which is otherwise not available in public domain. The committees within the Senate, National Assembly and Provincial Assemblies should also adopt this practice of using Annual Reports for general public.

- d) Parliamentary websites are also a good way to ensure public access. These websites should live web cast proceedings of the sessions in addition to providing easy-to-access archives of the proceedings. Following examples of other Parliamentary websites, the Parliamentary websites in Pakistan also need to introduce links such as Introduction to Parliament and basic research papers available on the working of Parliament for public information. The website of the Punjab Assembly (www.pap.gov.pk) is a pioneer in Pakistan in web casting live proceedings of the sessions in addition to other relevant material on its website. Parliament needs to take a lead in transparency and public access through promoting up-to-date, open and informative websites by optimum utilisation of available ICTs. Parliamentary websites can ensure interactivity by connecting communities of interest with the on going business in the House.
- e) Parliamentary Press Gallery is another institution that needs to be strengthened and facilitated for proactive dissemination of information. In this way mutually beneficial relationship between the Parliament and the Press can make Parliament the centre-stage of democracy in the country.
- f) The live coverage of the parliamentary proceedings on public service broadcast as well as on private television channels is vital to enhance citizens' knowledge and information about the functioning of the parliamentary institutions, and the performance of the legislators. Pakistan, like other developed and developing democracies such as UK, USA, Germany, India, etc., should also have a dedicated Parliamentary TV Channel to live telecast Parliamentary Proceedings as well as

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Standing Committee Sessions.

- g) Unless justified in-camera sessions, the proceedings of Parliamentary Committees should be open for journalists and the public.
- h) The Parliamentary Review of existing media laws in a holistic manner is needed and the country's media policy should be articulated after detailed parliamentary debate. The Parliament should , in consultation with civil society, professionals, and media organisations, discuss proposals for repeal or amendment to those laws that impede the freedom of information or put unnecessary restraints on free and independent media.
- i) The provincial legislatures should take a lead to pass Freedom of Information Laws covering the provincial governments and their departments.
- j) A Parliamentary Committee can review the existing classification criteria of various documents and suggest progressive changes in to it. Presently almost every document lying in official files carry a tag of confidential, restricted or secret.
- k) In Pakistan while promulgating laws their financial implications are hardly debated or taken into consideration. The culture of freedom of information requires proper record keeping, its indexing and management in a citizen-friendly manner. All this requires huge financial and human resources. The parliament should allocate sufficient resources to realise the culture of open access and transparency.

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- iii. <http://www.privacyinternational.org/countries/pakistan/pk-foia-1002.html>
- iv. Javed Jabbar and Qazi Faez Isa, Mass Media Laws and Regulations in Pakistan, AMIC (1997) offer the texts and analysis of all these laws. However for new media related laws see, Grace Under Pressure, Pakistan State of Media and Press Freedom Report 2002-03 by Green Press and Internews.
- v. Complete Text of SAFMA's National Media Declaration available at: http://www.southasianmedia.net/conference/National_Conference/index.htm
- vi. Nawaz Sharif vs. President of Pakistan, PLD 1993 SC473.
- vii. Article 89 of 1973 Constitution explains the life of an ordinance promulgated by the President
- viii. For detailed history see a case study on Pakistan by I. A. Rehman in Global Trends on the Right to Information: A Survey of South Asia, July 2001 (<http://www.humanrightsinitiative.org>)
- ix. The verdict came as a result of a complaint by Consumers Rights Commission of Pakistan and Center for Civic Education Pakistan on April 6, 2004. CRCP and CCE embarked on a campaign to seek information from various federal government institutions by invoking FOI-2002 and succeeded in getting the requested information. Copy of verdict attached as Appendix B.
- x. <http://www.freedominfo.org/survey.htm>
- xi. The Public's Right to Know: Principles on Freedom of Information Legislation available at the Thematic and Standard setting Publications section of <http://www.article19.org>
- xii. Comparison of Information Laws, The News International (Islamabad Edition) Tuesday, June 22, 2004
- xiii. Javed Jabbar and Qazi Faez Isa, Mass Media Laws and Regulations in Pakistan, AMIC (1997) P.61

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APPENDICES



Appendix A

Excerpts from the Freedom of Information-2002 Ordinance (Ordinance No XCVI of 2002)

Type of Information available under FOI-2002

7. Declaration of public record.- Subject to the provision of section 8, the following record of public bodies are hereby declared to be the public record, namely:-

- a) Policies and guidelines;
- b) Transactions involving acquisition and disposal of property and expenditure undertaken by a public body in the performance of its duties;
- c) Information regarding grant of licenses, allotments and other benefits and privileges and contract and agreements made by a public body;
- d) Final orders and decisions, including decisions relating to members of public; and
- e) Any other record which may be notified by the Federal Government as public record for the purposes of this Ordinance.

Type of Information exempted under FOI-2002

8. Exclusion of certain record. - Nothing contained in section 7 shall apply to the following record of all public bodies, namely:-

- a) Notings on the files;
- b) Minutes of meetings;
- c) Any intermediary opinion or recommendation;
- d) Record of the banking companies and financial institutions relating to the accounts of their customers;
- e) Record relating to defence forces, defence installations or connected therewith or ancillary to defence and national security;
- f) Record declared as classified by the Federal Government;
- g) Record relating to the personal privacy of any individual;
- h) 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; and
- i) Any other record which the Federal Government may, in public interest, exclude from the purview of this Ordinance.

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.
- (2) In the Section, "international relations" means relations between Pakistan and:
 - a) The government of any other foreign State; or
 - b) An organisation 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;

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

17. Privacy and personal information.-Information is exempt if its disclosure under this Ordinance would involve the invasion of 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:

- a) would be likely to 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;
- b) would be likely to cause 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 or the supply of goods or services, or
- c) by revealing information to a competitor of the public body, would be likely to cause significant damage to the lawful commercial activities of the public body.

Appendix B

Copy of the Verdict of Wafaqi Mohtasib (Ombudsman)



OMBUDSMAN

WAFAQI MOHTASIB (OMBUDSMAN)'S SECRETARIAT
FINDINGS

- Complaint Number* : B-00001/2004
- Date of Registration* : 22/1/2004
- Name and Address of the Complainant* : Mr. Mukhtar Ahmad Ali, Project Coordinator, Consumer Rights Commission of Pakistan, P.O.Box 1379, Islamabad.
- Name of the Agency Complained Against* : Commerce Division.
- Name & Designation of Investigating Officer* : Brig. Zulfiqar Ahmad Khan, Federal Secretary (Retd.) Advisor
- Subject of Complaint* : Failure to Provide Information Under the Freedom of Information Ordinance 2002

THE COMPLAINT

Mr. Mukhtar Ahmad Ali, Project Coordinator, Consumer Rights Commission of Pakistan stated in his complaint registered on 22/1/2004 that he had asked for some information from the Commerce Division which they have not provided so far in violation of Section 1(3) of the Ordinance within the prescribed period of 21 days.

Instead the Ministry of Commerce has informed that the information cannot be provided.

REPORT OF THE AGENCY

2. The Ministry of Commerce stated vide letter dated 30.1.2004 that the Cabinet Division has informed vide letter dated 29.1/2004 that "the Freedom of Information Ordinance 2002 is yet to be put into effect" as relevant Rules have not been notified as required under section-25 of the Ordinance. The Commerce Division has taken the position that it is not under a legal obligation to supply this information and the complainant was accordingly informed. The Commerce Division also attached a copy of Cabinet Division letter dated 22.1/2004, which indicates that the revised draft of Rules has been prepared by the Cabinet Division and forwarded to the Ministry of Law & Justice after which a summary will be resubmitted to the Prime Minister for final approval.

COMPLAINANT'S REJOINDER

3. The complainant stated in his rejoinder dated 14.2.2004 that Section 1(3) of the Ordinance clearly and unambiguously states that it shall come into force at once and, therefore, statement of the Ministry of Commerce that it is under no "legal obligation" to provide information till the rules are promulgated and notified is not correct. He stated that Section 10(2) of the Ordinance states that if a Ministry has not designated an official to deal with information requests then the Head of the Department will perform that function. In view of this citizens have the right to complain against the Ministry if it does not provide the requisite information. The complainant alleged that it appears that the

"Executive has put the Ordinance to disuse by not notifying the Rules." He further stated that, "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." He pleaded for early relief and stated that if the rules have not been notified despite lapse of 15 months the citizen's right to information should not be restricted.

THE POINTS AT ISSUE

4. The point at issue is whether the implementation of law has to await promulgation of Rules under Section 25 of the Ordinance *ibid*.

HEARING-PROCEEDINGS

5. A hearing was held on 26.2.2004 at which the complainant was absent. The Ministry of Commerce was represented by Ms. Shaista Sohail, Deputy Secretary and Mr. Bilal Khan Pasha, Section Officer.

6. The representative stated that the Ministry is corresponding with the Cabinet Division regarding provision of Rules and as soon as they get a copy of the Rules they would provide information requested by the complainant without any loss of time.

7. The complainant's viewpoint is contained in the rejoinder.

FINDINGS

8. 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 maladministration itself.

RECOMMENDATIONS FOR IMPLEMENTATION

9. In the light of the above findings the Commerce Division should provide requisite information to the complainant within 21 days as required by the law. Implementation report should be submitted within 21 days of the receipt of a copy of these Findings or reasons for not doing so should be intimated in terms of Article 11 (2) of P.O 1/1983.

(IMTLAZ AHMAD SAHIBZADA)

Wafaqi Mohtasib (Ombudsman)

Dated 6/4/2004

Appendix C

Freedom of Information Rules-2004 (As notified on June 21, 2004)

On June 21, 2004, the Government notified Freedom of Information Rules 2004 to enable the implementation of Freedom of Information Ordinance-2002.

Following is the text of the notification:

" S.R.O.514 (1) 204-In exercise of the powers conferred by section 25 of the Freedom of Information ordinance, 2002 (Ordinance No. XCVI of 2002), the Federal Government is pleased to make the following rules, namely:

The Freedom of Information Rules, 2004

1. Short Title, Application and Commencement:

- 1) These rules may be called the Freedom of Information Rules, 2004
- 2) They shall apply to public bodies
- 3) They shall apply come into force at once

2. Definitions: In these Rules, unless there is anything repugnant in the subject or context.

- a) "Ordinance" means the Freedom of Information Ordinance, 2002 (XCVI Of 2002); and
- b) all other words and expression used, but not defined herein, shall have the same meanings as are assigned to them in the Ordinance.

3. Designated Official:

- 1) The Head of every public body shall designate an official for a public body under his administrative control for the purpose of providing duly attested photocopy of the public record to the applicant, in accordance with the provisions of section 7, 11, 12 and of the Ordinance.
- 2) The designated official 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 present in charge of the public body shall be the designated official, for the purpose of these rules.

4. Application for obtaining information:

- 1) Subject to sub section (2) of section 12 of the Ordinance, any citizen of Pakistan may apply on the Application Form as set out in Annexure-I for obtaining photocopy of the public record available with the respective public body along with an initial fee of fifty rupees for ten or less than ten pages to be deposited with the Cash Branch of the respective department under proper receipt or in the State Bank of Pakistan or National Bank of Pakistan or Treasury under the following heads of account namely ;
 - a) major head 1300000 other receipts,
 - b) minor head 1390000 other, and
 - c) detailed head 1391221 fee payable for obtaining information and copies of public record.
- 2) (2) An amount of five rupees per page of photocopy shall be deposited in the heads of account specified in sub-rules (1) of rule 4 for every additional page (standard size) if the number of the pages of the record requested exceeds ten pages per requisition.
- 3) In case of any Board, Commission, Council or other body established by, or under, a Federal law, charges shall be deposited in their respective heads of account.
- 4) Subject to the availability of the facility each public body shall make available the Application Form (Annexure-I) on its website.
- 5) Procedure for disposal of application. The designated official of every public body shall give an

INFORMATION

FREEDOM OF INFORMATION

intimation to the applicant in the form as set out in Annexure-II and duly attested photocopy of public record subject to the provisions of rules 6 and 7 except such information as is exempted under section 8, 14, 15, 16, 17 and 18 of the Ordinance, as well as, any other introductions of the Government for restricting the disclosure of information by the public body concerned.

- 6) Procedure for filling of complaint with the head of public body. In case the requisite information is not provided by the designated official of a public body within twenty-one days, the applicant may, file a complaint under intimation to the complainant within thirty days of its receipt.
- 7) In case the application is sent through mail it shall be deposited of within prescribed time limit beginning from the date of the receipt in the office concerned.



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