

COMMENTS
ON
“FEDERAL RIGHT TO INFORMATION (RTI) Bill, 2013”
BY
CONSUMER RIGHTS COMMISSION OF PAKISTAN (CRCP)

General

The Federal Right to Information (RTI) Bill 2013 was approved by the Senate Standing Committee on Information and Broadcasting on August 28, 2013. In the backdrop of excellent legislations on RTI through promulgation of KPK RTI Ordinance 2013 and recently advertised text of Punjab Freedom of Information (FOI) Bill 2013, stakeholders had raised their expectations about the impending Federal RTI Bill 2013. However, when the law was finally unveiled, it appeared to be a slightly modified version of FOI Ordinance 2002, with many distortions and few improvements. CRCP’s RTI Team has carried out a preliminary evaluation of the law, which will be refined through feedback by RTI Practitioners and law experts and shared with relevant Ministries and Standing Committees of Senate and National Assembly. Following are the main observations and recommendations:

Section/ Title	Text Under Review	Comments by CRCP’s RTI Team	Recommendations By CRCP
Preamble	<p style="text-align: center;">A BILL <i>to provide for the right to have access to information in all matters of public importance subject to reasonable restriction</i></p> <p style="text-align: center;">WHEREAS it is expedient to provide for a law whereby every citizen of the Islamic Republic of Pakistan shall have the right to have access to information in all matters of public importance subject to</p>	<ul style="list-style-type: none"> • The preamble reflects intention, spirit and resolve of a law and sets the tempo for the subsequent parts. “Sunshine” law on Transparency should not start with “reasonable restriction” (<i>mentioned twice</i>), which is otherwise obvious and understood, being a constitutional requirement. • Part of preamble of Bangladesh RTI Act 2009 is reproduced here for comparison: “Whereas all powers of the Republic belong to 	<p>The preamble should be suitably revised to reflect Government’s resolve and spirit for:</p> <ul style="list-style-type: none"> • Transparency. • Accountability. • Good governance • Curbing the menace of corruption. • Empowerment of people.

<p>regulation and reasonable restriction as enunciated in Article 19A of the Constitution of the Islamic Republic of Pakistan and for matters connected therewith or incidental thereto;</p> <p>It is hereby enacted as follows:-</p>	<p>the people, and it is necessary to ensure right to information for the empowerment of the people; and Whereas if the right to information of the people is ensured, the transparency and accountability of all public, autonomous and statutory organisations and of other private institutions constituted or run by government or foreign financing shall increase, corruption of the same shall decrease and good governance of the same shall be established; and”</p> <ul style="list-style-type: none"> • Just consider the resolve and spirit of Indian RTI Act 2005: <p style="text-align: right;">“ [15th June, 2005.]</p> <p>Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.</p> <p>WHEREAS the Constitution of India has established democratic Republic;</p> <p>AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the</p>	
--	---	--

		governed;	
Section 1:Short title, extent, application and commencement.-	Section 1(3) It shall apply to the Federal Government's Ministries, Divisions, attached departments, subordinate offices, organizations, autonomous bodies, corporations and other institutions and non-governmental organizations (NGOs) registered by the Federal Government or un-registered.	Mentioning the list of public bodies seems out of place here, as a consolidated list is given under the definition of Public Body, under Section 2(ix). Simply a reference of Section 2(ix) in Section 1(1) would suffice.	a. Please delete existing Section 1(3) and revise Section 1(1) in the light of our comments. b. Renumber the remaining three sub-sections accordingly.
Section 2- Definitions : Section 2(ii)(b)	(b) the information sought by a requester has been unduly delayed by a public body; or	As this statement ends with 'or', it seems something has been deleted here. Following grievances should also be included here as these could also constitute a possible cause of complaint: (c) a public body has excessively charged a requester for the information provided. (d) a public body has provided false or misleading information to a requester. (e) only partial information has been provided to a requester. (f) the requester feels that irrelevant information has been provided.	May be revised as proposed.
	(iii) "information" means public documents and records required by the requester under this Act, but does not include the records exempted under section 8 or	The information defined here is limited in scope. It should also include all forms of recorded information, certified samples of material, inspection of work etc.	It should be amended to read: "information" means material (both recorded and physical) which communicates meaning and which is held in any

	disclosure of which may infringe upon the right of privacy of any individual;		recorded form or relates to taking certified samples of material, or inspection of work etc.;"
	(iii) "Mohtasib" means the Wafaqi Mohtasib (Ombudsman), appointed under the Establishment of the Office of Wafaqi Mohtasib Order, 1983 (P.O. No. 1 of 1983) or, as the case may be, the Federal Tax Ombudsman, appointed under the Federal Tax Ombudsman Ordinance, 2000 (XXXV of 2000) under whose jurisdiction the Federal public body may fall;	Mohtasib has very limited powers and is often heavily committed in tackling the thousands of complaints regarding maladministration of public officials. The Institution of Independent and Powerful 'Information Commission' on the lines of KPK, Punjab, Bangladesh and India is a dire necessity of the current times.	CRCP strongly recommends that instead of assigning additional RTI responsibilities on adhoc basis to the Mohtasib, there should be a dedicated independent Information Commission, based on the four models mentioned under comments.
	(ix) "public body" means-	Following establishments/ bodies have not been included in the definition of public body, which should also be added in the list: <ul style="list-style-type: none"> a. National Assembly, Senate and respective Secretariats. b. Presidency and Prime Minister's Secretariat. c. Any other body engaged in public functions (such as providing public transport, running schools, colleges, universities and hospitals, electricity distribution, telephony services etc.). 	May be revised accordingly
	(ix)(f) any court, tribunal, commission or board; and	Since the sub-section on public bodies ends here, word and should be deleted, being un-necessary..	

	(x)(d) any information required to be furnished by a person to a public body under any law or furnished for the purpose of receiving any benefit or advantage;	This could also contain some personal information and simply declaring it as 'public record' would amount to violating personal privacy of citizens. It needs to be properly qualified.	The statement should be properly qualified
	(x)(e) 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- i. all internal working documents of a public body, including proposals for Cabinet's decisions, proposals relating to management of the national economy and other affairs of the Government, till such time that a final decision thereon has been taken and notified by the public body;	'all internal working documents of a public body' and 'other affairs of the Government' are broad terms and could be readily used by public bodies for denying information of public importance.	Exemptions should be very few and specific.
	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; iv) any information relating to scientific or technical research	The clauses next to this clause are in continuation, but the numbering follows a different pattern. Parenthesis/ brackets should be removed from clauses (iv), (v) and ((vi)	As proposed.

	<p>the disclosure whereof would, or could reasonably, be expected to expose the concerned organization or project to disadvantage;</p> <p>v) any information the disclosure whereof would violate any intellectual property rights; and</p> <p>vi) any information regarding defence planning, deployment of forces, defence installations and matters that can legitimately be related to national security.</p>		
<p>Section 2 (xi)</p>		<p>The definition of Right to Information is missing, which is quite crucial to objectives and scope of this Act.</p>	<p>Following definition should be added:</p> <p>(xi) "right to information" means the right to information accessible under this Act which is held by or under the control of any public body and includes the right to—</p> <p>(i) inspection of work, documents, records;</p> <p>(ii) taking notes, extracts or certified copies of documents or records;</p> <p>(iii) taking certified samples of material;</p> <p>(iv) obtaining information in the</p>

			form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;
Section 4	4. Maintenance and indexing of records.- Subject to provisions of this Act and the rules as may be prescribed, principal officer of each public body shall ensure that all records covered under clause (x) of section 2 are properly maintained.	A similar clause existed in the FOI Ordinance 2002, where no time limit was fixed for implementation of Section 4 of said Ordinance. It was learnt through number of information requests by CRCP that there was hardly any public body that had maintained its public records and their index as per law even after ten years of promulgation of FOI Ordinance 2002. It is therefore suggested that this Act should give a deadline of say '6' months to all public bodies to implement this Section, which would indirectly help the concerned public bodies in their 'Record Management', which is currently quite deficient and weak.	It should be amended to read: "4. Maintenance and indexing of records.- Subject to provisions of this Act and the rules as may be prescribed, principal officer of each public body shall ensure that all records covered under clause (x) of section 2 are properly maintained within 180 days from the date of this Act coming into force.
Section 5	Section 5(2)(b) statues , statutory rules, regulations, bye laws ,	Typographical errors	Should be amended to read: "statutes, statutory laws, regulations, bylaws,.....
	Section 5(2)(g) such other matters which the principal officer of the public body deems fit to be published in the public interest:	It is good to give this discretion to the principal officer, to accommodate any pertinent information not covered in the above list. However, following aspects should also be included in the above list: (a) a detailed budget of the public body, including proposed and actual expenditures; (b) details about any subsidy or benefit	As proposed

		<p>programmes operated by the public body, including details about the amount or benefits provided and the beneficiaries;</p> <p>(c) particulars of the recipients of concessions, permits, licences or authorizations granted by the public body;</p> <p>(d) the categories of information held by the public body i.e. Index of Public Records, covered under Section 4;</p>	
		<p>Accountability clauses for not implementing the RTI Act by public bodies are missing, as in the case of FOI Ordinance 2002. The system is not expected to function efficiently, accountability clauses.</p>	<p>Sub-sections 5(4) and (5) on accountability of public bodies should be added as under:</p> <p>(4) Each public body shall publish an annual report on what they have done to implement their obligations under this Act, which shall include detailed information about the requests for information which they have received, and how they have processed these requests.</p> <p>(5) The annual report under sub-section (4) shall be formally forwarded to the Federal Ombudsman (or Federal</p>

			Information Commission as proposed here), who shall take such action on the report as he may deem appropriate
Section 6	<p>Section 6. Computerization and voluntary disclosure of records.- (1) Each public body shall Endeavour within reasonable time and subject to availability of resources that all public records covered under this Act are computerized and connected through a network all over the country on different systems so that authorized access to such public records is facilitated.</p> <p>(2) Subject to the provisions of section 8, each public body shall put in place a mechanism for maximum voluntary disclosure of all information and record, especially-</p> <p>(a) Acts, rules, regulations, by-laws, notifications, office orders, circulars, application forms, etc;</p> <p>(b) names, designations, functions and job description of the employees and consultants, advisers, etc. as well as names of designated officials; and</p> <p>(c) perks and privileges of all persons appointed in special grades, etc.</p>	<ul style="list-style-type: none"> • Section 6 is mere repetition/ continuation of Section 5. It would be more appropriate to suitably merge Section 6 with Section 5. • It would be worthwhile giving a deadline for Computerization of public records, along with provisions for allocation of requisite budget to public bodies as a prelude to functional e-governance. 	As proposed.

Section 7	<p>7. Declaration of public records.- (1) Subject to the provisions of section 8, all record of public bodies specified under this Act is hereby declared to be the public record.</p>	<p>Sections 14 to 18 deal with Exemptions and need to be mentioned here to avoid possible confusion.</p>	<p>The Sub-section should be amended to read: “7. Declaration of public records.- (1) Subject to the provisions of section 8 and Sections 14 to 18, all record of public bodies specified under this Act is hereby declared to be the public record.”</p>
	<p>7(2) Notwithstanding anything contained in any law, for the time being in force, all documents shall become public record after twenty years of their commencement.</p>	<p>This clause has been adequately and appropriately covered in Section 8 of National Archives Act 1993, laying down a procedure for extending this period for sensitive matters of national security by a competent board of officials.</p>	<p>This clause may be deleted, being un-necessary and out of place here.</p>
Section 8	<p>8. Exclusion of certain record.-</p>	<ul style="list-style-type: none"> • To avoid confusion, exclusions and all exemptions covered under Sections 8 and 14 to 18 should be covered under one Section. • Exclusions under Section 8 and exemptions under Sections 14 to 18 have been rigidly enforced, without any regard to public interest. In fact World’s Best practices entail that all the exclusions and exemptions should be subject to harm test i.e. if the overall public interest outweighs the harm likely to be caused due to disclosure, even the exempt information should be disclosed. 	<p>As proposed</p>

	Section 8(2)(d) record declared as classified by the Federal Government;	This clause can be widely misused by public servants originating documents/ information. The classified documents should be subject to harm test (Explained above) and if the benefit to disclose outweighs the likely harm, even the classified information should be disclosed.	It should be amended to read: “8(2)(d) record declared as classified by the Federal Government, subject to harm test;
	Section 8(2)(e) record relating to personal privacy of any individual; and	This exclusion should not apply to anything done by a person in his official capacity.	It should be amended to read: 8(2)(e) record relating to personal privacy of any individual, except for anything done by him in his official capacity.; and
Section 10	10. Designation of official.- (1) Each public body shall notify a designated official, not below the rank of BPS-19 or equivalent , to whom requests under this Act are to be made and who shall ensure easy public access to information:	This would tend to complicate and over-centralize the dissemination of information to requesters as many small public bodies may not have a grade 19 officer working under the principal officer. Therefore, this condition should be removed.	It should be amended to read: 10. Designation of official.- (1) Each public body shall notify a designated official, to whom requests under this Act are to be made and who shall ensure easy public access to information:
Section 12	12. Applications for obtaining information, etc.- 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.	<ul style="list-style-type: none"> • The form should be used only to assist requesters in making their request, but should not be mandatory. Even a handwritten/ e-mail request carrying requisite details of request and contact details of the requester should be entertained. • There should be no fee for submitting an information request as it goes against the spirit of Section 3(2)(b) Of this Act which reads “facilitate and encourage, promptly and at the lowest reasonable cost, the disclosure of information.” As such, there should be no fee and only cost of photocopying or other means 	As proposed

		of providing information should be charged from requesters.	
Section 13(2)	(2) In case the designated official, on authority of the principal officer, is of the opinion that-	If the Designated Official seeks authority/ blessing from the Principal Officer at this stage, there is no point in making a review application to Principal Officer under Section 13(4). Therefore, this part of the statement should be deleted.	May be deleted.
	Section 13(2)(a) the applicant has not furnished necessary particulars or has not paid the prescribed fee; or	<ul style="list-style-type: none"> As stated earlier, there should be no fee and only cost of photocopying or other means of providing information should be charged from requesters. <p>If the applicant has not furnished necessary particulars, it should not be made a pretext to return the application 21 days after receipt. Instead, it should be the duty of the Designated Official to check and correct the particulars at the time of receipt of application, if delivered in person. In other cases, he should request for essential/ missing particulars and process the application simultaneously. This is in line with Section 9, which reads, “9. Duty to assist requesters.- Each public body shall take necessary steps as may be prescribed to assist any requester under this Act.”</p>	May be deleted/ revised accordingly.
	Section 13(2)(c) the required information or, as the case may be, the required record constitutes a record which is excluded under section 8,	The statement would be incomplete without including exemptions under Sections	Amend to read: 13(2)(c) the required information or, as the case may be, the required record constitutes a record which is excluded under section 8 or exempted under Sections 14 to 18.
	Section13(4) Where a designated	The review application may be filed in 30 days	This Section should be amended to

	official, within twenty-one days of receipt of the request, does not supply or refuses to supply to the applicant the required information or, as the case may be, a copy of the requisite public record, the applicant may, within a period of not exceeding thirty days, make a review application to principal officer of the public body:	but it is not clear how much time Principal Officer can take to respond to the request. The Act must specify the maximum time limit in this regard. Since the application has already been processed by the public body for 21 days, the Principal Officer should be able to complete his review in maximum of 15 days.	read: “Section13(4) Where a designated official, within twenty-one days of receipt of the request, does not supply or refuses to supply to the applicant the required information or, as the case may be, a copy of the requisite public record, the applicant may, within a period of not exceeding thirty days, make a review application to principal officer of the public body, who will complete the review in maximum 15 days time and provide the requested information or otherwise, with reasons of denying information in writing:”
Section 17	17. Privacy and personal information.	This exemption should not apply to anything done by a person in his official capacity, because disclosure of such information could possibly lead to exposure of corrupt practices in public bodies, which is one of the objectives of transparency laws.	It should be amended to read: “Privacy and personal information, except for anything done in official capacity, which shall be treated as public record.
Section 19	19. Recourse to Wafaqi Mohtasib and Federal Tax Ombudsman.-(1) Where, an applicant is aggrieved by decision of the principal officer or, as the case may be, the next higher authority in review under sub-section (4) of section 13, he may file a complaint with the Mohtasib and, in cases relating to Revenue Division, its	No time limit has been specified for the Federal Ombudsmen to dispose of the complaints, which goes against the spirit of this Act. A realistic time bracket should be specified in the Act to make the exercise meaningful.	It should be amended to read: “19. Recourse to Wafaqi Mohtasib and Federal Tax Ombudsman.-(1) Where, an applicant is aggrieved by decision of the principal officer or, as the case may be, the next higher authority in review under sub-section (4) of section 13, he may file a complaint with the Mohtasib

	subordinate departments, offices and agencies, with the Federal Tax Ombudsman.		and, in cases relating to Revenue Division, its subordinate departments, offices and agencies, with the Federal Tax Ombudsman. The Federal Ombudsman or Federal Tax Ombudsman, as the case may be, shall dispose of the complaint in three months time, extendable to maximum three more months, for which reasons of delay will be endorsed in the final decision.
Section 20	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, after providing him the opportunity of being heard.	This amounts to scaring a requester and goes against the spirit of this law of voluntary disclosure. Simply denying information to such requesters should suffice.	May be revised as proposed.
Section 21	21(2). The <i>designated official</i> who, without reasonable excuse, fails or refuses to provide inspection or disclose records under sections 9,10,11,12 and 13 shall be liable to a <i>fine not exceeding twenty-five thousand rupees.</i>	<ul style="list-style-type: none"> • What will happen if a principal officer or anyone else is found guilty of obstructing lawful disclosure of information under this Act? • What will happen if: <ul style="list-style-type: none"> a. False or misleading or only partial information is provided to a requester. b. The information is delayed for 1 day or 100 days? 	Sub-section 21(2) should be amended to read: ‘The designated official who, without reasonable excuse, fails or refuses to provide inspection or disclose records under sections 9,10,11,12 and 13, furnishes false, misleading, irrelevant or partial

		<ul style="list-style-type: none"> When the offence relates to delay, the amount of fine should be based on some fixed per day penalty, say Rs 250/- or Rs 500/- ,subject to maximum of Rs 25,000.00 <p>In other cases, Federal Ombudsman (or Information Commissioner) can decide the amount of fine on degree of offence in each case.</p>	<p>information shall be liable to a fine not exceeding twenty-five thousand rupees.’</p> <p>An additional Sub-section should be added as under:</p> <p>Section 21(3) any official who has acted willfully to obstruct any activity which is required to be undertaken under this Act, including with a view to preventing or delaying the disclosure of information to a requester; will be liable to a daily fine of Rs. 250 per day, up to a maximum of Rs. 25,000.</p>
	<p>26. Power to make rules.- (1) The Federal Government <i>may</i>, by notification in the official Gazette, make rules for carrying out the purposes of this Act.</p>	<p>The word ‘may’ should be replaced by ‘will’ because due to this kind of flexibility, there are many Acts for which necessary rules have not been framed and public bodies tend to make it a pretext for being unable to implement certain Acts.</p>	<p>This Section should be amended to read:</p> <p>‘26. Power to make rules.- (1) The Federal Government will, by notification in the official Gazette, make rules for carrying out the purposes of this Act.’</p>
	<p>Final Comments</p>	<p>Essential points not specified/ clarified in the Act:</p> <ol style="list-style-type: none"> Will the orders of Ombudsman be final and binding on all parties? 	<p>It is recommended that an independent and powerful</p>

		<ul style="list-style-type: none"> b. Since RTI is a fundamental right under Article 19A of the Constitution, can a person/ requester aggrieved by the decision of Ombudsman go to higher courts for redressal of grievances? c. Who is responsible for capacity building and awareness of stakeholders from public and private sectors under the law? d. Who will monitor implementation of this law by the public bodies? e. Will the Federal Ombudsmen be accountable for implementing the Act and presenting the Year Book based on progress of RTI to the President, who in turn will be required to present the same before both the houses on annual basis? f. Who will undertake the responsibility for publicity of legal provisions on RTI and generate requisite demand about this 'Sunshine Law'? g. Who holds the Ownership and promotion responsibility of Federal RTI Law? Cabinet Division, Mol&B or Federal Ombudsmen? 	<p>'Federal Information Commission' be instituted as recommended earlier and all the questions asked against final comments should be properly addressed.</p>
--	--	---	--