

VIEWS AND COMMENTS

ON

“DRAFT KHYBER PAKHTUNKHWA (KPK) RIGHT TO INFORMATION (RTI) ORDINANCE 2013”

BY

CONSUMER RIGHTS COMMISSION OF PAKISTAN (CRCP)

General

The ‘KPK RTI Ordinance – 2013’ is an excellent legislation on Right to Information in the Province and certainly a tremendous improvement over the existing Freedom of Information (FOI) laws i.e. FOI Ordinance 2002 (Federal Law), Balochistan FOI Act 2005 and Sindh FOI Act 2006. It is reasonably brief, precise and covers almost all pertinent aspects of a balanced and implementable legislation. Following points may also be considered to further improve the Ordinance.

Section/ Title	Text Under Review	Views/ Comments	Recommendations By CRCP
Title of the Ordinance	<p style="text-align: center;">AN ORDINANCE</p> <p><i>to provide for ensuring transparency and access to information in the Province of the Khyber Pakhtunkhwa</i></p>	It is not clear as to what is the logic behind issuing an Ordinance in the presence of elected Provincial Assembly (PA), where the proposed Bill could be discussed and debated at length.	The Ordinance should be tabled in the KPK Provincial Assembly as a Bill for debate and enactment as an Act.
Preamble	<p style="text-align: center;">AND WHEREAS</p> <p>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;</p>	No relevance has been drawn to foreign funding in the Ordinance and the point has not been clarified in definition of public body. Hence it appears superfluous, if not qualified/ elaborated in the subsequent Sections.	The point needs appropriate elaboration or deletion from this part.

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Section - 2: Definitions	(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 ;	The statement starts with ‘request for information’ and ends with ‘that record’. This statement appears to be jerky from language point of view. It should be changed, as proposed under recommendation.	It should be amended to read “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 requested information/ record;
	(e) “information” means material which communicates meaning and which is held in recorded form;	Definitions of ‘information’ and record’ are synonymous and tend to confuse the reader. It is better to have one comprehensive definition, covering all the essential ingredients, as proposed here.	“information” means material (both recorded and physical) which communicates meaning and which is held in any recorded form or relates to taking certified samples of material, or inspection of work etc.;
	(i)(iv) any Office, Board, Commission, Council or any other Body established by, or under, any law;	Federal public bodies, even if located in KPK are covered under the Federal FOI/ RTI Law. Therefore, word ‘provincial’ should be inserted between ‘any’ and ‘law’, to avoid any misunderstanding on this account.	“any Office, Board, Commission, Council or any other Body established by, or under, any provincial law”;

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	(i)(viii) any other body which undertakes a public functions	Since public functions have not been defined here, it is likely to cause some confusion. Needs to be appropriately clarified in the text or through a separate definition. Also please include the criteria of body performing public functions and list them out such as providing public transport, running schools, colleges, universities and hospitals, electricity distribution, telephony services etc.;	May be revised in the light of comments by KPK Government.
	(i)(j) “record” means information which is recorded in any form;	If the definition of ‘information is modified as proposed above, the definition of ‘record given here becomes redundant and should be omitted.	The definition of record may be deleted after revision of definition of Information accordingly.
Section 3(1)	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.	Quite often, there will be situations when the requester wants to know about quality of work or wants to take some certified samples of material for laboratory analysis. Therefore, the addition given under recommendation becomes very critical for making the law practical and meaningful in the true spirit of transparency	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 and includes the right to— (a) inspection of work, documents, records; (b) taking notes, extracts or certified

			<p>copies of documents or records;</p> <p>(c) taking certified samples of material;</p> <p>(d) obtaining information in the 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;</p>
Section-5, Main Heading	5. Publication and availability of records	Proactive Disclosure is the essence of this law and should form part of this heading to convey the intended spirit. Besides, the term has been used as such, in Section 25(2) (b), while referring to this Section.	5. Proactive Disclosure Through Publication and availability of records
Section -5 (1) (a)	(a) Acts and subordinate legislation such as rules, regulations, notifications, <u>bye laws</u> , manuals and.....	Typing error; words 'bye laws' should be replaced by 'bylaws'.	(a) Acts and subordinate legislation such as rules, regulations, notifications, bylaws, manuals and

Section 5(1)		Nothing has been mentioned about the ongoing contract/s or contracts in the pipeline, which has a special significance and relevance to transparent use of public money. Therefore, subsection (j) should be inserted as proposed.	Please insert Sub-section 5(1)(j) as under and renumber the remaining Sub-sections: (j) Details of ongoing and planned contracts awarded or being awarded by the public body during next six months.
Section 5(3)	(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.	Two separate agencies have been proposed to take action on one report, which is likely to create confusion about the mandate of each agency. Needs further clarification and distinct distribution of tasks through rules/ regulations.	The sub-section should be amended to read: '(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, in line with respective mandate, as may be prescribed.'
Section -6	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.	In the entire Ordinance, it is written as 'designated officer', (shown in dark blue). Same should be written in the heading also, to avoid confusion. Contrarily, 'Designated Official' may be used and written in the whole document.	It should be amended to read: '6. Designation of officer. ---(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.'
Section - 7	7. Request for information. ---(1) Subject to the provisions of this Ordinance, <u>every</u> citizen may lodge a request for information with a public body through the designated officer.	Minor language problem; word 'every' should be replaced by 'any'.	7. Request for information. ---(1) Subject to the provisions of this Ordinance, any citizen may lodge a request for information with a public body through the designated officer.

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Section -7(6)	(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 <i>date</i> and name of the official responsible for processing it.	Word ‘date’ should be qualified as ‘date of receipt’ or any other date intended here.	Please amend to read: ‘(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 of receipt and name of the official responsible for processing it.’
	(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 <i>held</i> due to disability.	Typographical error.	Please amend to read: ‘(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 to writing, and provide the requester with a <i>signed, date</i> copy of it.	Typographical error.	Please amend to read: (3) Where a requester is unable to provide a written request, a designated officer shall reduce the request to writing, and provide the requester with a signed and, dated copy of it.
Section -11	11. Time line for responding	Typographical error. ‘Timeline is one word’, and should be written accordingly.	11. Timeline for responding
Section-12	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	If the proposed changes in the Section 3 of this Ordinance and definition of ‘Information’ are entertained, the changes proposed under CRCP’s recommendation will become imperative.	It should be amended to read: ‘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, taking certified samples of different materials for laboratory analysis or an opportunity to inspect certain records/ works, the public body shall

	do so would unreasonably interfere with its operations or harm the document.		provide access in that form unless to do so would unreasonably interfere with its operations or harm the document/ material.
Section-18	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.	Policy making process should be enriched by candid feedback of informed citizenry and frequent sharing/ exchange of public information. This exception is likely to further erode our already deficient policy making mechanisms, processes and policy cycle.	This Section should be deleted.
Section 24	24. Information Commission. ---(1) On the commencement of this Ordinance, Government shall within a period of one hundred and twenty (120) days, establish <u>a</u> Information Commission to be known as the Khyber Pakhtunkhwa Information Commission.	Typographical error.	It should be amended to read: 24. Information Commission. ---(1) On the commencement of this Ordinance, Government shall within a period of one hundred and twenty (120) days, establish an Information Commission to be known as the Khyber Pakhtunkhwa Information Commission.
Section 24(3) and (4)	(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	In these sub-sections, authority for appointments of Chief Information Commissioner and three Information Commissioners have been vested separately in Government of KPK, Chief Justice Peshawar High Court, Bar Council and Human Rights Commission. This makes the	Sub-sections 24(3) and (4) should be suitably revised as proposed

	<p>shall be appointed in the following manner:</p> <p>(a) one retired/serving judge of the High Court, to be appointed by the Chief Justice Peshawar High Court;</p> <p>(b) one Advocate of High Court or Supreme Court, to be appointed by the Bar Council; and</p> <p>(c) one respected representative of civil society, to be appointed by the Human Rights Commission.</p>	<p>appointment system faulty, as each appointing authority would like to induct their favourites as Information Commissioners. In fact a panel comprising CM KPK, Leader of Opposition KPK and Chief Justice PHC should select suitable candidates with consensus or majority vote, from amongst shortlisted candidates through a properly advertised selection process/ procedure.</p>	
Section 24(4)(a)	<p>(a) one retired judge of the High Court, to be appointed by the Chief Justice Peshawar High Court;</p>	<p>Normally a Judge of High Court retires at the age of 65 years. Since maximum age of a Commissioner has been fixed as 66 years, a Retired Judge of High Court will be available for only one year as a Commissioner. Hence, the proposed amendment becomes imperative, to have some continuity of appoint.</p>	<p>It should be amended to read: (a) one retired/serving judge of the High Court, to be appointed by the Chief Justice Peshawar High Court;</p>
Section 24 (7)	<p>(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 <i>at the time of</i>, or during their appointment to the Information Commission.</p>	<p>If the portion recommended for deletion (underlined in italics) is retained in this sub-section, it is likely to adversely and drastically affect the scope of selection of capable and deserving individuals as Commissioners.</p>	<p>It should be amended to read: '(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 during his appointment to the Information Commission.'</p>

<p>Section 26-4</p>	<p>(4) A decision of the Information Commission under sub-section (3) shall, if it has not been <u>appealed against</u> 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.</p>	<p>Where and how appeals will be lodged by the persons aggrieved by the decisions of the Commission has not been covered in the Ordinance.</p>	<p>A Section on ‘Appeals’ against the decisions of the ‘Commission’ should be added in the Act, being the primary legislation on affording and implementing a fundamental right under Article 19A of Constitution of Pakistan.</p>
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