

## VIEWS AND COMMENTS

ON

“DRAFT PUNJAB FREEDOM OF INFORMATION Bill, 2012”

BY

CONSUMER RIGHTS COMMISSION OF PAKISTAN (CRCP)

### General

The draft Bill is a remarkable piece of proposed legislation on Right to Information (RTI) in the Punjab Province. 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 draft.

Section/ Title	Text Under Review	Views/ Comments	Recommendations By CRCP
Title of the draft Act, first line of Preamble and Section 1(1).	<ul style="list-style-type: none"><li>Title: The Punjab Freedom of Information (FOI) Act, 2012.</li><li>Preamble: The first line reads, “WHEREAS it is expedient to provide for transparency and freedom of information.....”</li><li>“This Act may be cited as Punjab Freedom of Information Act 2012.</li></ul>	The term ‘Freedom’ sounds passive in nature and signifies lack of restrictions, whereas Article 19A of the Constitution of Pakistan has recognized it as ‘Right to Information (RTI)’. In other words, ‘freedom’ is given as a favour or blessing whereas a ‘right’ belongs to citizens and can be claimed with dignity and authority.	The term ‘Freedom of Information’ should be replaced by ‘Right to Information’, where ever it appears in the title or text.
Section 1(3)	<ul style="list-style-type: none"><li>It shall come into force at once.</li></ul>	The Act is rightly being implemented in phases, giving reasonable time for implementation of various clauses. It would be appropriate, if a reference is made to these Sections as exception to this statement.	The line should be amended to read, “It shall come into force at once, except Sections 4(1), 5(3)(f) and (g), Section 6(1)....., which shall come into force, as specified against each”.

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<b>Section -2: Definitions.</b>			
Section 2(c) “Complainant” means	(i) Any person, who desires to obtain any information under this Act referred to as applicant for the purposes of this Act, or (ii) Any person acting for and on behalf of an applicant	(i) An ‘information requester/ applicant’ becomes a complainant only when his/ her request has been delayed or denied. It is therefore imperative that ‘information requester/ applicant’ should also be defined, preferably before defining the ‘Complainant’. (ii) ‘Person’ should also be defined separately and besides others, it should include civil society organizations working for promotion of RTI/ FOI or human rights and law practitioners.	Definitions of ‘Information Requester’ and ‘Person’ should be included in the light of our comments and definition of ‘Complainant’ should be revised accordingly.
2(f) “public body” means	(vi) legislature;	‘Legislature’ is a too broad term. It should preferably be specified as a public body.	It should be amended to read ‘Provincial Assembly of the Punjab’
Section 2(j)	Right to Information (RTI).	The definition of RTI has not been given in the draft. A suitable definition of RTI covering essential aspects of information should be added.	The following definition based on regional best practices is recommended: "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to— (i) inspection of work, documents, records; (ii) taking notes, extracts or

			<p>certified copies of documents or records;</p> <p>(iii) taking certified samples of material;</p> <p>(iv) 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>
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<b>Section -3. Access to Information</b>			
Section 3	<b>Access to Information</b>	In the light of definition on RTI proposed above this section should be renamed accordingly	Section 3 should read “Right to Information”
Section 3(1)	Every citizen of Pakistan shall, subject only to the provisions of this Act and any regulations made thereunder, have the right to access all information held by public bodies.	Since ‘Rules’ are made prior to detailed ‘Regulations’ by concerned departments, word ‘regulations in the third line should be replaced by the word ‘rules’ and reference to section 2 (j) must be given. (Proposed Above)	The revised sub-section would thus read “Every citizen of Pakistan shall, subject only to the provisions of this Act and any rules made thereunder, have the right to access all information held by public bodies” as per Section 2(j);

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<b>Section- 3B. Proactive Disclosure</b>			
Section 3B	<b>Proactive Disclosure.-</b> Subject only to the provisions of this Act and any regulations made thereunder, all public bodies shall proactively disclose:	do	<ul style="list-style-type: none"> <li>a. The section should be renamed as Section 4 instead of Section 3B and the remaining sections should be revised accordingly.</li> <li>b. The revised sub-section would thus read “Proactive Disclosure.- Subject only to the provisions of this Act and any rules made thereunder, all public bodies shall proactively disclose”:</li> </ul>
Section 3B x)	Particulars of the recipients of concessions, permits or authorizations granted by the public body.	Although the sub-section broadly serves its purpose, it would be more appropriate to add; ‘licences, allotments and other benefits’ and details of ongoing/ projected contracts and agreements made/ to be made by the public body.	The revised sub-section would thus read; “Particulars of the recipients of concessions, permits, licences, allotments and other benefits or authorizations granted by the public body,’ and details of ongoing/ projected contracts and agreements made/ to be made by the public body.”

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<b>Section- 4. The Punjab Information Commission</b>			
Sub-section 4(2)	(2) The Commission shall comprise three Information Commissioners, one of whom shall be a former senior government servant who is familiar with the working of the government, one of whom is retired judges of the High Court or equivalent seniority and one of whom is respected members of society with the requisite skills and experience for this position.	<ul style="list-style-type: none"> <li>• No Provincial Chief Information Commissioner has been authorized under the Act, for general superintendence, direction and management of affairs of the Punjab Information Commission. Absence of unified command/ policy in the Commission is likely to render it less effective.</li> <li>• Maximum of three Information Commissioners (IC) have been authorized/ proposed by the draft Act. Three ICs are not enough to efficiently handle the complaints of whole the province. It would be prudent, if the Act authorizes a maximum figure (say ten) and the number of incumbents is gradually increased from a smaller figure on need basis.</li> <li>• Since retirement age for Judges of High Court is 65 years, it would be worthwhile if qualified and reputed Lawyers are also combined with the category of retired judges, to broaden the scope.</li> </ul>	(2) The Commission shall comprise one Provincial Chief Information Commissioner and such number of ncial Information Commissioners, not exceeding ten, as may be deemed necessary. Three of the Provincial Information Commissioners shall be former senior government servants who are familiar with the working of the government, three of them would be retired judges of the High Court/ retired judges of equivalent seniority or reputed Lawyers qualified for the appointment as a Judge of High Court and three of whom would be respected members of society with the requisite skills and experience for this position. The Provincial Chief Information Commissioner can represent either of the above mentioned three categories.

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Sub-sections 4(4) to (7)	Sub-section 4(3) reads; “The Commissioners shall be appointed by a Selection Committee comprising the Chief Minister of Punjab and the Leader of the Opposition in the Punjab Assembly with the following limitations:”	Since sub-sections 4(4) to (7) fall under sub-section 4(3), these should be numbered differently, say 4(3) (a), (b) and (c), to facilitate legal referencing.	Renumbering may be done as proposed.
Sub-section 4(4)	Sub-sections 4(4) reads; “The Commissioners shall not hold office for more than 3 years from date of appointment or beyond the age of 65 years, whichever is earlier. Persons who are more than 62 years old shall not be eligible for appointment as Information Commissioner.”	The current section is creating confusion while appointments of the Information Commissioners. The retirement age of High Court Judge is 65 years thus clearly incumbent Judge cannot be appointed as Information Commissioner. Therefore, age relaxation should be revised.	The maximum age limit for retired High Court Judge should be increased as under: <ul style="list-style-type: none"> <li>a. Maximum Appointment Age: 67 years</li> <li>b. Maximum Age of retirement as Information Commissioner: 70 years</li> </ul>
Sub-section 4(5)	It reads; “The Commissioners may not hold any other public office, or any other office of profit or be connected with any political party or be running any business or pursuing any profession, at the time of appointment to the Commission.”	The qualifying statement is being closed with a binding remark; “..... at the time of appointment to the Commission”. In fact, these conditions should apply, once an Information Commissioner has been selected. Applying these conditions at the time of appointment would unduly limit the scope of selection of otherwise suitable candidates.	It should therefore read; “The Incumbent Information Commissioners may not hold any other public office, or any other office of profit or be connected with any political party or be running any business or pursuing any profession.”

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<b>Section- 5: Powers and Functions of the Commission</b>			
Sub-section 5(2)(v)	(v) While deciding on a complaint, impose a fine upon a Public Information Officer as prescribed in Rules:	Nothing regarding compensation to the applicant for the loss suffered at the hand of concerned public body has been mentioned in the Act. The Commission should be empowered in this regard.	Following additional sub-section should be added: “5(2)(vi) Require the public body to compensate the complainant for any loss or harm suffered due to non-compliance to the provisions of this Act by the concerned public body.”
Sub-section 5(3)(aa)	(aa) deciding upon complaints lodged with it within 30 days of receiving them, which may be extended to 60 days for good reason;	Since the time for taking the decision is extendable from 30 to 60 days, it would only be fair if the reasons of delay are recorded in writing.	It should be amended to read: “(aa) deciding upon complaints lodged with it within 30 days of receiving them, which may be extended to 60 days for good reason, to be recorded in writing;”
Sub-section 5(3)(d)	(d) providing technical and other support to the authorities with the aim to ensure the right to information;	Effective implementation of the Act entails capacity building of stakeholders, especially Public Information Officers (PIOs), civil society, media, parliamentarians and academics. However this element is missing in the draft Act.	The sub-section should be amended to read: “(d) providing technical support and facilitating capacity building of all stakeholders from private and public sectors with the aim to ensure the implementation of right to information;”



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Sub-section 5(3)(g)	g) The Commission shall, as soon as practicable, after the end of each year, prepare a report on the implementation of the provisions of this Act during that year and submit it to the Governor Punjab, for laying before the Punjab Assembly, not later than June 30, of the succeeding year. The report will cover the following aspects:	There is a need to lay down a deadline for preparation of the Report by the Commission, giving enough time for the Governor Punjab to lay the Report before the Punjab Assembly.	The sub-section should be amended to read: “After the end of each calendar year, the Commission shall, as soon as practicable, but not later than April 30 of the succeeding year, prepare a report on the implementation of the provisions of this Act during that year and submit it to the Governor Punjab, for laying before the Punjab Assembly, not later than June 30, of the succeeding year. The report will cover the following aspects:

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<b>Section- 7: Maintenance and Indexing of Information</b>			
Sub-section 7(1)	(1) Subject to provisions of this Act and as prescribed in the Rules, each public body shall ensure that all information covered under section 2(e) of this Act are properly maintained in an easily accessible form as early as possible.	<ul style="list-style-type: none"> <li>• Section 2(e) briefly defines ‘Information’, whereas Section 3B comprehensively covers the public documents for proactive disclosure. Therefore, 3B should also be added here.</li> <li>• The statement ends with open ended timeline i.e. as early as possible. It has been experienced over a period of time that that such timelines are often misinterpreted as indefinite time period for implementation. Since no extra resources are required to implement this Section, it is imperative that a realistic time period is specified, which also happens to be a regional best practice.</li> </ul>	The sub-section should be amended to read: “(1) Subject to provisions of this Act and as prescribed in the Rules, each public body shall ensure that all information covered under sections 2(e) and 3B of this Act are properly maintained in an easily accessible form as early as possible, but not later than 90 days from the date of appointment of designated officials under this Act.
<b>Section -9B: Exceptions</b>			
Sub-section 9B(1)(b)	(b) a legitimate privacy interest, unless the person concerned has consented to disclosure of the information relates to the functions of a public official;	Personal privacy of all persons should be respected. However, when it relates to functions of a public official or probable misappropriation of public funds, then the consent of concerned person becomes irrelevant.	The sub-section should therefore be amended to read: “(b) a legitimate privacy interest, however, if the requested information relates to disclosure of information regarding the functions of a public official or transaction/s relating to public money, it shall not fall under the purview of exceptions;”

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<b>Section -10 Offence/s</b>			
Section 10	Any person who destroys a record which at the time it was destroyed was the subject of a request or of a complaint, or otherwise obstructs access to a record which is the subject of a request or a complaint, with the intention of preventing its disclosure under this Act, commits an offence punishable with imprisonment for, a term not exceeding two years, or with fine, or with both.	<p>In this section, only two offences i.e. destruction of requested documents and obstruction to access to requested records have been covered. It is silent about following offences by the Public Information Officer (PIO):</p> <ol style="list-style-type: none"> <li>a. Without any reasonable cause, refusal to receive an application for information.</li> <li>b. Non provision of information within stipulated timeframe without any plausible cause.</li> <li>c. Malafidely denying the request for information.</li> <li>d. Knowingly giving incorrect, incomplete or misleading information.</li> </ol> <p>The proposed punishment of two years imprisonment coupled with fine also appears to be too harsh for the stated offence.</p>	All these offences should be covered under this Section separately and corresponding punishment be stated against each offence. A system of penalties on daily basis should also be considered, to discourage unjustified delays by the PIOs
<b>Section -11 Cognizance for Offence under this Act</b>			
Section 11	No court shall take cognizance of the offence punishable under this Act except on a report in writing of the facts constituting such offence made with the previous sanction of the Punjab Information Commission (PIC) or an officer authorized on behalf of this Commission.	The courts have been barred from taking cognizance of offences punishable under this Act and can act only on the previous sanction of the PIC. However, if a person feels aggrieved by the decision of the Commission, his right of appeal has not been covered in the Draft.	A Section on ' <b>Appeals</b> ' should also be added.

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<b>Section 16 Act to take precedence over other laws</b>			
Section 16	The provisions of this Act shall take precedence over anything contained in any other law for the time being in force.	The way overriding powers have been defined entails serious legal complications, as it will affect many laws as well as rules of business of the government.	The sub-section should therefore be amended to read: “The provisions of this Act shall take precedence over other laws to the extent of inconsistency of their provisions with this Act.”