

**Freedom of Information Ordinance 2002, and Bills 2004 & 2008**  
**Analysis and Recommendations**  
**Submitted To: Ministry of Information and Broadcasting, Government of Pakistan**  
**Ministry of Law, Justice and Human Rights, Government of Pakistan**  
**By Consumer Rights Commission of Pakistan (CRCP), on October 29, 2008, Islamabad**

Section/Title	Freedom of Information Ordinance 2002	Freedom of Information Bill 2004	Freedom of Information Bill 2008	CRCP's Comments/ Recommendations
<p><b>Preamble/ Statements of Objects and Reasons</b></p>	<p>ORDINANCE NO. XCVI OF 2002.  <b>AN ORDINANCE</b></p> <p>To provide for transparency and freedom of information.  <b>WHEREAS</b> it is expedient 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.</p> <p><b>AND WHEREAS</b> the President is satisfied that circumstances exist which renders it necessary to take immediate action.</p> <p><b>NOW, THEREFORE,</b> in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999, and the provisional Constitution Order No. 1 of 1999, read with the provisional Constitution (Amendment) Order No. 9 of</p>	<p><b>Statement of Objects and Reasons:</b>  To provide for the recognition and realisation of the right to freedom of information and its role in the promotion of good and transparent governance.  Whereas the freedom of access to information is a universally recognised human right;  Whereas the right to access to information is guaranteed to the citizens of Pakistan under Article 19 of the constitution and it is necessary to ensure that restrictions on this right imposed by law do not exceed the constitutionally permissible limits; and  Whereas freedom of information is an essential pre-requisite to the people's realisation of their ideal of good and transparent governance and for which it is necessary to ensure that the citizens of Pakistan should have the fullest possible access to public records.</p> <p>SHERRY REHMAN  Member-in-Charge</p>	<p><b><u>Page 9, STATEMENT OF OBJECTS AND REASONS</u></b></p> <ul style="list-style-type: none"> <li>• <b>Whereas</b> Right to know is inalienable birth right of an individual and is universally recognized. In a democratic dispensation, where the public officials are the custodians of the public records and documents, the people, the real sovereigns, have the right of access to all public records, subject to law and except the material disclosure of which may be harmful to national security, relations with the friendly countries and privacy of the life, home, family and honour of the citizens of Pakistan.  <b>Whereas,</b> access to information is an essential pre-requisite to the people's realization of their ideals of good and transparent governance for which it is necessary to ensure that the citizens of Pakistan should have the fullest possible access to public records.</li> </ul> <p><b>And whereas</b> The Freedom of Information Ordinance, 2002. one of the nightmares of the despotic rule of strangulation of information and denial of fundamental rights to the people of Pakistan, served as a suppressor and</p>	<p><b>Page 9, Statement of Objects and Reasons</b>  The Statement of Objects and Reasons of the FOI Bill 2008 refers to the Freedom of Information Ordinance, 2002 and terms it as "one of the nightmares of the despotic rule of strangulation of information and denial of fundamental rights to the people of Pakistan" and that it "served as a suppressor and blocker of the information hand has thus failed to achieve its declared objectives".</p> <p>CRCP believes that the language of the Statement of Objects and Reasons is inappropriate and emotive. The Bill's reference to the FOI Ordinance, 2002, is based on unexamined assumptions and factually incorrect statements. There is convincing evidence available to suggest that, despite several shortcomings and deficiencies, the Ordinance has been used to access information from government departments, though only with proactive role of the Federal Ombudsman. Information requests filed by CRCP and other civil society organizations provide the best example. There is hardly any known case where the Ordinance has been used to suppress or block the information. This is not to say that the Ordinance is perfect; its deficiencies and shortcomings are well recognized.</p> <p><b><u>Recommendations</u></b></p> <ol style="list-style-type: none"> <li>1. The Statement of Objects and Reasons should not give a factually incorrect statement that the law has served as suppressor and blocker of information. Instead, it should refer to the well recognized deficiencies and shortcomings of the Ordinance as a reason for enacting the FOI Bill 2008.</li> </ol>

	1999, and in exercise of all powers enabling him in that behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance: -		blocker of the information and has thus failed to achieve its declared objectives. <b>Therefore</b> , with a view to opening up ‘so-called’ secrets to the general public, the elected government intends to substitute the black and anti-information “Freedom of Information Ordinance 2002 (XCVI of 2002)”, by a more democratic and people friendly Act of Parliament, “Freedom of Information Act 2008” to ensure comfort and convenience for the people, openness and transparency in public offices and accountability of the public sector organizations. <b>MINISTER IN CHARGE</b>	2. It is customary that ‘The Statement of Objects’ is given at page 1, whereas it has been given at page 9 on the draft Bill 2008. Therefore, it should be covered on page 1 instead of page 9.
<b>1. Short title, extent and commencement.</b>	(1) This Ordinance may be called the Freedom of Information Ordinance, 2002. (2) It extends to the whole of Pakistan. (3) It shall come into force at once	1. This Act shall be called the Freedom of Information Act, 2004. 2. It shall apply to the whole of Pakistan. 3. It shall come into force forthwith.	1. This Act shall be called the Freedom of Information Act, 2008; 2. It shall extend to the whole of Pakistan; 3. It shall come into force at once.	Note: Some sections/ sub-sections have been shifted in front of their corresponding text of 3 versions of FOI laws, for ease of comparison.
<b>2. Definitions</b>	In this Ordinance, unless there is anything repugnant in the subject or context, -  (a) "complainant" means (i) a requester, or (ii) any person acting for and on behalf of requester;	In this Act, unless there is anything repugnant in the subject or Context  (a) .complainant. means (i) a requester, or (ii) any person acting for and on behalf of a requester;	In this Act, unless there is anything repugnant in the subject or context.  a. "complainant" means a requester or any person acting for and on behalf of a requester.	Section 2(a): The term “complainant” has been defined as “a requester or any person acting for and on behalf of a requester.” This definition is restrictive, as it tends to exclude legal entities and voluntary associations to act on behalf of the requester. A designated official is likely to interpret this definition in its narrow sense to apply only to the

	<p>(b) "complaint" means any allegation in writing made by a complainant,</p> <p>(i) where he is requester, that access to record has been wrongfully denied to him by a public body;</p> <p>(ii) Where he is a requester, that access to and/or correction of his personal information has been wrongfully denied to him by a public body having the custody or control of the record;</p> <p>(iii) Where he is requester that the information requested by him has been unduly delayed by a public body;</p> <p>(c) "designated official" means an official of a public body designated under section 10;</p> <p>(d) "employee" in relation to a public body, means person employed in a public body</p>	<p>(b) .complaint. means any grievance registered in writing by a complainant to the effect that</p> <p>(i) access to record has been wrongfully denied to a requester, or that</p> <p>(ii) access to and/or correction of information relating to him has been wrongfully denied to a requester by a public body having custody or control of the record; or that</p> <p>(iii) the information sought by a requester has been unduly delayed by a public body.</p> <p>(c) .designated official. means an official of a public body designated to provide information sought by a requester;</p> <p>(d) .prescribed. means prescribed by rules made under this Act;</p>	<p>b. "complaint" means any grievance registered in writing by a complainant to the effect that:</p> <p>i. access to record has been wrongfully denied to a requester or;</p> <p>ii access to the requisite documents, information or record has been wrongfully denied to a requester by a public body having custody or control of the record; or</p> <p>iii the information sought by a requester has been unduly delayed by a public body.</p> <p>c. "designated official "means an official of a public body designated to provide information sought by a requester.</p> <p>d. "information means the public documents and records required by the requester under this act, but dose not include the records exempted under section 8 of this Act or disclosure of which may infringe upon the right of</p>	<p>individuals, and thus create problems in establishing the <i>locus standi</i> of research institutions, associations, non-governmental organizations, etc in access to public records.</p> <p><b><u>Recommendations</u></b></p> <p>i. After the word "person", "a legal entity and voluntary association" should be added.</p> <p>ii. The grounds on which a complaint may be made should also include (1) refusal of the designated official to receive and process information requests, and (2) furnishing of false or incomplete information.</p> <p>Section 2(b)The term "complaint" was defined more clearly in the 2004 FOI Bill, as it entitled the requester to complain where "access to and/ or correction of information relating to him has been wrongfully denied to a requester by a public body having custody or control of the record" [Section 2 (b) ii of FOI Bill 2004]. Thus, it explicitly covered the right to complain against wrongful denial to personal information. This clause has been replaced in the FOI Bill 2008 with the following: "access to the requisite documents, information or record has been wrongfully denied to a requester by a public body having custody or control of the record". This substitution does not expressly mention the right of complaint where access to personal information has been denied. The purpose that this clause serves is already covered in Section 2 (b) i, and as such there is duplication.</p> <p><b><u>Recommendation</u></b></p> <p>Section 2 (b) ii of the FOI Bill 2008 should be replaced with Section 2 (b) ii of FOI Bill 2004 to explicitly guarantee the right to file a complaint where access to personal information has been wrongfully denied.</p> <p>Section 2 (d) Definition of the term "information" has been added in the FOI Bill 2008; this term was not defined in FOI Bill 2004. The Bill, however, is not clear, as it uses the terms "records" and "information" interchangeably, and therefore, creates confusion. For instance, it suggests that requested records are 'information' except where the records</p>
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	<p>whether permanently or temporary;  (e) "Federal Tax Ombudsman" means Federal Tax Ombudsman appointed under section 3 of the Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000 (XXXV of 2000);</p> <p>(f) "Mohtasib" means the Wafaqi Mohtasib (Ombudsman) appointed under Article 3 of the Establishment of the office of the Wafaqi Mohtasib (Ombudsman) Order, 1983 (P.O. No. 1 of 1983);  (g) "prescribed" means prescribed by rules made under this Ordinance;</p> <p>( Sub-paragraph (h), Public Body, shifted below for comparison)</p> <p>(i) "record" means record in any form, whether printed or in writing and includes any map, diagram, photography, film, microfilm, which is used for official purpose by the public body.</p>	<p>(e) .principal officer. means:  (i) in the case of federal or provincial ministries/departments the Secretary of the Ministry, division or department and  (ii) in all other cases, the head or chief executive of the public body by whatever designation he is identified;</p> <p>(f) .public record. means record mentioned in Sec 7 in any form, whether printed or in writing or in any form such as map, diagram, photograph, film, video, microfilm;  (i) transactions involving acquisition</p>	<p>privacy of any individual;</p> <p>e. "Mohtasib" means the Wafaqi Mohtasib (Ombudsman), appointed under P.O No.1 of 1983  "prescribed" means prescribed by rules made under this Act;</p> <p>"national security " means and includes the matters pertaining to the integrity, security or defence of Pakistan or any part thereof.</p> <p>"Principal Officer" means:</p> <p>i in the case of Federal or Provincial Ministries/Departments the Secretary of the Ministry, Division or Department; and  ii in all other cases , the head or chief executive of the public body by whatever designation he may be identified;</p> <p>"Public record" means:  (i) record mentioned in section 7 , in any form , whether printed or in writing or in any from such as map , diagram , photograph , film video , microfilm;</p>	<p>are exempt. Thus, it tends to exempt the non-exempt information which is contained within an exempt record.</p> <p><b><u>Recommendations</u></b>  i. The right of access and exemptions should both be defined in terms of "information", and not records; OR  ii. If the Bill defines the right of access in terms of records, as it does in its present form, then clause 2(d) should clearly state that where records contain both exempt and non-exempt information, the non-exempt information must be disclosed.</p> <p>Section 2(e).The term "Mohtasib" is defined as the Federal Ombudsman. It means that complaints under this law could be filed to the Federal Ombudsman or Federal Tax Ombudsman, after failing to get a satisfactory response on complaint filed with head of the public body.</p> <p><b><u>Recommendation</u></b>  The Bill ignores the limitations on powers of the Federal Ombudsman. This issue has been dealt at length in Section 19, below.</p> <p>Section 2 (i) The term "public record" has been dealt at length. There are some clauses that tend to restrict the definition, and therefore, need to be modified.  Clause i (i) It enumerates forms of public records that can be accessed. Although it mentions any form of public record, but enumerates six forms map, diagram, photograph, film, video, and microfilm. A narrow interpretation of this</p>
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		<p>and disposal of property and expenditure undertaken by a public body;</p> <p>(ii) information regarding grant of licences, approvals, consents, allotments and other benefits and privileges, and contracts made, by a public body;</p> <p>(iii) information relating to appointments, promotions, disciplinary actions etc. of personnel employed by a public body;</p> <p>(iv) correspondence, summaries and notes relating to any of the above matters;</p> <p>(v) 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;</p> <p>(vi) 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 the following:</p> <p>(i) all internal working documents of a public body, including proposals for Cabinet decisions, proposals relating to management of the national economy, and other affairs of the Government, till such time that a final decision has been taken and implemented by the public body.</p> <p><b>(Explanation:</b> After a final decision has been taken and implemented in respect</p>	<p>(ii) transactions involving acquisition and disposal of property and expenditure undertaken by a public body;</p> <p>(iii) information regarding grant of licences, approvals, consents, allotments and other benefits and privileges, and contracts made, by a public body;</p> <p>(iv) correspondence, summaries and notes relating to any of the above matters;</p> <p>(v) any information required to be furnished by a person to a public body under any law or furnished for the purpose of receiving <i>my</i> benefit or advantage;</p> <p>(vi) 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 the following:</p> <p>(a) all internal working documents of a public body, including proposals for Cabinet decisions, proposals</p>	<p>clause may exclude some other forums such as audio cassettes and electronic information.</p> <p><b><u>Recommendations</u></b></p> <p>i. ‘Electronic information’ should explicitly be added in the types of records mentioned in this clause.</p> <p>ii. Therefore, the word “etc.” should be added at the end of the clause.</p> <p>Section 2 (i) The public bodies have a lot of discretion to judge whether or not certain document is a public record. Although the Bill provides that reasons shall be given for exclusion of certain record (refer to Section 8 (1) of FOI Bill 2008), but it is silent on whether these reasons shall be available for public scrutiny. As a result, a designated official might record any reasons and declare that the record has been classified.</p> <p><b><u>Recommendation</u></b></p> <p>The definition of ‘public record’ should also include: (1) the reasons for exclusion and classification of a certain record, (2) the guidelines for government officials to classify a document titled as “Security of Classified Matter in Government Departments”.</p> <p>Section 2e i (v) This clause has a typographical mistake.</p> <p><b><u>Recommendation</u></b></p> <p>The word “my” before the words “benefit or advantage” should be replaced with “any”.</p> <p>Section i (vi) This clause excludes “ all internal working documents of a public body, including proposals for Cabinet decisions, proposals relating to management of the national economy, and other affairs of the Government, till such time that a final decision has been taken and implemented by the public body”</p> <p>This clause highly restricts the definition of public records. By implication, it means that information related to any matter on which the final decision has not yet been made can be withheld. Thus, access to proposals that might have</p>
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		<p>of any of the matters referred to in this clause, all documents, including summaries and proposals shall be deemed to constitute public record. available for access under this Act);</p> <p>(i) matters relating to law enforcement and public safety, including:</p> <p>(a) investigative reports undertaken by agencies for the prevention and detection of crime, and for the collection and assessment of taxes, including any information obtained or received in the course of any investigation;</p> <p>(b) any information about the existence or non-existence or identity of a confidential source of information in relation to the enforcement of any law;</p> <p>(c) 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</p>	<p>relating to management of the national economy, and other affairs of the Government, till such time that a final decision has been taken and implemented by the public body.</p> <p><i>(Explanation: After a final decision has been taken and implemented in respect of any of the matters referred to in this clause, all documents, including summaries and proposals shall be deemed to constitute public record, available for access under this Act);</i></p> <p>(b) matters relating to law enforcement and public safety, including: investigative reports undertaken by agencies for the prevention and detection of crime, and for the collection and assessment of taxes, including any information obtained or received in the course of any investigation;</p> <p>(i) any information about the existence or non-existence or identity of a confidential source of information in relation to the enforcement of any law;</p> <p>(ii) any information the disclosure whereof would</p>	<p>immediate and vital effects on the public can be denied. For instance, if there is a proposal to increase the power tariff by 20 percent, a government official can easily turn down the request for access to this proposal. As a result, public participation and informed policy debate would be precluded on important matters at the proposal stage.</p> <p>This clause ties the disclosure of internal working documents to two conditions: (1) final decision has been taken, AND (2) the decision has been implemented. The second reason makes no sense, as it might take years to implement a decision. One must have the right to ask about the progress in implementation of a decision even at the initial stage. If “implementation” is a condition for disclosure, then one cannot access much information about public sector development program (PSDP) under this law.</p> <p><b><u>Recommendation</u></b></p> <p>This clause should be deleted. International working documents and final decisions should be open to public access without any condition of implementation.</p> <p>(b)(i) It exempts the information related to “investigative reports undertaken by agencies for the prevention and detection of crime, and for the collection and assessment of taxes, including any information obtained or received in the course of any investigation”.</p> <p><b><u>Recommendation</u></b></p> <p>The phrase “and for the collection and assessment of taxes” is out-of-context and should be deleted.</p>
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	<p>(h) "public body" means,-</p> <p>(i) any Ministry, Division or attached department of the Federal Government;</p> <p>(ii) Secretariat of Majlis-e-Shoora (Parliament);</p> <p>(iii) Any office of any Board Commission, Council, or other body established by or under, a Federal law;</p> <p>(iv) Courts and tribunals; ody which holds the record;</p>	<p>any court or tribunal;</p> <p>(iii) any information relating to scientific or technical research the disclosure whereof would, or could reasonably be expected to, expose a public body to disadvantage;</p> <p>(iv) any information the disclosure whereof would violate any intellectual property rights;</p> <p>(v) any information the disclosure whereof is recognized to be detrimental to public interest;</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>(g).public body. means:</p> <p>(i) any ministry, division, department, or attached department of the federal or the provincial government;</p> <p>(ii) any federal or provincial legislature, and any municipal or local authority set up or established by or under any law;</p> <p>(iii) any statutory corporation or other body corporate or institution set up or established or owned or controlled or funded by the federal or a provincial government;</p> <p>(iv) any incorporated or unincorporated body or legal entity functioning under the control or authority of the federal or a provincial government or wherein</p>	<p>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 of tribunal;</p> <p>(c) any information relating to scientific or technical research the disclosure whereof would, or could reasonably be expected to, expose the concerned organization or project to disadvantage;</p> <p>(d) any information the disclosure whereof would violate any intellectual property rights;</p> <p>(e) any information the disclosure whereof is recognized to be detrimental to public interest;</p> <p>(f) any information regarding defence planning, deployment of forces, defence Installations, and matters that can legitimately be related to national security.</p> <p>j. "public body" means:</p> <p>i. any Ministry, Division, Department, or attached Department of the Federal or the Provincial Government;</p> <p>ii. any Federal or Provincial legislature, and any Municipal or Local authority set up or established by or under any law;</p> <p>iii. any statutory corporation or other body corporate or institution set up or established or owned or controlled or funded by the Federal or a Provincial Government;</p>	<p>Section 2 (j) The term "public body" has been elaborated to cover federal, provincial as well as local government entities, statutory corporations, courts, tribunals, commissions, etc. The Bill does not apply to the private sector entities even those involved in delivery of public services such as health, education, insurance, banks, etc. A citizen must have the right to access information about the public services being provided by a private company. For example, a person who has contracted a disease due to poor quality of bottled water for which he paid high price, he must have the right to ask about the arrangements made by the company to comply with safety standards, or to ask about the laboratory test results of the brand undertaken by the company.</p> <p>Another example is that a bank customer is not entitled</p>
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		<p>one or more of such governments owns or has controlling interests, or which is funded by any such government;</p> <p>(v) any court, tribunal, commission or board.</p>	<p>iv. any incorporated or unincorporated body or legal entity functioning under the control or authority of the Federal or a Provincial Government or wherein one or more of such Government owns or has controlling interests, or which is funded by any such government;</p> <p>v. any court, tribunal, commission or board.</p>	<p>under the rules of State Bank of Pakistan to access his/her Credit Worthiness Report, but other banks and financial institutions can. This means that personal information of a customer is accessible to a third party, but not to the individual itself. Such practices infringe upon the right of individuals to access information.</p> <p><b><u>Recommendations</u></b></p> <p>i. The law should be applicable to those private sector companies that are involved in delivery of public services and where larger public interest is involved. Initially, the private sector entities providing financial services, health and education should be brought directly under the ambit of FOI law.</p> <p>ii. Given that extension of the law to private sector involves commercial interests, the government should consider enacting a comprehensive FOI law for private sector exclusively.</p> <p><b>Terms not Defined</b></p> <p>The Bill does not define the term “requester”. It does not describe who can submit an information request for access to records; only citizens of Pakistan or any individual or any legal entity? In Section 12, however, it lays down that “any citizen of Pakistan” may make an application ..... This provision is restrictive, and does not recognize the right to access information as a fundamental human right.</p> <p><b><u>Recommendation</u></b></p> <p>The Bill should clearly state that any person or legal entity can make an application for information.</p>
<p><b>3. Access to information not to be denied</b></p>	<p>(1) Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Ordinance, no requester shall be denied access to any official record other than exemptions as provided in</p>	<p>(i) Notwithstanding anything contained in any other law for the time being in force, and subject to this Act, no requester shall be denied access to any public record other than exemptions mentioned in this Act.</p> <p>(ii) This Act shall be interpreted so as</p>	<p>(i) Notwithstanding anything contained in any other law for the time being in force, and subject to this Act, no requester shall be denied access to any public record other than exemptions mentioned</p>	



	<p>section 15. (2) This Ordinance shall be interpreted so as (i) to advance the purposes of this Ordinance, and (ii) to facilitate and encourage, promptly and at the lowest reasonable cost, the disclosure of information.</p>	<p>(i) to promote the right to freedom of information, and (ii) to facilitate and encourage, promptly and at the lowest reasonable cost, the disclosure of information.</p>	<p>in this Act.  (ii) This Act shall be interpreted so as;  i. to promote the right to know, and ii. to facilitate and encourage, promptly and at the lowest reasonable cost, the disclosure of information.</p>	
<p><b>4. Maintenance and indexing of records</b></p>	<p>Subject to provisions of this Ordinance and in accordance with the rules that may be prescribed, each public body shall ensure that all records covered under clause (i) of section 2 of this Ordinance are properly maintained.</p>	<p>Subject to provisions of this Act and in accordance with the rules that may be prescribed, principal officer of each public body shall ensure that all records covered under clause (g) of section 2 of this Act are properly maintained.</p>	<p>Subject to provisions of this Act and in accordance with the rules that may be prescribed, Principal Officer of each public body shall ensure that all records covered under clause (g) of section 2 of this Act are properly maintained.</p>	<p><b>Section 4 Maintenance and Indexing of Records</b> The Bill provides for maintenance and indexing of records in the title of Section 4, but in the description, it does not oblige the public bodies to do indexing. <b>Recommendations</b> i. The word “and indexed” should be added at the end of the article. ii. The Section should mandate the public bodies, at least to the federal and provincial public bodies and district governments, to make their index available on websites and ensure availability of resources for maintenance and indexing within 3 years of the enforcement of the law. iii. The Bill should explicitly require the public bodies to develop an action plan for maintenance, indexing and computerization of records within one year of the law coming into force.</p>
<p><b>5. Publication and availability of records</b></p>	<p>The acts and subordinate legislation such as rules and regulations, notifications, by-laws, manuals, orders having the force of law in Pakistan shall be duly published and made available to a reasonable price at</p>	<p>1](i) The acts and subordinate legislation such as rules and regulations, notifications, by-laws, manuals, orders having the force of law in Pakistan as well as reports of legislative and municipal proceedings and boards and commissions shall be duly published</p>	<p>(i) The Acts and subordinate legislation such as rules and regulations, notifications, by-laws, manuals, orders having the force of law in Pakistan as well as reports of legislative and municipal proceedings and boards and Commissions shall be duly published and made</p>	<p><b>Section 5 Publication and Availability of Records</b> The Section specifies the public records that shall be proactively disclosed and made available for public access. This list does not mention the Year Books/Annual Reports to be published by each division under Section 25 (2) of the Rules of Business of Government of Pakistan. Similarly, provincial departments and some local government bodies</p>

	<p>an adequate number of outlets so that access thereof is easier, less time-consuming and less expensive.</p>	<p>and made available at a reasonable price at an adequate number of outlets so that access thereof is easier, less timeconsuming and less expensive.</p> <p>(ii) The principal officer of each public body shall within six months of the commencement of this Act cause to be published in the Official Gazette or special publications and shall immediately make available for inspection and copying, during office hours at each of its offices and branches, the following information:</p> <p>(a) description of the public body.s organisation and functions, indicating as far as possible the duties and functions of various officers of the body empowered to take decisions;</p> <p>(b) statutes, statutory rules, regulations, orders, notifications applicable to the public body disclosing the date of their respective coming into force or effect;</p> <p>(c) substantive or procedural rules and regulations of general application evolved or adopted by the public body;</p> <p>(d) statement of policies adopted by the public body and the criteria, standards or guidelines upon which discretionary powers are exercised by it;</p> <p>(e) the conditions upon which members of the public can acquire any licences, permits, consents, approvals, grants, allotments or other benefits of whatsoever nature from any public body, or upon</p>	<p>available at a reasonable price at an adequate number of outlets so that access thereof is easier, less time- consuming and less expensive.</p> <p>(ii) The Principal Officer of each public body shall, within six months of the commencement of this Act, cause to be published in the Official Gazette or special publications and shall immediately make available for inspection and copying, during office hours at each of its offices and branches, the following information:</p> <p>(a) description of the public body’s organization and functions, indicating as far as possible the duties and functions of various officers of the body empowered to take decisions;</p> <p>(b) statutes, statutory rules, regulations, orders, notifications applicable to the public body disclosing the date of their respective coming into force or effect;</p> <p>(c) substantive or procedural rules and regulations of general application evolved or adopted by the public body;</p> <p>(d) statement of policies adopted by the public body and the criteria, standard or guidelines upon which discretionary powers are exercised by it;</p> <p>(e) the conditions upon which members of the public can acquire any licenses,</p>	<p>are also obliged to develop performance reports on annual basis under the law. Most of the public bodies, however, do not publish these reports.</p> <p><b><u>Recommendation</u></b></p> <p>This Section should also include Year Books/Annual Reports in the list of documents to be published and made available for public access.</p>
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		<p>which transactions, and contracts (including contracts of employment) can be entered into with the public body;</p> <p>(f) the methods whereby specific information in possession or control of the public body may be obtained, and the basis of the fee required therefore;</p> <p>(g) such other matters which the principal officer of the public body deems fit to be published in the public interest; Provided that no information otherwise already published in the Official Gazette shall be required to be so published under this sub-section.</p> <p>(2) any amendment, alteration or modification relating to matters described in sub-section (1) shall also be published and made available for inspection and copying in the like manner, and no person shall be adversely affected by any amendment, modification or alteration of any matter other than a statute.</p>	<p>permits, consents, approvals, grant, allotments or other benefits of whatsoever nature from any public body, or upon which transactions, and contracts including contracts of employment, can be entered into with the public body:</p> <p>(f) the methods whereby specific information in possession or control of the public body may be obtained, and the basis of the fee required therefore;</p> <p>(g) such other matters which the principal officer of the public body deems fit to be published in the public interest;</p> <p>Provided that no information otherwise already published in the Official Gazette shall be required to be so published under this sub-section.</p> <p>(2) any amendment, alteration or modification relating to matters described in sub-section (i) shall also be published and made available for inspection and copying in the like manner, and no person shall be adversely affected by any amendment, modification or alteration of any matter other than a statute.</p>	
<p><b>6. Computerization of records</b></p>	<p>Each public body shall endeavour within reasonable time and subject to availability of resources that all records covered by the provisions of this Ordinance are computerized and connected through a network all over the</p>	<p>1] Each public body shall endeavour within reasonable time and subject to availability of resources that all records covered by the provisions of this Act are computerized and connected through a</p>	<p>(1) Each public body shall endeavor within reasonable time and subject to availability of resources that all records covered by the provisions of this Act are computerized and connected through a network all over the country on different systems so that authorized access to such</p>	

	country on different systems so that authorised access to such records is facilitated.	network all over the country on different systems so that authorised access to such records is facilitated. (2) The Federal Government shall maintain a FOI website listing updated rules, application forms as well as the names and addresses of the designated officials.	records is facilitated.  (2) The Federal Government shall maintain a website listing updated rules, application forms as well as the names and addresses of the designated officials.	
<b>7. Declaration of public records.</b>	Subject to the provisions of section 8, the following record of all public bodies are hereby declared to be the public record, namely: - (a) policies and guidelines; (b) transactions involving acquisition and disposal of properly and expenditure undertaken by a public body in the performance of its duties; (c) information regarding grant of licences, allotments and other benefits and privileges and contracts and agreements made by public body; (d) final orders and decisions, including decisions relation 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.	Subject to the provisions of section 8, all record of public bodies mentioned in this Act is hereby declared to be the public record. 2].-Notwithstanding anything contained in any law for the time being in force, all documents will become public record after 20 years of their initiation.	(1) Subject to the provisions of section 8, all record of public bodies mentioned in this Act is hereby declared to be the public record.  (2) Notwithstanding anything contained in any law for the time being in force, all documents will become public record after 20 years of their initiation.	
<b>8. Exclusion of certain record</b>	<b>8. Exclusion of certain record.</b> - Nothing contained in section 7 shall apply to the following record of all public bodies, namely: -	<b>8. Exclusion of certain record.</b> - All exclusion and classification must be accompanied by a record of reasons for such exclusion. Nothing contained in this Act shall apply to the following record of public bodies, namely:	<b>8. Exclusion of certain record.</b> (1) All exclusion and classification must be accompanied by a record of reasons for such exclusion.  (2) Nothing contained in this Act shall apply to the following record of	For comments pertaining to ‘Exclusion of certain record’, please see comments made against Sections 14-18.

	<p>(a) noting on the files;</p> <p>(b) minutes of meetings;</p> <p>(c) any intermediary opinion or recommendation;</p> <p>(d) record of the banking companies and financial institutions relating to the accounts of their customers;</p> <p>(e) record relating to defence forces, defence installations or connected therewith or ancillary to defence and national security;</p> <p>(f) record declared as classified by the Federal Government;</p> <p>(g) record relating to the personal privacy of any individual;</p> <p>(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</p> <p>(i) any other record which the Federal Government may, in public interest exclude from the purview of this Ordinance.</p>	<p>a] record of the banking companies and financial institutions relating to the accounts of their customers;</p> <p>b] record relating to deployment of defence forces, defence installations or connected therewith or ancillary to national security will apply only when its threat to national security can be demonstrated;</p> <p>c]) record relating to the personal privacy of any individual; and</p> <p>(d] 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.</p> <p><b>9. Duty to assist requesters.</b> - A public body shall take necessary steps as may be prescribed to assist any requester under this Act.</p> <p><b>10. Designation of official.</b> - (1) A public body shall designate and notify an officer on its staff to whom requests under this Act are to be made. These officials will be designated to ensure easy public access to information.</p> <p>(2) In case no such official has been designated or in the event of the absence or non-availability of the designated official, the principal officer of the public body shall be the designated official</p>	<p>public bodies, namely:</p> <p>a. .record of the banking companies and financial institutions relating to the accounts of their customers;</p> <p>b. record relating to deployment of defence forces, defence installations or connected therewith or ancillary to national security will apply only when its threat to national security can be demonstrated;</p> <p>c. record relating to the personal privacy of any individual; and</p> <p>d. 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.</p>	
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<p><b>9. Duty to assist requesters.</b></p>	<p>A public body shall take necessary steps as may be prescribed to assist any requester under this Ordinance.</p>	<p>A public body shall take necessary steps as may be prescribed to assist any requester under this Act.</p>	<p>A public body shall take necessary steps as may be prescribed to assist any requester under this Act.</p>	<p><b>Section 9 Duty to Assist Requesters</b>  This Section requires a public body to “take necessary steps as <u>may be</u> prescribed to assist any requester under this Act”. Thus, the government may or may not prescribe any steps; there is no binding force.</p> <p><b><u>Recommendations</u></b>  i. The words <u>may be</u> should be replaced with <u>shall be</u>. Or,  ii. The Bill should create a general duty to take reasonable steps to assist the requesters. A public body should have the obligation to assist whether any steps are prescribed or not.</p>
<p><b>10. Designation of official.</b></p>	<p>(1) A public body shall designate and notify an officer or employee to whom requests under this Ordinance are to be made. These officials will be designated to ensure easy public access to information.  (2) In case no such official has been designated or in the event of the absence or non-availability of the designated official, the person incharge of the public body shall be the designated official.</p>	<p>(1) A public body shall designate and notify an officer on its staff to whom requests under this Act are to be made. These officials will be designated to ensure easy public access to information.  (2) In case no such official has been designated or in the event of the absence or non-availability of the designated official, the principal officer of the public body shall be the designated official</p>	<p>(1) A public body shall designate and notify an officer on its staff to whom requests under this Act are to be made. These officials will be designated to ensure easy public access to information.  (2) In case no such official has been designated or in the event of the absence or non-availability of the designated official, the Principal Officer of the public body shall be the designated official.</p>	
<p><b>11. Functions of designated official.</b></p>	<p>Subject to the provisions of this Ordinance and the rules made thereunder and the instructions if any, of the Federal Government, the designated official shall provide the information contained in any public record or, as the case may be, a copy of any such record.</p>	<p>Subject to the provisions of this Act and the rules made thereunder, the designated official shall provide the information contained in any public record or, as the case may be, a copy of any such record.</p>	<p>Subject to the provisions of this Act and the rules made thereunder, the designated official shall provide the information contained in any public record or, as the case may be, a copy of any such record.</p>	<p><b>Section 11 Functions of designated official</b>  This Section obliges the designated official to provide the information contained in any public record, or a copy of such record.</p> <p><b><u>Recommendations</u></b>  The law is silent on a situation where the requisite information does not belong to the public body where the request has been made. It should be the duty of the designated official to (1) re-route the information request to</p>

				the concerned department, and (2) intimate the requester that the information does not belong to the department, and therefore, has been transferred to the concerned department.
<b>12. Applications for obtaining information, etc.-</b>	(1) 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. (2) Nothing contained in sub-section (1) shall apply to such public record as has been published in the Official Gazette or in the form of a book offered for sale.	(1) 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. (2) Nothing contained in sub-section (1) shall apply to such public record as has been published in the Official Gazette or in the form of a book offered for sale.	1) 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.  (2) Nothing contained in sub-section (1) shall apply to such public record as has been published in the Official Gazette or in the form of a book offered for sale or placed on website for general public consumption.	<b>Section 12 Application for Obtaining Information, etc.</b> The Bill does not propose any improvement in the application procedure. There are two main issues in the Freedom of Information Rules, 2004: (1) The procedure for deposit of prescribed fee is complex and troublesome, (2) Photocopying charges of Rs.5 per page are too high as compared to the market rates. The proposed Bill does not address these issues. <b>Recommendations</b> i. The Bill should provide for multiple and convenient options for submission of application forms. The Bill should clearly mention that (1) applications submitted electronically shall be acceptable, and (2) applications submitted through fax shall be acceptable.  ii. In the first five years, information should be provided free of cost in order to encourage the people to use the law. After this period, reasonable charges for reproduction of public records may be levied, but in no case, these should exceed the market rates.  iii. Compensation should be provided to the applicant if he/she suffers from demonstrable loss or harm as a result of wrongful denial or unnecessary delay in provision of information.  iv The Bill does not adequately protect the information belonging to third parties. It should require the designated officials to invite objections from third parties when a request for such information is received.
<b>13. Procedure for disposal</b>	(1) Subject to sub-section (2), on receiving an application under section 12, the designated official	(1) Subject to sub-section (2), on receiving an application under section 12, the designated official shall, within	(1) Subject to sub-section (2), on receiving an application under section 12, the designated official shall, not later than	

<p><b>of applications.</b></p>	<p>shall, within twenty-one days of the receipt of request, supply to the applicant the required information or, as the case may be a copy of any public record.</p> <p>(2) In case the designated official is of the opinion that -</p> <p>(a) the application is not in the form as has been prescribed;</p> <p>(b) the applicant has not furnished necessary particulars or has not paid such fee as has been prescribed;</p> <p>(c) the applicant is not entitled to receive such information;</p> <p>(d) the required information or, as the case may be, the required record does not constitute a public record under section 7;</p> <p>(e) the required information or, as the case may be, the required record constitutes a record which is excluded under section 8, he shall record his decision in writing and the applicant shall be informed about such decision within twenty-one days of the receipt of the application.</p> <p>(3) The information from, or the copy of, any public record supplied to the applicant under sub-section (1), shall contain a certificate at the foot thereof that the information is correct or, as the case may be, the copy is a true copy of such public record, and such certificate shall be dated and signed by the designated official.</p>	<p>fourteen days of the receipt of request, supply to the applicant the required information or, as the case may be a copy of any public record.</p> <p>(2) In case the designated official, on the authority of the Principal officer, is of the opinion that -</p> <p>(a) the applicant has not furnished necessary particulars or has not paid such fee as has been prescribed;</p> <p>(b) the required information or, as the case may be, the required record does not constitute a public record;</p> <p>(c) the required information or, as the case may be, the required record constitutes a record which is excluded under section 8, he shall record his decision in writing and the applicant shall be informed about such decision within fourteen days of the receipt of the application.</p> <p>(3) The information from, or the copy of, any public record supplied to the applicant under sub-section (1), shall contain a certificate at the foot thereof that the information is correct or, as the case may be, the copy is a true copy of such public record, and such certificate shall be dated and signed by the designated official.</p>	<p>fourteen days of the receipt of request, supply to the applicant the required information or, as the case may be a copy of any public record.</p> <p>(2) In case the designated official, on the authority of the Principal Officer, is of the opinion that-</p> <p>a. The applicant has not furnished necessary particulars or has not paid such fee as has been prescribed;</p> <p>b. the required information or as the case may be, the required record does not constitute a public record;</p> <p>c. the required information or, as the case may be, the required record constitutes a record which is excluded under section 8, he shall record his decision in writing and the applicant shall be informed about such decision within fourteen days of the receipt of the application.</p> <p>(3) The information, or the copy of any public record supplied to the applicant under sub-section (1) shall contain a certificate at the foot thereof that the information is correct or, as the case may be, the copy is a true copy of such public record, and such certificate shall be dated and signed by the designated official.</p>	
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<p><b>14. Exempt information from disclosure.</b></p>	<p>Subject to the provisions of this Ordinance, a public body shall not be required to disclose exempt information.</p>	<p>Subject to the provisions of this Act, a public body shall not be required to disclose exempt information.</p>	<p>Subject to the provisions of this Act, a public body shall not be required to disclose exempt information.</p>	
<p><b>15. International relations.</b></p>	<p>(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 relation. (2) In this Section, "international relations" means relation between Pakistan and (a) the government of any other foreign State; or (b) an organization of which only States are members.</p>	<p>(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, but not without explaining why. (2) In this Section, "international relations" means relation between Pakistan and (a) the government of any other foreign State; or (b) an organization of which only States are members.</p>	<p>(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, but not without explaining why. (2) In this section, "international relations" means relation between Pakistan and (a) the government of any other foreign State; or (b) an organization of which only States are members.</p>	<p><b>Sections 14-18, 8, 2 (i) (vi) Exclusion and Exemption of Certain Records</b></p>
<p><b>16. Disclosure harmful to law enforcement .</b></p>	<p>- Information may be exempt if its disclosure is likely to (a) result in the commission of an offence; (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 communication system.</p>	<p>Information may be exempt if its disclosure is likely to (a) result in the commission of an offence; (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 communication system.</p>	<p>Information may be exempt if its disclosure is likely to: (a) result in the commission of an offence; (b) harm the detection, prevention, investigation 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 communication system.</p>	<p>The exclusions and exemptions have been described in different places and do not give a clear picture. An ordinary reader finds it difficult to differentiate between exclusions and exemptions.</p> <p><b>Recommendations</b></p> <p>i. There should be a single list of exclusions and exemptions in the law. An ordinary reader should be able to easily identify:</p> <p>a. the records and information that cannot be accessed, as these are already excluded from the definition of public record under this law;</p> <p>b. the records and information that are not excluded from the definition of public record under this law, but it is the prerogative of the public body to judge whether</p>

<p><b>17. Privacy and personal information.</b></p>	<p>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 requester.</p>	<p>Information is exempt if its disclosure under this Act would involve the invasion of the privacy of an identifiable individual (including a deceased individual) other than the requester.</p>	<p>Information is exempt if its disclosure under this Act would involve the invasion of the privacy of an identifiable individual (including a deceased individual) other than the requester.</p>	<p>access should be provided or not</p> <p>c. the records and information that cannot be accessed now, but will be accessible after 20 years;</p> <p>d. the records and information that shall not be declared public record even after the passage of 20 years</p>
<p><b>18. Economic and commercial affairs</b></p>	<p>Information is exempt if and so long as its disclosure</p> <p>(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 of variation of any tax, duty, interest rate, exchange rate or any other instrument of economic management;</p> <p>(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</p> <p>(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.</p>	<p>Information is exempt if and so long as its disclosure</p> <p>(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 of variation of any tax, duty, interest rate, exchange rate or any other instrument of economic management;</p> <p>(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</p> <p>(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.</p>	<p>Information is exempt if and so long as its disclosure is likely to cause:</p> <p>(a) grave and significant damage to the economy as a result of the premature disclosure of the proposed introduction, abolition of variation of any tax, duty, interest rate, exchange rate or any other instrument of economic management;</p> <p>(b) significant damage to the financial interests of 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 of the supply of goods or services, or</p> <p>(c) significant damage to the lawful commercial activities of the public body.</p>	<p>ii. According to the universal principles of FOI, the overall presumption should be in favor of disclosure. Therefore, the Bill should clearly state in Section 5 that “all information shall be open for public access except those listed in Section [number of the Section should be given; all exemptions and exclusions should be put together in one article]</p> <p>iii. The Bill does not contain any public interest test to determine ‘public record’ where its disclosure ‘is recognized to be detrimental to the public interest’ (clause vi (f) of the definition of public record). Similarly, a test to determine the ‘legitimate interest’ of the public (vi of the definition of public record) has to be provided in the Bill; otherwise, the discretionary space available to public bodies to classify document is likely to be misused greatly thus defeating the whole objective of the law. A public interest test is always useful to determine whether the public interest in withholding the information outweighs the public interest in disclosure.</p> <p>iv. Harm test should be included in the case of all exemptions. Information should be exempt only if the harm likely to be caused by disclosure is greater than its benefits for the public. Particularly, harm test is needed for defense related information.</p>

<p><b>19. Recourse to the Mohtasib and Federal Tax Ombudsman .</b></p>	<p>(1) If the applicant is not provided the information or copy of the record declared public record under section 7 within the prescribed time or the designated official refuses to give such information or, as the case may be, copy of such record, on the ground that the applicant is not entitled to receive such information or copy of such record, the applicant may, within thirty days of the last date of the prescribed time for giving such information or, as the case may be, of such record, or the communication of the order of the designated official declining to give such information or copy of such record, file a complaint with the head of the public body and on failing to get the requested information from him within the prescribed time may file a complaint with the Mohtasib and in cases relating to Revenue Division, its subordinate departments, offices and agencies with the Federal Tax Ombudsman.</p> <p>(2) The Mohtasib or the Federal Tax Ombudsman, as the case may be, may, after hearing the applicant and the designated official, direct the designated official to give the information or, as the case may be, the copy of the record, or may reject the complaint.</p>	<p>(1) If the applicant is not provided the information or copy of the record declared public record under section 7 within the prescribed time or the designated official refuses to give such information or, as the case may be, copy of such record, on the ground that the applicant is not entitled to receive such information or copy of such record, or if a public record is wrongly declared classified or exempted, the applicant may, within thirty days of the last date of the prescribed time for giving such information or, as the case may be, of such record, or the communication of the order of the designated official declining to give such information or copy of such record, a complaint with the head of the public body and on failing to get the requested information from him within the prescribed time may file a complaint with the Mohtasib and in cases relating to Revenue Division, its subordinate departments, offices and agencies with the Federal Tax Ombudsman.</p> <p>(2) The Mohtasib or the Federal Tax Ombudsman, as the case may be, may, after hearing the applicant and the designated official, direct the designated official to give the information or, as the case may be, the copy of the record, or may reject the complaint. All such applications shall be disposed of within</p>	<p>(1) If the applicant is not provided the information or copy of the record declared public record under section 7, within the prescribed time or the designated official refuses to give such information or, as the case may be, copy of such record, on the ground that the applicant is not entitled to receive such information or copy of such record, or if a public record is wrongly declared classified or exempted, the applicant may, within thirty days of the last date of the prescribed time for giving such information or, as the case may be, of such record, or the communication of the order of the designated official declining to give such information or copy of such record, a complaint with the head of the public body and on failing to get the requested information from him within the prescribed time may file a complaint with the Mohtasib and in cases relating to Revenue Division, its subordinate departments, offices and agencies with the Federal Tax Ombudsman.</p> <p>(2) the Mohtasib or, as the case may be, the Federal Tax Ombudsman, may, after hearing the applicant and the designated officials, direct the designated official to give the information or, as the case may be, the copy of the record, or may reject the complaint. All such applications shall be disposed of within 14 days of being filed.</p> <p>(3) the complainant may challenge the Mohtasib or the Federal Tax Ombudsman's decision to classify or</p>	<p><b>Section 19. Recourse to the Mohtasib and Federal Tax Ombudsman and the Judiciary</b></p> <p>a. According to the Bill, complaints can be lodged to the Federal Ombudsman appointed under President's Order No. 1 of 1983, after failing to get a satisfactory response from head of the public body. The Bill appears to be ignorant of the jurisdiction of the Federal Ombudsman who can entertain complaints related to the federal public bodies only. As the 2008 FOI Bill covers the federal as well as the provincial and municipal public bodies, recourse to the Federal Ombudsman only is not a legal option. The Federal Ombudsman cannot process the complaints related to maladministration in provincial and local government departments.</p> <p><b><u>Recommendations</u></b></p> <p>i. The Bill should resolve the anomaly of powers of the Ombudsman to deal with complaints. This anomaly needs to be removed.</p> <p>ii. If recourse is provided to the office of Ombudsman, then Ombudsmen will need to be established at the district level as well, as provided in the Local Government Ordinance, 2001.</p> <p>The Ombudsman can only make recommendations and have not powers to get its recommendations enforced. The relevant laws should be amended to provide for binding orders of the Ombudsman as far as FOI is concerned.</p> <p>iii. Information Commissioners should be established as soon as possible. However, the Ombudsman should be given powers to entertain complaints as an interim arrangement till the establishment of Information Commissioners.</p> <p>b. It is not clear in the Bill whether the Mohtasib or</p>
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		<p>14 days of being filed.  (3) The complainant may challenge the Mohtasib or the Federal Tax Ombudsman’s decision to classify or exempt a record in the High Court of competent jurisdiction and in the event of an adverse decision appeal to the Supreme Court.</p>	<p>exempt a record in the High Court of competent jurisdiction and in the event of an adverse decision appeal to the Supreme Court.</p>	<p>judiciary can review the use of exemptions.  <b><u>Recommendation</u></b>  The Bill must clearly state that these legal forums shall have the power to review a public body’s decision to refuse a request on the grounds that the record is not a ‘public record’, or that the particular information is excluded from the definition of ‘public record’.</p> <p>c. The time for processing of information request might take longer than the stipulated time because the designated officer is authorized to turn down the application for even a minor omission in the particulars.  <b><u>Recommendation</u></b>  Time should be reduced for response in case the application form is incomplete. A designated official should scrutinize the application on receiving it and intimate the requester within one week if (1) the application is incomplete, and (2) the requested record is already excluded from the definition of public record and no internal deliberations are required to decide whether or not the record is public record. For this purpose, a standard proforma can be used to intimate the requester.</p> <p>d. The Bill does not specify a time for the Principal Officer or head of the body to respond to the complaint filed by a requester. Thus, head of the concerned public body may take even months to respond to the complaint.  <b><u>Recommendation</u></b>  The Bill should prescribe maximum 10 days for the response to the complaint by head of the public body concerned.</p> <p>e. Where the designated official is head of the public body because no other official has been designated, there would be a conflict of interest in case a complaint is made to the public body under this law. The official who turned down the request will have to deal with the complaint as well. It is against the principles of justice.</p>
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				<p><b><u>Recommendation</u></b> The Bill should clearly state that, where a requester wishes to file a complaint against head of the public body who is also the designated official, the complaint shall be directly made to the Ombudsman (or any other legal forum independent of the public body).</p>
<p><b>20. Dismissal of frivolous, vexatious and malicious complaint.</b></p>	<p>Where a complaint instituted is found to be malicious, frivolous or 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.</p>	<p>Where a complaint instituted is found to be malicious, frivolous or 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.</p>	<p>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.</p>	<p><b>Section 20 Dismissal of Frivolous, Vexatious and Malicious Complaints</b> This Section imposes fine on requesters if the request is found frivolous, vexatious and malicious. It is very easy to treat an information request as such. Therefore, imposition of fine is likely to intimidate the requesters not to file a complaint. <b><u>Recommendations</u></b> This Section should be deleted from the Bill, as dismissal of the complaint should be sufficient deterrence.</p>
<p><b>21. Offence.</b> -</p>	<p>Any person who destroys a record which at the time it was destroyed was the subject of a request, or of a complaint with the intention of preventing its disclosure under this Ordinance, commits an offence punishable with imprisonment for a term not exceeding two years, or with fine, or with both.</p>	<p>1] Any person who destroys a record which at the time it was destroyed was the subject of a request, or of 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. 2] The designated officer who, without reasonable excuse, fails or refuses to provide inspection or disclose records under Section 9, 10, 11, 12 and 13 of this Act shall be liable on summary conviction to a fine not exceeding Rs 25,000.</p>	<p>(1) Any person who destroys a record which at the time it was destroyed was the subject of a request, or of 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.  (2) The designated officer who without reasonable excuse, fails or refuses to provide inspection or disclose records under Section 9,10,11,12 and 13 of this Act shall be liable on summary conviction to a fine not exceeding twenty five thousand.</p>	

<p><b>22. Indemnity. -</b></p>	<p>No suit, prosecution or other legal proceedings shall lie against any person for anything which is done in good faith or intended to be done in pursuance of this Ordinance or any rules made there under.</p>	<p><b>22. Access not to Constitute Offence.</b> Notwithstanding anything contained in any other law for the time being in force, any access to public information granted by any officer under this Act, or any action taken in good faith in the exercise or purported exercise of powers and duties conferred under this Act, shall not constitute an offence under the Official Secrets Act, 1923, or any other law for the time being in force.</p> <p>2] For purposes of sub-section [1], wrongdoing includes the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious maladministration regarding a public b</p>	<p><b>22. Access not to Constitute Offence.-</b> Notwithstanding anything contained in any other law for the time being in force, any access to public information granted by any officer under this Act, or any action taken in good faith in the exercise or purported exercise of powers and duties conferred under this Act, shall not constitute an offence under the Official Secrets Act, 1923, or any other law for the time being in force.</p> <p><b>23. Indemnity.-</b> (1) No official shall be subject to any legal, administrative or employment related sanction, as long as he acted in good faith and in the reasonable belief that the information was substantially true and with in the parameters of this Act</p>	<p><b>Section 23 Indemnity</b>  This Section indemnifies government officials for anything done in “good faith and in reasonable belief that the information was substantially true and within the parameters of this Act”. One problem with this provision is that the government official can be deemed to have exercised the ‘good faith’ even where she/he acted honestly, but has committed negligence. By implication, the applicant cannot pursue the matter on the basis of negligence, as a tort action, even where she/he has suffered loss or harm due to the government official’s failure to exercise proper attention. Thus, the provision of good faith, as is given in the FOI Bill 2008, protects the government officials against even those harms and losses which an applicant can incur due to a negligent act of the government official.</p>
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		<p><b>23. Whistleblowers.</b>- 1] No one may be subject to any legal, administrative or employment related sanction, or that which would disclose a serious threat to public health, safety or the environment, as long as they acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing or a serious threat to public health, safety or the Environment.</p>		<p><b><u>Recommendations</u></b></p> <p>i. Good faith clause should distinguish between acts done honestly, and acts done negligently. Provisions of</p> <p>ii. indemnity should not be applied where an applicant has suffered loss or harm due to negligence of the government official under the FOI law.</p> <p>iii. If an applicant feels that a government official has, without lawful excuse, committed a wrong against him or her, the government official must be tried before a court of law and an appropriate relief provided to the applicant. As far as indemnity is concerned, Article 212 (1)(b) of the 1973 Constitution of Pakistan provides for establishment of specialized tribunals which shall adjudicate upon disputes between civil servants' and citizens. Unfortunately, such administrative tribunals have not been established, and citizens are effectively denied a legal remedy. The government must establish these tribunals without further delay.</p> <p><b>Whistleblowers' Protection</b></p> <p>In FOI Bill 2004, Section 23 dealt with whistleblowers' protection, whereas in FOI Bill 2008, this provision has been taken out. This indicates that the interplay of political forces and vested interests have taken over the larger public interest of transparency and elimination of corruption from the government departments.</p> <p><b><u>Recommendations</u></b></p> <p>i. Whistleblower protection must be added to the FOI Bill 2008.</p> <p>ii. Some countries have comprehensive whistleblowers protection laws. Learning from these countries, Pakistan may have a new law dedicated to whistleblowers protection, but in this case, the government must give a timeframe within which the law shall be enacted with consultation of all stakeholders.</p>
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<p><b>23. Ordinance not to derogate other laws. -</b></p>	<p>The provision of this Ordinance shall be in addition to, and not in derogation of, anything contained in any other law for the time being in force.</p>	<p><b>24. Act to Over-ride other laws. -</b> The provisions of this Act shall override, anything contained in any other law for the time being in force.</p>	<p><b>24. Act to Over-ride other laws.-</b> The provisions of this Act shall over-ride, anything contained in any other law for the time being in force.</p>	<p><b>Section 24 Act to Over-ride other laws</b> The provisions of this Act shall over-ride, 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.</p> <p><b><u>Recommendation</u></b> This provision should be re-phrased to state that this law will over-ride other laws to the extent of inconsistency of their provisions with this law.</p>
<p><b>24. Power to remove difficulties. -</b></p>	<p>- If any difficulty arises in giving effect to the provisions of this Ordinance, the Federal Government may, by order in the official Gazette, make such provision not inconsistent with the provisions of this Ordinance as appear to it to be necessary or expedient for removing the difficulty.</p>	<p><b>26. Power to remove difficulties. -</b> If any difficulty arises in giving effect to the provisions of this Act, the Federal Government may, by order in the official Gazette, make such provision not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty, subject to ratification by Parliament.</p>	<p><b>26. Power to remove difficulties.-</b> If any difficulty arises in giving effect to the provisions of this Act, the Federal Government may, by order in the official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty, subject to ratification by National Assembly within 120 days.</p>	



<p><b>25. Power to make rules</b></p>	<p><b>25. Power to make rules.</b> - (1) The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Ordinance.</p> <p>(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for -</p> <p>(a) the fee payable for obtaining information from, and copies of the public record;</p> <p>(b) the form of application for obtaining information from, and copies of, the public record; and</p> <p>(c) the form in which information from public record shall be furnished.</p>	<p><b>27. Power to make rules.</b> - (1) The Standing Committees on Information of Parliament may, by notification in the official Gazette, within one month of the enforcement of the Act, make rules for carrying out the purposes of this Act.</p> <p>(2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for -</p> <p>(a) the fee payable for obtaining information from, and copies of the public record;</p> <p>(b) the form of application for obtaining information from, and copies of, the public record; and</p> <p>(c) the form in which information from public record shall be furnished</p> <p>(d) the rules for this act must be formulated within 90 days of its passage by the parliament.</p>	<p><b>27. Power to make rules.-</b> (1) The Standing Committee of the National Assembly on Information and Broadcasting shall, by notification in the official Gazette, within one month of the enforcement of the Act, make rules for carrying out the purposes of this Act.</p> <p>(2) In particular and without prejudice to the generality of the foregoing, such rules may provide for –</p> <p>(a) the fee payable for obtaining information and copies of the public record;</p> <p>(b) the form of application for obtaining information and copies of the public record; and</p> <p>(c) the form in which information from the public shall be furnished.</p>	
<p><b>Repeal</b></p>		<p><b>25.Repeal</b> . The Freedom of Information Ordinance 2002 stands hereby repealed</p>	<p><b>25. Repeal-</b> The freedom of information Ordinance 2002 (XCVI of 2002) stands hereby repealed.</p>	<p><b>Section 25 Repeal</b></p> <p>It appears that the Bill has been drafted without an in-depth analysis of the existing legal and institutional framework for FOI in Pakistan. The Bill does not refer to the two provincial FOI laws, i.e. Balochistan Freedom of Information Act (2005) and Sindh Freedom of Information Act (2006). These laws are almost replica of the FOI Ordinance, 2002. The FOI Bill 2008 repeals the FOI Ordinance, 2002, but does not even slightly touch upon these two provincial laws. It is silent about what would happen to these laws after enactment of the Bill.</p>

				<p><b><u>Recommendation</u></b> The FOI Bill should provide for repeal of the provincial FOI laws, in addition to the FOI Ordinance, 2002.</p>
<p><b>Public Awareness Campaign</b></p>				<p><b>A new Section to be added for the following reasons:</b></p> <p><b>Public Awareness Campaign</b> The Bill does not make any provision for public awareness on FOI law. Our experience indicates that unless citizens are informed about the existing of a law and benefits of its use, the laws remain underutilized. Existing FOI laws are a case in point.</p> <p><b><u>Recommendation</u></b> The Bill should mandate the Ministry of Information and Broadcasting to run a nation-wide campaign for public awareness on FOI. The Ministry should translate the law and rules into simple and easy-to-understand Urdu and local languages. In addition, the Ministry should build capacities of the designated officials to deal with information requests.</p>