

PUNJAB FOI BILL 2013

The Government of Punjab introduces the Punjab Freedom of Information Act 2013. This Act has been approved in principle by the Cabinet and now the Government of Punjab invites comments from the public within 15 days in order to improve the proposed legislation.

Comments may be sent to the following address:

Director General Public Relations
21 Mehmood Ghaznavi Road Lahore

Or

e-mail at:

dgprmh@gmail.com

A BILL

To provide for transparency and freedom of information in the Punjab.

Preamble – Whereas it is expedient to provide for transparency and freedom of information to ensure that citizens have improved access to public information; to make the Government more accountable to citizens; to enforce the fundamental right of access to information in all matters of public importance; and to provide for ancillary matters;

It is enacted as follows:

1. Short title, extent and commencement.-(1) This Act may be cited as the Punjab Freedom of Information Act 2013.

(2) It extends to the whole of the Punjab.

(3) It shall come into force at once.

2. Definitions.-In this Act:

(a) “applicant” means a citizen of Pakistan or a legal person registered or incorporated in Pakistan who has submitted an application for exercising right to information and includes a person authorized on behalf of the legal person;

(b) “Commission” means the Punjab information Commission established under section 5 of the Act;

(c) “Commissioner” means an Information Commissioner and includes the Chief Information Commissioner;

(d) “complaint” means any allegation in writing made by an applicant to the Commission on any of the following grounds:

(i) wrongful denial of access to information;

(ii) The information has not been provided within the stipulated time;

(iii) the public information officer has refused to receive and process the application for access to information;

(iv) false or misleading information has been furnished by the public information officer;

- (v) fee or cost for provision of information has been overcharged;
 - (vi) an incomplete information has been provided;
 - (vii) the information has deliberately been destroyed to avoid disclosure; or
 - (viii) the public body is not implementing the provisions regarding proactive disclosure or is violating any other provision of the Act;
- (e) “Government” means Government of the Punjab;
- (f) “information” means any information relating to a public body’s constitution, structure and official activities and includes any memo, book, design, map, contract, representation, pamphlet, brochure, order, notification, document, plans, letter, report, accounts statement, project proposal, photograph, audio, video, drawing, film, any instrument prepared through electronic process, machine-readable documents and any other documentary material regardless of its physical form or characteristics;
- (g) “prescribed” means prescribed by the rules made or regulations framed under the Act;
- (h) “public body” means:
- (i) a department, attached department, autonomous or semi-autonomous body of the Government, a company of the Government or a special institution;
 - (ii) a local government constituted under the Punjab Local Government Ordinance 2001 (XIII of 2001) or any other law for the time being in force;
 - (iii) secretariat of the Governor of the Punjab;
 - (iv) any court, tribunal, office, Board, Commission, Council, or other body substantially financed by the Government;
 - (v) a statutory body established under a Provincial law;
 - (vi) Provincial Assembly of the Punjab; and
 - (vii) a body owned or non-government organization controlled or substantially financed by the Government or a local government;

3. Access to information.- (1) Subject to the provisions of this Act, an applicant may exercise the right to information.

(2) This Act shall be interpreted so as to advance the purposes of the Act and to facilitate and encourage, promptly and at the lowest reasonable cost, the disclosure of information and implementation of right to information.

4. Proactive disclosure.- Subject to the provisions of this Act, a public body shall proactively disclose:

- (a) particulars of the public body, its functions and duties;
- (b) powers and functions of its officers and employees;
- (c) norms and criteria set by the public body for the discharge of its functions;
- (d) Acts, Ordinances, rules, regulations, notifications, circulars and other legal instruments being enforced, issued used by the public body in discharge of its functions;

- (e) a statement of categories of information being held by the public body;
- (f) a description of its decision-making processes and any opportunities for the public to provide input into or be consulted about decisions;
- (g) a directory of its officers and employees with their respective remunerations, perks and privileges;
- (h) budget of the public body including details of all proposed and actual expenditures;
- (i) the amount of subsidy and details of beneficiaries if the public body provides any subsidy;
- (j) particulars of the recipients of concessions, permits or authorizations granted by the public body;
- (k) facilities available with the public body for obtaining information held by it;
- (l) name, designation and other particulars of the public information officer of the public body; and
- (m) any other information that the Government may notify in the official Gazette.

5. Punjab Information Commission.- (1) The Government shall establish a Commission, to be called the Punjab Information Commission.

(2) The Commission shall comprise of three information Commissioners to be appointed from amongst the following.

- (a) a person who has been or is qualified to be a Judge of the High Court;
- (b) a person who is or has been in the service of Pakistan in basic scale 21 or equivalent; and
- (c) a person from civil society having experience of not less than fifteen years in the field of mass communication academic or right to information.

(3) The Commissioners shall be appointed by a selection committee comprising the Chief Minister of the Punjab and the leader of the Opposition in the Provincial Assembly of the Punjab with the following limitations:

- (a) a person shall not be appointed as Commissioner if he is more than sixty five years of age on the date of appointment;
- (b) a Commissioner shall hold office for a non-renewable term of three years; and
- (c) a Commissioner shall 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 after appointment as the Commissioner.

(4) the Government shall nominate one of the Commissioners as the Chief Information Commissioner who shall be the chief executive of the Commission.

(5) The Government may remove a Commissioner if an open inquiry held by a special committee of the provincial Assembly of the Punjab, specially constituted for the purpose through a resolution of the Provincial Assembly, finds that misconduct has been committed by the Commissioner or the Commissioner has become incapable performing the duties of the Commissioner by reason of physical or mental incapacity.

(6) If the Provincial Assembly of the Punjab is dissolved and the situation mentioned in subsection (5) has arisen, the speaker of the provincial Assembly shall constitute a special committee may exercise the power of special committee of Provisional Assembly under subsection (5) until the election of new Provincial Assembly.

(7) The Government shall allocate adequate resources to the commission to enable it to establish a secretariat, hire the requisite staff to conduct its business properly, and promote access to information among the wider public, public servants and civil society.

6. Functions of the Commission.-(1) The Commission shall receive complaints or determine the public interest under section 13 and resolve any inconsistencies in the application of the provisional of this ACT or the rules.

(2) The Commission may:

(a) Conduct an inquiry, on its own accord or upon a complaint, and may direct a public body information to an applicant or in a proactive manner;

(b) While inquiring into a complaint, exercise powers of a civil court in respect of the following matters:

(i) Summon and enforce attendance of persons, compel them to give oral or written evidence on oath and to produce documents or things;

(ii) Examine and inspect information;

(iii) Receive evidence on affidavit;

(iv) Requisition information from any office; and

(v) Issue summons for witness or documents.

(3) While inquiring into a complaint, the commission may examine any information on spot or get it examined by an officer pointed by the commission.

(4) The commission may, while deciding a complaint, impose the prescribed fine upon the public information officer in prescribed manner.

(5) The commissions shall facilitate the application of the provisions of this Act through the following functions, in addition to any other functions as may be prescribe:

(a) Issuing directive to public bodies for preservation, management, public, publicity and access to information;

(b) Deciding a complaint within thirty days of receiving it or, for good reason, within sixty days of receiving it;

(c) Prescribing the application procedure for accessing information from public body;

(d) Advising and providing support to the Government to make the necessary laws and procedure for implementation of the right to information;

(e) Providing technical and other support to the public bodies with aim to ensure enforcement of right to information;

(f) establishing an information web portal,

(g) compiling a user hand book in Urdu and English, containing such information in easily comprehensible form and manner, as many reasonably be required by a person who wishes to exercise the right to information under this Act and the user hand book shall contain all pertinent information, required by the public information officer for implementation of this Act;

(h) preparing an annual report on the implementation of the provision of this Act during that year and submit it to the Government for laying before the Provincial Assembly of the Punjab.

(4) The annual report of the Commission shall cover the following aspects:

(a) status of freedom of information law, rules, regulation and procedures;

(b) progress on implementation of the freedom of information law, including district and department wise summaries of information requests showing current status of each information request;

(c) hurdles being faced in implementation of freedom of information law; and

(d) budget, expenses and other organizational matters.

7. Designation of public information officers.- (1) A public body shall, within sixty days of the commencement of this Act, designate and notify as many officers as public information officers in all administrative units or offices under it, as may be necessary.

(2) Subject to the provisions of this Act, designate and notify as many officers as public information officer shall provide information to an applicant, and carrying out any responsibilities pertaining to this Act as may be prescribed.

(3) The public information officer may seek the assistance of any other officer of the public body as may be necessary.

(4) Any officer whose assistance has been sought under subsection (3) shall render all assistance to the public information officer seeking his assistance and for the purposes of any contravention of the provisions of this Act such other officer shall be deemed as the public information officer.

8. Maintenance and indexing of information.- (1) Subject to provisions of this Act and as may be prescribed, a public body shall ensure that an information is properly maintained in an easily accessible form.

(2) A public body shall, within a time prescribed by the commission for any special or general categories of information, computerize or maintain in electronic form the information to enable:

(a) easy retrieval of information; and

(b) easy and authorized electronic access of information by an applicant.

9. Annual report of public bodies.- A public body shall publish in electronic form or otherwise an annual report of its activities during the previous financial year by July 31st as may be prescribed and make the report available for public inspection free of charge and available for purchase or copy at a reasonable cost.

10. Application procedure.- (1) An applicant may make an application to a public information officer on an information request form that shall be made easily available to the public both electronically and on paper by the public body.

(2) An applicant shall not be required to provide reasons for their requests and shall only be required to provide an adequate description of the information and the necessary details to enable provision of the information

(3) Where an applicant is having difficulty making a request, including because he cannot describe the information in sufficient detail or because he is disabled or illiterate, the public information officer shall provide reasonable assistance to the applicant.

(4) Where an applicant has indicated a preferred form of access, including a physical copy, an electronic copy or an opportunity to inspect documents, the public body shall provide access in that form unless to do so is likely to interfere with its operations or harm the document.

(5) The public body shall not charge any fee for making a request other than cost of reproducing or sending the information in accordance with a centrally set schedule of costs stipulated by the commission.

(6) The public information officer shall respond to an application as soon as possible and in any case within twenty-one working days, provided that this may be extended by a maximum of a further twenty-one working days where this is necessary, including because the request requires a search through a large number of records or consultation with a third party or any other public body, but the public information officer shall provide an information related to life or liberty within two working days of submission of the application.

(7) where the public information officer has refused the application, the applicant shall be provided with a notice in writing setting out precise reasons for the refusal, along with a statement of right of internal review or complaint against the refusal.

(8) the information from, or the copy of, any public record supplied to the applicant under section (1) shall contain a certificate at the foot thereof that the information is correct or the copy is true copy of such public record, and such certificate shall be dated and signed by the public information officer.

11. Transfer of application. – (1) Where an officer of public body other than the public information officer receives an application for access to information, such officer shall immediately transfer the application to the public information officer with intimation to the applicant and the public information officer received the application under section 10.

(2) If the information or the part of information requested in an application is not available with the public body or the office of public body, the public information officer shall, within seven days under intimation to the applicant:

(a) transfer the application to the public information officer to whom the application should have been made for the information or the part of information; or

(b) if the public information officer do not know the public body or the office where the requested information or the part of the information is not available with the public body.

(3) If the application is transferred to another public information officer under subsection (2), the other public information officer shall process the application as if the other public information officer received the application under section 10.

12. Internal review. – (1) If an applicant has not filed a complaint before the commission, the applicant may request the head of the public body for the internal review of any decision of the public information officer in relation to what the applicant regards as involving:

(a) a failure of public information officer to comply with any provision of this Act including failure to communicate decision within the specified time; or

(b) unreasonable behavior by the public information officer in the exercise of any discretion under the Act; or

(c) provision of incomplete, misleading or false information under the Act; or

(d) any other matter relating to requesting or obtaining access to information.

(2) an applicant shall, within sixty days from the date of communication of the decision of the public information officer or the failure of public information officer to decide within the stipulated time, submit the request under section 1 in writing and specify remedy which the applicant seeks against the decision of the public information officer.

(3) The officer before whom an application for internal review is failed under this section may exercise any of the powers of the public information officer under this Act and shall, within twenty one days of the receipt of the application:

(a) confirm, modify or reverse the decision of the public information officer;

(b) notify the decision of internal review of the applicant including reasons for the decision; and

(c) order departmental action against the public information officer if found negligent in performance of duties under this Act.

13. Exceptions.- (1) A public information officer may refuse an application for access to information where disclosure of the information shall or is likely, to cause harm to:

(a) national defence or security, public order or international relations of Pakistan;

(b) a legitimate privacy interest, unless the person concerned has consented to disclosure of the information relates to the functions of a public servant;

(c) the protection of legally privileged information or of the rules relating to breach of confidence;

(d) the legitimate commercial interests of a public body or a third party, including information subject to third party intellectual property rights;

(e) the life, health or safety of any person;

(f) the prevention or detection of crime, the apprehension or prosecution of offenders, or the administration of justice;

(g) the ability of the Government to manage the economy; or

(h) the effective formulation of or success of a policy either by its premature disclosure or by restraining the free and frank provision of advice within the Government public information officer shall disclose the information if the public interest in such disclosure outweighs the harm that shall or is likely to result from such disclosure.

(2) Notwithstanding anything contained in subsection (1), if a determination to this effect has been made by the Commission, the public information officer shall disclose the information if the public interest in such disclosure outweighs the harm that shall or is likely to result from such disclosure.

(3) Where a part of a document is covered by an exception in subsection (1), any information in the

document which is not covered by an exception shall be closed if it is reasonably severable from the rest of the document.

(4) Where the information is refused, the public information officer shall, within the time-limit specified under section 10, inform the applicant specifying:

(a) provision of this act under which the requested information is refused;

(b) reasons which connect the information with the provision of the Act;

(c) procedure for internal review or complaint against the decision ; and

(d) name and designation of the person who may provide full or limited access to an exempted information.

4. Offence.- In addition to any other action under any other law, any person who destroys a record which at the time it was destroyed was the subject of an application for access to information, internal review or complaint, or otherwise obstructs access to information which is the subject of an application, internal review or 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 both.

5. Cognizance for Offence.- A court shall not 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 commission or an officer authorized by the commission .

6. Bar of Suits .- A court shall not entertain a suit, application or other proceeding in respect of any decision made under this Act and the decision shall not be called in question otherwise than by way of an internal review or a complaint under the Act.

7. Power to make rules and regulations. – (1) The Government, in consultation with the commission and by notification in the official Gazette, may make rules for carrying out the purposes of this Act.

(2) The rules shall provide elaboration of the following provisions of this Act:

(a) procedure for proper maintenance, indexing and storage of information, including details of information to be established in an electronic form;

(b) procedure for filing of request for information and a schedule of the costs for providing the information ;

(c) applications handling and internal review mechanisms ;

(d) information that shall be included in the annual report of each public body;

(e) procedure for publishing, displaying and obtaining the annual report;

- (f) designation of public information officers, and if require, any other officials delegates , and their duties and responsibilities;
 - (g) procedure for removal of a commissioner including definition of misconduct;
 - (h) finances, budgeting and staffing related to the Commission and its secretariat;
 - (i) responsibilities of Commissioners , mechanism for taking decisions , quorum requirements and procedures in case of non-availability of one or more Commissioners;
 - (j) provisions regarding imposition of penalties or fines; and
 - (k) any fees that may be imposed by the public body in carrying out the provisions of this Act.
- (3) Subject to the rules , the Commission may, by notification, frame regulations to give effect to the provisions of the Act and any rules made there under.

18. Power to remove difficulties.- if any difficulty arises in giving effect to the provisions of this Act, the 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 .

19. Indemnity.- 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 o this Act or any rules that may be made there under.

20. Act to take precedence over other laws.- The provisions of this Act shall take precedence over the provisions of any other law.