

Draft of Punjab Freedom of Information Bill, 2012

March 13, 2013

AN ACT 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 the citizens of Punjab have improved access to public information and to make the Government of the Punjab more accountable to its citizens, and for matters connected therewith or incidental thereto;

It is hereby enacted as follows:-

1. Short title, extent and commencement.-

(1) This Act may be cited as Punjab Freedom of Information Act 2012.

(2) It extends to the whole of Punjab.

(3) It shall come into force at once.

2. Definitions. In this Act, unless there is anything repugnant in the subject or context,

(a) "Commission" means the Punjab Information Commission constituted under section 4(1);

(b) "Commissioners" mean the Information Commissioner.

(c) "Complainant" means

(i) any person, who desires to obtain any information under this Act, referred to as "applicant" for the purposes of this Act, or

(ii) any person acting for and on behalf of an applicant;

(d) "Complaint" means any allegation in writing made by a complainant;

(i) where he/she is an applicant, that access to information has been wrongfully denied to him/her by a public body;

(ii) where he/she is an applicant, that access to and/or correction of his/her personal information has been wrongfully denied to him/her by a public body having the custody or control of the information;

(iii) where he/she is an applicant, that the information requested by him/her has been delayed by a public body;

(iv) where the designated public information officer has refused to receive and process the information request;

(v) where false or misleading information has been allegedly furnished by the designated public information officer;

(vi) where fees have been overcharged;

(vii) where requested information has been provided only partially;

(viii) where requested information / records appear to have been destroyed deliberately, to avoid disclosure;

(ix) where a public body is not implementing the provisions regarding proactive disclosure or is violating any other provision of law.

(e) "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.

(f) "public body" means:

(i) any Department, attached department, autonomous organisation, and companies of the Punjab Government;

(ii) a District Government, TMA's and UA's constituted under PLGO 2001 or any successor bodies of these organisations;

(iii) Secretariats of Chief Minister and Governor of the Punjab;

(iv) any office of any Board, Commission, Council, or other body established by, or under law;

(v) courts and tribunals;

(vi) legislature;

and includes anybody owned or non-government organization controlled, substantially financed or subsidized directly or indirectly by funds provided by the Provincial or Local Governments.

(g) "Prescribed" means prescribed by Rules made under this Act;

(h) "Public Information Officer" means Public Information Officer designated under section 6(1);

(i) "Third party" means a person other than the citizen making a request for information and includes a public office.

3. Access to information.

(1) Every citizen of Pakistan shall, subject only to the provisions of this Act and any regulations made thereunder, have the right to access all information held by public bodies.

(2) This Act shall be interpreted so as

(a) to advance the purposes of this Act; and

(b) to facilitate and encourage, promptly and at the lowest reasonable cost, the disclosure of information.

3B. Proactive Disclosure.- Subject only to the provisions of this Act and any regulations made thereunder, all public bodies shall proactively disclose:

i) Particulars of the public body, its functions and duties.

ii) Powers and functions of its officers and employees.

iii) Norms and criteria set by the public body for the discharge of its functions.

iv) Acts, Ordinances, Rules, Regulations, Notifications, Circulars etc. being enforced, issued or used by the public body in discharge of its functions.

v) A statement of categories of information being held by the public body.

vi) A description of its decision-making processes and any opportunities for the public to provide input into or be consulted about decisions.

vii) A directory of its officers and employees with their respective remunerations, perks and privileges.

viii) Budget of the public body including details of all proposed and actual expenditures.

ix) If the public body provides subsidy, the amount of subsidy and details of beneficiaries.

x) Particulars of the recipients of concessions, permits or authorizations granted by the public body.

- xi) Facilities available with the public body for obtaining information held by it.
- xii) Name, designation etc. of the public information officer of the public body.
- xiii) Any other information that the Government may notify in the official gazette from time to time.

4. The Punjab Information Commission.

- (1) The Government of the Punjab shall establish a Commission to be called the Punjab Information Commission, which shall be an independent statutory body, within a maximum period of 90 days from the date on which the Act comes into force.
- (2) The Commission shall comprise three Information Commissioners, one of whom shall be a former senior government servant who is familiar with the working of the government, one of whom is retired judges of the High Court or equivalent seniority and one of whom is respected members of society with the requisite skills and experience for this position.
- (3) The Commissioners shall be appointed by a Selection Committee comprising the Chief Minister of Punjab and the Leader of the Opposition in the Punjab Assembly with the following limitations:-
- (4) The Commissioners shall not hold office for more than 3 years from date of appointment or beyond the age of 65 years, whichever is earlier. Persons who are more than 62 years old shall not be eligible for appointment as Information Commissioner.
- (5) The Commissioners may not hold any other public office, or any other office of profit or be connected with any political party or be running any business or pursuing any profession, at the time of appointment to the Commission.
- (6) Chief Minister may remove any of the Commissioners if an open inquiry held by a select committee of the Provincial Assembly, specially constituted for the purpose through a resolution of the Provincial Assembly finds that grave misconduct has been committed by the Commissioner. Grave misconduct shall be interpreted as prescribed by the Rules.
- (7) The Government of Punjab shall make an adequate budgetary allocation to the Commission to enable it to establish a secretariat and hire the requisite staff to enable it to conduct its business properly.

5. Powers and functions of the Commission.

- (1) The Commission shall be responsible for resolving any inconsistencies in the application of the principles of this Act, or the prescribed Rules, either through a complaint, or otherwise. (2) The Commission shall exercise the following powers:-
 - (i) Receive complaints made under the Act, and in accordance with the prescribed Rules, from any person.
 - (ii) Conduct an inquiry, on its own accord or upon a complaint, regarding a complaint made under the Act, or as prescribed in the Rules, and dispose of complaints, including, as appropriate, by ordering a public body to disclose information to a complainant.
 - (iii) While inquiring into a complaint, powers of a Civil Court in respect of the following matters:
 - (a) summon and enforce attendance of persons, compel them to give oral or written evidence on oath and to produce documents or things;
 - (b) examine and inspect information;
 - (c) receive evidence on affidavit;
 - (d) requisition information from any office;
 - (e) issue summons for witnesses or documents.
 - (iv) While inquiring into a complaint, examine any information on spot or get it examined through an agent appointed for this purpose, kept in custody with any public body.
 - (v) While deciding on a complaint, impose a fine upon a Public Information Officer as prescribed in Rules:
 - (vi) In cases of complaints, take decisions that are binding on all concerned. No court shall entertain any suit, application or other proceeding in respect of an order made under this Act and no such order shall be called in question otherwise than by way of any appeal under this Act.
- (3) The Commission shall facilitate the application of the provisions of this Act through the following functions, in addition to any other functions as prescribed in the Rules:-
 - (a) issuing directives to authorities for preservation, management, publication, publicity and access to information;
 - (aa) deciding upon complaints lodged with it within 30 days of receiving them, which may be extended to 60 days for good reason;
 - (b) prescribing the application procedure for accessing information from a public body;
 - (c) advising and providing support to the Government to make the necessary laws and administrative directives for preservation and implementation of the right to information;
 - (d) providing technical and other support to the authorities with the aim to ensure the right to information;
 - (e) establishing an information web-portal to ensure the right to information.
- f) The Commission shall, within 12 months from the commencement of this Act, compile 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 his Right to Information under this Act. The 'User Hand Book' shall also contain all pertinent information, required by Public Information Officer for implementation of this Act.
- g) The Commission shall, as soon as practicable, after the end of each year, prepare a report on the implementation of the provisions of this Act during that year and submit it to the Governor Punjab, for laying before the Punjab Assembly, not later than June 30, of the succeeding year. The report will cover the following aspects:
 - i. Status of FOI law, rules, regulations and procedures.
 - ii. Progress on implementation of FOI laws, including District-wise summaries of information requests showing current status of each information request.
 - iii. Hurdles being faced in implementation of FOI laws.
 - iv. Budget, expenses and other organizational matters.

6. Designation of Public Information Officers.

- (1) Every public body shall, within one hundred and fifty days of the enactment 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, who will be responsible for providing information to applicants, and carrying out any responsibilities pertaining to this Act as prescribed in the Rules.
- (2) The Public Information officer may seek the assistance of any other officer as he or she considers it necessary for the proper discharge of his/her duties.
- (3) Any officer whose assistance has been sought under sub-section (2), shall render all assistance to the Public Information Officer seeking his/her assistance and for the Purposes of any contravention of the provisions of this Act, such other officer shall be treated as a Public Information Officer.

7. Maintenance and indexing of information.

- (1) Subject to provisions of this Act and as prescribed in the Rules, each public body shall ensure that all information covered under section 2(e) of this Act are properly maintained in an easily accessible form as early as possible.
- (2) Each public body shall endeavour within reasonable time, and subject to availability of resources, to computerize all such information so as to enable:

- (a) easy retrieval of information; and
- (b) easy and authorized electronic access of information by the applicant.

8. Publication and availability of information.

- (1) The acts and subordinate legislation such as rules and regulations, notifications, by-laws, manuals, orders having the force of law in Punjab shall be duly published over the internet and in any other forms that the Rules may prescribe so that access thereof is easier, less time-consuming and less expensive.
- (2) Each public body must publish an annual report by July 31st as prescribed in the Rules and make such reports available for public inspection free of charge and available for purchase at a reasonable price.

9. Applications procedure.

- (1) Any citizen of Pakistan may make an application to the 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) Applicants 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 be able to provide them with the information.
- (3) Where an applicant is having difficulty making a request, including because he or she cannot describe the information in sufficient detail or because he or she is disabled or illiterate, the Public Information Officer shall provide reasonable assistance to that 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 would unreasonably interfere with its operations or harm the document.
- (5) (i) No fee shall be charged simply for making a request and only the cost of reproducing and sending the information shall be charged for satisfying a request, in accordance with a centrally set schedule of fees.
(ii) Requests shall be responded to 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 third parties or other public bodies, and provided further that information related to life and liberty will be provided within two working days.
(iii) Where a request is refused, the applicant shall be provided with a notice in writing setting out precise reasons for the refusal, along with an indication of his or her right to appeal against the refusal.
- (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 Public Information Officer.

9B. Exceptions.

- (1) Access to information may be refused where disclosure of the information would, or would be likely, to cause harm to:
 - (a) national defence or security, public order or international relations;
 - (b) a legitimate privacy interest, unless the person concerned has consented to disclosure of the information relates to the functions of a public official;
 - (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, through its premature disclosure, or the free and frank provision of advice within government.
- (2) Notwithstanding subsection (1), information shall be disclosed if the public interest in such disclosure outweighs the harm that will result from such disclosure.
- (3) Where only 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 disclosed, provided that it may reasonably be severed from the rest of the document.

10. Offence.

Any person who destroys a record which at the time it was destroyed was the subject of a request or of a complaint, or otherwise obstructs access to a record which is the subject of a request or a complaint, with the intention of preventing its disclosure under this Act, commits an offence punishable with imprisonment for, a term not exceeding two years, or with fine, or with both.

11. Cognizance for offence under this Act.

No court shall take cognizance of the offence punishable under this Act except on a report in writing of the facts constituting such offence made with the previous sanction of the Punjab Information Commission or an officer authorized on behalf of this Commission.

12. Power to make Rules and Regulations.

- (1) The Government of the Punjab in consultation with the Commission, by notification in the official Gazette, may make Rules for carrying out the purposes of this Act.
- (2) The Rules shall, at a minimum, define the following provisions of this Act:
 - (a) procedure for proper maintenance, indexing and storage of information, including details of information to be published in an electronic form;
 - (b) procedure for filing of request for information and a schedule of the fees for providing the information;
 - (d) complaints handling mechanism, including any appeals mechanism within public bodies, and maximum permissible time to dispose of complaints;
 - (e) information that will be included in the annual report of each public body;
 - (f) procedure for publishing, displaying and obtaining the annual report;
 - (g) designation of Public Information Officers, and if required, any other official delegates, and their duties and responsibilities;
 - (h) procedure and reasons for which a Commissioner may be removed, including definition of grave misconduct;
 - (i) finances, budgeting and staffing related to the Information Commission and its secretariat;
 - (j) responsibilities of Commissioners, mechanism for taking decisions, quorum requirements and procedures in case of non-availability of one or more Commissioners;
 - (k) provisions regarding imposition of penalties or fines;
- (1) 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.

13. Power to deal with removal of ambiguity.

If any ambiguity arises in implementing any provisions in the Act, then the Government through a notification in the official gazette and subject to consistency with the

provisions in the Act shall remove such ambiguity.

14. Power to remove difficulties.

If any difficulty arises in giving effect to the provisions of this Act, the Government of the Punjab 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.

15. 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 of this Act or any Rules that may be made thereunder.

16. Act to take precedence over other laws.

The provisions of this Act shall take precedence over anything contained in any other law for the time being in force.