Freedom of Information Ordinance 2002 and its implementation

Background, Concerns and Recommendations

Islamabad, December 2009
Freedom of Information is a fundamental human right and ...the touchstone of all freedoms to which the United Nations is consecrated.
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**ABBREVIATIONS**

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<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tr>
<td>ADB</td>
<td>Asian Development Bank</td>
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<td>ANF</td>
<td>Anti Narcotics Force</td>
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<td>BPS</td>
<td>Basic Pay Scale</td>
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<tr>
<td>CCE</td>
<td>Centre for Civic Education</td>
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<tr>
<td>CDA</td>
<td>Capital Development Authority</td>
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<tr>
<td>CNIC</td>
<td>Computerized National Identity Card</td>
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<td>CPDI</td>
<td>Centre for Peace and Development Initiatives</td>
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<td>FBR</td>
<td>Federal Board of Revenue</td>
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<td>FIA</td>
<td>Federal Investigation Agency</td>
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<td>FNSt</td>
<td>Friedrich Naumann Stiftung</td>
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<td>FOI</td>
<td>Freedom of Information</td>
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<td>FTO</td>
<td>Federal Tax Ombudsman</td>
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<td>HRCP</td>
<td>Human Rights Commission of Pakistan</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<tr>
<td>IFIs</td>
<td>International Financial Institutions</td>
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<tr>
<td>LFP</td>
<td>Liberal Forum Pakistan</td>
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<td>NLA</td>
<td>National Language Authority</td>
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<tr>
<td>PLD</td>
<td>Pakistan Law Digest</td>
</tr>
<tr>
<td>TI</td>
<td>Transparency International</td>
</tr>
<tr>
<td>UDHR</td>
<td>Universal Declaration on Human Rights</td>
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<tr>
<td>WAPDA</td>
<td>Water and Power Development Authority</td>
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Government of Pakistan promulgated the Freedom of Information Ordinance in October 2002 with the aim of promoting transparency and accountability and providing citizens with their right to information. Following this, in order to ensure smooth implementation of the Ordinance, the Cabinet Division notified the Freedom of Information Rules in June 2004. However, about seven years since the promulgation of the Ordinance, there exists a widely held view that the Ordinance has not proved to be a success, as not many people have used it. Given this, Centre for Peace and Development Initiatives (CPDI), with the support from Friedrich-Naumann-Stiftung für die Freiheit (FNF), has carried out this study on the implementation of the Ordinance.

Aim of the study is to inform the policy debates around the Freedom of Information legislation in the country. Specific objectives of this study are as follows:

- To make citizens aware of the important aspects of FOI and familiarize them with the process of filing a request for information.
- To analyze the steps taken by the government for implementation of the Ordinance.
- To document the experience of citizens and civil society groups in terms of using the Ordinance.
• To identify the weaknesses responsible for little progress towards the objectives set out in the Ordinance.
• To suggest some pragmatic measures to make the ordinance effective.

We hope that this study will not only inform the policy debate on Freedom of Information but would also serve as a useful resource for activists, training workshops and future researches.
On 26 October 2002, President of Pakistan, General Pervaiz Musharraf, promulgated the Freedom of Information Ordinance 2002. Objective of the Ordinance, as stated in the very beginning of the Ordinance itself, was:

...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 in its citizens, and for matters connected therewith or incident thereto.¹

The Freedom of Information Ordinance 2002 came into force at once, as per its Section 1(3). In normal circumstances, an ordinance issued by the President is

¹ See Freedom of Information Ordinance 2002
considered valid only for 120 days. Therefore, an ordinance has to be enacted by the Parliament within 120 days to become a valid act of Parliament. However, the Freedom of Information Ordinance 2002 had been issued by a military regime; and it remains valid in view of the 17th Amendment in the Constitution of Pakistan whereby all orders and ordinances issued by the previous military regime were indemnified in 2003. It is for this reason that, although it is still called as an ordinance, it is as good and applicable as an act of Parliament.

With the promulgation of Freedom of Information Ordinance 2002, Pakistan became the first country in South Asia to have a law, which provided for citizens access to official information and records. Since then, however, India and Bangladesh have enacted much more comprehensive and progressive laws on right to information. India enacted its Right to Information Act in 2005 and Bangladesh in early 2009.

In Pakistan, since 2002, the Provinces of Sindh and Balochistan have also enacted laws on freedom of information. These laws are exact copies of the Freedom of Information Ordinance 2002, while being applicable on the provincial departments. In other words, Sindh and Balochistan made no effort to enact better laws for their provinces, although it was within their authority and powers to do so.
2.1 Global Scenario

Freedom of information is universally recognized as a fundamental human right and a pre-requisite for transparent and accountable governance. It is now referred to as 'oxygen' for democracy and a 'touchstone for all freedoms'. It is also widely recognized as an effective anti-corruption tool and, for this reason, the Transparency International (TI) has been working for its advancement around the world.

In 1946, the United Nations General Assembly passed a Resolution, which stated that:

*Freedom of Information is a fundamental human right and ... the touchstone of all freedoms to which the United Nations is consecrated.*

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2 See the United Nations Resolution No. 59(1), 1946.
Similarly, Article 19 of the Universal Declaration on Human Rights (UDHR) 1948 as well as of International Covenant on Civil and Political Rights (ICCPR) 1966, which came into force in 1976, explicitly recognize right to information as a fundamental human right.

Article 19 of the UDHR reads as follows:

> Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Similarly, Article 19 of ICCPR reads as below:

> Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

In the light of international and regional best practices, the good laws on freedom of information are now expected to be consistent with the following principles:

- Maximum disclosure;
- Obligation to publish;
- Promotion of open government;
- Limited scope of exceptions;
- Processes to facilitate access;
- Minimal costs;
- Open meetings;
- Disclosure should take precedence;
- Protection for whistleblowers.
Over 90 countries around the world have so far enacted freedom of information laws. In South Asia, India enacted in 2005 a very good law on right to information, which allows access to significant amount of government information including noting on the files and minutes of meetings, except when these are specifically declared as exempt or excluded. Bangladesh has also enacted a very good law in 2009. Although Pakistan was the first country in South Asia to promulgate Freedom of Information Ordinance 2002, the laws enacted by India and Bangladesh are far more comprehensive and progressive. On the other hand, the Freedom of Information Ordinance 2002 is applicable only to the Federal institutions and suffers from a large number of flaws, which make it less effective in terms ensuring realization of peoples’ right to information.

2.2 Domestic Developments

In the context of Pakistan, civil society efforts for right to information can be clearly traced back to colonial period. However, until late 1980s, these efforts were mostly in the context of freedom of speech and expressions, while having a primary focus on the freedom and independence of print media. Since late 1980s, however, some civil society activists and groups started specifically demanding legislation for right to information, whereby every citizen could access official information and records. Emergence of such demands actually coincided with the restoration of democratic process following the 1985 elections and then the death of military dictator, General Zia ul-Haq in 1988.

In early 1990s, one of the Senators, Professor Khurshid Ahmad, introduced a private member bill on freedom of information in the Senate. However, it was not adopted for consideration by the Senate of Pakistan. Later, when the government of Benazir Bhutto faced criticism for increased corruption in her government, she setup a committee under the chairmanship of late Malik Qasim to examine the causes of corruption and make recommendations to address the problem. One of the recommendations of this committee was to enact a law on freedom of information. These recommendations could not be implemented due to resistance from the bureaucracy and dismissal of her government. In the meanwhile, various civil society activists continued to demand such a legislations, although such voices were fewer and far between.
In the 1973 Constitution of Pakistan, access to information is not explicitly recognized as a right in the Chapter on ‘Fundamental Rights and Principles of Policy’. However, in 1993, Supreme Court of Pakistan observed that:

...the Government is the major source of information, which in a democratic setup, it is duty bound to disseminate for public awareness, to enable them to adjudge the conduct of those who are in office and the wisdom and follies of their policies.3

The Supreme Court further observed that the right to information can be drawn from Article 19 of the Constitution,4 which is about freedom of speech and expression. The exact wording of the judgment was that the:

...right of the citizenry to receive information can be spelt out even from the ‘freedom of expression’ guaranteed by Article 19 of the Constitution, of course subject to inhibitions specified therein.5

However, the government of the time did not take this judgment seriously and took no steps whatsoever to enact laws whereby peoples’ right to information could be materialized through comprehensive legislation and appropriate institutional framework.

After the dismissal of the second Benazir government in 1997 and against the background of massive corruption charges, the interim government lead by Malik Miraj Khalid as Prime Minister promulgated an ordinance on Freedom of Informa-

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3 See Pakistan Law Digest (PLD) 1993 SC 746.
4 Article 19 of the Constitution reads as follows: “Every citizen shall have the right to freedom of speech and expression, and there shall be freedom of the press, subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, commission of or incitement to an offence.”
5 See PLD 1993 SC 746.
tion. But this ordinance lapsed, as the following government of Pakistan Muslim League lead by Nawaz Sharif failed to turn it into an act of Parliament.

The existing Freedom of Information Ordinance was promulgated in 2002 by the military dictator General Pervaiz Musharraf, who had committed to rid the country of the menace of corruption. However, the content of the Ordinance shows that his claims were hollow and dishonest, as he failed to enact a good and comprehensive law on Freedom of Information. Even this weak Ordinance was promulgated as a result of policy actions agreed with the Asian Development Bank (ADB) as a part of conditions for disbursement of loans.

The current coalition government, which is led by Pakistan Peoples’ Party (PPP) has committed to reform the existing 2002 Ordinance. However, no concrete steps have been taken in this regard so far.
Young and old, male and female, bureaucrat and civil society activist, politician and voter follow with high interest. FOI workshop in Karachi city, 2009.
Soon after its promulgation on October 26, 2002, the Freedom of Information Ordinance 2002 came into force and, therefore, could be used to access information and records, which it declared as public records. Salient features of the Ordinance included the following:

- It is a Federal law, which is applicable only to the Federal institutions including courts and secretariat of the Parliament.
- Only citizens of Pakistan can apply for access to information.
- Each institution is required to designate an officer, who should provide the requested information by the applicants.
- Access to public record is to be provided within 21 days.
- Complaints against delay or denial in terms of access to information can be filed, firstly, to the head of the concerned public body and then to the Federal Ombudsman.
- If a complaint about delay or denial of access to information is against the Federal Board of Revenue (FBR), the complaint should be filed to the Federal Tax Ombudsman (FTO).
Under Section 7 of the Ordinance, information and records that can be accessed included the following:

- Policies and guidelines;
- Transactions involving acquisition and disposal of property and expenditure undertaken by a public body in the performance of its duties;
- Information regarding grant of licenses, allotments and other benefits and privileges and contracts and agreements made by a public body;
- Final orders and decisions, including decisions relating to members of public; and
- Any other record which may be notified by the Federal Government as public record for the purposes of this Ordinance.

On the other hand, records that cannot be accessed are covered by Section 8 of the Ordinance, which include the following:

- Noting on the files;
- Minutes of meetings;
- Any intermediary opinion or recommendation;
- Record of the banking companies and financial institutions relating to the accounts of their customers;
- Record relating to defence forces, defence installations or connected therewith or ancillary to defence and national security;
- Record declared as classified by the Federal Government;
- Record relating to the personal privacy of any individual;
- 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
- Any other record which the Federal Government may, in public interest, exclude from the purview of this Ordinance.

Furthermore, access to records may be denied if the disclosure was likely to cause significant damage to international relations, law enforcement, privacy of individuals or economic and commercial affairs of the country.

Application for information can be filed on a Form, which has been prescribed by the Cabinet Division through Freedom of Information Rules 2004. The Form is as follows:
APPLICATION FORM
FOR OBTAINING RECORD UNDER
FREEDOM OF INFORMATION ORDINANCE, 2002 (XCVI OF 2002)

<table>
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<th>Name of Applicant:</th>
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<tbody>
<tr>
<td>CNIC No.: (Attach a photocopy)</td>
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<tr>
<td>Father's Name:</td>
</tr>
<tr>
<td>Address:</td>
</tr>
<tr>
<td>Phone No.:</td>
</tr>
<tr>
<td>Name of Public Body from which information is to be obtained:</td>
</tr>
<tr>
<td>Subject matter of record requested:</td>
</tr>
<tr>
<td>Nature of record requested:</td>
</tr>
<tr>
<td>Purpose of acquisition of the information or record:</td>
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DECLARATION

(a) Application Fee of Rs. 50/- (non-refundable) has been deposited with the cash branch of the department or in State Bank of Pakistan or National Bank of Pakistan or Treasury  vide challan or receipt No.------ dated----------, an original copy of which is attached.

(b) The information obtained would not be used for any purpose other than specified above.

Signature of Applicant
There is a prescribed fee of Rs. 50, which should be deposited in the cash branch of the respective department or in the State Bank of Pakistan or in the Treasury or in the National Bank of Pakistan. The relevant heads of Account are:

a) Major head 1 30 0000 Other receipts  
b) Minor head 1 39 0000 Other, and  
c) Detailed head 1 39 121 Fee payable for obtaining in formation and copies of public record

The applicants must send their information requests through registered mail and must keep the photocopies of application and receipts issued by post office or a courier company in their record. These photocopies and receipts are important to later prove, if required, that you indeed had filed an information request.

The applications should be addressed to the designated officers in the department from which you need the required information or record. If the related department has not designated any officer or if you do not know about it, you can address the application to head of the concerned department. In the case of a ministry, the head would be its secretary. In the case of autonomous bodies or attached departments, there may be different titles for their heads. Some examples are as below:

A) Water and Power Development Authority (WAPDA) Chairman  
B) Capital Development Authority (CDA): Chairman  
C) Federal Investigation Agency (FIA): Director General

If the applicant does not receive the requested information within a period of 21 days, the applicant can file a complaint to the office of Ombudsman. Address of the Ombudsman office is as follows:

Wafaqi Mohtassib, Wafaqi Mohtassib Secretariat, Zero Point, Islamabad  
URL: www.mohtasib.gov.pk

However, if the requested information is related to FBR, the complaint should be submitted to Federal Tax Ombudsman, whose address is as follows:

Federal Tax Ombudsman, State Enterprise Complex, Constitution Avenue, Islamabad  
URL: www.fto.gov.pk
Since the promulgation of the Ordinance in 2002, the Government of Pakistan has not made any consistent efforts to ensure its efficient implementation. In fact, there is little appreciation in the government about the importance of right to information for transparent and accountable governance. In view of this, only a few steps have been taken and these too have been taken essentially in response to efforts being made by various civil society organizations. These official steps can be summed up as follows:

4.1 Formulation of Rules

In Pakistan, laws usually include substantive provisions and leave the procedural matters for the executive to decide through rules and by-laws. These rules and by-law are important to provide for a clear procedure, which should not only facilitate people in accessing their rights and entitlements but also officers and government departments in terms of meeting their legal obligations. However, it is a common problem that rules are either not notified soon after the enactment of law or these are made in such a manner that it becomes difficult for people to access their rights, entitlements or public services. It happens primarily due to the fact that the major consideration before the executive is the convenience, authority or discretion...
of officers or departments, and not the interest of the people. The executive usually gets away with such attitudes in view of week oversight by media, civil society and public representatives.

In the case of Freedom of Information Ordinance 2002, however, civil society groups had started demanding the government to formulate the rules. Simultaneously, some of them had started filing information requests, while arguing that non-existence of rules cannot stop the operation of the Ordinance. This generated a pressure on the government, which was otherwise not interested in formulating the rules. It was also because, in the absence of rules, government could not charge any fee or photocopying charges from the applicants.

However, the Freedom of Information Rules, which were notified by the Cabinet Division in June 2004, were drafted and finalized without any consultations with civil society groups. As a result, these include a number of flaws from the perspective of applicants and citizens. Some of these flaws include the following:

4.1.1. Under the Rules, citizens requesting information have to pay a fee of Rs. 50/- for each request with the entitlement to receive information only up to ten pages. If the requested information exceeds ten pages, the requester has to pay additional fee of Rs. 5/- per page. While the amount of prescribed fee may be fair, the photocopying charges are unfair and prohibitive and fail the very purpose of the Ordinance. The photocopying charge of Rs. 5/- per page is significantly higher than the market rate, which is about Rs. 1 per page. It may be noted that high fee and photocopy charges are in violation of Article 3 of the Ordinance, which explicitly provides that it will be interpreted so as to “facilitate and encourage, promptly and at the lowest reasonable cost, the disclosure of information”.

4.1.2. Under the Ordinance or Rules, applicants have not been given the right to inspect records. As the information or records requested may constitute only a small part of voluminous documents or files, it would have been useful to give the applicant the right to inspect relevant records in order to identify the required pages before photocopies were to be made. This would have been beneficial for applicants in terms of minimizing photocopying expenses. Furthermore, it would have

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6 Mukhtar Ahmad Ali, who is now head of CPDI, had led the campaign for early notification of Rules for FOI Ordinance 2002.
minimized the prospects of disagreements about
(a) whether the claimed photocopy charges are justified; and
(b) whether the records photocopied and provided are exactly the ones that had been requested.

4.1.3. Rules do not provide for quick handling of urgent requests for access to information. In such special circumstances, the designated officials should have been mandated to provide the requested information as soon as possible, without waiting for the 21 days limits prescribed in the FOI Ordinance 2002. The special circumstances could have been determined on case to case basis, involving situations where delayed provision of information could result in grave or irretrievable loss or injury to the requesting party or other individuals and groups in the society.

4.1.4. The Application Form given in the FOI Rules 2004 for information requests requires citizens to describe the purpose of information request. In addition, the declaration part of the Form requires applicants to declare that the “information obtained would not be used for any purpose other than specified above.” This is totally unnecessary, especially when the excluded (Section 8) or exempted (Sections 16–18) information is not to be disclosed any way. Experience shows that government officials can abuse such unnecessary provisions to unlawfully delay or deny information to requestors. It may be noted that most good laws around the world either do not require such information and declaration. The Indian Right to Information Act 2005 explicitly forbids officials from asking such questions.

4.1.5. The FOI Rules do not explain Section 9 of the Ordinance, which reads as follows:

Duty to assist requesters - A public body shall take necessary steps as may be prescribed to assist any requester under this Ordinance

In the view of civil society activists, the duty to assist should have been explained to include help to the illiterate or others with special needs in writing information requests; as well as proper guidance about what kinds of questions they should ask to expose the causes of their grievances and relevant inefficient and corrupt practices. It could also include clear guidelines on implementing steps whereby all visitors to the government offices could learn about their right to information, as well as about the procedure of filing information requests. Relevant steps may include posting of relevant information on notice-boards or on other prominent places in the offices.
4.2 Designated Officers

Under the 2002 Ordinance and 2004 Rules, the government bodies are required to designate officers (not below BPS 19) to handle information requests. However, not many institutions of the government have met this requirement. In 2004, after the Rules were notified, the Cabinet Division had written to various government ministries and departments for designating officers. Acting on this letter, around 40 departments designated officers. However, as very few applications for access to information were received and government departments did not take it seriously, the designated officers themselves forgot about the Ordinance and its implementation. Many of them also got transferred without leaving behind any institutional memory about the letter issued by the Cabinet Division and designation of officers.

In October 2009, on the demand of Centre for Peace and Development Initiatives (CPDI), the Cabinet Division again wrote to government departments for designating officers. Various departments have already acted on this letter but it is not likely to produce the desired results until and unless people start using the Ordinance or the government require the designated officers to proactively work for the implementation of the Ordinance.

4.3 Obligatory Records

Under the 2002 Ordinance, it is obligatory for the government bodies to properly maintain records, ensure computerization and networking of records, and proactively disclose important information through various media. The related provisions are as follows:

4. Maintenance and indexing of records.- 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.

7 See the website of Cabinet Division i.e. www.cabinet.gov.pk
There is little evidence that government is making adequate efforts to ensure efficient implementation of above provisions of the Ordinance. In fact, record keeping situation in most departments is quite bad, which makes it difficult for the departments to efficiently retrieve information or records when needed.

**4.4 Orientation or Training of Government Officers**

The pervasive culture of official secrecy cannot be quickly changed into a culture of openness and transparency, which ensures easy and cost-effective access to people to maximum official information. The 2002 Ordinance seeks to promote transparency but little efforts have been made to orient or train officers so that they understand the importance of right to information and are fully informed to respond to information requests.

Right to information or transparency in governance are the not the subjects, which are covered by the training academies for government officers. There is

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**5. Publication and availability of records.** - 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 at a reasonable price at an adequate number of outlets so that access thereof is easier, less time-consuming and less expensive.

**6. Computerization of records.** - 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 country on different systems so that authorised access to such records is facilitated.

Intense discussions during a FOI workshop, Karachi, July/August 2009.
no evidence of government organizing or planning to organize any short-term or long-term courses on this subject. Nor has the government issued any guidelines or standard operating procedures to deal with information requests.

In 2005, however, the then Secretary of the Cabinet Division had shown some interest in this issue and had established collaboration with CPDI for the orientation of government officers on right to information. As a part of this arrangement, CPDI and Cabinet Division had organized two half-day sessions in the conference room of National Language Authority (NLA). But, after the transfer of the Secretary, this initiative could not continue and sustain. Later, as a part of Access to Justice Program, the Ministry of Law organized a few workshops for government officers on freedom of information. There is no evidence of any other initiative taken in this regard so far.

4.5 Public Awareness

Government has made no efforts aimed at creating public awareness about the 2002 Ordinance. Various civil society groups, however, have been making efforts for public awareness through their projects. But such efforts have remained modest and lacking in consistency and outreach due to a variety of limiting factors. The organizations, which have been making such efforts include the following:

- Centre for Peace and Development Initiatives (CPDI);
- Liberal Forum Pakistan (LFP);
- Individualland;
- Centre for Civic Education (CCE);
- Human Rights Commission of Pakistan (HRCP);
- Consumer Rights Commission of Pakistan (CRCP).

The above organizations have also been engaged in promoting policy dialogues around right to information as well as in training activists belonging to various sectors. However, all these efforts have not worked so far to generate a broad-based civil society movement for right to information.
EXPERIENCE OF CIVIL SOCIETY GROUPS

There are a few civil society groups, which have been working to promote right of people to access information and records held by the government. In terms of the use of Freedom of Information Ordinance 2002, their experience is briefly summed up in the following paragraphs:

5.1 Vast Range of Exclusions Discourage the Use of the Ordinance

A law on right to information is only useful when it can help in fixing problems, which people face in their daily lives, by exposing inefficiencies in the government systems. However, the 2002 Ordinance includes a vast range of exemptions and exclusions and, therefore, has serious limitations in terms of exposing inefficiencies. For this reason, common people and various civil society groups do not feel confident that its use can really help in addressing the problems that they face. So far, the Ordinance has been mostly used by a few civil society groups, which too did it with the purpose of collecting empirical data about its limitations and official responses so as to improve their understanding for policy advocacy.
5.2 Government Response to Information Requests

5.2.1. In most cases, government departments fail to provide the requested information within the prescribed time limit of 21 days. In fact, most departments do not even acknowledge the receipt of the information request. Generally, the attitude of concerned officers is unhelpful and, in some cases, even hostile and threatening.

5.2.2. The office of Wafaqi Mohtassib, however, has been generally efficient in terms of responding to and dealing with complaints filed by the applicants, who did not receive the requested information within 21 days. However, office of Ombudsman is effective only when the complaint is very straightforward and regarding a very clear violation of a certain section of the Ordinance. If a complaint involves interpretation of a certain word or a section of the Ordinance, the Ombudsman has proven to be conservative institutions – mostly being less progressive and more appreciative of official positions.

5.2.3. In most cases, especially if the requested information is of ordinary nature, departments provide the requested information after the Ombudsman writes to them and asks them to explain why the requested information was not provided. In fewer instances, departments chose to contest by claiming exclusion or exemption of requested information or records. In such instances, they usually argue that the disclosure of requested information would cause embarrassment to the government or that it requires a lot of effort of the part of government to collect and compile it.

ANF Response to Information Request

On September 5, 2009, Malik Saleem Iqbal, a staff member of CPDI, submitted an information request under the Freedom of Information Ordinance 2002 to the Secretary, Ministry of Narcotics Control. Under the Ordinance, the Ministry was required to provide the requested information, or deny it by explaining the grounds of denial, within a period of 21 days. However, we never received any response from the Ministry.

On November 18, 2009, an official belonging to the Anti-Narcotics Force (ANF) visited the office of CPDI and stated that he was here to check and verify the
credentials of CPDI as well as of Mr. Iqbal, who had submitted the information request. He was fully briefed about the Ordinance. He wanted to have copies of some documents, which were also provided to him.

Later, CPDI wrote letters to the Director General of ANF, Secretary of Ministry of Narcotics Control and Secretary of Cabinet Division to convey its concerns regarding this kind of response by public bodies. The letter stated:

a) Information and records that can be requested and which the public bodies are required to provide have been declared as ‘public records’ under Section 7 of the Ordinance. Therefore, the highly guarded, secretive and protective attitude of public bodies is unfair and without legitimate grounds. If the requested information is of classified nature and not covered by the Ordinance, the public bodies can simply deny the request by stating the grounds and referring to the relevant provisions of the Ordinance.

b) Under the Ordinance, the public bodies are not required to first check the credentials of individuals or organizations that have requested the information before responding. Hence, in our view, any public body that resorts to any such methods oversteps its lawful authority.

c) Our biggest concern is that, if public bodies start checking the credentials of individuals and organizations before providing or denying access to information under the Ordinance, it would be perceived by citizens as harassment. It would also discourage the use of the Ordinance, which is already being used rarely.

No response was received in relation to the above mentioned letter. However, the requested information was promptly provided to Mr. Iqbal.

5.2.4. When the requested information is of important nature and the department feels that its disclosure may create an embarrassing situation, every effort is made to delay or deny the access.
5.2.5. Sometimes, government officers call back and offer to provide the requested information informally. They fear that a formal disclosure may cause embarrassment to their superiors and, hence, may have adverse implications for their careers.

5.2.6. There have been occasions when officers called back and argued why the requested information was needed and what interest the applicant had in the related matter. They usually argued that the requested information could only be required by a superior officer or another government department; and people had nothing to do with that.

5.2.7. In few cases, especially when access to information relating to a law enforcement agency had been requested, relevant officers called back and used threatening tones to ask why it needed. In one case, involving the Anti-Narcotics Force (ANF), an officer visited the office of CPDI to collect information about the applicant as well as about the organization.

In 2008, a staff member of Centre for Peace and Development Initiatives (CPDI) submitted an application to the Ministry of Law seeking information about fee paid to lawyers engaged by the Ministry to represent the Federation in the Supreme Court during Oct. 1, 2002 to March 20, 2008. The Ministry refused to provide the requested information and stated:

“... if the required information was provided to the requester then it [will] create unnecessary problems, embarrassing situation, and open a Pandora box, further it would be direct interference in the internal working of this Division...”.

Later, the Ombudsman decided in favour of the applicant and directed the Ministry to provide the requested information within 30 days. However, the Ministry filed a representation to the President against the decision of the Ombudsman. The matter is still pending with the President.
MAJOR WEAKNESSES AND CHALLENGES

The weaknesses and challenges responsible for little progress towards the realization of the objectives set out in the Ordinance are as follows:

Interactive sessions in the FOI workshop in Karachi, November 2009.
6.1 The 2002 Ordinance includes a vast range of exclusions and, therefore, does not inspire much confidence that it could really help in addressing a range of problems in terms of accessing rights, services and entitlements.

6.2 A number of laws and rules, which require and promote secrecy, remain on the statute books, despite the promulgation of 2002 Ordinance. Until and unless, these laws and rules are amended, the government officers will continue to feel insecure and would not easily give access to official and information and records. Such laws and rules include Official Secrets Act 1923 and Rule 18 of Govt. Servants (Conduct) Rules, 1964.

6.3 Government officers have no security of tenure or protection and can be easily transferred or side-lined, if their superiors are not happy with them. In such a situation, they fear that, if access to information created an embarrassing situation for higher ups, then they may suffer, even if the access to information given by them was fair and legitimate.

6.4 The culture of secrecy, which is rooted in laws, attitudes and official practices, is pervasive and cannot be easily changed. So far, there does not seem to be a high-level of commitment in the top political leadership to transform this into a culture of transparency and openness. Until and unless, there exists a strong political will, government is not likely to make the required efforts in terms of changing laws and rules and training officers.

6.5 Despite efforts by a few civil society groups, the level of public awareness still remain limited. As a result, there is weak demand for a strong freedom of information legislation. It also partly explains the limited use of 2002 Ordinance.
Recommendations:
Implementation of the following recommendations by the government and civil society groups can ensure efficient realization of peoples’ right to information. These are as follows:

7.1  For Government

7.1.1. The Article 19 of the Constitution of Pakistan should be amended to explicitly provide for right to information.

7.1.2. The laws related to official secrecy should be revised in such a manner that all official information and records are treated as accessible, subject to minimal and clearly defined exemptions.

7.1.3. All important official meetings should be open; and journalists and civil society representatives should be allowed to sit in such meetings as observers. Only in exceptional circumstances, and for reasons to be recorded, such meetings may be declared as closed-door.
7.1.4. All the ministries, departments and institutions of the Federal/Provincial governments must be required to proactively share maximum information through notice-boards, press briefings, websites and other appropriate media.

7.1.5. It would be appropriate for the Federal Government to enact a comprehensive law on freedom of information, which should be applicable not only on all federal, provincial and local institutions but also on private institutions that receive or have received in the past official funding, subsidies or other assistance in any manner. In the case that Federal legislation in this matter cannot apply on provinces or local governments, it would be appropriate to have a uniform legislation across provinces that ensure equal rights of all citizens in terms of access to information.

7.1.6. The freedom of information legislation must ensure the following:

- There should be only one negative list of minimal, specific and narrowly defined exemptions. All other information and documents, including noting on the files
and minutes of meetings, must be declared as public documents.

- No exemptions should be declared as absolute. Rather, there should be an independent process to determine whether exemption or disclosure would better serve the public interest.
- Definitions of terms like information, record, nature of access and duty to assist should be comprehensive and equitable, especially in terms of reducing costs and ensuring access of disadvantaged groups to information and records.
- Information and records should be accessible in various forms including through inspection, photocopying, through floppies and other electronic devices and taking of notes, etc.
- There should be a strong implementation mechanism, which should include penalties for officers who may damage, destroy or conceal the requested record or who unfairly deny or delay legitimate requests for information.
- For oversight, annual assessment report, complaint handling and provision of guidance to government departments, an independent complaints commission should be established. Decision of such a commission should be final.
- There should be a provision for the protection of whistle-blowers.
- Information that cannot be denied to a member of the Parliament should not be denied to people requesting information under a freedom of information law.

7.1.7. Until the enactment of improved legislation on freedom of information, in the light of suggestions presented in 7.1.6, the government must take proactive steps to ensure full implementation of FOI Ordinance 2002. Such steps should include revision of FOI Rules 2004 in the light of recommendations of civil society organizations.

7.1.8. Government should take steps to create awareness about the importance of right to information and how people could access information by using this right.

7.1.9. Government must take timely and effective steps to change the culture of official secrecy that it had inherited from the colonial administration. Such steps could include revisions of official rules and procedures, issuance of guidelines for proactive disclosure, training for officers in transparency and right to information and implementation of a clear policy across the board aimed at maximum transparency and disclosure.
7.2 For Civil Society Organizations

7.2.1. Efforts to create public awareness about the need and importance of right to information for transparent and accountable governance must be stepped up.

7.2.2. Even those civil society groups, which are not directly working on right to information, should mainstream it into their programs whether related to health, education, environment or poverty.

7.2.3. Civil society organizations should themselves adopt policies allowing people to have access to their information and records. Hence, civil society organizations can set examples and standards, which they can then ask the government to adopt.

7.2.4. Greater efforts should be made to engage policy makers, especially officers and law makers, for improved legislation for freedom of information.

7.3. For Donors and IFIs:

7.3.1. Donors and International Financial Institutions (IFIs) should use their influence on the government to enact a good and comprehensive law on freedom of information.

7.3.2. Donors and IFIs should also facilitate government and civil society groups in terms of providing resources and knowledge products and building requisite capacities.
Comparison of Laws on Freedom of Information

India | Pakistan

Turkey | South Africa

United Kingdom

Centre for Peace and Development Initiatives, Pakistan (CPDI-Pakistan), Islamabad

&

Commonwealth Human Right Initiatives (CHRI), Delhi
## Comparison of Laws on Freedom of Information

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<td>Who has the right to information?</td>
<td>All citizens of India have the right to access information. The Act extends to the whole of India except the State of Jammu and Kashmir [S. 1(1) and 3].</td>
<td>All citizens of Pakistan have the right to access public records [S.3].</td>
<td>Every person has the right to access to information upon request [S.11, S.50].</td>
<td>Everyone (citizens and legal persons) has a right to information. Non-citizens and foreign corporations based in Turkey also have a right to information related to them or their interests if the country they are from allows Turkish citizens to demand information from their authorities [Article 4].</td>
<td>Any person, upon request, has a right to be informed about the possession of information by the concerned authority and to have the information communicated [S. 1(1)].</td>
</tr>
<tr>
<td>Meaning of Right to Information</td>
<td>Right to information means the “right to information accessible under this Act which is held by or under the control of any public authority and includes the right to (i) inspection of work, documents, records; (ii) taking</td>
<td>No such provision.</td>
<td>No such provision.</td>
<td>“Access to information and document: Depending on the nature of the information and the document, providing a copy of the information or the document to the applicant; in cases where it is not possible to give a</td>
<td>No such provision.</td>
</tr>
<tr>
<td>Definition of Information and Record</td>
<td>Information means &quot;any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, log books, contracts, reports, papers, samples, models, data materials held in any electronic form and information relating to any private body which can be accessed by a public body&quot;.</td>
<td>Information not defined.</td>
<td>&quot;Record&quot; of, or in relation to, a public or private body, means any recorded information- (i) regardless of form or medium; (ii) in the possession or under the control of that public or private body, respectively; and (iii) whether or not it was created by that public or private body, respectively [S. 1].</td>
<td>&quot;Information: Every kind of data that is within the scope of this law and are included in the records of the institution&quot; [Article 3 (c)].</td>
<td>&quot;Document: Any written, printed or copied file, document, book, journal, brochure, etude, letter, software, instruction, sketch, plan, film, photograph, tape and video cassettes, map</td>
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</table>
Applicability/Scope of Law | Any authority or body established or institution of self-government established or constituted:  
(i) by or under the Constitution;  
(ii) by any other law made by Parliament or a State Legislature,  
(iii) by notification made by an appropriate government | Any Ministry, Division or attached department of the Federal Government; Secretariat of Majlis-e-Shoora (Parliament); any office of any Board, Commission, Council, or other body established by, or under, a Federal law; courts and tribunals [S. 2] | Any Department of Government, body performing public function under any legislation and private bodies where the information is required for the exercise or protection of any rights [S. 4]. | Public institutions and private organizations, which qualify as public institutions [Article 2]. | Public authorities specifically listed in Schedule 1 of the Act or designated as such by an order of the Secretary of State (e.g., bodies which appear to exercise functions of a public nature, or are providing under a contract made with a public authority any service whose provision is a function of that au-

body under any law for the time being in force” [S. 2(f)].

Records includes “(a) any document, manuscript and file; (b) any microfilm, microfiche and facsimile copy of a document; (c) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and (d) any other material produced by a computer or any other device” [S. 2(i)].

of the institutions and the information, news and other data that are recorded and saved in electronic format that are within the scope of this law” [Article 3 (d)].
and includes (a) any other body owned, controlled or substantially financed and (b) non-government organization substantially financed; by funds provided directly or indirectly by the appropriate Government [S. 2(h)].

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<th>Application on Private Bodies</th>
<th>Includes (a) any other body owned, controlled or substantially financed and (b) non-government organization substantially financed; by funds provided directly or indirectly by the appropriate Government [S. 2(h)].</th>
<th>Not applicable on private bodies</th>
<th>A requester must be given access to any record of a private body if that record is required for the exercise or protection of any rights [S. 50]</th>
<th>Private organizations that qualify as public institutions [A. 2].</th>
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<tr>
<td>Suo Motu/Proactive Disclosure</td>
<td>It shall be a constant endeavour of every public body to provide as much information as possible suo motu to the public at regular intervals through various means of communications. Information shall be disseminated as 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 at a reasonable price [S. 5].</td>
<td>Human Rights Commission to compile in each official language a guide containing easily comprehensible info as may reasonably be required by a person wishing to exercise a right under the Act [S. 10].</td>
<td>N/a</td>
<td>Public authorities to make their publications available through Publication Scheme formulated by the public authority and approved by the Information Commissioner. The Scheme must specify classes of informa-</td>
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| widely as possible and in such form and manner which is easily accessible to the public, including through notice boards, newspapers, public announcements, media, internet or any other means including inspection of offices of any public authority. | Every public body shall publish the following information:

i) the particulars of its organization, its functions and duties;

ii) the powers and duties of its officers and employees;

iii) the procedures followed in the decision making process, including channels of supervision and accountability; | Public bodies to publish in three official languages: description of structure, functions, services; details of info officers and procedures for applying for access; categories of records available; opportunities for consultation; remedies available for an act or failure to act [S. 14].

Private bodies to publish: contact details for head of body; access procedures; records held by the body; records available under other legislation. Updated at least every 12 months [S. 52]. |
iv) the norms set by it for the discharge of its functions;
v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;
v) a statement of the categories of documents that are held by it or under its control;
vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;
viii) a statement of the boards, councils, committees, etc., and whether their meetings are open to public, or the minutes of
such meetings are accessible to public;

ix) a directory of its officers and employees;

x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;

xi) the budget allocated to each of its agencies, indicating the particulars of all programmes, proposed expenditures and reports on disbursements made;

xii) the manner of execution of subsidy programmes, including the amounts allocated and details of beneficiaries;

xiii) particulars of recipients of concessions, permits or authorizations granted by it.
xiv) details in respect of the information, available to or held by it, reduced in an electronic form;
xv) the particulars of facilities available to citizens for obtaining information;
xvi) the names, designations and other particulars of the Public Information Officers;
xvii) any other information as may be prescribed [S.4].

In addition, every public authority is required to:

i) publish all relevant facts while formulating important policies or announcing the decisions which affect public;
ii) provide reasons for its administrative or quasi-judi-
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<tr>
<th>Information Request Procedure</th>
<th>Request in writing or through electronic means to the Public Information Officer with reasonable assistance to be provided in the case of oral requests [S. 6]. The application for information should include particulars of the requested information, contact details of applicant and application fee as prescribed. Applicant is not required to give any reason for requesting the information or any other personal details except those necessary for contacting him/her [S. 6 (2)].</th>
<th>Application to the Designated Official in the form prescribed. Must furnish necessary particulars and pay such fee and at such time, as may be prescribed [S. 12]. Duty on public body to take necessary steps, as may be prescribed, to assist the requester [S. 9]. Under the Rules, it is necessary for the applicant to give the purpose for requesting the information; and to declare that the requested information would not be used for any other purpose. [Annexure I of The Freedom of Information Rules, 2004].</th>
<th>Application in the prescribed form to the Information Officer (public bodies) and private bodies, with sufficient details to identify the information and requester and stating the manner and language of access preferred [S. 18]. Illiterate/disabled persons can make the request orally to be converted into prescribed form by the Officer. There is also a duty to provide help to the requester [S. 19]. Requests are to be made in writing or in electronic form if the identity of the applicant and their signature can be verified using for example a digital signature [A. 6]. Oral requests are to be treated “with hospitality and kindness” and immediately reviewed and resolved if possible [Circular 2004/12].</th>
<th>S.8: Request to be made in writing to a public authority stating the requester's name, address for correspondence and description of the information requested. Text through electronic means considered to be in writing [S. 8]. It is a duty of officials to provide the requester a reasonable assistance [S. 16].</th>
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<tr>
<td>Public Records/Exemptions</td>
<td>Exemptions include: (a) information, disclosure of which</td>
<td>Only the following, subject to a large number of exemptions and exclusions: Exemption relating to records of public bodies include: Exemptions include: a) state secrets</td>
<td>Categories of exemption include:</td>
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would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm have been declared as public records:

a) policies and guidelines;

b) information regarding grant of licenses, allotments and other benefits and privileges and contracts and agreements made by a public body;

c) final orders and decisions, including decisions relating to members of public; and

d) any other record, which may be notified by the Federal Government as public record for the purpose of this Ordinance [S. 7].

a) privacy of third party;

b) certain records of South African Revenue Service;

c) commercial information of third party;

d) certain confidential information, and protection of certain other safety of individuals, and protection of property;

f) police dockets in bail proceedings, and protection of law enforcement and legal proceedings;

g) records privileged from production in legal proceedings;

h) violate the private life or economic or professional interests of an individual;

i) economic interests and financial welfare of Republic and commercial activities of public bodies;

j) research information of third party, and protection of

which would clearly cause harm to the security of the state or foreign affairs or national defense and national security;

b) harmful to the economic interests of the state or cause unfair competition or enrichment;

c) the duties and activities of the civil and military intelligence units;

d) administrative investigations;

e) judicial investigations or prosecutions;

f) violate the private life or economic or professional interests of an individual;

i) economic interests and financial welfare of Republic and commercial activities of public bodies;

j) research information of third party, and protection of

a) information accessible by other means;

b) information intended for future publication;

c) information supplied by, or relating to, bodies dealing with security matters;

d) national security;

e) certificates under ss. 23 and 24: supplementary provisions;

f) defence;

g) international relations;

h) relations within the United Kingdom;

i) the economy;

j) investigations and proceedings conducted by public authorities;

k) law enforcement;

l) court records, etc;

m) audit functions;

n) parliamentary privilege;

o) formulation of government policy, etc;
the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of information;

(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

(f) information received in confidence from foreign government;

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given

However, even the limited number of above listed public records are subject to a large number of exclusions. Exclusions include:

a) noting on the files;

b) minutes of meetings;

c) any intermediary opinion or recommendation;

d) record of the banking companies and financial institutions relating to the accounts of their customers;

e) record relating to defence forces, defence installations, or connected therewith or ancillary to defence and national security;

f) record declared as classified by the Federal Government;

and protection of research information of a public body;

k) operations of public bodies;

l) manifestly frivolous or vexatious requests, or substantial and unreasonable diversion of resources [Ch. 4].

Categories of exemption re records of private bodies include:

a) privacy of third party;

b) commercial information of third party;

c) certain confidential information of third party;

d) safety of individuals, and protection of property;

e) records privileged from production in legal proceedings;

f) commercial information notes and recommendations if determined by the institution to be exempt; and

k) requests for recommendations and opinions [Part 4].

p) prejudice to effective conduct of public affairs;

q) communications with Her Majesty, etc. and honours;

r) health and safety;

s) environmental information;

t) personal information;

u) information provided in confidence;

v) legal professional privilege;

w) commercial interests;

x) prohibitions on disclosure;

y) Ministerial certificates can be issued to exempt certain information;

z) vexatious requests;

aa) repeated requests;

bb) costs of complying with request would exceed fee recovery limits [Part II].
in confidence for law enforcement or security purposes;
(h) information which would impede the process of investigation or apprehension or prosecution of offenders;
(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers;

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over;

Provided further that those matters

g) record relating to the personal privacy of any individual;
h) record of private documents furnished to a public body either on an expressed or implied condition that information contained in any such document shall not be disclosed to a third person;
i) any other record which the Federal Government may, in public interest exclude from the purview of this Ordinance. [S. 8]

Restrictions imposed on access also relate to:

a) international relations;
b) disclosure harmful to law enforcement;
c) privacy and per-
g) research information of third party, and protection of research [Ch. 4].
which come under the exemptions specified in this section shall not be disclosed;

(j) information which relates to personal information the discloser of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information;

Provided that the information which cannot be denied to the Parliament

d) economic and commercial affairs [S. 14, 15, 16, 17, 18].
or a State Legislature shall not be denied to any person (S. 8).

Without prejudice to the provisions of section 8, the Public Information Officer may reject a request for information where it would involve an infringement of copyright subsisting in a person other than the State (S. 9).

Certain specified intelligence and security agencies, except where the Information Commissioner holds that the requested information pertains to allegations of corruption or human rights violations [S. 24 and Schedule 2].

Exemptions are qualified by a public interest override.

Both public and private bodies must disclose.

No public interest override.

Public interest.
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<th>Disclosure</th>
<th>Information may still be disclosed if the public interest in disclosure outweighs the harm to protected interests [S. 8(2)].</th>
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<td>Reverse public interest test included, such as that the Government can broadly refuse to disclose any other record from the purview of this Ordinance in the public interest [S. 8(i)].</td>
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<td>close information when it reveals evidence of substantial contravention of law or imminent and serious public safety or environment risk AND the public interest in disclosure outweighs the public interest in refusing [S. 46].</td>
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<tr>
<td>test override whereby access will only be refused where the public interest in maintaining the exemption outweighs the public interest in disclosing the information [S. 2]</td>
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<tr>
<td>Partial Disclosure / Severability</td>
<td>Information to be given if reasonably severable [S. 10(1)].</td>
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<tr>
<td>No such provision.</td>
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<tr>
<td>Severance is allowed, where exempt information can be reasonably severed [S. 28].</td>
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</tr>
<tr>
<td>No such provision.</td>
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<tr>
<td>Fees and Waiver</td>
<td>Must be reasonable &amp; will not be imposed where the applicant is below the poverty line. Amount to be prescribed [S. 7(5)].</td>
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<td>Information is provided free if the public authority fails to comply with time limits [S. 7(6)].</td>
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<tr>
<td>Fee to be prescribed in Rules by the Government. [S. 12 &amp; 25(2)]. But the decision to prescribe fee should take into account Section 3, which reads that the Ordinance shall be interpreted so as “to facilitate and encourage, promptly and at the lowest reasonable cost, the disclosure of information”.</td>
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<td>Application fee as prescribed. Additional fees for reproduction and for search and preparation. Fees can be waived by notice in Gazette by the Minister [S. 22].</td>
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<td>Fee can be charged in accordance with regulations framed by Secretary of State. Regulations may include provisions for fee waiver, set a maximum limit, advise re manner of calculation. Requests will not be processed until required fees are paid [S. 9].</td>
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<tr>
<td>Time for Providing Access to Information</td>
<td>30 working days for granting or refusing the information request [S. 7]. 40 days where confidential third party information has been requested [S. 11(3)].</td>
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| Urgent Requests | Where the information requested concerns the life and the liberty of a person, it should be provided within 48 hours of receipt of the request [S. 7(1)]. | No such provision. | No such provision. | No such provision although Circular 2004/12 states that oral requests are to be immediately reviewed and resolved if possible. | No such provision. |
Decision/Reasons for Refusal

Decision made by the Public Information Officer must give notice concerning right to review re decision on fees and form of access and/or refusal, including reasons for refusal, the period for appealing the decision and the particulars of the appellant authority [S. 7(3)(b) and (8)].

Designated Official shall record his/her decision in writing and the applicant shall be informed about such decision [S. 13].

Information Officer decides the request for public body and the head of the private body decides for requests to private body. The decision must contain details about access fee, form of access, right of appeal to court and reasons in case of refusal [S. 25 & 29].

Institutions notify the applicants, or inform them in electronic format, of the result of their applications regarding refusal, the period for appealing the decision and the particulars of the appellant authority [S. 7(3)(b) and (8)].

Decision made by the "public authority". Where access is refused: must state facts, the applicable exemption and reason for refusal [S. 17].

Review/Appeals Process

One internal appeal to the officer senior in rank to the Public Information Officer. Second appeal to the Central or State Information Commissions, which are independent appeal bodies set up under the Act. Jurisdiction of Courts is barred [S.19(1), 19(3), S. 23].

Applicant can file a complaint with the head of the public body within 30 days of notification. "On failing to get the requested information from him within the prescribed time", the applicant may file a complaint with the Mohtasib (Ombudsman) or Federal Tax Ombudsman [S. 19].

Public body: Internal appeal can be made by the applicant or a relevant third party to a specified authority within 60 days of notice. An appeal to the Courts is then available.

Private bodies: Appeal to the Courts directly from the decision of the head of the body [S. 75].

Applicants, or inform them in electronic format, of the result of their applications regarding refusal, the period for appealing the decision and the particulars of the appellant authority.

Appeals are lodged with the Board of Review of the Access to Information within 15 days of notification on the original decision. The Board shall render a decision within 30 days. Appeals can then be made to a court. For judicial review [A. 13].

The law requires the Secretary of State to issue a Code, which among other things, should provide guidance on setting up internal complaints procedures. Complaint from any such procedures lies to the Information Commissioner, who can make a binding decision. A second appeal lies to the Information Tribunal by either the complainant or the public authority. A third appeal lies to the High Court (England, Wales and Northern Ireland).
<p>| Penalties                                                                 | Where a Public Information Officer has, without any reasonable cause, refused to receive an application, has not furnished information within time limits, or malafide denied the request or knowingly gave incorrect, incomplete or misleading information or destroyed information subject to a request or obstructed the process, a penalty of Rs. 250 per day will be imposed until the application is received or information furnished. Total penalty not to exceed Rs. 25,000. In the above cases, the Information Commission can also recommend disciplinary action against the Officer at fault under the applicable service rules [S. 20]. | Any person who destroys a record, which 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, a fine or both [S. 21]. 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 Rs. 10,000 [S. 20]. | Any person intentionally destroying, damaging, altering concealing or falsifying records commits an offence punishable with imprisonment not exceeding two years [S. 90]. Sanctions can be imposed under the criminal law and administratively against officials for negligently, recklessly or deliberately obstructing the application of the law. | An employee, officer or person subject to the direction of a public authority who alters, defaces, blocks, erases, destroys or conceals any record held by that public authority intending to prevent the disclosure by that authority commits an offence and is liable on summary conviction to a fine &quot;not exceeding level 5 on the standard scale&quot; [S. 77]. |</p>
<table>
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<tr>
<th>Protection for Actions Under the Act / Whistle-blower Protection</th>
<th>Protection to officials against suits, prosecution or any other legal proceeding for anything done in good faith under the Act [S. 21]. Specific whistle-blower protection not provided under this Act.</th>
<th>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 with the Ordinance or its Rules Act [S. 22]. # Specific whistle-blower protection not provided under this Act.</th>
<th>No person is criminally or civilly liable for anything done in good faith in the exercise of any power or duty in terms of the Act [S. 89]. Specific whistle-blower protection not provided under this Act. [See the Protected Disclosures Act 2000].</th>
<th>N/a</th>
<th>No action for defamation if info provided to a public authority by a third person which contains defamatory material is released, if publication is made without malice. Specific whistle-blower protection not provided under this Act. [See the Public Interest Disclosures Act 1998].</th>
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<tr>
<td>Reporting &amp; on-going Monitoring/Review</td>
<td>Information Commissions required to monitor the Act and produce Annual Reports on the implementation of the Act, including recommendations for improvements. Annual reports to be forwarded to the appropriate Government for tabling in Parliament. Each Ministry or Department shall, in relation to their public authorities, collect and provide to the Information Commissions such</td>
<td>No such provision.</td>
<td>The Human Rights Commission must report annually to the National Assembly on the implementation of the Act in public bodies and may at that time make recommendations regarding the development, improvement, modernization, reform or amendment of the Act or other legislation having a bearing on access to information [S. 84].</td>
<td>Institutions must prepare reports on the application of the law and submit them to the Board of Review. The Board must produce an annual report for submission to the National Assembly, which will be made public</td>
<td>The Information Commissioner (IC) shall submit an annual report on his/her functions before each House of the Parliament. The requirements of the Act and the practice codes are monitored and enforced through the IC. The IC may, with the consent of any public authority, assess whether that authority is following good practice. The IC can make good practice recommendations and issue</td>
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| Implementation: Public Education, Training for Officials, etc. | Where resources are available, appropriate Government must:  
   a) develop and organize educational programmes for the public (in particular of disadvantaged communities) on how to exercise rights under the Act;  
   b) encourage public authorities to participate in programmes organized under clause (a), and to undertake such programmes themselves;  
   c) promote timely and effective dissemination of accurate information by public authorities about their  
 | 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 country on different systems so that authorized access to such records is facilitated [S. 6].  
 | Where resources are available, Human Rights Commission must:  
   a) conduct educational programmes for the public (in particular of disadvantaged communities) on how to exercise rights under the Act and encourage public and private bodies to do the same;  
   b) train information officers in public bodies;  
   c) promote timely and effective dissemination of information by public bodies about their activities; and  
   d) on request, assist people to exercise their rights [S. 83].  
 | No such provision.  
 | The Information Commissioner must promote the following of good practice by public authorities and arrange for dissemination of information to the public re the operation of this Act, good practice, and other matters within the scope of his functions. The Commissioner shall from time to time consult the Keeper of Public Records about promoting observance by public authorities of the Records Management Code [S. 47].  

activities; and
d) train public information officers and produce relevant training materials for use by the public authorities themselves [S. 26].
<table>
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<th>Useful Websites on Freedom of Information</th>
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<tr>
<td>Article 19</td>
<td><a href="http://www.article19.org">www.article19.org</a></td>
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<tr>
<td>Centre for Civic Education</td>
<td><a href="http://www.civiceducation.org">www.civiceducation.org</a></td>
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<tr>
<td>Centre for Peace and Development Initiatives</td>
<td><a href="http://www.cpdi-pakistan.org">www.cpdi-pakistan.org</a></td>
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<tr>
<td>Coalition for Freedom of Information</td>
<td><a href="http://www.freedomofinfo.org">www.freedomofinfo.org</a></td>
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<tr>
<td>Commonwealth Human Rights Initiative</td>
<td><a href="http://www.humanrightsinitiative.org">www.humanrightsinitiative.org</a></td>
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<tr>
<td>Freedom of Information Advocates Network</td>
<td><a href="http://www.foiadvocates.net">www.foiadvocates.net</a></td>
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<tr>
<td>Individualland</td>
<td><a href="http://www.individualland.com">www.individualland.com</a></td>
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Centre for Peace and Development Initiatives (CPDI) and Liberal Forum Pakistan (LFP), in collaboration with Friedrich Naumann Foundation for Freedom (FNF), conducted training workshops and implemented a range of public awareness initiatives in 2009. Objective of the training workshops was to build capacities of civil society activists, politicians and government officers about the legal framework and best practices relating to freedom of information. Furthermore, efforts were made to increase public awareness about freedom of information so that more people could use the existing laws to access government information.

In the year 2009, in total, five training workshops were conducted in Lahore, Karachi and Islamabad. More than 120 persons participated in these workshops. The participants included journalists, political leaders, civil society activists and government officers. One of the workshops in Karachi was conducted in collaboration with the City Institute of Image Management (CIIM).

For the purpose of public awareness, radio spots were developed in Urdu and broadcast through FM 100 across the country. The broadcasting started in November and continued until the end of December 2009. In this duration, different radio spots were broadcast for more than 210 minutes. Idea behind this method was to reach out to as many people as possible throughout the country.

Furthermore, newspaper advertisements on freedom of information were also published in Urdu and English on December 28, 2009. The Urdu version was published in Daily Jang and the English version was published in Dawn. One of these advertisements is reproduced on the next page.
Background, Concerns and Recommendations

RIGHT TO INFORMATION IS YOUR FUNDAMENTAL RIGHT

The Right of Access to Information is a touchstone for all freedoms. It is like oxygen for democracy and a pre-requisite for good governance.

In Pakistan, everybody including you can access official information and records by using the following laws:

Section 137 of Local Government Ordinance 2001 can be used to access information and records held by district governments, tehsils, town administration and union administration.

In the case of delay or denial, complaints can be filed in courts or related offices of Provincial Inspectors.

Freedom of Information Ordinance 2002 can be used to access information/records from the Ministries of the Federal Government. In the case of delay or denial, complaints can be filed with the Wafaq Monitor.

Sindh and Balochistan have also enacted their own laws on freedom of information, which can be used to access official information records.

Let us use the above laws to promote transparency in the government.

Let us further demand that the government must fulfill its promise to improve the existing legal framework for right to information.

For more information, please contact us

For more information, please contact us

LFP
LIBERAL FORUM PAKISTAN
info@lfp.org.pk | www.lfp.org.pk

CPDI-Pakistan
CENTRE FOR PEACE AND DEVELOPMENT INITIATIVE
info@cpdi-pakistan.org | www.cpdi-pakistan.org

Dawn
Islamabad, Monday, December 28, 2009

Mujhe Janney ka Haq Se!

مجرہ جانے کا حق سے!
The Centre for Peace and Development Initiatives, Pakistan (CPDI-Pakistan) is an independent, non-partisan and a not-for-profit civil society organization working on issues of peace and development in Pakistan. It is registered UNDER SECTION 42 of the Companies Ordinance, 1984 (XLVII of 1984). It was established in September 2003 by a group of concerned citizens who realized that there was a need to approach the issues of peace and development in an integrated manner. The CPDI-Pakistan is a first initiative of its kind in Pakistan. It seeks to inform and influence public policies and civil society initiatives through research-based advocacy and capacity building in order to promote citizenship, build peace and achieve inclusive and sustainable development. Areas of special sectoral focus include promotion of peace and tolerance, rule of law, transparency and access to information, budget watch and Legislative Watch and Development.