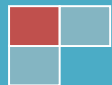


CPDI-CWP Comments on Right to Information Ordinance 2013



Document prepared with support of Citizen's Voice Project.





**AN
ORDINANCE**

*to provide for ensuring transparency and access to
information in the Province of the Khyber Pakhtunkhwa*

WHEREAS Article 19A of the Constitution of the Islamic Republic of Pakistan provides that every citizen shall have the right to access to information in all matters of public importance, subject to regulation and reasonable restrictions imposed by law;

AND WHEREAS transparency of information is vital to the functioning of democracy and also to improve governance, reduce corruption, and to hold Government, autonomous and statutory organizations and other organizations and institutions run on Government or foreign funding, more accountable to its citizens and for matters connected therewith and incidental thereto;

AND WHEREAS it is essential that citizens shall have right to information to participate meaningfully in a democratic process and further to improve their involvement and contribution in public affairs;

AND WHEREAS the Provincial Assembly is not in session and the Governor of the Khyber Pakhtunkhwa is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 128 of the Constitution of the Islamic Republic of Pakistan, the Governor of the Khyber Pakhtunkhwa is pleased to make and promulgate the following Ordinance:

1. Short title, extent and commencement.---(1) This Ordinance may be called the Khyber Pakhtunkhwa Right to Information Ordinance, 2013.

(2) It extends to the whole of the Province of the Khyber Pakhtunkhwa.

(3) It shall come into force at once.

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

- (a) “complaint” means any allegation in writing made by or on behalf of a requester that his request for information has not been dealt with by a public body in accordance with the rules and procedures set out in this Ordinance, including where he has been wrongfully denied access to all or part of **that record**;

Comment [H1]: Words “or information” may be added after the word “record”.



- (b) “designated officer” means an officer of a public body designated under section 6 of this Ordinance;
- (c) “employee or official” in relation to a public body means a person employed in a public body whether permanently or temporarily and includes consultants;
- (d) “Government” means the Government of the Khyber Pakhtunkhwa;

Comment [H2]: Why to call the officer as “designated Officer”? He should be titled as Public Information Officer or Right to Information (RTI) Officer.



- (e) “information” means material which communicates meaning and which is held in recorded **form**;
- (f) “Information Commission” means the Khyber Pakhtunkhwa Information Commission established under section 24 of this Ordinance;
- (g) “prescribed” means prescribed by rules made under this Ordinance;
- (h) “Province” means the Province of the Khyber Pakhtunkhwa;
- (i) “Public body” means:

Comment [H3]: This definition is quite precise and leaves a lot of room for interpretation. In our context, officers are likely to interpret it conservatively. It also excludes, among others, materials / samples in physical forms and the information, which a public body may not be holding but it can access from private bodies under the existing laws. It is suggested that it may be substituted by the following:

““Information”, subject to any restrictions under this Act, means any information or record held in any form relating to functioning of a public body, exercise of official authority or use of public funds and includes any data, document, memo, voucher, noting on the file, minutes of meeting, e-mail, map, advice, press release, brochure, circular, order, decision, notification, logbook, contract, agreement, budget, report, paper, sample, model, map, drawing, CD, USB, disc, audio record, mobile device, film, video, any instrument prepared through electronic process, machine-readable documents, and any other documentary material regardless of its physical form or characteristics. It also includes, among others, any information relating to procurements, meetings, proceedings, transactions, budgetary allocations, revenues, expenditures, licenses, allotments, approvals, benefits, disposals, appointments, postings, promotions, perks and privileges, plots, salaries, programs, projects or activities performed by and records held by or maintained by or within the purview of a public body, or within the powers and authority of a public body to lawfully obtain from a private body or a bilateral or multilateral institution.”

- (i) any department or attached department of the **Government**;
- (ii) Secretariats of Chief Minister and Governor of the Khyber Pakhtunkhwa;
- (iii) Secretariat of the Provincial Assembly, Khyber Pakhtunkhwa alongwith the Members of the Assembly and the Assembly itself;
- (iv) any Office, Board, Commission, Council or any other Body established by, or under, any **law**;
- (v) subordinate **judiciary** i.e. Courts of District and Sessions Judges, Courts of Additional District and Sessions Judges, Courts of Senior Civil Judges, Courts of Civil Judges and Courts of Magistrates;
- (vi) Tribunals;
- (vi) anybody which is owned, controlled or substantially funded by one of the above, including enterprises owned by the Province; and
- (vii) any other body which undertakes a public **functions**;
- (j) “record” means information which is **recorded** in any form;
- (k) “request for information” shall include a request for information and a request for a specific record;
- (l) “requester” means any **citizen**, who has made a request for information under this Ordinance; and
- (m) “third party” means a person other than the person making a request for information or a record.

3. Right to information.---(1) Every citizen shall subject to the provisions of this Ordinance and any rules made under it, have the right to access any information or record held by a public body.

(2) Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Ordinance, no requester shall be denied access to any information or record.

(3) This Ordinance shall be interpreted so as,-

- (a) to advance the purposes of this **Ordinance**; and

Comment [H4]: What about autonomous or semi autonomous bodies or institutions?

Comment [H5]: After the word “law”, the words “or Constitution of Islamic Republic of Pakistan” may be added.

Comment [H6]: Why the higher judiciary (i.e. Peshawar High Court) been excluded? Higher judiciary also uses public funds and subject to Article 19A of the Constitution. This exclusion is unjustified.

Comment [H7]: Why not to cover non-governmental organizations or institutions as well, which receive public funds, subsidies, concessions or plots etc.? The NGOs / schools/ hospitals, which receive public funds, plots, duty rebates or other concessions at the expense of taxpayers, must come under this law. Similar provisions exist in other laws like in Indian RTI 2005.

Comment [H8]: After the word “recorded”, the words “or maintained” may be added.

Comment [H9]: Why a legal person has been excluded from the definition of “requester”? This is another exclusion, which is unjustified. The word “citizen” may be substituted by any “natural or a legal person”.

Comment [H10]: After the word “Ordinance” the words “and with a strong presumption in favour of disclosure of information” may be added.



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

4. Maintenance and indexing of records.---Subject to the provisions of this Ordinance and in accordance with the rules as may be prescribed, each public body shall ensure that all of the records which it holds are properly maintained, including so as to enable it to comply with its obligations under this Ordinance, and in accordance with any relevant rules or standards established by the Information Commission.

Comment [H11]: After “maintained”, the words “catalogued, indexed and computerized” may be added.

5. Publication and availability of records.---(1) The following categories of information shall be duly published by public bodies in an up-to-date fashion and in a manner which best ensures that they are accessible to those for whom they may be relevant, including over the Internet, subject to reasonable restrictions based on limited resources:

Comment [H12]: The words “disclosed or” may be added after “duly”.

Comment [H13]: After the word “published”, a comma and the words “including through publications, notice boards and websites” may be added. This clarification is necessary as the publication of information in hard copies may be expensive; so other options must be used.

- (a) Acts and subordinate legislation such as rules, regulations, notifications, bye-laws, manuals and orders having the force of law in the Province, including being made available at a reasonable price at an adequate number of outlets to ensure reasonable access by the public;
- (b) information about the public body, including its organization, functions, duties, powers and any services it provides to the public;
- (c) a directory of its officers and employees, including a description of their powers and functions and their respective remunerations, perks and privileges;
- (d) norms and criteria set by the public body for the discharge of its functions, including any rules, manuals or policies used by its employees to this end;
- (e) a description of its decision making processes and any opportunities for the public to provide input into or be consulted about decisions;
- (f) relevant facts and background information relating to important policies and decisions which are being formulated or have been made and which affect the public;
- (g) a detailed budge of the public body, including proposed and actual expenditures;
- (h) details about any subsidy or benefit programmes operated by the public body, including details about the amount or benefits provided and the beneficiaries;
- (i) particulars of the recipients of concessions, permits, licences or authorizations granted by the public body;

Comment [H14]: This sub-section (g) may be substituted by “a detailed budget and related updates of a public body and its constituting functional or administrative units, including original or revised revenue targets, actual revenue receipts, proposed and actual expenditures, revisions in approved budget, and supplementary budget”.

Comment [H15]: Following this sub-section (i), two more sub-sections may be added, which are:
- “lists of defaulters of taxes, charges, utility bills or any other official dues;” and
- “reports like performance reports, audit reports, evaluation reports, inquiry or investigation reports or any other report that has been finalized”.



- (j) the categories of information held by the public body;
- (k) a description of the manner in which requests for information may be made to the public body, including the name, title and contact details of all designated officers; and
- (l) such other information as may be prescribed.

(2) Public body shall also publish an annual report on what they have done to implement their obligations under this Ordinance, which shall include detailed information about the requests for information which they have received, and how they have processed these requests.

(3) The annual report under sub-section (2) shall be formally forwarded to the Chief Secretary, Khyber Pakhtunkhwa and to the Information Commission, who shall take such action on the report as they may deem appropriate.

6. Designation of official.---(1) On commencement of this Ordinance, a public body shall within a period of one hundred and twenty (120) days, designate and notify an officer to act as designated officer for the purposes of this Ordinance, with whom request for information under this Ordinance may be lodged.

Comment [H16]: Why 120 days? No new recruitment will be required, not in the beginning at least. 45 days should be enough.

(2) In case no such official has been designated or in the event of the absence or non availability of the designated officer, the person in charge of the public body shall be the designated officer.

(3) The designated officer shall be responsible for ensuring that requests for information are dealt with in accordance with this Ordinance and generally for promoting full compliance by the public body with its obligations under this Ordinance.

7. Request for information.---(1) Subject to the provisions of this Ordinance, every citizen may lodge a request for information with a public body through the designated officer.

(2) A request for information shall be made in writing and lodged in any manner in which the public body has the facilities to receive it, including in persons, by mail, by fax or by e-mail.

Comment [H17]: After the word "mail", the word "online" may also be added.

(3) Any written request for information which identifies the information or record sought in sufficient detail to enable the public body to locate it, and which includes an address for delivery of the information or record, shall be treated as a request for information.

(4) Subject to sub-section (3), a public body may provide an optional form for making requests for information, with a view to assisting requesters to make request.

(5) In no case shall a requester be required to provide reasons for his request.



(6) Where a request for information is received by a public body, the requester shall be provided with a receipt acknowledging the request, including the date and name of the official responsible for processing it.

8. Assistance to requesters.---(1) A designated officer shall take all reasonable steps to assist any requester who needs such assistance.

(2) In particular, a designated officer shall assist any requester who is having problems describing the information sought in sufficient detail to enable the public body to locate that information, or who needs held due to **disability**.

(3) Where a requester is unable to provide a written request, a designated officer shall reduce the request to writing, and provide the requester with a **signed, date** copy of it.

9. Where information is not held.---(1) Where a public body does not hold information or records which are responsive to a request, and it is aware of another public body which does hold the information, it **shall** forward the request to that public body, and it shall inform the requester of this.

(2) Where a public body does not hold information or records which are responsive to a request, and it is not aware of any other public body which does, it **shall** return the request to the requester, informing him of **this**.

10. Procedure for disposal of requests.---(1) A designated officer shall provide a written notice in response to a request for information.

(2) The **notice** shall indicate that:

(a) the request has been accepted and the requester is entitled to receive the information or record, subject to the payment of any applicable fee; **or**

Comment [H18]: After the word “disability”, the words “distress or any other disadvantage” may be added.

Comment [H19]: It should be ‘signed and a dated’ copy.

Comment [H20]: After the word “shall”, the word “immediately” may be added.

Comment [H21]: After the word “shall”, the word “immediately” may be added.

Comment [H22]: After this, the following two sub-sections may be added:

“(3) Where a public body holds only a part of the requested information, it shall process the request for that specific part; and forward the request for the remaining part to the relevant public body, which may be holding it. If it is not aware of another public body, which may be holding such a part of requested information, it shall inform the requester about it.

(4) Where a public body receives a request forwarded by another public body, it shall process it within the prescribed duration from the day of its receipt.”

Comment [H23]: After the word “notice”, the words “may be served through email, web portal, text message or any other efficient means of communication and” may be added.

Comment [H24]: A sub-section may be added before this sub-section, which should read as follows: “the request has been accepted and, since no fee is applicable, the requested information is attached”.



- (b) the request has been rejected on the basis that it does not comply with the rules relating to such requests, but only after assistance has been offered to the requester in accordance with section 8; or
- (c) the request has been rejected on the basis that the information is already available in published form, including in the official Gazette or in another generally accessible form, such as a book, in which case the notice shall direct the requester to the place where the information may be found; or
- (d) the request has been rejected on the basis that it is vexatious, including because it relates to information which is substantially the same as information that has already been provided to the same requester; or
- (e) the request has been rejected, in whole or in part, on the basis that the information is exempt, in which case the notice shall specify the exact exception relied upon and include details regarding the right of the requester to appeal against this **decision**.

(3) Where information or a record **is** provided in accordance with clause (a) of sub-section 2, it shall **be** accompanied by a certificate, which may be affixed to the information or record at the foot thereof, as appropriate, to the effect that the information is correct or, as the case may be, the copy is a true copy of such public record, and such certificate shall be dated and signed by the designated officer.

11. Time line for responding.---(1) Subject to the provisions of this Ordinance, a public body shall be required to respond to a request for information in accordance with section 7 as soon as possible and in any case within ten working days of the receipt of request.

(2) The period stipulated in sub-section (1), may be extended by a maximum of a further ten working days where this is necessary because the request requires a search through a large number of records or records located in different offices, or consultation with third parties or other public bodies.

(3) Information needed to protect the life or liberty of any individual will be provided within two working days.

12. Form for providing information.---Where an applicant has indicated a preferred means for accessing information, such as a physical **copy** (attested), an electronic copy or an opportunity to inspect certain **records**, the public body shall provide access in that form unless to do so would unreasonably interfere with its operations or harm the document.

13. Fees for requests.---(1) It shall be free to lodge requests for information.

(2) Fees may be charged for the actual costs of reproducing information and sending it to the requester, in accordance with any schedule of fees which may be adopted by the Information Commission.

Comment [H25]: At the end of sub-section (2), the following may be added:

“provided that if the requested information is not provided within the specified duration, it shall be deemed to have been denied”.

Comment [H26]: After the word “is”, the words “to be provided” may be added.

Comment [H27]: After the word “be”, the words “provided immediately after the receipt of applicable fee and shall be” may be added.

Comment [H28]: After the word “copy”, the words “or a sample” may be added. When the request is about a certain material being held by a public body, information may actually mean a sample.

Comment [H29]: After the word “records”, the words “and take notes” may be added.



(3) No fee shall be charged for the first twenty pages of information provided, or where the requester is below the poverty line.

14. Exempt information.---A public body shall not be required to disclose information which falls within the scope of the exceptions provided for in sections 15 to 21 of this Ordinance, provided that:

- (a) exceptions in other laws (secrecy provisions) may not extend the scope of the exceptions in this Ordinance, although they may elaborate on an exception that is provided for in this Ordinance;
- (b) the fact that information has been classified is irrelevant to the question of whether or not it falls within the scope of the exceptions provided for in this Ordinance, which must always be accessed directly, at the time of a request, based on clear and objective considerations;
- (c) where only part of a record or the information falls within the scope of the exceptions provided for in this Ordinance, that part shall be severed and the rest of the record or information shall be provided to the requester;
- (d) even where information falls within the scope of an exception provided for in this Ordinance, the information shall still be provided to the requester where, on balance, the overall public interest favours disclosure of the information;
- (e) for the purposes of clause (d), there shall be a strong presumption in favour of the disclosure of information that exposes corruption, criminal wrongdoing, other serious breaches of the law, human rights abuse, or serious harm to public safety or the environment; and
- (f) the exceptions set out in sections 15 to 18 of this Ordinance, shall cease to apply after a period of twenty years, provided that this may be extended, in exceptional cases, for up to a maximum of another fifteen years, with the approval of the Information Commission.

15. International relations and security.---A public body may refuse a request for information the disclosure of which would be likely to cause grave and significant harm to international relations or national security.

16. Disclosure harmful to law enforcement.---A public body may refuse a request for information the disclosure of which would be likely to:

- (a) result in the commission of an offence;

Comment [H30]: The words “is below the poverty line” may be substituted by “requests waiver on the basis of some evidence about his or her being poor.” It is because, in Pakistan, unlike India, people below the poverty line have no specific documents to readily prove their income status.

Comment [H31]: This sub-section may be substituted by “this Act shall take precedence over other laws for the time being in force, and that exceptions or limitations in other laws shall not extend the scope of the exceptions in this Act.”

Comment [H32]: The word “twenty” may be substituted by “fifteen” years.

Comment [H33]: Here the word “fifteen” may be substituted by “ten” years”.



- (b) harm detection, prevention, investigation, inquiry or prosecution in relation to an offence, or the apprehension of an offender;
- (c) reveal the identity of a confidential source of information in relation to an investigation;
- (d) facilitate an escape from legal custody; or
- (e) harm the security of any property or system, including a building, a vehicle, a computer system or a communication system.

17. Public economic affairs.---A public body may refuse a request for information the disclosure of which would be likely to:

- (a) cause grave and significant damage to the economy as a result of the premature disclosure of the proposed introduction, abolition or variation of any tax, duty, interest rate, exchange rate or any other instrument of economic management; or
- (b) cause significant damage to the legitimate financial interests of the public body, including by giving an unreasonable advantage to any person in relation to a contract which that person is seeking to enter into with the public body or by revealing information to a competitor of the public body.

18. Policy making.---A public body may refuse a request for information the disclosure of which would be likely to cause serious prejudice to the deliberative process in a public body by inhibiting the free and frank provision of advice or exchange of views, or cause serious prejudice to the success of a policy through premature disclosure of that policy.

19. Privacy.---(1) A public body may refuse a request for information the disclosure of which would encroach on the privacy of an identifiable third party individual, other than the requester, including an individual who has been deceased for less than twenty years.

- (2) The exception in sub-section (1) shall not apply where:
 - (a) the third party has effectively consented to the disclosure of the information;
 - (b) the person making the request is the guardian of the third party, or the next of kin or the executor of the will of a deceased third party; or
 - (c) the third party is or was an official of a public body and the information relates to his function as a public official.

Comment [H34]: After the word “policy”, semi comma may be inserted as the words “provided that information about the deliberative process will become accessible after a final decision has been made” may be added.



20. Legal privilege.---A public body may refuse a request for information which is privileged from production in legal proceedings, unless the person entitled to the privilege has waived it.

21. Commercial and confidential information.---A public body may refuse a request for information if the information:

- (a) was obtained from a third party and to communicate it would constitute an actionable breach of confidence; and
- (b) was obtained in confidence from a third party and it contains a trade secret or to communicate it would be likely to seriously prejudice the commercial or financial interests of that third party.

22. Third parties.---(1) Where a request for information relates to information or a record provided on a confidential basis by a third party, the public body shall endeavour to contact that third party with a view to obtaining either his consent to disclosure of the information or record or his objections to disclosure.

(2) Where a third party objects to disclosure, his objections shall be taken into account, but the decision as to whether or not the information falls within the scope of the exceptions in this Ordinance shall be assessed by the public body on the basis of objective considerations.

23. Complaints.---(1) Anyone who believes that his request has not been dealt with in accordance with the provisions of this Ordinance has the right to lodge a complaint with the Information Commission to this effect.

(2) Complaints under sub-section (1) shall be free of charge.

(3) The Information Commission shall decide any complaint within a period of sixty (60) days.

(4) In an appeal, the public body shall bear the burden of proof of showing that it acted in accordance with the provisions of this Ordinance.

24. Information Commission.---(1) On the commencement of this Ordinance, Government shall within a period of one hundred and twenty (120) days, establish a Information Commission to be known as the Khyber Pakhtunkhwa Information Commission.

(2) The Information Commission shall be an independent statutory body, which shall enjoy operational and administrative autonomy from any other person or entity, including the Government and any of its agencies, except as specifically provided for by law.

Comment [H35]: After the word “that”, the words “a public body is not effectively implementing one or more provisions of this Act, or that” may be added.

Comment [H36]: The time limit should ordinarily not be more than 30 days and, where a third party is involved, it may be extendable to 45 days.

Comment [H37]: It should be reduced to a maximum of 90 days.

(3) The Information Commission shall be headed by the Chief Information Commissioner, who shall be a retired Senior Government Servant and shall be appointed by Government.

(4) The Information Commission shall comprise of three other Members to be known as Commissioners, who shall be appointed in the following manner:

- (a) one retired judge of the High Court, to be appointed by the Chief Justice Peshawar High Court;
- (b) one Advocate of High Court or Supreme Court, to be appointed by the Bar Council; and
- (c) one respected representative of civil society, to be appointed by the Human Rights Commission.

(5) The Chief Information Commissioner and the Commissioners shall hold office for a term of four years from the date on which they assume office and shall not be eligible for re-appointment.

(6) Notwithstanding anything contained in sub-section (5), the Chief Information Commissioner and Commissioners shall not hold office after they have attained the age of sixty-six (66) years.

Comment [H38]: Why the Chief Information Commission should necessarily be a “retired Senior Government Servant”? It is suggested that Commission should be defined to be consisting of 4 members, one of whom should be designated by the Government as Chief Information Commissioner.

Comment [H39]: It is suggested that, while bars and civil society organizations, should be able to make suggestions, the final decision should be made on the basis of recommendations by a provincial assembly committee with equal representation from treasury and opposition benches.

Comment [H40]: Which Bar Council? Is this PHC Bar?

Comment [H41]: Which Commission is this? Is it HRCP? If so, this arrangement is problematic because NGOs like HRCP don't have the representative character of whole range of civil society and have their ups and downs due to leadership changes or funding constraints. Moreover, such a role can't be given to a private organization without its consent. Even if HRCP accepts such a role, other CSOs may object to it.

Comment [H42]: With this provision, tenure of all members will complete about the same time and, as a result, a completely new team will assume office with no direct experience. There should be a possibility of re-appointment for another 2 years in exceptional circumstances, whereas the term 'exceptional circumstances' should be clearly defined to avoid its abuse. This would enable the Commission to retain certain expertise already developed, along with the induction of new members.

Comment [H43]: It means if a person is appointed at the age of 64 or 65 years, he will not have a tenure of 4 years and would retire after 1 or 2 years. Such a short tenure would badly affect the performance of the Commission. Instead, it may be provided that no person with over 62 years of age shall be eligible. Hence, a person, once appointed, shall get a tenure of at least 4 years.



(7) A Commissioner may not hold any other public office, or be connected with any political party or be running any business or pursuing any profession at the time of or during their appointment to the Information Commission.

Comment [H44]: This phrasing “at the time of” is too restrictive. Why it should be a problem if a person is willing to leave his current job, profession or business to become a Commissioner? Why only the fully retired be eligible?

(8) A Commissioner may be removed by a positive vote of not less than two of the other Commissioners on grounds of failure to attend three consecutive meetings of the Information Commission without cause, inability to perform the duties of a Commissioner, falling foul of the conditions for being a Commissioner as set out in sub-section (6), or conduct which is materially inconsistent with the status of being a Commissioner, provided that a Commissioner who has been removed pursuant to this sub-section shall have the right to appeal that removal before the courts.

Comment [H45]: It is suggested that removal should be based on a person found guilty through an inquiry launched by the Government and concurrence of 60% of total members of the Provincial Assembly. Current provision may adversely affect the internal dynamics of the Commission.

25. Functions of the Information Commission.---(1) The Information Commission shall have a primary responsibility to receive and decide on complaints.

(2) The Information Commission shall, in addition to its complaints function, conduct the following activities:

- (a) set rules and minimum standards regarding the manner in which public bodies are required to manage their records, in accordance with section 4 of this Ordinance;
- (b) designate further categories of information which may be subject to proactive disclosure, in accordance with sub-section (1) of section 5 of this Ordinance;
- (c) adopt a schedule of the fees that public bodies may charge for providing information to requesters, in accordance with sub-section (2) of section 13 of this Ordinance;
- (d) approve or reject extensions to the maximum period that information may be kept confidential, in accordance with clause (f) of section 14 of this Ordinance;
- (e) compile a user-friendly handbook, in Urdu and English, describing in easily comprehensible form the rights established by, and how to make a request for information under, this Ordinance;
- (f) refer to the appropriate authorities cases which reasonably disclose evidence of criminal offences under this Ordinance;
- (g) compile a comprehensive annual report both describing its own activities, including an overview of its audited accounts, and providing an overview of the activities undertaken by all public bodies to implement this Ordinance, taking into account the information provided by individual

Comment [H46]: It may be substituted by the word exempt.

Comment [H47]: After the word “activities”, the words “and performance” may be added.

Comment [H48]: After the word “including”, the words “the challenges faced, remedial steps taken and” may be added.



public bodies pursuant to sub-section (2) of section 5 of this Ordinance; and

- (h) have an accredited accountant conduct an audit of its accounts on an annual basis, and provide a copy of its audited accounts to the Provincial Assembly and the Department of Finance.
- (3) The Information Commission shall have the power to:
- (a) monitor and report on the compliance by public bodies with their obligations under this Ordinance;
 - (b) make recommendations to Government for reform both of a general nature and in relation to specific public bodies;
 - (c) make formal comments on any legislative or other legal proposals which affect the right to information;
 - (d) co-operate with or undertake training activities for public officials on the right to information and the effective implementation of this Ordinance; and
 - (e) publicize the requirements of this Ordinance and the rights of individuals under it.

Comment [H49]: After this sub-section, another sub-section may be added, which reads as follows: “establish, within sixty days of its establishment, an advisory committee or advisory committees to advise or assist the Commission in public awareness, removal of any difficulties in the performance of its responsibilities, and review of official rules, regulations, procedures, manuals, bye-laws and orders in the light of this Act to prepare appropriate recommendations. The reports or recommendations of such a committee or committees shall be submitted to the Commission for decisions or onward submission to the Government”.

Comment [H50]: After the word “to”, the words “existing laws, rules, regulations, procedures, forms, bye-laws, manuals, training programs and” may be added.

26. Powers of the Information Commission.---(1) The Information Commission shall have all powers, direct or incidental, as are necessary to undertake its functions as provided for in this Ordinance, including full legal personality, and the power to acquire, hold and dispose of property.

(2) The Information Commission shall also have the power to conduct inquiries, in relation to either a complaint or other matters connected with the proper implementation of this Ordinance, and when conducting such an inquiry, the Information Commission shall have the powers of a Civil Court under Code of Civil Procedure (CPC) 1908 in respect of the following matters:

- (a) summoning and enforcing the attendance of witnesses and compelling them to give oral or written evidence under oath;
- (b) requiring public bodies and to produce documents or things;
- (c) inspect the premises of public bodies; and
- (d) examining and inspecting information.

Comment [H51]: After the word “inquiries,” the words “on its own initiative or” may be added. The Commission should be able to initiate inquiries on its own initiative, if and when it comes to know about a problem through whatever channel or media.

Comment [H52]: After the word “document, the word “records, information” may be added.



(3) When deciding a complaint, the Information Commission shall have the following powers:

- (a) to order a public body to disclose information to a requester or to take such other reasonable measures as it may deem necessary to compensate a requesters for any failure to respect the provisions of this Ordinance;
- (b) to impose a daily fine of up to Rs. 250 per day, up to a maximum of Rs. 25,000, on any official who has acted wilfully to obstruct any activity which is required to be undertaken by this Ordinance, including with a view to preventing or delaying the disclosure of information to a requester; and
- (c) to require a public body to take such general measures as may be required to address systematic failures to respect the provisions of this Ordinance, including by appointing a designated officer, by conducting training for its employees, by improving its record management, by publishing information on a proactive basis and/or by preparing and publishing an annual report.

Comment [H53]: Taking into account the inflationary impact over the years, the law should link the fines to salaries rather than providing a specific amount. Therefore, this sub-section may be substituted by the following text:
“a) if the designated officer has not provided the requested information within the prescribed limit, he or she shall be fined by an amount equivalent to one day of his or her salary for each day of delay in providing the requested information.
(b) if a designated officer has provided incomplete or misleading or uncertified information or has charged fee or costs in excess of prescribed amounts, he or she shall be fined with an amount up to the sum of six months of his or her salary.
(c) if a designated officer has failed to fully comply with any other provision of this Act, he or she shall be fined with an amount up to six months of his or her salary.
(d) if it can be established that non-compliance under this Act, including under the above sub-sections a, b and c was caused, solely or partly, as a result of non-cooperation, negligent behaviour or late response by other officers, who were bound to assist the designated officer or to give timely approvals to the designated officer, any such officer shall be liable to be fined as per the above provisions.”



(4) A decision of the Information Commission under sub-section (3) shall, if it has not been appealed against within 30 days, be registered with the court and any failure to respect the decision shall be dealt with in the same way as any contempt of court.

27. Funding for the Information Commission.---(1) Government shall make such a budgetary allocation to the Information Commission as it may require to discharge its responsibilities effectively, including by establishing a secretariat and hiring the requisite staff to enable it to conduct its business properly, and shall provide the funds indicated through a reasonable schedule of payments throughout the year.

(2) For purposes of implementing sub-section (1), the Information Commission shall present a budget proposal to the Provincial Government.

(3) The remuneration and other monetary benefits of the Chief Information Commissioner and Commissioners shall be set at the equivalent level of a Judge of High Court.

28. Offence.---(1) It is a criminal offence willfully to:

- (a) obstruct access to any record with a view to preventing the exercise of a right provided for in this Ordinance;
- (b) obstruct the performance by a public body of a duty under this Ordinance;
- (c) interfere with the work of the Information Commission; or
- (d) destroy a record without lawful authority.

(2) Anyone who commits an offence under sub-section (1), shall be liable to a fine not exceeding rupees five thousand (5000) or imprisonment for a period not exceeding two years.

29. Indemnity.---No one may be subject to any legal, administrative or Employment-related sanction for anything which is done in good faith or intended to be done in pursuance of this Ordinance or any rules made there under.

30. Whistleblowers.---(1) No one may be subject to any legal, administrative or employment-related sanction, regardless of any breach of a legal or employment obligation, for releasing information on wrongdoing, or which would disclose a serious threat to health, safety or the environment, as long as they acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing or a serious threat to health, safety or the environment.

(2) For purposes of sub-section (1), wrongdoing includes the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious maladministration regarding a public body.

Comment [H54]: The highlighted part after the word “be” may be substituted by: “final and any failure to respect or implement the decision shall be dealt with by the Commission in the same way as any contempt of court.”

Moreover the following sub-section may be added:

“(5) The Commission shall have the same powers, *mutatis mutandis*, as the High Court has to punish any person for its contempt;

Provided that fair comments made in good faith and in public interest on the working of the Commission or any staff member or on the final decision or report of the Commission shall not constitute contempt of the Commission.”

Comment [H55]: After the word “any”, the words “information or” may be added.

Comment [H56]: After the word “wrongdoing”, the words “corruption or abuse of authority” may be added.

Comment [H57]: After the word “wrongdoing”, the words “corruption or abuse of authority” may be added.



31. Power to remove difficulties.---If any difficulty arises in giving effect to the provisions of this Ordinance, the Government may, by order in the Official Gazette, make such provisions not inconsistent with the provisions of this Ordinance as appear to it to be necessary or expedient for removing the difficulty.

32. Power to make rules.---Government in consultation with the Information Commission may, by notification in the official Gazette, make rules for carrying out the purposes of this Ordinance.

Comment [H58]: How about the power to make regulations?

Peshawar,
dated the
2013.

(ENGR. SHAUKAT ULLAH)
Governor of the Khyber Pakhtunkhwa.