The Centre for Peace and Development Initiatives, (CPDI) 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 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.
CPDI experience of Submitting Information Requests Under freedom of information Ordinance 2002

Centre for Peace and Development Initiatives (CPDI) would welcome reproduction and dissemination of the contents of the report with due acknowledgments.

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Disclaimer:
Every effort has been made to ensure the accuracy of the contents of this publication. The organization does not accept any responsibility of any omission as it is not deliberate. Nevertheless, we will appreciate provision of accurate information to improve our work.

This Publication is Supported by Foundation Open Society Institute Pakistan (FOSIP)
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Introduction:

This publication documents CPDI experience of submitting information requests to public bodies under Freedom of Information Ordinance 2002, lodging complaints with Federal Ombudsman, attending hearings and writing rejoinders to public bodies, filing representations to the President of Pakistan, filing response to representations filed by public bodies against decisions of Federal Ombudsman in favour of CPDI and filing petition in Supreme court of Pakistan. Only selected information requests have been included in this publication. The purpose of this publication is to document the whole process that takes place when a citizen seeks information from public bodies under FOI Ordinance 2002. Secondly, this publication also proves with empirical data that FOI Ordinance is an ineffective law and that Federal Ombudsman, the appellant body envisaged under this law, is a toothless body. Lastly, the publication also seeks to document culture of secrecy which prevails in bureaucracy. It is hoped that procedural anomalies identified in this publications will generate more informed dialogue on right to information issues and strengthen right to information movement in Pakistan.

Information Request Exposing Scandalous Amounts Given as Fee to Lawyers in judges Case:

CPDI submitted an information request to the Ministry of Law and Justice on May 05, 2008, requesting them the following information:

1. Certified copy of the list containing the names and addresses of lawyers hired by Ministry of Law, Justice and Human Rights to represent Federal Government/ Federation in Supreme Court of Pakistan from October 01, 2002 to March 20, 2008.
2. Certified information about the total amount paid by Ministry of Law, Justice and Human Rights as fee or in other heads to the lawyers who represented Federal Government/ Federation in Supreme Court of Pakistan during the same tenure.
3. Certified information about the fee paid by Ministry of Law, Justice and Human Rights to each lawyer from October 01, 2002 to March 20, 2008, to represent the Federal Government/ Federation in Supreme Court of Pakistan.

In responding to our request, ministry in its letter Dy.811/2008-Sol II, dated May 22, 2008, referred to Section 7 for refusing the requested information. Interestingly, this section is all about providing the requested information. On June 05, 2008, CPDI lodged complaint with Federal Ombudsman. It took Federal Ombudsman almost a year to decide on this information request. However, instead of providing information to CPDI, as directed by Federal Ombudsman in its findings and conveyed to the Ministry of Law and Justice on May 04, 2009, the ministry chose to file representation to the President of Pakistan on June 06, 2009. This representation contains some very interesting remarks. For example, in its appeal to President to reverse Federal Ombudsman decision, it says: “If the required information was provided to the requester, then (sic) create unnecessary problems, embarrassing situation, and open Pindora box, further, it be would direct interference in the internal working of this Division, accordingly, the request was turned down”. This issue is still pending with the President despite the lapse of considerable time and no decision has been taken by the office of the President. In this case study, what is interesting is the excuses and pretensions adopted by the ministry to deny access to information. Ministry denied the information request, saying it would open a ‘Pandora box’. CPDI remained undeterred and persisted to open this ‘Pandora box’. CPDI shared all the details with Mr. Ansar Abbasi, reporter ‘The News International’ and there was a front page story in ‘Jang’ and ‘The News’ on Monday, July 14, 2008 titled ‘Law ministry protecting Musharrafi’s legal extravagance’. CPDI’s endeavours in terms of taking initiative of submitting information request and launching media campaign on this issue paid off as Begum Nuzhat Siddiqi, MNA, asked the minister for law, justice and human rights the same question CPDI had been raising. The Minister provided the partial information and details of scandalous amounts paid to the lawyers were divulged and injudicious use of public funds was exposed. The news item pertaining to these revelations was a major story carried by print and electronic media on Tuesday, August 12, 2008.
**APPLICATION FORM**

FOR OBTAINING RECORD UNDER

FREEDOM OF INFORMATION ORDINANCE, 2002 (XCVI OF 2002)

<table>
<thead>
<tr>
<th>Name of Applicant:</th>
<th>Zahid Abdullah, Project Manager, Centre for Peace and Development Initiatives, Pakistan (CPDI-Pakistan)</th>
</tr>
</thead>
<tbody>
<tr>
<td>NIC No.:</td>
<td>61101-4845890-3 (copy enclosed)</td>
</tr>
<tr>
<td>Father's Name:</td>
<td>Amir Abdullah</td>
</tr>
<tr>
<td>Address:</td>
<td>105, First Floor, Park Towers, F-10/3, Islamabad</td>
</tr>
<tr>
<td>Phone No.:</td>
<td>051-2108387</td>
</tr>
<tr>
<td>Name of Public Body from which information is to be obtained:</td>
<td>Ministry of Law, Justice and Human Rights</td>
</tr>
<tr>
<td>Subject matter of record requested:</td>
<td>Information about lawyers hired to represent Federal Government in Supreme Court of Pakistan</td>
</tr>
</tbody>
</table>
| Nature of record requested: | 1. Certified copy of the list containing the names and addresses of lawyers hired by Ministry of Law, Justice and Human Rights to represent Federal Government/Federation in Supreme Court of Pakistan from October 01, 2002 to March 20, 2008.  
2. Certified information about the total amount paid by Ministry of Law, Justice and Human Rights as fee or in other heads to the lawyers who represented Federal Government/Federation in Supreme Court of Pakistan during the same tenure.  
3. Certified information about the fee paid by Ministry of Law, Justice and Human Rights to each lawyer from October 01, 2002 to March 20, 2008, to represent the Federal Government/Federation in Supreme Court of Pakistan. |

**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
No. Dy. 814/2008-Sol.II
Government of Pakistan
Ministry of Law and Justice

Islamabad, the 22nd May, 2008

From: Mr. Tanvir Hussain Shah,
Deputy Assistant Solicitor

To: Mr. Zahid Abdullah,
Project Manager,
Centre for Peace and Development Initiatives Pakistan (CPDI),
105 First Floor, Park towers,
F.10/3, Islamabad

Subject: APPLICATION

Dear Sir,

I am directed to refer to your application for obtaining record and to inform that your request has not been acceded by the competent authority as nomination letter issued to the advocate/counsel for representing the Federation in the court does not come within the classification of public record as per section 7 and 8 of Freedom of Information Ordinance 2002 (XCVI of 2002).

Yours faithfully,

(Tanvir Hussain Shah)
Deputy Assistant Solicitor

July 10, 2008

Federal Ombudsman
The Federal Ombudsman Secretariat
Zero Point
Islamabad.

Subject: Unfair Denial of Information Request Filed under Freedom of Information Ordinance 2002

Sir,

Thanks for your intervention in helping me exercise my right to information. I am not satisfied with the answer I have received from the Section Officer on the following counts.

1. I have sought information about the contracts. Under the said ordinance, a citizen can have access to the contracts and the expenditures undertaken by a public body. So, the sought information cannot be denied.

2. The argument put forward by the Section Officer that decision to award contracts are reflected in the minutes and since minutes are exempted from disclosure under the said Freedom of Information Ordinance 2002 does not hold water. Minutes and contracts are two separate documents. I have only asked for the contracts and not the minutes.

3. Furthermore, if my request is denied on this ground, it would set a dangerous trend. The officers would never give access to any contract taking the plea that decisions about these contracts are contained in the minutes. The Ordinance allows access to contracts to ensure public accountability and transparency. If access is denied on this plea the whole spirit of this ordinance will be compromised.

Lastly, I also want to know what the Section Officer means when he says that "if the required information is provided to the applicant, the same would create unnecessary problems and will open a Pandora box..."

For your perusal, please find attached my correspondence with the ministry and help me have access to the information which is my right as the citizen of Pakistan.

Yours’ sincerely,

(Zahid Abdullah)
Program Manager
September 02, 2008
Federal Ombudsman
The Federal Ombudsman Secretariat
Zero Point
Islamabad.

Subject: Unfair Denial of Information Request Filed under Freedom of Information Ordinance 2002

Sir,

This is in response to your letter dated August 30, 2007 (case No bp/0035282/08). According to Freedom of Information Ordinance 2002, if a public body does not appoint a designated officer, a citizen can directly send the information request to the head of the body as has been the case in my information request. Since the information request sent to the Secretary, Ministry of Law, Justice and Human Rights was denied, the only option available to me was to lodge complaints with Federal Ombudsman. Please direct the ministry to provide me the requested information.

Yours’ sincerely,

Zahid Abdullah
Program Manager
9

(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;

(g) record relating to the personal privacy of any individual;

(h) record of private documents furnished to a public body either on an express or implied condition that information contained in any such documents shall not be disclosed to a third person;

(i) any other record which the Federal Government may, in the public interest, exclude from the purview of this Ordinance.

3. The Agency has further stated that the information requested relates to contracts with advocates representing the Federation in the Supreme Court of Pakistan during a certain period. For purposes of nominating/briefing of advocates from outside the existing Central Legal Officers/Federal Counsel (or Panel) of Advocates, the Legal Advisor Committee (LAC) of the Division nominees/choose advocates. The decision is referred to the members of the meeting. Its disclosure could result in direct interference in the internal working of Law Divisions. It has been further pointed out that the nomination letters issued to the advocates/barristers for representing the Federation in courts do not fall in the category of public record.

COMPLAINANT’S REJOINDER

4. A citizen is entitled to information about contracts and expenditure undertaken by a public body. The same cannot be denied. Minutes of meetings and contracts are two separate documents. The refusal of the request would set an unenforceable trend and the spirit of the Ordinance will be compromised.

POINTS AT ISSUE

5. The point at issue in the case is whether the information requested by the applicant is excluded from the category of public record under section 3 of the Ordinance as claimed by the agency?

HEARING PROCEEDINGS

6. The complainant and the agency restated their stand positions.

FINDINGS

7. To ensure that the citizens of Pakistan have improved access to public records and to make the Federal Government more accountable to its citizens, the Freedom of Information Ordinance, 2002 was promulgated on 18.06.2002. Section 7 of the Ordinance aims to make the record of public bodies which are declared as public record. The list includes the following:

a. Policy and guidelines;

b. Transactions involving acquisition and disposal of property and expenditure undertaken by a public body in the performance of its duties;

c. Information regarding grant of licenses, allowances and other benefits and privileges contracts and agreements made by a public body;

d. Final orders and decisions, including decisions relating to members of public;

Any other record which may be notified by the Federal Government as public record for the purposes of this Ordinance.

JAVED SADIQ MALIK
WAFIQ MONTANI (OMBUDSMAN)
8/5/2009

ATTESTED

(Imaazat)
BEFORE THE HON’BLE PRESIDENT ISLAMIC REPUBLIC OF PAKISTAN

Ministry of Law & Justice through Secretary..........................Appellant

Vs

Zahid Abdullah S/O Amir Abdullah center for peace and development initiatives,
Pakistan 103, Park Tower, F-10 Markar, Islamabad..........................Respondent

REPRESENTATION UNDER ARTICLE 32 OF P.O.I OF 1984 AGAINST THE
FINDINGS OF WAFAQI MOHTASIB DATED 4-5-2009 IN COMPLAINT
NO.HQR/000528/2008

Being aggrieved and dissatisfied with the findings dated 4-5-2009 passed by the
Honorable Wafaqi Mohtasib in complaint No.HQR/000528/2008 filed by the respondent
the appellant prefer this representation on the following facts/grounds:

1. That Mr. Zahid Abdullah, the respondent made a request for providing him the
following documents from Law & Justice/appellant. (Annexure-I)
   (i) Certified copy of the list containing the names and addresses of lawyers hired by
       Ministry of Law, Justice and Human Rights to represent the Federal Government/
       Federation of Pakistan in Supreme Court of Pakistan from October 01.2002 to
       March 20,2008.
   (ii) Certified information about the total amount paid by Ministry of Law, Justice and
       Human Rights as fee or in order to the lawyers who represented Federal
       Government/Federation in Supreme Court during the same tenure.
   (iii) Certified information about the fee paid by Ministry of Law, Justice and Human
       Rights to each lawyer from October 01.2002 to March 20,2008 to present the
       Federal Government/Federation in Supreme Court of Pakistan.

2. That the request was thoroughly examined in Law & Justice Division under the
   prevailing law and declined to provide the same, by taking the privilege of section 8
   of the Freedom of Information Ordinance, 2002. The respondent/complainant filed a
   complaint No.HQR/000528/2008, before the Wafaqi Mohtasib against the Ministry of
   Law and Justice (Annexure-II). This Ministry submitted its views/comments to the

3. That Section 7 and Section 8 of the Freedom of Information Ordinance, 2002 are
   reproduced herein below for proper examination of the case.

   7. Declaration of Public record. Subject to the provision of section 8, the
      following record of all public bodies are hereby declared to be the public record,
      namely:
      a) policies and guidelines;
      b) transactions involving acquisition and disposal of property and expenditure
         undertaken by a public body in the performance of its duties;
      c) information regarding grant of licenses, allotments and other benefits and
         privileges and contracts and agreements made by a public body;
      d) final orders and decisions, including decisions relating to members of
         public; and
      e) any other record which may be notified by the Federal Government as
         public record for the purpose of this Ordinance.

4. That the above provisions clearly show that the nomination letter to different
   lawyers and their fee issued by this Division does not constitute a public document.

8——Exclusion of certain records: Nothing contained in section 7 shall apply
   to the following record of all public bodies, namely:
   a) notes on the files;
   b) minutes of meeting;
   c) any intermediary opinion or recommendations;
   d) record of the banking companies and financial institutions relating to the
      accounts of their customers;
   e)............
   f)............
   g) record relating to the personal privacy of any individual;
   h) record of the 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 their person; and

1) any other record which the Federal Government may, in public interest, exclude from the purview of this Ordinance” (Annex-JV)

5. That Section 8 of the Ordinance, vividly expressed that the noting of of the files, minutes of the meetings, any recommendations—, or any other record which the Federal Government, may in the public interest, exclude from the purview of this Ordinance, have been taken out of the ambit of public record as declared/ defined under Section 7 of the Ordinance.

6. That for the purpose of the hiring of Advocates from outside the existing Central Law Officers or the Panel of Advocates, this Division had a Legal Advisors Committee (LAC) comprising the Law Minister as its Chairman and the Attorney General for Pakistan and the Law Secretary as its Members. The cases of hiring of Advocates were decided by the Legal Advisors Committee through a meetings which were held for the purpose and then the decisions reflected in the minutes of the meeting. The disclosure of such information was excluded from the classification of public record under clause (a) & (b) of Section 8 of the said Ordinance. The nomination letter issued to the Advocates/ Counsel for representing the Federation in the Courts, do not come with the meaning of public record as per Section 7 of the Ordinance. Even otherwise, this record is of confidential and classified in nature and was excluded from the purview of the Ordinance under the provisions of clause (l) and clause (i) of Section 8 of the Ordinance. Moreover, if the required information was provided to the requester then it create unnecessary problems, embarrassing situation, and open a Pandora box, further it would be direct interference in the internal working of this Division, accordingly the request was turned down. The Wafaqi Mohtasib vide his recommendation dated 4-5-2009 has decided the said complaint in the favour of complainant and directed this Division to provide the requisite documents to the complainant within 30 days.

PRAYER

In view of the above humble submissions it is, therefore, respectfully prayed that the decision of the Wafaqi Mohtasib dated 4-5-2009 in complaint No.11/QR-000282/08 may kindly be set aside, in the interest of justice.

Solicitor

[Signature]

Ali Khan Subaip Urban
Solicitor
In the Government of Pakistan
Law, Justice & Human Rights Division
Nizamat Tel: 10803
Section 7(c) and is, therefore, liable to be disclosed. The requested information about the lawyers and fees paid must be a part of such agreements or contracts.

5. Para 5 is completely irrelevant here, as it refers to exclusions related to minutes of meetings, noting on the file and recommendations under Section 8 of FOIO 2002. The respondent has not asked for any of these. In fact, the requested information is only about the lawyers engaged and the fee paid to them, which is clearly covered by Section 7(b) and 7(c).

6. Arguments made in Para 6 are absurd and totally devoid of any merit or substance. First of all, the respondent has not demanded the minutes of the meeting of the Legal Advisors Committee (LAC). But it seems that the Law and Justice Division is deliberately misleading by suggesting that the information about lawyers engaged and fees fixed or paid is only reflected in the minutes; and there exist no other record that includes such information. In fact, the Law and Justice Division can provide the requested information by collecting it from, for instance, its financial records; or by getting it from the contracts/agreements that it signed with the lawyers engaged. It does not even need to look at the minutes of the meeting of LAC; although we are also of the view that, while the minutes are excluded, the information about final decisions regarding hiring of lawyers or fees to be paid, does constitute the public record as the information about expenditures (Section 7a & 7b) and final decisions/orders (Section 7d) has been declared as public record under Section 7.

It has also been argued that the requested record/information is of "classified and confidential nature" and has been excluded from the preview of the Ordinance under clause (f) and clause (i) of Section 8 of the Ordinance. However, no order or notification issued by the Federal Government to this effect has been shared with the Respondent. In any event, even if such an order or a notification exists, the Federal Government will need to explain the justification for declaring the requested information excluded from the preview of the Ordinance. It is an established principle, which is supported by a large number of judgments of superior courts, that such executive authority cannot be exercised arbitrarily, without providing convincing reasons and with malafide intentions or without adequate justification from the perspective of public interest. In the instant case, any such decision or notification, if it exists at all, would be hard to justify, as the disclosure of requested information harms no public interest. On the other hand, it would serve the public interest by ensuring transparency in decision-making and public expenditures.

Furthermore, the Law and Justice Division has argued that the disclosure of requested information would create "unnecessary problems, embarrassing situation and open a Pandora box" and that it would "be direct interference in the internal working of this Division." This is a clear admission of some sort of guilt or mistakes or violation of rules or something that cannot be justified and, therefore, would embarrass the Division, and which the Division is bent upon hiding from the public scrutiny. The Respondent has only used his legal, democratic and human right to access information about the use of public money. How could this amount to "interference in the internal working of the
Division? It may be appropriate for the Division to explain whether the disclosure of requested information would embarrass only the bosses of the previous government (as it is about the period from Oct. 01, 2002 – March 20, 2008) or it would embarrass the current leadership of the Division as well?

In addition to the above para-wise response, it may be added that:

7. Right to information is globally recognized as a fundamental human right [See Article 19 of the Universal Declaration of Human Rights (1948) and Article 19(2) of the International Covenant on Civil and Political Rights, 1966]. The globally recognized principles for enacting or interpreting a law of right to information include maximum disclosure and minimal exceptions. These principles may be kept in view in the course deciding upon this Representation.

8. The provision of FOIO 2002 must be interpreted to facilitate access to information and to promote transparency, as against protecting secrecy or confidentiality on vexatious or unjustified ground as it is evident from the Representation of the Law and Justice Division. A reference is made to Section 3(2) of the FOIO 2002, which reads as follows:

“(2) This Ordinance shall be interpreted so as

(i) to advance the purposes of this Ordinance,

(ii) to facilitate and encourage, promptly and at the lowest reasonable cost,

the disclosure of information.”

The purpose of the Ordinance is also given in the beginning of the Ordinance, which reads as follows:

"WHEREAS it is expedient to provide for transparency and freedom of information to ensure that the citizens of Pakistan have improved access to public records and for the purpose to make the Federal Government more accountable to its citizens, and for matters connected therewith or incidental thereto.”

9. Lastly, it may be noted that right to information is also a constitutional right. While interpreting Article 19 of the Constitution, the Supreme Court of Pakistan has held that the freedom of speech and expression is inclusive of right to information. [See PLD 1995 SC 473 and 746]. It is because the freedom of speech and expression becomes less meaningful in the absence of right to information. Therefore, any restrictions imposed on right to information have to be narrowly defined and must be consistent with the restrictions provided in Article 19 of the Constitution.

**PRAYER:**
Given the above submissions, it is respectfully prayed that the decision of the Wafaqi Mohtasib dated 4-05-2009 (Re. Complaint No. HQR0005282/08) may be upheld in the
Special Publicity Fund

On August 29, 2008, CPDI sent a request for information to the Ministry of Information and Broadcasting. This request pertained to:

1. Certified copies of the strategy/advertisement plans to spend funds under Special Publicity Fund budget head from October 01, 2002 to March 20, 2008.

2. Certified information about the names and addresses of media houses/PR firms/consultants/journalists/individuals that received funds under Special Publicity Fund from October 01, 2002 to March 20, 2008.

3. Certified copies of the contracts under which Ministry of Information and Broadcasting released funds to media houses/PR firms/consultants /journalists /individuals from Special Publicity Fund from October 01, 2002 to March 20, 2008.

On September 25, 2008 the Ministry denied the information saying that: “the whole operation of Special Publicity Fund falls under category of classified information. It is, therefore, exempted under Section 8, 14, 17 of Freedom of Information Ordinance 2002. However, CPDI had already filed complained with Federal Ombudsman as ministry had failed to respond to the request within 21 days. On 27 September 2008 the Ombudsman informed CPDI that the office was dealing with the complaint. On 29 September the Ombudsman wrote to the Ministry calling upon them to respond to the allegations laid out in CPDI’s complaint. In a letter to Federal Ombudsman dated October 24, 2008, the ministry took the plea before the Wafaqi Mohtasib that the Special Publicity Fund is secret and allocation made under the Head of the Account "A 03914- Secret Services Expenditure" similar to Secret Fund provided to any organization of the government.

On 25th November, CPDI wrote a rejoinder to the Ombudsman stating that Special Publicity Fund is put in 'Others' category in budget for 2008-9. Furthermore, there were some other allocations in 'Others' category such as 'Pakistan Institute of National Affairs', 'Internews', 'Institute of Regional Studies' and 'News Network International' were also put in this 'Others' category. CPDI maintained that it saw no reason why the information pertaining to the utilization of 'Special Publicity Fund' may be termed as classified and that if it indeed was classified information, then by the same token, we should not have access to information on the expenditure of Pakistan Institute National Affairs, Internews, Institute of Regional Studies and News Network International. In its response, on December 17, 2008, the ministry maintained that the fund was declared by the Finance Division as secret through its letter dated April 29, 1976.

The ministry also stated that the Secretary had declared the information sought by the complainant as secret in exercise of the powers given to him in terms of Chapter 4 of the booklet titled 'Security of Classified Matter in government Departments' issued by the Cabinet Division. This letter makes a very interesting reading. Justifying the reason for the existing of this fund, the letter says this fund is to counter the 'hostile propaganda' and 'for wider dissemination of government's policies and activities. Terming the Special Publicity Fund as secret, the letter says: “the account will not be subject scrutiny by even the Audit. On October 27, 2010, deciding on this information request, Federal Ombudsman wrote: “It is not the function of this office to call for and scrutinize the expenditure met from allocations made under the head 'Special Publicity Fund' to see whether it was really made for the stated objectives and that the disclosure of which could be against national interest. The parliament has approved the allocations made. In view of the fact that New Item Statement (NIS) identifies the Special Publicity fund as Secret Service Expenditure, the contention of the ministry seems to be correct. In view of the foregoing, the refusal by the ministry to provide the information sought by the complainant was justified. Consequently, the complaint is rejected.” We filed representation to the president of Pakistan against this decision on November 29, 2010. In the meanwhile, Ministry of Information and Broadcasting has become more secretive. In its budget for financial year 2011-12, it has lumped together all the budgetary heads in 'Others' category.
APPLICATION FORM FOR OBTAINING RECORD UNDER FREEDOM OF INFORMATION ORDINANCE, 2002 (NFVO OF 2002)

<table>
<thead>
<tr>
<th>Name of Applicant:</th>
<th>Zahid Abdullah, Project Manager, Centre for Peace and Development Initiatives, Pakistan (CPDI-Pakistan)</th>
</tr>
</thead>
<tbody>
<tr>
<td>NIC No.:</td>
<td>61105-9843806-3 (copy enclosed)</td>
</tr>
<tr>
<td>Father’s Name:</td>
<td>Amir Abdullah</td>
</tr>
<tr>
<td>Address:</td>
<td>155, First Floor, Park Towers, F-10/3, Islamabad</td>
</tr>
<tr>
<td>Phone No.:</td>
<td>051-21683287</td>
</tr>
<tr>
<td>Name of Public Body from which information is to be obtained:</td>
<td>Ministry of Information and Broadcasting</td>
</tr>
<tr>
<td>Subject matter of record requested:</td>
<td>Information about Utilization of Special Publicity Fund</td>
</tr>
<tr>
<td>Nature of record requested:</td>
<td>1. Certified copies of the strategy/advertisement plans to spend funds under Special Publicity Fund budget head from October 01, 2002 to March 28, 2008.</td>
</tr>
<tr>
<td></td>
<td>2. Certified information about the names and addresses of media houses/PR firms/consultants/journalists/individuals that received funds under Special Publicity Fund from October 01, 2002 to March 20, 2008.</td>
</tr>
<tr>
<td></td>
<td>3. Certified copies of the contracts under which Ministry of Information and Broadcasting released funds to media houses/PR firms/consultants/journalists/individuals from Special Publicity Fund from October 01, 2002 to March 20, 2008.</td>
</tr>
</tbody>
</table>

Purpose of acquisition of the information: For research and advocacy initiatives undertaken by Centre for Peace and Development Initiatives.
September 22, 2008

Federal Ombudsman

The Federal Ombudsman Secretariat

Zero Point

Islamabad.

Subject: No Response from Ministry of Information and Broadcasting to Information Request Filed Under Freedom of Information Ordinance 2002

Sir,

I filed information request to Ministry of Information and Broadcasting, seeking the following information:

1. Certified copies of the strategy/advertisement plans to spend funds underSpecial Publicity Fund budget head from October 01, 2002 to March 20, 2008.
2. Certified information about the names and addresses of media houses/PR firms/consultants/journalists/individuals that received funds under Special Publicity Fund from October 01, 2002 to March 20, 2008.
3. Certified copies of the contracts under which Ministry of Information and Broadcasting released funds to media houses/PR firms/consultants/journalists/individuals from Special Publicity Fund from October 01, 2002 to March 20, 2008.

Under the said ordinance, a public body has to provide information within 21 days of the filing of the information request. I have received no response from Ministry of Information and Broadcasting despite the lapse of more time than given in the Freedom of Information Ordinance.

For your perusal, please find attached my correspondence with the ministry and believe I have access to the information which is my right as the citizen of Pakistan.

Yours sincerely,

Zahid Abdullah

---

Government of Pakistan
Ministry of Information & Broadcasting

No. 1(1)/2006-JS
Islamabad, September 25, 2008

Mr. Zahid Abdullah,
Project Manager,
Centre for Peace & Development Initiatives Pakistan,
(CPDI-Pakistan)
Islamabad

Subject: REQUEST FOR OBTAINING PUBLIC RECORD UNDER FREEDOM OF INFORMATION ORDINANCE, 2002

Please refer to your application for obtaining records under Freedom of Information Ordinance, 2002.

I. The whole operation of Special Publicity Fund falls under the category of classified information. It is therefore, exempted under Section 8(1)-(I),14 & 17 of the Freedom of Information Ordinance, 2002.

(Signed)

(Mrs. Tahira Zia)
Joint Secretary
Office Memorandum

Subject: Failure to Provide Information Under Freedom of Information Ordinance, 2002

The undersigned is directed to refer to the Wafaqi Mohtasib (Ombudsman)'s Secretarial letter No. Reg.HR340/2008 dated 29th September, 2008 on the above mentioned subject and to inform that this Ministry has already sent a reply to Mr. Zahid Abdullah, Programme Manager, Centre for Peace and Development Initiatives, Pakistan (CPDI, Pakistan), vide its letter of 25th September, 2008 (Copy enclosed).

2. It is clarified that Special Publicity Fund is an allocation made under the Head of Account "A03914: Secret Services Expenditure" similar in nature to Secret Fund provided to any organization of the Government.

3. The Special Publicity Fund is strictly utilized in accordance with the rules and regulations governing the "Secret Service Expenditure" issued by the Finance Division from time to time.

4. It is pointed out that Mr. Zahid Abdullah has earlier filed a petition on similar grounds and decision on which is pending with the Wafaqi Mohtasib (Ombudsman)'s Secretariat under case No. HCPR/057092/08.

Wafaqi Mohtasib (Ombudsman)'s Secretariat
(Mr. Mansoor Ahmad, Advisor)
Zero Point, Islamabad

November 25, 2008

Federal Ombudsman
The Federal Ombudsman Secretariat
Zero Point
Islamabad

Subject: Rejoinder to the Denial of Information Request Pertaining to the Utilization of Special Publicity Fund by Ministry of Information and Broadcasting

Dear Sir,

We have gone through the Federal Budget 2008-9 document and see no reason as to why the information pertaining to the utilization of "Special Publicity Fund" may be termed as classified, maintained by the Ministry of Information and Broadcasting in the letter dated 25th September, 2008. We believe the information about the "Special Publicity Fund" to be in the public domain on the following counts:

Allocation of funds for "Special Publicity Fund" in the Federal Budget 2008-9 is in the 'Others' category. If the information about "Special Publicity Fund" is not to be disclosed, by the same token, the Ministry of Information and Broadcasting may not give information about the details of the expenditure of "Pakistan Institute National Affairs", Internexa, Institute of Regional Studies and News Network International which also fall, like "Special Publicity Fund", in the Other category in federal budget document 2008-2009. (Relevant page from Federal Budget 2008-9 attached)

How can funds allocated for 'publicity' be termed as classified?

Ministry of Information and Broadcasting has failed to provide the document under which expenditure details of "Special Publicity Fund" have been made classified.

Thanks for your continued cooperation in providing citizens access to information under Freedom of Information Ordinance 2002.

Yours,

Zahid Abdullah
GOVERNMENT OF PAKISTAN
MINISTRY OF INFORMATION AND BROADCASTING

No. 3/1/2008-J.S.
Islamabad: 17 Dec 2003

OFFICE MEMORANDUM

Subject: FAILURE TO PROVIDE INFORMATION UNDER FREEDOM OF
INFORMATION ORDINANCE 2002.

This is with reference to Waqas Mohsin (Ombudsman) Secretariat's letter No Reg/13/340/2008 dated 28-11-2008 on the above subject. The correct position is as under:-

(a) This Fund was declared as Secret and notified in 1976 (vide O.M. No.F.3(92)/87 dated 29-04-76) as is evident from Regulations Wing Finance Division's O.M. No.F.3(92)/87 dated 22-11-1976 (original letter is not traceable in Finance Division). The status & procedure has also been incorporated in General Financial Rules Vol-2 No.37.

(b) The Special Publicity Fund is a Fund managed by the Ministry of Information and Broadcasting from allocations under the Head of Account "A-4394-Secret Services Expenditure". As the Head of Account specifies, it is a secret fund which is discretely utilized to support and supplement Ministry's efforts for protection and wider dissemination of Government's policies & activities. It is utilized mainly to counter hostile & anti-Pakistan propaganda both within and outside the country, disclosure of which is not in the public interest and national integrity. The classification of Secret has very clearly been explained in (Chapter 4 & para 4.7(b) of the booklet "Security of Classified Matter in Government Departments (Revised Edition 2001) prepared by the Cabinet Division. The objectives and nature of the said fund cannot, therefore, be discussed in public form.

(c) The authority for classification has also been explained in Chapter 4 of S.No.4.15 of the above mentioned booklet.

(d) The access to Secret record has also been explained in Chapter 5 of the said booklet at S.No.5.3. that the Secret matter is to be made available only to the person specially authorized and as per G.F.R. at sub-para 5 of S.No.37, the record will not be subject to scrutiny by even the Audit Authority. There is a proper procedure of audit duly outlined from time to time by Auditor General of Pakistan.

(Mansoor Selahat)
Additional Secretary
92165965

Waqas Mohsin (Ombudsman) Secretariat,
(Mr. Mansoor Ahmed, Advisor to Ombudsman),
Zero Point, Islamabad
EXTRACTS TAKEN FROM SERIAL NO.37 OF APPENDIX 8 OF
GOVERNMENT FINANCIAL RULES 1977


3. When an allowance is granted to the disposal of an officer for secret service, the
officer concerned will maintain a contingent register in the prescribed form in
which the date and amount of each contingent bill will be entered with a note of
the progressive expenditure. Within the allotment the officer may draw bills for
such items as may be necessary. Such bills will not be supported by vouchers.

2. The general control of expenditure incurred against the allotment will be vested
in the officer authorized, who will be responsible that accounts are duly
maintained and that payments have been properly made for the purpose for
which the appropriation has been made.

5. The officer responsible will maintain in the form of a cash book a secret record of
the expenditure and receipts (if any) connected with the allotment. This record
should contain the amount and the date of each payment and such indication of
an nature as the officer mentioned in para (4) below may consider necessary in
order to enable him to discharge the responsibility placed upon him by law.
The account from the initial to contingent bills will be entered on the
next book with the number and date of the bill being noted against each.

4. In respect of each officer authorized to issue secret service expenditure,
Government will nominate a Controlling officer who should conduct at least once
in every financial year, a sufficiently real administrative audit of the expenditure
incurred and furnish a certificate to the Accountant General in the following form
not later than the 10th November following the year to which it relates -

I hereby certify that the amount actually expended by me under my
authority for secret service in the year ending the 30th June, was Rs.
and that the balance as paid on the said 30th of June, was Rs.
and that this balance was intimated by detachments in the
1st bill presented during the year; and I declare that the interests of
the public service required that the above payments should be made out of
secret service funds and that they were properly so made.

5. The accounts of secret service expenditure will not be subjected to scrutiny by the
Audit authority.

NOTICE OF HEARING FIXED
FOR 11/03/2009

Subjects: COMPLAINT AGAINST MIN INFORMATION & BROADCASTING

In exercise of the powers vested under Article 134(1) of the Constitution of the
State of Pakistan, the hearing of the proceeding(s) scheduled on the above mentioned date, as detailed below:

Cost No. Complainant Time
Reg No Date

Mr. Zahir Abidal 10:00 AM

The Aggrieved is advised to:
(a) Attend a representative of the appropriate level (preferably an officer in BPS-16 or
above) who is competent to make a commitment take decision on behalf of the Agency,
and
(b) Provide a complete report on the matter.

The complaint should appear in person or through an authorized representative along
with documents/evidence, which he/she wants to produce in his/her support.

May be noted that if the Agency/Complainant fails to attend the hearing or does not
be heard on available evidence.

BY ORDER OF THE WAFAQI MOHTASIB (OMBUDSMAN)

(MANSOOR AHMED)

Adviser

Ms. Tahir Zia,
Joint Secretary,
Ministry of Information & Broadcasting,
Cabinet Block, Government of Pakistan,
Islamabad.

Copy to:
1. The Secretary, Ministry of Information & Broadcasting, Cabinet Block,
Government of Pakistan, Islamabad.
2. Copy to complainant. He is advised to attend the hearing.

(MANSOOR AHMED)

Adviser
WAF-QI MOHTASIB (Ombudsman’s) SECRETARIAT

FINDINGS

Complainant No. 1 HQN-944/2008
Date of Registration 26-09-2009 (Received on 27-09-2009)
Name & address of the Complainant Mr. Zahid Adbullah S/o Amir Abdullah, 105, Parks Towers, F-10/3, Islamabad.
Name of the agency Ministry of Information & Broadcasting.
Brief subject Failure to provide information under Freedom of Information Ordinance, 2002.
Name of the Investigating Officer Mansoor Ahmed, Adviser
Date when Report called from Agency 28th September, 2008
Date of Receipt of Complete Report 24-10-2008
Number & Dates of Hearing Number : 01
Date of Dispatch of Final Findings 10-11-2009

ORDER UNDER SECTION 18 OF THE FREEDOM OF INFORMATION ORDINANCE, 2002

THE COMPLAINT

The complainant stated that he had requested the Ministry of Information and Broadcasting to provide the following information under Freedom of Information Ordinance, 2002:

1. Certified copies of the strategy/advertise plans to spend funds under Special Publicity Fund budget from 1-10-2002 to 30-09-2003.
2. Certified information about the names and addresses of media houses/PR firms/consultants/journalists/individuals that received funds under Special Publicity Fund from 1-10-2002 to 30-09-2003.
3. Certified copies of the contracts under the Ministry of Information and Broadcasting released fund to media houses/PR firms/consultants/journalists/individuals from Special Publicity Fund from 1-10-2002 to 30-09-2003.

The complainant stated that the Ministry was obliged to provide the information requested within 21 days of filing of request, but expired no response from the Ministry.

REPORT OF THE MINISTRY

The Ministry of Information & Broadcasting, vide its letter dated 24/10/2008, stated that the Ministry had already sent a reply to the requesters vide letter dated 23-09-2008.

4. It was further stated that the Special Publicity Fund is an allocation made under the head of Account “A-4914 – Secret Service Expenditure” similar in nature to Secret Fund provided to any organization of the Government. The Special Publicity Fund is strictly utilized in accordance with the rules and regulations governing the Secret Service Expenditure issued by the Finance Division from time to time.

COMPLAINANT’S DEFENDERS

5. The complainant, vide his reply letter dated 24/10/2008, stated that he saw no reason why the Ministry had declared the requested information in respect of Special Publicity Fund as classified, as intimated by the Ministry in its letter dated 23-09-2008.
6. He pointed out that the funds for Special Publicity Fund is put in “Others” category in Budgets for 2008-2009. There were also other allocations under the “Others” category, such as “Pakistan Institute for Artificial Intelligence”, “Institute of Regional Studies” and “South Network International". With the same argument the Ministry may refrain to provide information in respect of the above quoted allocations.
7. The complainant further argued that there seemed to be no reason why a fund given for publicity could be classified.

FURTHER REPORT OF THE MINISTRY

8. The Ministry, vide its letter dated 31-10-2008, stated that fund was declared as secret by the Finance Division, vide letter dated 23-04-1976, original of which is not available. The Special Publicity Fund is a fund managed by the Ministry from allocations made under the head of account “A-4914 – Secret Service Expenditure”. As the head of account indicates, it is a secret fund which is exclusively utilized to support and supplement Ministry’s efforts for publication and external dissemination of Government’s policies and activities.
9. It was also stated that it is utilized solely to counter hostile and anti-Pakistan propaganda both within and outside the country, dissemination of which is not in public interest and national dignity. The classification of “Secret” has been explained in Chapter 5 of the booklet “Secrecy of Classified Matters in Government Departments”, prepared by the Cabinet Division. The complainant was aware of the said fund concept, therefore, he disclosed in public term. The access to Secret record has been explained in Chapter 5, and as per G.P.R., the account will not be subject to scrutiny even by the audit authorities. There is a proper procedure of audit notified by the Auditor General of Pakistan.

COMPLAINANT’S FURTHER DEFENDERS

10. The complainant stated that he was not satisfied with the response of the Ministry. It was a clear information by citing a document which is not available with it. He also stated that Special Publicity Fund is mentioned in the “Others” category and not under “Secret Fund”. Hence, it appears that it is not a secret fund. When budget is presented,
the law-makers do not know whether it is a secret fund or not. It is to be treated as secret fund. It should be mentioned as such.

**POINTS AT ISSUE:**
11. The point at issue is whether the Ministry of Information and Broadcasting was justified in refusing to supply the information requested by the complainants?

**HEARING PROCEEDINGS:**
15. Hearing in the case was held on 14.03.2006, which was attended by Mr. Muhammad Iqbal, Deputy Secretary, on behalf of the Ministry and Mr. Zulfiqar Akhtar, the complainant.

16. The representation of the Ministry was that what was sought by theFileInfo through the Information Satisfaction was classified, and the relevant fund the 'Special Publicity Fund' was not for the same purpose for which allocations under the head 'Secret Service Expenditure' were made. The representation of the agency was that only the allocation was required, and the information in question was classified under Chapter 4 of the book titled 'Ministry of Information and Broadcasting' prepared by the Cabinet Division. The decision to deny any document or matter contravened therein was taken with the Secretary Division, Ministry. The decision also contemplated a philosophy of NIS issued by the Finance Division, in which the 'Special Publicity Fund' had been shown under the title 'Secret Service Expenditure'.

17. The complainant alleged that Secret Service Expenditure and Special Publicity Fund was shown under separate heads in the budget book. It means that the Parliament was kept in the dark by later on passing the allocation for Special Publicity Fund under the Secret Service Expenditure by the Finance Division. He also alleged that it is not about how the information sought by him could be harmful to the interests of State. In this way, a Government department can deny any type of information by taking the plea that it had been declared classified by the head of the department.

**FINDINGS / DECREE:**
18. The complainant's request was rejected for certain information from the Ministry of Information and Broadcasting, in respect of the advertisement in the newspaper announcing the allocation of funds under Special Publicity Fund, the source and address of media house, for the preparations for preparing and distributing Government policies and activities. It is used mainly in counter-heuristic and anti-Pakistan propaganda. It is in the country, because of which it is not in public interest and national interest.

19. The Ministry's decision dated 19.02.2006, had stated that this fund was treated as secret and notified in 1978. However, the agency did not produce the information sought by the complainant. The information was sought by the complainant in 1999. The Ministry had informed the complainant that the information sought by the complainant was classified. The Ministry had also informed the complainant that the information sought by the complainant was classified.

20. It is not the function of this office to call for and scrutinize the expenditure from allocations made under the head 'Special Publicity Fund' to see whether it was made in the public interest and national interest. The Parliament has approved the allocations made. View of the fact that the NIS identifies the Special Publicity Fund as a 'Secret Service Expenditure' the contention of the Ministry seems to be correct.

21. In view of the foregoing, the refusal by the Ministry to provide the information sought by the complainant was justified. Consequently, the complaint is rejected.

(JAVED SADIQ MALLIK)
WARAQ MOHTASHAM UDDIN)
30.07.2006
Before the President of Islamic Republic of Pakistan

Representation No. 2000

Against Decision in Complaint No. 93/2000

Ziauddin Ahmad, Program Manager H. No. 133, St. 49, F-10/3, Islamabad
The Secretary Ministry of Information and Broadcasting, Pak Secretariat, Islamabad.

REPRESENTATION UNDER ARTICLE 32 OF THE ESTABLISHMENT OF THE OFFICE OF WAFAY MONTASIR ORDER 1983 BY THE COMPLAINANT:

RESPECTFULLY SUBMITTED:

That the representation is filed against the decision no. 93/2000 in compliance with the provisions of Article 32 of the Establishment of the Office of Wafay Montasir Order 1983. The representation is filed after the decision dated 11/1/2000 in the case of Wafay Montasir.

The brief facts for this representation are as under:

1. That the complainant filed an application before the Secretary Ministry of Information and Broadcasting requesting the following information under Freedom of Information Ordinance 2002:
   - Certified copies of the strategic-reimbursement plans to spend funds under Special Publicity Fund and Budgets for the period from October 01, 2002 to March 30, 2003.
   - Certified information about the names and addresses of media houses/PR Firms/Consultants/Individuals that received funds under Special Publicity Fund from October 01, 2002 to March 30, 2003.
   - Certified copies of the contracts under which Ministry ofInformation and Broadcasting released funds to media houses/PR Firms/Consultants/Individuals from Special Publicity Fund from October 01, 2002 to March 30, 2003.

2. That the required information was denied by the ministry and feeling aggrieved the complainant filed a complaint before Wafay Montasir.

Centre for Peace and Development Initiatives

1331, Street 48, F-10/3, Islamabad
+92 51 230 82 87, 231 23 10, 431 94 20, +92 51 230 15 94
www.cpdpakistan.org

A non-profit educational and research 501(c)3 organization under IRC Section 501 (c)(3)
Information Request to Ministry of Information and Broadcasting Pertaining to Funds Hidden under 'Others' Category

In our pursuit to make matters transparent at Ministry of Information and Broadcasting, CPDI filed information request on August 11, 2011, requesting the following information:

1 Certified information about the names of different heads under 'Others' category and budget allocated to each in financial year 2011-12

2 Total number of discretionary/secret funds maintained by Ministry of Information and Broadcasting, their names and budget allocated for these in financial year 2011-12

3 Certified copies of the documents declaring certain funds as secret/discretionary which are being maintained by Ministry of Information and Broadcasting.

We did not receive response from the ministry and filed complaint to Federal Ombudsman on October 11, 2011.
## Application Form

For obtaining record under Freedom of Information Ordinance, 2002 (XCVI of 2002)

<table>
<thead>
<tr>
<th>Name of Applicant:</th>
<th>Zubid Abdullah, Programme Manager, Centre for Peace and Development Initiatives, Pakistan (CPDI-Pakistan)</th>
</tr>
</thead>
<tbody>
<tr>
<td>NIC No.:</td>
<td>61161-9976123-5 (copy enclosed)</td>
</tr>
<tr>
<td>Father's Name:</td>
<td>Amir Aishullah</td>
</tr>
<tr>
<td>Address:</td>
<td>H-133, S-6, F-11/3 Islamabad</td>
</tr>
<tr>
<td>Phone No.:</td>
<td>051-2168237</td>
</tr>
<tr>
<td>Name of Public Body from which information is to be obtained:</td>
<td>Ministry of Information and Broadcasting</td>
</tr>
<tr>
<td>Subject matter of record requested:</td>
<td>Information about budget under 'Others' Category</td>
</tr>
</tbody>
</table>

### Nature of record requested:

1. Certified information about the names of different heads under 'Others' category and budget allocated to each in financial year 2011-12
2. Total number of discretionary secret funds maintained by Ministry of Information and Broadcasting, their names and budget allocated for these in financial year 2011-12
3. Certified copies of the documents declaring certain funds as secret/discretionary which are being maintained by Ministry of Information and Broadcasting.

### Purpose of acquisition of the information or record:

For research and advocacy initiatives undertaken by Centre for Peace and Development Initiatives (CPDI).

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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 of...

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

Signature of Applicant:
Information Request to Federal Board of Revenue (FBR)

On January 13, 2010, CPDI filed an information request to Federal Board of Revenue (FBR) under the Freedom of Information Ordinance 2002 asking the FBR to provide certified information about the names, addresses and the fee paid to the lawyers by FBR to represent it in courts from January 1, 2004 to December 21, 2009. On February 22, 2010, FBR provided an answer in one liner: “The required information does not come within the ambit of section 7 of Freedom of Information Ordinance 2002.” On the intervention of Federal Tax Ombudsman, FBR explained its position on March 4, 2010 and took the plea that the requested information was part of its records which were exempted under the FIO. (Interestingly, the requester had sought access to the contracts between lawyers and FBR and had never demanded file noting in the first place). FBR also maintained that “it invaded the privacy of the individual. Constitution of Pakistan gives protection to the privacy of individuals and the complainant is desirous of violating this fundamental right”.

No one can claim right to privacy when paid from public funds but FBR bureaucracy was willing to invoke constitution of the country to protect information about the fee it paid to the lawyers from public funds. No wonder, The Federal Tax Ombudsman after hearing both parties on April 05, 2010, in its finding said that “The requested information falls in the category of public record” and that “FBR is wrong in presuming that complainant is requesting information which is excluded under section 8(a) of FOI Ordinance. Since decisions of Federal Tax Ombudsman are recommendatory in nature, therefore, it recommended FBR on June 09, 2010 to provide information to requester within 21 days. Instead of compliance, the FBR chose to file representation to the President of Pakistan on July 07, 2010 and prayed him to set aside the decision of Federal Tax Ombudsman. On September 09, 2010, CPDI asked S. O(Law-1) to provide certified copies of relevant documents (notifications/SRO, OM, Circular, Office Orders/Instructions regarding the issue of filing representation to President of Pakistan. CPDI did not receive any reply and has submitted a petition under Article 184 (3) of the constitution of Pakistan in the Supreme Court of Pakistan on December 2, 2010, which is still pending with the Supreme Court.
APPLICATION FORM
FOR OBTAINING RECORD UNDER
FREEDOM OF INFORMATION ORDINANCE, 2002 (XCVI OF 2002)

Name of Applicant: Mukhtar Ahmad Ali
N.C. No.: 61191-5279953-1 (copy enclosed)
Father's Name: Ghulam Jaffer Shah
Address: 102 Park Towers, F-10/3, Islamabad
Phone No.: 051 210 8287
Name of Public Body from which information is to be obtained: Federal Board of Revenue
Subject matter of record requested: Professional Fees of Lawyers Engaged by the FBR from 01-01-2004 to 31-12-2009
Nature of record requested:
1. Information about Names and addresses of advocates engaged and professional fee/TADA paid. No. of decided cases in the courts during the period
2. Reasons for payment of the enhanced fees in any of the cases along with the relevant documents
3. Court wise results
   (a) Dismissed for non prosecution
   (b) Decided against
   (c) Dismissed on merits
4. Cases wise and court wise actions in cases which were dismissed for non prosecution or being time barred
Purpose of acquisition of the information or record: For research and advocacy initiatives undertaken by CPDI

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 - Vade Challan or Receipt No. date of deposit an original copy of which is attached.
**GOVERNMENT OF PAKISTAN**  
**REVENUE DIVISION**  
**FEDERAL BOARD OF REVENUE**

C. No. 9/2/4/2010  
the Islamabad 04th March, 2010

To:  
The Registrar  
Federal Tax Ombudsman  
5-A, State Enterprises Complex  
Constitution Avenue, Islamabad

**SUBJECT:** Submission of Para-wise Comments in Complaint, No. 64/6d/FBR(1)/194/2010-Reply/Comments

Reference to the subject above and your office letter File No. 64/6d/FBR (1)/194/2010 dated 20/02/2010.

2. As desired para-wise comments on the allegations leveled by the complainant are submitted as under:

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Allegations</th>
<th>Accepted /Not Accepted</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>That, all withheld information is illegal, without jurisdiction and authority as is also against the judgments of the Honourable Superior Courts of Pakistan and the “Findings” of this August Forum.</td>
<td>Not accepted</td>
<td>The complainant filed application before Chairman FBR on prescribed format under the Freedom Of Information Ordinance 2002 requesting information in respect of court cases for the period from 01.01.2004 to 30.12.2009. The complainant asked for information person-wise along with their names, addresses, T/A/DA paid reasons for payment of enhanced fees etc. Information relating to reasons to enhanced fees, T/A/DA is part of noting sheet which is excluded from the definition of public record by virtue of section 8 of the Ordinance. Further, section 8 (g) also bars the provision of</td>
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<td>Case</td>
<td>Description</td>
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<td>2</td>
<td>That, without prejudice, the withholding of the said information is purely with no legal intentions and motives other than legal. Additionally, all the allegations leveled are baseless without any cogent reason and evidence. Non-provision of information is well-reasoned as per remarks column at serial number 1.</td>
<td></td>
<td></td>
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<tr>
<td>3</td>
<td>That, without prejudice, the complaint has not cited any</td>
<td></td>
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<td>prejudice, the complainant are being treated in violation of their fundamental rights as enshrined in the Constitution of the Islamic Republic of Pakistan, 1973.</td>
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<tr>
<td></td>
<td>admitted fundamental right enshrined in the Constitution of Islamic Republic that has been violated. On the contrary the Constitution of Islamic Republic of Pakistan gives protection to the privacy of individuals and the complainant is desirous of violating this fundamental right. Information required cannot be provided for the reasons recorded in the Remarks column of serial number 1.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>That the respondent has violated the provisions of the Establishment of the office of the FTO Ordinance, 1995 (XXV of 2000), read with section 19 of the Freedom of Information Ordinance, 2002.</td>
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<td></td>
<td>Not admitted</td>
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</table>

Under these circumstances it is prayed to:-

i) dismiss the complaint under section 20 of Freedom of Information Ordinance, 2002 being frivolous, vexatious and malicious.

(Malik Muhammad Azam)
Secretary (Information)
FBR, Islamabad

Copy for information to:-

1. Mukhtar Ahmed Ali - Executive Director, Centre for Peace and Development Initiatives (CPDI), 105, Park Towers, F-10/3, Islamabad as per directions of FTO, office.
FEDERAL TAX OMBUDSMAN SECRETARIAT
ISLAMABAD

Complaint No. 154/2016
Dated: 15-02-2016

Complainant
Mr. Muhammad Amin
Chairman
Complaint

Versus
Revenue Division
Respondent

FINDINGS/RECOMMENDATIONS

Leader Officer
Mr. Yousaf Khan, Senior Advisor

Authorized Representative
Mr. Farrukh Naeem Lodhi

Deputy Officer
Mr. Shahzad Majeed Advocate
Mr. Tufail Muneer Qazi, 2nd Secretary (Legal)

The Complainant applied to the FBR for provision of information under Section 10 of the Freedom of Information Ordinance 2002 (hereinafter referred to as FOI Ordinance) about the names and addresses of advocates engaged in professional fees and T&D paid to them along with other details provided in the assessment notices dated 14.05.2016 followed by a reminder dated 15.10.2016. The application was directly addressed to the Chairman FBR being the public body as no other official had been notified as designating official under Section 10(1) of the FOI Ordinance. The FBR replied with its letter No. 191/S&L/2016 dated 22.07.2016 that the requested information did not fall within the ambit of Section 7 of the FOI Ordinance. The Complainant filed a complaint to the FTO Secretariat in accordance with the provisions of Section 10 of FOI Ordinance with the request that FBR be directed to supply the requested information immediately.

The complaint was forwarded to Secretary, Revenue Division for comments of the FBR which opposed the requested information on the ground that it fell outside the scope of public record under Section 7 of the FOI Ordinance as well as the privacy consideration of the advocates. It was also contended that the requested information pertained to the audit portion of the tax assessment.

After the review, it was concluded that there was no basis to provide the requested information under Section 7 of the FOI Ordinance.

The Department agreed to provide the requested information under Section 10 of the FOI Ordinance and also agreed to make the information available to the Complainant in the format of Excel sheet.

The report concluded that the Department had violated the provisions of Section 10 of the FOI Ordinance and recommended that

1. The Complainant be furnished the requested information in the format of Excel sheet.
2. The Department be directed to provide the requested information in the format of Excel sheet.
3. The Department be directed to ensure that the information is made available in the format of Excel sheet.
4. The Department be directed to ensure that the information is made available in the format of Excel sheet.
5. The Department be directed to ensure that the information is made available in the format of Excel sheet.
6. The Department be directed to ensure that the information is made available in the format of Excel sheet.
7. The Department be directed to ensure that the information is made available in the format of Excel sheet.
8. The Department be directed to ensure that the information is made available in the format of Excel sheet.
9. The Department be directed to ensure that the information is made available in the format of Excel sheet.
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11. The Department be directed to ensure that the information is made available in the format of Excel sheet.
12. The Department be directed to ensure that the information is made available in the format of Excel sheet.
13. The Department be directed to ensure that the information is made available in the format of Excel sheet.
14. The Department be directed to ensure that the information is made available in the format of Excel sheet.
15. The Department be directed to ensure that the information is made available in the format of Excel sheet.
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GOVERNMENT OF PAKISTAN
REVENUE DIVISION
FEDERAL BOARD OF REVENUE

C.No. 4/194-TO/J2010

Islamabad, the July 2, 2010

To
The Secretary,
Ministry of Law, Justice and Human Rights,
Government of Pakistan,
Islamabad

SUBJECT: REPRESENTATION UNDER SECTION 32 OF THE FEDERAL TAX OMBUDSMAN ORDINANCE, (XXXV OF 2000) ON BEHALF OF
SECRETARY, REVENUE DIVISION, THROUGH MEMBER LEGAL
WING, FEDERAL BOARD OF REVENUE, ISLAMABAD IN
COMPLAINT NO. 64/ISD/FBR(01)/194/2010 - MR. MUKHTAR AHMED
ALL EXECUTIVE DIRECTOR CENTRAL FOR PEACE AND
DEVELOPMENT INITIATIVES (CPDI) LAHORE - REPRESENTATION
FILING OF:

I am directed to refer to the subject cited above and to enclose the
representation u/s 32 of Federal Tax Ombudsman Ordinance (XXXV of 2000) before
the President of Islamic Republic of Pakistan, filed by the Member (Legal) Federal
Board of Revenue, Islamabad against the order of the Honourable Federal Tax
Ombudsman in complaint NO.64/ISD/FBR(01)/194/2010 for further necessary action
please.

2.

It is certified that FTO’s Order was received in FBR on 14-06-2010 and
representation is being filed within time.

End of (As above)

( Muhammad Ashfaq)
Second Secretary (TO-I)
Ph: 051-9205410
BEFORE THE PRESIDENT OF ISLAMIC REPUBLIC OF PAKISTAN, ISLAMABAD

REPRESENTATION NO.___________, 2010.

AGAINST (DECISION) IN
COMPLAINT NO. 194/2010

TITLED
The Secretary, Revenue Division, Islamabad.

Vs. Mr. Mukhtar Ahmed Ali, Executive Director Central for Peace and Development Initiatives (CPDI) Lahore.

Representation: UNDER SECTION 32 OF THE F.T.O. ORDINANCE NO. XXXV OF 2000 ON BEHALF OF SECRETARY, REVENUE DIVISION, THROUGH MEMBER, LEGAL WING FEDERAL BOARD OF REVENUE, LAHORE.

Respectfully submitted:

That this Representation is filed against the decision/findings, dated 09.06.2010 given in complaint No. 194/2010 hereinafter called “impugned decision” passed by the Federal Tax Ombudsman, Islamabad.

The brief facts to file this Representation are as under:

1. That the complainant filed an application before the Chairman, Federal Board of Revenue (FBR) requesting information under the Freedom of Information Ordinance, 2002 (FOI) in respect of advocates with their names and addresses regarding professional fees/TA/DA etc. paid to them in respect of cases

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(Muhammad Aqil Umar)  
Member (Legal)  
FBR, Islamabad
assigned to them for contesting the same before August Supreme Court including its four Registries, various branches of Honorable High Courts, various Benches of Appellate Tribunals of Inland Revenue and Customs, Federal Services Tribunal and its various benches, District Courts, Special Courts or any other court and cases dismissed for non-prosecution, decided in favour or dismissed on merits and actions taken by FBR in cases which were dismissed for non-prosecution or being time barred or where some observation was made by the courts for the period covering from 01-01-2004 to 31-12-2009. The information requested vide application dated 13.01.2010 and 14.01.2010 (Revised) was on following formats respectively:

Format of request made on 13.01.2010

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<td>01-01-2004 to 30-12-2009</td>
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2. The required Information was regretted by the Department on the ground that it neither falls within the ambit of Freedom of Information Ordinance, nor such
information is maintained by the FBR as this information is not required to be maintained at one single place.

3. Feeling aggrieved the complainant filed a complaint before the Federal Tax Ombudsman who was apprised in the para-wise comments that the information requested by the complainant relates to the privacy of the advocates and being privileged information can not be provided.

4. During the hearing before the Federal Tax Ombudsman the same stance of the Department was reiterated and informed that consolidated maintenance of such information is neither needed nor maintained at one place but this plea was not accepted by the FTO and in order dated 09.06.2010 the FTO has recommended the FBR to-

i) provide the requested information within 21 days;

ii) designate and notify an officer under sub-section 10(1) of the FOI Ordinance;

iii) ensure maintenance and indexing of record, in accordance with Section 4 of the FOI Ordinance;

iv) take necessary steps to provide reasonable assistance to those requesting information under FOI Ordinance; and

v) report compliance within 30 days.

5. That the findings and consequent recommendations by the Federal Tax Ombudsman, except Sr. No. (ii) as the

officer under section 10(1) of FOI Ordinance has already been designated and notified prior to the recommendations of FTO, are assailed on the following grounds:-

i) That section 19 of FOI provides recourse to requester to file complaint before FTO if he is not provided information or copy of the record declared public record under section of the Ordinance ibid. since the information requested is ousted from the ambit of section 7 of FOI, the FTO doesn’t have any jurisdiction to entertain the complaint and give recommendations.

ii) That the FTO while giving his finding in para 9 of order, has erred in interpreting that the requested information falls in the category of public record under sub-sections 7(b) and 7(c) of the FOI Ordinance and again erred in holding that FBR is wrong in presuming that the Complainant is requesting information which is excluded under sub-section 8(a) of FOI Ordinance. FBR while submitting its para-wise comments (Annex D) to the FTO vide C.No. 9/12/Lita/2010 dated 4th March, 2010 did not solely rely upon section 8(a) which excludes the operation of section 7(b) and 7(c) but also section 8(g) and 17 of FOI intent of which has not been rebutted by the FTO in the findings of order.

iii) That the findings of the FTO are violative of the fundamentals of the Constitution of Pakistan, 1973 which guarantees and safeguards the privacy of individuals. Further, recommendations of the FTO defeat the intent of sections 8(a), 8(g) and 17 of the Freedom of
Information, Ordinance, 2002 which bars the disclosure of any information which involves the invasion of the privacy of individuals and operation of section 14 is invoked.

iv) That neither the requester can ask for the requested information as enumerated in para 1 under FOI nor the FTO can order to provide a record which is not maintained by the FBR.

v) That the FTO can't direct the FBR to maintain a record which it does not need to maintain.

vi) That even otherwise the cost of maintaining this record without any corresponding benefit would be phenomenal in terms of time and money which is a sheer waste of precious govt. resources, which this country can ill afford. If the requested information as enumerated in para 1 is attempted to be prepared (for sake of the need of complainant) it shall involve expenditure of millions of rupees and hundreds of man hours of functionaries of FBR. As the requested information relates to the period form 01.01.2004 to 31.12.2009 (Five Years) the period during which restructuring of FBR has taken place and a large number of offices have become defunct. Even if millions of rupees are spent and hundreds of officials engaged in the preparation of the requested information which may reach to hundreds of thousands court cases, is practically not possible to consolidate the information as it relates to FBR (Hqrs), 13 Regional Tax offices and 3 Large Taxpayers Units of Income Tax, Sales Tax, FED, 15 Customs Collectorate, various offices of Directorates of Customs Intelligence, Directorates of Internal Audit and various defunct offices of field formations including 5

Regional Commissioners Income Tax, various Zonal Commissioners Income Tax, 3 Medium Taxpayers Units, numerous Periphery stations of Income Tax, 3 Composite Collectorate of Customs, Sales Tax and FED and 7 Collectorate of Sales Tax and FED etc. which became redundant during the reform process initiated by FBR.

vii) As far as the cases decided by the Courts are concerned, the decisions are part of the court records and available with different courts many of them reported in Law Journals.

PRAYER

It is, therefore, respectfully prayed that the impugned decision/findings dated 09.06.2010 in Complaint No.194/2010 with consequent recommendations may be set-aside by declaring the same in excess of jurisdiction and against the spirit of law.

(Muhammad Aqil Khan)
Member (Legal)
FBR, Islamabad
OFFICE OF FEDERAL TAX OMBUDSMAN
5-A, Constitution Avenue, Islamabad.
Phone 9212316 & 9212321
Fax No. 9205555

No. 4/194/10-imp. Dated: 08-07-2010

Mr. Mubarak Ahmed Ali,
Executive Director,
10A, Park Tower, Sector F-10 Markaz,
Islamabad,

Complaint No. 194/2010

Refer to the Findings dated 09-06-10 in the aforementioned complaint. I am directed to convey that a representation has been filed before the President of Pakistan by the Revenue Division. Copy of representation is enclosed herewith for your information and record. I am to inform you further that vide Office Memorandum No. 36/2001-Law (FTO) dated 10-12-2001 of Law Justice and Human Rights Division Islamabad, whereby decision of President has been conveyed that implementation of the Findings/Recommendation shall remain in abeyance, during the pendency of tax representation.

2. Any Communication that you wish to make regarding the representation may be sent to the President Secretariat with a copy to the Law Division and to this Office for information and record.

Enclosure above

Copy to:
1. Mr. Parvez Nawaz Lodhi, Advocate, 21, CA, Pazaia, 46330, Rawalpindi.
2. Secretary to FTO
3. Office copy

Adviser (BM)

Copy to:
1. The Consultat (Law), President Secret (Public), Islamabad.
2. The Director (BM), Office of the FTO, Fax: 9223155. [For info and reply, a copy of the FTO letter dt. 14-06-2005.]

Centre for Peace and Development Initiatives
10A | Park Tower | F-10/3 | Islamabad
e: +92 51 210 87 57, 211 29 29, 431 64 20 e: +92 51 210 86 96 e: info@cpdi.pak.org
IN THE SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

Constitution Petition No. 72010

1. Mukhtar Ahmed Ali Executive Director
   The "Centre for Peace and Development Initiatives" (CDPI)
   H. 133, St. 48, F-1/3, Islamabad.

2. The "Centre for Peace and Development Initiatives" (CDPI)
   H. 133, St. 48, F-1/3
   Islamabad.
   Through its Executive Director ......................... Petitioners
   Vs.

1. The Federal Board of Revenue (FBR)
   FBR House
   Islamabad. Through its Chairman/Secretary Revenue Division

2. The Federation of Pakistan
   Ministry of Law, Justice and Parliamentary Affairs
   R-Block, Civil Secretariat
   Islamabad.
   Through its Secretary................................. Respondents

Petition under Article 184(3) of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter "the Constitution"), seeking declaration that the aims and objectives, for transparency and good governance in government departments and for making public servants more accountable to the people of Pakistan, as provided by Article 19 and 19A of the Constitution readwith the "Freedom of Information Ordinance, 2002 (Ordinance No. XCVI of 2002—hereinafter "the FOI Ordinance"), more particularly vide its preamble and vide section 3, 4, 5, 6 and 7 thereof and, also through judgments of this Honourable Court, inter alia, in cases reported as i) Chairman, Regional Transport Authority, Rawalpindi Vs. Pakistan Mutual Insurance Company Limited, Rawalpindi (PLD 1991 SC 14) and ii) Khan Asfandyar Wali & Others Vs. Federation of Pakistan (PLD 2001 SC 607), have not been achieved so far, in letter and spirit and in the true perspective of the enactments/judgments.
Also seeking declaration that independence and separation of the "Judiciary" from the "Executive", as envisaged in Article 2-A, 175(3) and 203 of the Constitution, have also not been achieved so far.

Seeking further directions to the respondents to immediately take the necessary steps and measures for the purposes, as deemed fit and appropriate, by this Honourable Court, to ensure that the provisions of the referred-to enactments and judgments are fully acted upon/implemented and also to ensure complete independence of "the Judiciary" from "the Executive", in terms of the President of Pakistan's solemn promise contained in his speech made on 13-04-1972, Articles 2-A, 175(3) and 203 of the Constitution of the Islamic Republic of Pakistan, 1973 and the judgments of this Honourable Court in many cases, e.g.

i. Government of Balochistan Vs. Azizullah Memon and 16 others (PLD 1993 Supreme Court 341)

ii. Government of Sindh and another Vs. Sharafr Faridi and others (PLD 1994 Supreme Court 105)

iii. Al-Jehad Trust Vs. Federation of Pakistan (PLD 1996 Supreme Court 324)

(PLD 1996 Supreme Court 324)

Also seeking to challenge the provisions of section 32 of the Federal Tax Ombudsman Ordinance, 2000 (Ordinance No. XXXV of 2000--hereinafter "the FTO Ordinance") and of the Office Memorandum bearing No.36 /2001-Law (FTO) of 10-12-2001 (hereinafter "the OM"), being ultra vires to the Constitution and a consequent declaration that same are not legally sustainable as such.

Submitted that:-

SECTION I. Questions of Law:-

The questions of public importance with reference to the enforcement of the Fundamental Rights conferred by Chapter I of Part II of the Constitution, 1973 that arise in this petition include:-

A. Have the aims and objectives, for transparency and good governance in government departments and for making the public servants more accountable to the people of Pakistan, as provided by Article 19 and 19A of the Constitution readwith the "Freedom of Information Ordinance, 2002 (Ordinance No. XCVI of 2002, the FOI Ordinance), more particularly vide its preamble and vide section 3, 4, 5, 6 and 7 thereof and, also through judgments of this Honourable Court, inter alia, in cases reported as i) Chairman, Regional Transport Authority, Rawalpindi Vs. Pakistan Mutual Insurance Company Limited, Rawalpindi (PLD 1991 SC 14) and ii) Khan Asfandyar Wali & Others Vs Federation of Pakistan (PLD 2001 SC 607), have been achieved so far, in letter and spirit and in the true perspective of the enactment/judgments of the superior courts?

B. If the reply to this is in negative, are the fundamental rights of the people of Pakistan not infringed?

C. Whether divulgence of information to the public, as to the policy making and as to the utilization of the public money (the tax payers money) is not pre-requisite for building the confidence of the people in the tax system and in turn yielding more revenue, for the betterment of the country so that it can be taken out of the present financial crisis?

D. Whether the acts and omissions of the respondents do not amount to the subversion of the Constitution and whether the respondent no. 2 is not bound to propose legislation in accordance with provisions of Article 19A thereof and to act accordingly?

E. Have the aims and objectives, as to the independence and separation of the "Judiciary" from the "Executive" as envisaged in Article 175(3) of the Constitution of the Islamic Republic of Pakistan, 1973 ("The Constitution") completed been achieved in letter and spirit?

F. Are provisions of section 32 of the FTO Ordinance ultra vires to the provisions of Article 175(3) of the Constitution and does the section create a parallel judicial system, in violation of the provisions of Article 4 of the Constitution read with Article 25 thereof, thus creating a hindrance as to complete access of justice?

G. Whether Office Memorandum bearing No.36 72001-Law (FTO) of 10-12-2001, is ultra vires to the Constitution and against the basic norms of justice and fair play?

H. Are the respondents not duty bound/responsible to make sure compliance of the provisions of the Constitution, more particularly Articles 2-A, 175(3) and 203 thereof, as expounded by this Honourable Court?

I. Can the respondent No. 2 draft/propose any law, which is contrary to the Constitution?

J. Is it not essential that the "Judicial Fora" be constituted properly, legally and in accordance with the Constitution?

SECTION II. Relevant Facts, in Brief:-

1. Petitioner No. 1, Mukhtar Ahmed Ali is Executive Director of the "Centre for Peace and Development Initiatives (hereinafter "CPDI").
2. Petitioner No. 2, CPDI 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. 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. CPDI 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. CPDI has published a held number of publications and workshops/seminars on these issues as well.

3. The petitioners submitted, by hand, two request-letters, to the respondent no. 1, on 14-01-2010, requesting therein, inter alia, for certain information, as to (formulation of) policies for effectively pursuing/defending the litigation by and against FBR, also to disclose the process and care/concern exercised in engaging lawyers/advocates and the fees paid to them. The request was made, inter alia, under section 12 of the FOI Ordinance. It was followed by two more letters.

4. The information was sought for the sake of transparency and freedom of information in order to see that people of Pakistan have access to public records, also to ensure that concerned in FBR consider themselves accountable to the public, in general and to the tax payers in particular. It was also to ascertain that whether public revenue was/is being fully safeguarded; whether sufficient prudence and care was/is being exercised and whether the concerned are qualified and well equipped to handle the legal affairs of FBR.

5. Vide letter dated 22.02.2010, a very junior officer responded and refused to provide the requested Information on the basis that it was not covered by Section 7 of the FOI Ordinance (neither any reasons were assigned nor any explanation was given).

6. Against this a complaint was preferred before the Learned Federal Tax Ombudsman (hereinafter “the FTO”). In the Para Wise Comments, the respondent no. 1 averred that: “a. The complainant filed application before Chairman FBR on prescribed format under the Freedom of Information Ordinance 2002 requesting information in respect of court cases for the period from 01.01.2004 to 30.12.2009. The complainant asked for information person-wise along with their names, addresses, TA/DA paid, reasons for payment of enhanced fees etc. Information relating to reasons to enhanced fees, TA/DA is part of noting sheet which is excluded from the definition of public record by virtue of section 8 of the Ordinance. Further section 8(1) also bars the provision of information relating to the privacy of an individual. Further requisition of this information is violation of section 17 of Freedom of Information Ordinance 2002 as it involves the invasion of the privacy of identifiable individuals. Information requested can’t be provided under the specific provisions of law.

Even otherwise the fee received by a Legal practitioner from a client constitutes privileged information and can not be morally or legally disclosed to an unrelated person. For these reasons the complainant was conveyed vide letter C. No 9(12) S-Lita/2010 dated 22nd February 2010 that the information requested doesn’t fall within the ambit of section 7 of the Freedom of Information Ordinance, 2002.

b. All the allegations leveled are baseless, without any cogent reason and evidence. Non-provision of information is well-reasoned as per remarks at serial number 1”7. A rejoinder was submitted by the petitioners, highlighting therein various aspects of the issues involved and the need to divulge the information. The FTO was pleased to decide the complaint in the favour of the petitioners. Operative Para reads as under:

“Recommendations:

FBR to:

i) provide the requested information within 21 days;

ii) designate and notify an officer under sub-section 10 (1) of the FOI Ordinance;

iii) ensure maintenance and indexing of records, in accordance with section 4 of the FOI Ordinance;

iv) take necessary steps to provide reasonable assistance to those requesting information under the FOI Ordinance; and

v) report compliance within 30 days”.

8. Against this, FBR made a presentation to His Excellency, the President of the Pakistan (hereinafter “the President”), under the provisions of section 32 of the FTO Ordinance, 2000. The section reads as:

“The Revenue Division or any person aggrieved by a recommendation of the Federal Tax Ombudsman may, within thirty days of the recommendation, make a representation to the President who may pass such order thereon as he may deem fit.”

9. A notice of said representation was received by the petitioners, from the respondent no. 2, for submission of the written comments. The petitioners requested for certain information so that a proper reply/comments could be submitted,

Followed
by a reminder. The response is still awaited.
SECTION III. GROUNDS:
Because:

A. The aims and objectives, for transparency and good governance in government departments and for making the public servants more accountable to the people of Pakistan, as provided by Article 19 and 19A of the Constitution read with the "Freedom of Information Ordinance, 2002 (Ordinance No. XCVI of 2002, the FOI Ordinance), more particularly vide its preamble and vide section 3, 4, 5, 6 and 7 thereof and, also through judgments of this Honourable Court, inter alia, in cases reported as i) Chairman, Regional Transport Authority, Rawalpindi Vs. Pakistan Mutual Insurance Company Limited, Rawalpindi (PLD 1991 SC14) and ii) Khan Asfandyar Wali & Others Vs Federation of Pakistan (PLD 2001 SC607), have not been achieved so far, in letter and spirit and in the true perspective of the enactments/judgments of the superior courts.

B. By this way, the fundamental rights of the people of Pakistan have been infringed.

C. Divulgence of information to the public, as to the policy making and as to the utilization of the public money (the tax payer’s money) is a prerequisite for building the confidence of the people in the tax system and in turn yielding more revenue, for the betterment of the country so that it can be taken out of the present financial crisis.

D. The acts and omissions of the respondents amount to the subversion of the Constitution and that the respondent no. 2 is bound to propose legislation in accordance with provisions of Article 19A thereof and to act accordingly.

E. The aims and objectives, as to the independence and separation of the "Judiciary" from the "Executive" as envisaged in Article 175(3) of the Constitution of the Islamic Republic of Pakistan, 1973 ("The Constitution") have not been completely achieved in letter and spirit.

F. Provisions of section 32 of the FOI Ordinance are ultra vires to the provisions of Article 175(3) of the Constitution and the section creates a parallel judicial system, in violation of the provisions of Article 4 of the Constitution read with Article 25 thereof, thus creating a hindrance as to complete access of justice.

G. Office Memorandum bearing No.36 72001-Law (FTO) of 10-12-2001, is ultra vires to the Constitution and is also against the basic norms of justice and fair play.

H. The respondents are duty bound/responsible to make sure compliance of the provisions of the Constitution, more particularly Articles 2-A, 175(3) and 203 thereof, as expounded by this Honourable Court.

I. Respondent No. 2 cannot draft/propose any law, which is contrary to the Constitution.

J. It is essential that the “Judicial Fora” be constituted properly, legally and in accordance with the Constitution.

As to the Freedom of Information Ordinance 2002.

A. Aim, objective and purpose of the Promulgation thereof:

The FOI Ordinance was promulgated, in the year 2002, to provide for transparency and freedom of Information to ensure that the citizens of Pakistan have improved access to public records and for the purpose to make the Federal Government more accountable to its citizens, and for matters connected therewith or incidental thereto. An attempt is being made, hereunder, to depict a brief background as to the promulgation of the Ordinance and to explain the aims and objective behind it:

a) Historic Perspective:

“Freedom of Information” (or right to information) is now universally recognized as a fundamental human right and a pre-requisite for transparent and accountable governance. It is referred to as ‘oxygen’ for democracy and a ‘touchstone for all freedoms’. It is also widely recognized as an effective anti-corruption tool.

In 1946, the United Nations General Assembly recognized that “Freedom of Information is a fundamental human right and the touchstone for all freedoms to which the United Nations is consecrated” (United Nations Resolution No. 59(1), 1946).

Article 19 of the Universal Declaration of Human Rights (1948) defines the right to access information in the following terms: “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”.

Article 19(2) of the International Covenant on Civil and Political Rights (1966) states:

"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".

Its importance has also been stressed in a number of reports by the UN Special Rapporteur on Freedom of Opinion and Expression, as the following excerpt from the 1999 Report illustrates:
“The Special Rapporteur expresses again his views, and emphasizes, that everyone has the right to seek, receive and impart information and that this imposes a positive obligation on States to ensure access to information, particularly with regard to information held by Government in all types of storage and retrieval systems - including film, microfiche, electronic capacities, video and photographs - subject only to such restrictions as referred to in article 19, paragraph 3, of the International Covenant on Civil and Political Rights”. Though until recent past, the Constitution did not expressly give a right of access to information, even then this Honourable Court was pleased to hold in case reported as "Nawaz Sharif Vs. President of Pakistan (PLD 1993 SC 473)" that "The right of citizens to receive information can be spelt out from the freedom of expression guaranteed in Article 19" (of the Constitution).

b) For "openness" and for improved efficiency of the public authorities:

In order to ensure that public authorities perform adequately, sufficiently and in accordance with the Will of the people, some sort of accountability is required. This sort of basic accountability is not possible unless public authorities operate in an open and transparent manner, which would include allowing people to access information they hold. It is probably because of this reason that in the year 1991, this Honourable Court laid down the seven golden principles of “openness” in case reported as "Chairman, regional Transport Authority, Rawalpindi Vs. Pakistan Mutual Insurance Company Limited, Rawalpindi" (PLD 1991 Sc:14).

The principles are:

i. Open plans
ii. Open policy statements
iii. Open rules
iv. Open findings
v. Open reasons
vi. Fair informal procedure

In Khan Asfandyar Wali & Others Vs. Federation of Pakistan (PLD 2001 SC 607), this Honourable Court highlighted seven principles that should be followed by holders of public office (quoted from Lord Nolan’s Report (1995), Vol. I, titled: "Standards in Public Life").

These principles are:

(I) Selflessness
(ii) Integrity
(iii) Objectivity
(iv) Accountability
(v) Openness
(vi) Honesty
(vii) Leadership

It is also about the public authority’s responsibility to the people and the idea that civil servants really should ‘serve’ the public. This includes the idea that public authorities have, in principle, no right to keep information they hold, away from people, unless there is some overriding public interest reason to justify this.

Information held by public authorities is not acquired by them for their benefit but for the public as a whole. By facilitating such access and making more information related to the operations of the public sector available in the public domain, the Government introduces greater transparency and accountability, which in turn exposes corruption and mismanagement. Ensuring access to information is, therefore, a fundamental requirement for establishing and effective system of national integrity.

The Federal Board of Revenue need to follow the seven principles of “openness” relentlessly, in order to move Pakistan forward in its quest for sustainable governance, improved efficiency and discipline and also for a corrupt free environment.

c) For eradication of corruption and corrupt practices:

Former United Nations Secretary-General, Kofi Annan, once said: “good governance is perhaps the single most important factor in eradicating poverty and promoting development”.

Governance has to do with the manner in which responsibility is discharged. Generally it encompasses all aspects of the way a country is governed, including its economic policies and regulatory framework. In this instance, it means a condition whereby responsibility is discharged by public bodies in an effective, fair, transparent, and accountable manner.

On the other hand, corruption is a narrower concept, which is often defined as the abuse of
Public authority or trust for private benefit. These two concepts are closely linked, as an environment characterized by poor governance offers greater incentives and more scope for corruption.

Asian Development Bank Organization for Economic Cooperation and Development Anti-Corruption Initiative, 2007 Action Plan sets out member states commitment to freedom of Information in order to:

“ensure that the general public and the media have freedom to receive and impart public information and in particular information on corruption matters in accordance with domestic law and in a manner that would not compromise the operational effectiveness of the administration or, in any other way, be detrimental to the interest of governmental agencies and individuals”.

In Pakistan today, the state has spread its tentacles to virtually every aspect of public life. The person on the street is condemned to grapple hopelessly with corruption in almost every aspect of daily life.

In the quest for systemic solutions to this chronic disease, which has become an epidemic, it is very important and relevant to identify the sources of corruption inherent within the state machinery. These include a determined denial of transparency, accessibility and accountability, cumbersome and confusing procedures, and poor commitment at all levels to real results of public welfare.

According to report published by Transparency International (a global coalition against corruption), for the year 2010, Pakistan ranked 143 out of 180 countries on the Corruption Perception Index (CPI). According to the "National Corruption Perception Survey: 2010", conducted by Transparency International, Pakistan, corruption worth Rs. 223 billion occurred in Pakistan alone in year 2010 compared to Rs. 195 billion in year 2009. FBR (Customs Wing) has been ranked as the most corrupt department of the Federal Government.

Furthermore, Pakistan ranked 145 out of 149 countries on the Global Peace Index (GPI). The GPI ranks the nations of the world by their peacefulness and typically countries that rank lower on the GPI are the ones which rank higher on the CPI.

The GPI is calculated by using a number of indicators for the existence or absence of peace and also takes into account a range of related criteria which influence the creation of peaceful societies. Based on research that has been conducted over the last four years in the Global Peace Index, peaceful societies can be characterized as having a set of common structures and social attributes. Among other things, these structures and attributes include respect of human rights, high levels of freedom of information and low levels of corruption.

As corruption is one of the structural attributes of peace, CPI is one of the determinants most closely linked to the GPI. In countries with high corruption, resources are inefficiently allocated, often resulting in essential services missing out on appropriate funding. The resulting inequality can manifest into civil unrest and in extreme situations can be the catalyst for violence. Low corruption, by contrast, can support confidence in institutions, which in turn helps to create peaceful societies.

Areport entitled “Economic Growth, Law and Corruption: Evidence from India” by Sambit Bhattacharyya and Raghbendra Jha (Australian National University) published in September 2009, examined the issue of whether Right to Information Act, 2005 (hereinafter “the RTI Act”) has been effective in curbing corruption?

They collected data from 20 states and covered the period from 2005 to 2008. On average, the RTI Act reduced corruption by 18.5 percentage points. The state of Bihar turned out to be the most corrupt with 59 percent of respondents reporting corruption in the year 2005. However, the RTI Act explains approximately 30 percentage points decline in corruption over the period of 2005 to 2008, when actual corruption was recorded at 29 percent in 2008.

In India, RTI Act is a product of people’s struggle for the realization of fundamental rights in the face of corruption and bureaucracy. People are actively using the Act to obtain their entitlements under well-financed public schemes. The RTI use across the country by all segments of society is evidence of its intrinsic value. However, its use by extremely poor to redress grievances, get entitlements and expose corruption and discrimination is indicative of the truth that the right to know is absolutely fundamental to the practical realization of all other rights. As early as 1975, in State of U.P Vs. Raj Narain [AIR 1975 SC 865], it was stated: “The responsibility of officials to explain or to justify their acts is the chief safeguard against oppression and corruption”.

d) Growth in Revenue:

It is always lamented that the level of tax compliance is abysmal in Pakistan as there are only two million registered taxpayers, which is not more than one percent of total population. In mid 80’s the tax-to-GDP ratio was 13.8 percent, while in the year 2009, it has drastically declined to 8.8 percent, which cost around Rs. 700 billion to Rs. 800 billion to the treasury, annually. According to some reports, Pakistan has a tax potential of over Rs. 4 trillion, but less than one-third is collected annually, due to the ill-policies, maladministration and lack of faith in the tax system, because of inefficient administrative tools.

A report of the task force on reform of the administration published in 2001 identified reform of tax administration as the single most important economic task for the government. In order to increase the tax potential of the country and to reduce corruption, the report suggested some measures for the Government to adopt. These measures included-to establish a more equitable relationship with the citizens, make policies and procedures more customer-friendly, re-establish its credibility with the taxpayers by demonstrating genuine austerity at the top levels and to reduce discretion. It was also highlighted how important it is for the tax administration to function in a transparent manner and be as honest and efficient. Even though this report was published almost 10 years ago, the Government is not even close to achieving what was set out.

It is duty of all the public bodies to provide a transparent and open system in order to restore the masses faith in their respective offices. A tax payer needs to know where his money is being spent. If more and more people are made aware of public spending, and the policies regarding it, and if they develop faith in the system/public spending, the revenue of the country would drastically improve. A good taxation system is when the tax base is broadened whereas a bad taxation system is when the rate of tax is raised.
c)  Life and peace:

As mentioned earlier, low levels of corruption and high levels of freedom of information leads to a peaceful society, consequently a society with a free flow of information can disseminate information in a way that helps the community to react appropriately. A better flow of information through society can help to provide decision makers and citizens with the balanced viewpoints necessary to make rational responses during times of crisis. Hence, it is vital to recognize how important access to information is in enabling people to realize their fundamental rights to security, as mentioned in Article 9 of the Constitution.

In Sheila Zia Vs. WAPDA (PLD 1994 SC 693), this Honourable Court gave the word "life" a wider meaning and held that "Life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally". It was further held that "the requirement of requiring knowledge, to establish home, the freedoms as contemplated by the Constitution, the personal rights and their enjoyment are nothing but part of life". This would suggest that freedom of information is also linked to the fundamental right of life under Article 9.

1)  Democracy:

Right to information is a linch-pin of democracy. Pakistan is a democratic state and democracy cannot flourish if the government or its different organs operate in secrecy.

Therefore, importance of freedom of information is not only relevant for the provision of an open and accountable government but also in choosing representatives of that government, a basic attribute of a political system and of our Constitution. In case reported as ‘Pir Sabir Shah Vs. Federation of Pakistan and Others (PLD 1994 SC 738), this Honourable Court concluded that sufficient information (material) is a pre-requisite for making correct decisions, even for the President of the country. (So in order to adequately use his right to vote, an ordinary person needs proper, sufficient and correct information and assistance).

In Union of India Vs. Association for Democratic Reforms (AIR 2002 SC 2112), the Supreme Court considered the issue whether or not an elector, a citizen of the country has a fundamental right to receive information regarding a candidate to the Legislative Assembly. The Court held: "The members of a democratic society should be sufficiently informed so that they may influence intelligently the decisions which may affect themselves and this would include their decision of casting votes in favour of a particular candidate". Furthermore the Court stated: "The Little man of this country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted".

Hence in this scenario, the reluctance of the respondent no. 1 to provide the basic arid un-harmful information and that too, to a body which is relentlessly working on the right of the masses to know what they are supposed to know, for the betterment of the country and has contributed a lot towards the awareness of the people about this right, is nothing but an illegal exercise and right, is nothing but an illegal exercise and reflects “close minds” and "shut eyes”.

As to the Federal Tax Ombudsman Ordinance, 2000:

1.  According to section 32 of the FTO Ordinance, any person aggrieved of the "Recommendations" of the FTO, can file a "Representation" to the President. It does not provide for a regular appeal (the first appeal) and, therefore, the first question that arises is whether the remedy of representation can be treated as an adequate and effective remedy to disentitle an aggrieved party from invoking the jurisdiction of the regular courts. The FTO performs quasi-judicial functions. This forum has several attributes of a "Court of Law". According to section 16 of the Ordinance, the FTO has the same powers, mutatis mutandis, as this Honourable Court has to punish any person for contempt, if he abuses, interferes with, impedes, imperils, or obstructs the process of the FTO in any way or disobey his orders.

2.  On the other hand, the President is an executive authority under Article 90 of the Constitution. Therefore, he cannot perform judicial (or quasi judicial) acts/functions viz. a viz the acts/functions performed by the FTO which are of quasi judicial nature. Thus the provisions of section 32 of the FTO Ordinance are simply against the concept of "trichotomy of powers", a basic norm of the Constitution and also against the judicial norms hence ultra vires and not sustainable.

3.  Additionally, it is also well known that representations are examined and recommendations are made thereon by some middle-level officers in the Law, Justice and Human Rights Division, Islamabad (an executive establishment, respondent no. 2). This is not only against the very concept of separation of the Judiciary from the Executive, as per Article 175 of the Constitution, but is also against the established norms that "Findings" by the FTO (normally a former Senior Judge of the Hons. Supreme Court of Pakistan) to be examined by a much junior (executive) officer in the Division.

4.  Article 48 of the Constitution provides that in the exercise of his functions, the President shall act in accordance with the advice of the Cabinet or the Prime Minister (the highest executive authority of the country, after the 18th amendment in the Constitution). However, in case reported as
“Federation of Pakistan Vs. Muhammad Tariq Pirzada and others” (1999 SCMR 2189), it has been held that this provision was not applicable in case of representation to the President under Article 32 of the Order (Wafaqi Mohtasib Order, 1983). This provision is analogous to section 32 of the FTO Ordinance. If President cannot consult the Prime Minister, than on what basis, a decision the President is supposed to take, can be decided by a much junior officer in the executive division (or in other words, how a much junior officer can be “consulted”).

5. A judgment of this Honourable Court, reported as “Government of Balochistan through Additional Chief Secretary Vs. Azizullah Memon and 16 Others” (PLD 1993 SC 341) states:

“One of the modes for blocking the road of free access to justice is to appoint or hand over the adjudication of rights and trial of offence in the hands of the executive Officers. This is merely a semblance of establishing Courts which are authorized to decide cases and adjudicate the rights, but in fact such Courts which are manned and run by executive authorities without being Under the control and supervision of the judiciary can hardly meet the demands of Constitution.”

6. In another case, reported as “Government of Sindh Vs. Sharaf Faridi and others” (PLD 1994 SC105), this Honourable Court explained the meaning of the phrase “independence of Judiciary” and held that “the Judiciary is independent of the Executive and Legislature, and has jurisdiction, directly or by way of review, over all issues of a judicial nature”.

7. As the hallmark of our Constitution is that it envisages complete separation of the Judiciary from the Executive (which is founded on the Islamic Judicial System) in order to ensure independence of Judiciary and, therefore, any Court, Tribunal or any other quasi judicial forum which is not subject to judicial review and administrative control of the High Court and/or the Supreme Court does not fit in with the judicial framework of the Constitution.

8. The decision of the Learned FTO automatically stands suspended by merely filing a “Representation” by the “Judgment-debtor”. This is as per OM issued by the respondent no. 2. The OM bearing No.36 72901-Law (FTO) dated 10-12-2001 states that by filing of the representation, the Recommendations/Findings of the FTO remain in abeyance till the disposal of the Representation. It is unconstitutional and illegal that the Findings/Recommendations by a highly placed judicial officer stand suspended in such a mechanical and stereotypical manner. This anomaly was highlighted by the FTO himself in a letter dated 15-03-2005, addressed to the President, however, the OM is still there in field.

9. The general perception is that government bodies are resorting to dilatory tactics in order to ensure that the orders which are not passed in their favour, are made the subject-matter of the Representations, so that the process of implementing the order is delayed.

10. Though the President and the Prime Minister of Pakistan have emphatically directed the agencies to implement the findings/recommendations of the Ombudsmen and desist from making unnecessary representations. This Honourable Court has also expressed its deep concern over the alarming situation where a number of citizens are found to run from pillar to post to obtain relief in terms of The order of Mohtasib. However, no marked improvement in the situation has been brought about.

11. In the Wafaqi Mohtasib (Ombudsmen) Annual Report of 2009, it is mentioned that the number of Representations rejected by the President has also increased from 70.6 in 2004 percent to 77 percent in 2009. The increase in the percentage of rejection means that normally baseless representations are made and despite the increase in upholding the recommendations of the Ombudsmen, representations are still being made.

12. Without prejudice, justice and fair play demand that all such representations should be disposed of within a reasonable time. On the question of quantum of time to be considered as reasonable for disposal of representations, it would be appropriate if representation under section 32 should normally be disposed of within 90 days from the date of its presentation. However this is usually not the case, as time after time applications to the courts have been made to remind the executive authority of the time limit. A representation dated 04-05-2009, in complaint No. HQR/900528/2009 has still not been decided. Sometimes it can take up to 2 years for a decision to take place. So if this Honourable Court arrives at the conclusion that section 32 is intra vires to the Constitution, then may like to issue appropriate directions for removal of this difficulty.

**Further:**

1. Even though the FOI Ordinance has provided for some “exclusions and exemptions”, which seems to be too restrictive and may not be very healthy for the advancement of the very aim and objective of the Ordinance, but the real problem lies with the public servants who are supposed to act upon them and divulge the information in all matters of public importance, to people who ask for it. The need of the day and the call of the moment is to train and educate them in such a manner that they tilt towards openness and are prone to questions as to their policies,

2. Many laws in Pakistan have changed and have aimed at the “Glasnost” for the public good, but mindset of bureaucracy has not. The bureaucracy in this country still has a medieval mindset, for one reason or another. The anachronistic foundation of the bureaucracy which was made for supporting a colonial structure needs to be replaced by a new set of values and rules. It is time the government Take some measures to change this mindset for the betterment of the people of this Country.
3. People are central to the efficiency and morale of any organisation. Thus the most fundamental need is a change in the mindset of civil servants. It is not uncommon to find bureaucrats with a blunted moral sense of superiority over the public. Currently, effective control of data is with government departments. Many individuals within these departments will attempt to block any change that might leverage power away from them and their organisation. Therefore, changing the mindsets of officials is as important as changing the law.

4. Changing the mindset of these officials would require them to recognize that what they are doing is not working. They are required to forget the outdated rules that they have been following up to now. In other words, the exercise of “unlearning” is required to be carried out by all public authorities.

5. Unlearning will involve resetting and challenging old assumptions, experiences, ideals, motives and beliefs that were used consciously or subconsciously in decision making. It has to be about the discovery of new goals and responses by stepping out the habitual frames of reference and re-examining norms and assumptions.

6. Thus this Honourable Court may like to direct the respondents to conduct by-fold programmes, i.e. to educate the public about their rights and also to train officials responsible for handling information requests and other procedures, under the law.

7. The public servants are to be made expert in applying the concept of “public interest” and while doing so, they should be sufficiently trained to be positive and progress-oriented. Therefore, this Honourable Court may also like to direct the respondents to make all exemptions regarding people’s right to information, subservient and subject to a “public interest” override. Even when it is not expressly stated, the importance of public interest has to be read “between the lines and under the ink”, by all the governing bodies and their officials, when deciding whether information some information be disclosed or not.

8. Submitted that it is not easy to define the term “public interest”, as flexibility is required in its application. Public Interests change over time and according to the circumstances of each situation. However, guidelines and training may be provided to public servants on what factors should or should not be taken into account in weighing the public interest.

9. This Honourable Court may like to direct the respondents that a “Code of Practice” or guidelines should be developed to help the public functionaries understand the benefits of competence while dealing with the day-to-day problems and grievances of general public. The officials should be trained to welcome healthy criticism and suggestions so as to improve their efficiency; and so that the general masses may have a deeper involvement in the state-affairs for the proper functioning of the state-machinery. This will also help in building the confidence level of an ordinary person and will in turn help in promoting the concept of “ownership” of the state-policies and decisions.

10. Submitted that according to s.16 of the Civil Servants Act, 1973, a civil servant shall be liable to the prescribed disciplinary action and penalties in accordance with the prescribed procedure. These disciplinary actions need to be implemented robustly, so that public authorities refrain from refusing to disclose information without applying the public interest test.

11. Submitted as an example only, in India, officials who refuse to respond to information requests have been made liable to monetary penalty, the same penalty is desirable to be imposed in Pakistan.

12. Furthermore, with the 18th amendment, right to information is a constitutionally entrenched fundamental right and decisions made by officials in relation to a constitutional right must be amenable to challenge in a court of law (and not to an executive authority). Therefore, on this count alone, s.32 is liable to be struck down.

13. May kindly be appreciated that jurisdiction of the courts of law has not been barred under any other legislation that deals with the working of FBR. For example, S.196 of the Customs Act 1969, S. 47 of Sales Tax Act, 1990 and S.34 of Federal Excise Act, 2005, all provide for appeal to a High Court. Hence instead of providing for a Representation before the President, the Ordinance should have provided for a right of appeal in a regular court of law. The courts, being independent of the executive, have the requisite authority to impose standards on the governing bodies and they are also in a good position to ensure that due attention is given to resolving difficult questions/issues and that a consistent approach to freedom of information issues is promoted.

14. This Honourable Court may thus like to direct the respondent no. 2 to draft, propose and get tabled an amendment in the FTO Ordinance which may provide for an Appeal against the decision of FTO before this Honourable Court. The decision as to filing of the Appeal (or otherwise) may also be taken by a committee of at least three members, each of them may be a BS-21 officer.

15. May be submitted that an analysis of the Indian Right to Information Act, 2005 (Act 22 of 2005) and recommendations thereon (submitted by the Commonwealth Human Rights Initiative, 2004), recommends that a provision which explicitly states that appeal from decisions of the Information Commission can be made by the courts, on points of fact and law should be added.

16. Also submitted that as no role has been assigned to judiciary under the FOI Ordinance in Pakistan, there has been no development and interpretation of freedom of Information law or linkages with other laws and the Constitution has been established.

17. That the petitioners crave the indulgence to add or modify the averments, as and when so needed, during the course of hearing.
The petitioner, therefore, prays that this Honourable Court may be pleased to declare as under:

1. The aims and objectives of Article 19 and 19A of the Constitution have not been achieved so far, in letter and spirit.

2. The respondents have not implemented the judgments of this Honourable Court, propounded on the subject of openness and transparency.

3. The acts and omissions of the respondents have resulted in infringement of the fundamental rights of the people in Pakistan, inter alia, as to access to information and in turn to "Life" and "Democracy".

4. Divulgence of information to the concerned public, as to policy making and as to the utilization of the public money is a pre-requisite for building the confidence of the people in the tax system and in turn yield more revenue, for the betterment of the country.

5. The acts and omissions amount to the subversion of the Constitution and the respondent no. 2 is bound to draft and propose legislation in accordance with the provisions of Article 19 and 19A, and to act accordingly.

6. The aims and objectives, as to the independence and separation of the "Judiciary" from the "Executive" as envisaged under Article 175(3) of the Constitution have not been achieved in letter and spirit.

7. The provisions of section 32 of the FTO Ordinance, 2000 are ultra vires to the provisions of Article 175(3) of the Constitution and creates a parallel judicial system, in violation of the provisions of Article 4 of the Constitution read with Article 25 thereof thus creating a hindrance.

8. Office Memorandum bearing No.36 72001-Law (FTO) of 10-12-2001 is ultra vires to the Constitution and is also against the basic norms of justice, equity and fair play.

9. The respondents are duty bound/responsible to make sure the compliance of the provisions of the Constitution, more particularly Articles 2-A, 175(3) and 203 thereof, as expounded by this Court, from time to time.

10. The respondents cannot draft/propose any law, which is contrary to the Constitution.

11. It is essential that the "Judicial Fora" is constituted properly, legally and in accordance with the Constitution.

This Court may thus be pleased to strike down section 32 of the FTO Ordinance, 2000 (entrusting the "Executive" with "Judicial" authority/powers) and the OM bearing No.36 72001-Law (FTO) dated 10-12-2001, being not in conformity with the Constitutional provisions, more particularly Articles 2-A, 175(3) and 203 and the Objective Resolution thereof.

This Court may also be pleased to direct the respondent no. 2 to initiate the measures and to take necessary steps, so as to bring the laws in conformity with the provisions of Article 175(3) of the Constitution.

During the pendency of this petition, this Honourable Court may further be pleased to suspend the operation of section 32 of the FTO Ordinance , 2000 (entrusting the Executive officer with judicial powers) and OM No.36/2001-Law (FTO) dated 10-12-2001.
CPDI Information request and Anti Narcotics Force

On September 5, 2009, CPDI submitted an information request under the Freedom of Information Ordinance 2002 to the Secretary, Ministry of Narcotics Control. He requested from ANF the following information.

1- Information about total quantity of recovered narcotics from July 1, 2008 to June 30, 2009

2- Information about total current budget allocated for ANF during the same period

3- Information about total development budget allocated for ANF for the above said year

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 the person 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. No response was received in relation to the above mentioned letters. On November 26, 2009, CPDI lodged a complaint with Federal Ombudsman and ultimately after the intervention of Ombudsman, the requested information was provided.
APPLICATION FORM
FOR OBTAINING RECORD UNDER
FREEDOM OF INFORMATION ORDINANCE, 2002 (XCVI OF 2002)

<table>
<thead>
<tr>
<th>Name of Applicant:</th>
<th>Malik Saleem Iqbal, Programme Manager, Centre for Peace and Development Initiatives (CPDI)</th>
</tr>
</thead>
<tbody>
<tr>
<td>NIC No.:</td>
<td>61101-2005885-i (copy enclosed)</td>
</tr>
<tr>
<td>Father's Name:</td>
<td>Malik Muhammad Khan</td>
</tr>
<tr>
<td>Address:</td>
<td>105, First Floor, Park Towers, F-103, Islamabad</td>
</tr>
<tr>
<td>Phone No.:</td>
<td>051-2108287</td>
</tr>
<tr>
<td>Name of Public Body from which information is to be obtained:</td>
<td>Ministry of Narcotics Control</td>
</tr>
<tr>
<td>Subject matter of record requested:</td>
<td>Information about the Recovery of Narcotics/Drugs during the year 01 July, 2008 to 30 June, 2009.</td>
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</tbody>
</table>
| Nature of record requested: | 1. Total quantity of all types of recovered narcotics/drugs.  
                                   2. Certified information about the total current budget allocated for ANF during the same year.  
                                   3. Total development budget allocated for ANF for the above said year. |
| Purpose of acquisition of the information or record: | For research and advocacy initiatives undertaken by Centre for Peace and Development Initiatives (CPDI) |

DECLARATION

(a) Application Fee of Re.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 deposit slide 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

November 21, 2009
Federal Ombudsman
The Federal Ombudsman Secretariat
Zero Point
Islamabad.

Subject: Complaint under section 19(1) of FOI Ordinance 2002 against Ministry of Narcotics Control.

Sir,

I filed information request to Ministry of Narcotics Control seeking the following information:

1. Total quantity of all types of recovered narcotics/drugs.
2. Certified information about the budget allocated for ANF during the same year
3. Total development budget allocated for ANF for the above said year

Under the said ordinance, a public body has to provide information within 21 days of the filing of the information request. I have received no response from Ministry of Narcotics Control despite the lapse of more time than given in the Freedom of Information Ordinance.

Moreover, ANF the subordinate organization of Ministry of Narcotics Control harassing the complainant rather replies the information request.

For your perusal, please find attached my correspondence with M/o Narcotics Control and help me have access to the information which is my right as the citizen of Pakistan.

Yours' sincerely,

Malik Saleem Iqbal
105 Park Towers
F-103, Islamabad.
November 21, 2009

Director General
Anti Narcotics Force
Islamabad

Subject: Concerns regarding ANF Response to Requests Submitted under Freedom of Information Ordinance 2002

Dear Sir,

With reference to the above subject, I am writing to draw your attention to the following facts and submissions for your kind consideration and perusal:

1. On September 5, 2009 I submitted an information request under the Freedom of Information Ordinance 2002 to the Secretary, Ministry of Narcotics Control. The request was filed as per the provisions of the Ordinance and the relevant Rules notified by the Cabinet Division. 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.

2. On November 18, 2009, an official belonging to the Anti-Narcotics Force (ANF) visited our office and stated that he was here to check and verify the credentials of CPDI as well as of my colleague, Mr. Saleem Iqbal, who had submitted the information request. We fully briefed the gentleman, explained the Ordinance and the related initiatives that we as an organization are engaged in. He also wanted to have copies of some documents, which we have committed to provide in due course.

3. However, we have certain concerns regarding this kind of response by public bodies, which we wish to highlight so that your organization may respond to information requests in a more informed manner in future. These are as follows:

   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 resists 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.

4. Please note that over 90 countries around the world have enacted freedom of information laws to promote transparency and public accountability in governance. Governments and departments, which are serious about ensuring transparency, take such laws seriously and establish efficient mechanisms to implement them, instead of creating unnecessary impediments and going after each individual or organization seeking information in a lawful manner.

5. In view of the above, we request you to please take appropriate steps to ensure that your organization implements the Freedom of Information Ordinance 2002 in letter and spirit and efficiently responds to information requests, if and when submitted. The method of first checking credentials of requesters should be immediately stopped, as it is devoid of lawful authority, amounts to waste of time of public officials and gives rise to avoidable complaints of harassment. You may also like to sensitise and train your officials in the implementation of Freedom of Information Ordinance 2002; and we shall be happy to provide any assistance in this regard:

I am sure that, by taking a proactive approach regarding implementation of peoples' right to information, your organization can emerge as a role model for other organizations in the government and civil society. We are enclosing some of our research and advocacy materials for your information please. Thank you.

Yours sincerely,

Mutahar Ahmad Ali
Executive Director

CC:
1. Principal Secretary, Prime Minister Secretariat, Islamabad.
2. Secretary, Cabinet Division, Islamabad
3. Secretary, Ministry of Narcotics Control, Islamabad
Government of Pakistan
Ministry of Narcotics Control

F.No.5/1/09-C&C.
Islamabad, 5 December, 2009

Mr. Mansoor Ahmed,
Adviser,
Wafaqi Mohtasib (Ombudsman)'s
Secretariat, Zero Point,
Islamabad.

Subject: NON-PROVISION OF INFORMATION REGARDING RECOVERY
OF NARCOTICS

Dear Sir,

I am directed to refer to your letter/case No.HQR/0011676/09 dated
03-12-2009 on the subject noted above and to inform that the information asked
for, by Malik Saleem Iqbal vide his application dated nil was forwarded to him
vide this Ministry's letter of even number dated 16-10-2009 (copy enclosed).
However, a copy is again being sent to Malik Saleem Iqbal, Programme
Manager, Centre for Peace and Development Initiative (CPDI).

Yours faithfully,

(Dr. Nawaz Ahmad)
Deputy Secretary (Policy)
Ph: 9261987

Copy alongwith a copy of this Ministry's letter of even number dated 16-
10-2009 for ready reference to Malik Saleem Iqbal, Programme Manager, Centre
for Peace and Development Initiative (CPDI) 105, First floor Park Tower, F-
10/3, Islamabad.

Government of Pakistan
Ministry of Narcotics Control

No.5/1/2009-C&C
Islamabad, the 16 October, 2009

Malik Saleem Iqbal,
Programme Manager,
Centre for Peace & Development Initiatives (CPDI),
105, First Floor, Park Towers,
F-10/3, Islamabad.

Subject: INFORMATION REPLY TO NCD, UNDER F.10/2002

Reference your application form dated 'NIL' on the above subject.
The requisite information is enclosed herewith as desired.

(Muhammad Siddique)
Section Officer (C&C)
Parwise Reply relating to the information requested is as under-

<table>
<thead>
<tr>
<th>QUESTION</th>
<th>REPLY</th>
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<tbody>
<tr>
<td>i). Information about the recovery of Narcotics/Drugs during the year 01 July, 2008 to 30 June, 2009 and total quantity of all types of recovered narcotics/drugs.</td>
<td></td>
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<tr>
<td>ii). Certified information about the total current budget allocated for ANF during the same year.</td>
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<tr>
<td>iii). Total development budget allocated for ANF for the above aid year.</td>
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<table>
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<tr>
<th>QUESTION</th>
<th>REPLY</th>
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<tbody>
<tr>
<td>i). Kind &amp; Quantity of drugs (in Kg)</td>
<td></td>
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<tr>
<td>Year</td>
<td>Opian</td>
</tr>
<tr>
<td>2008</td>
<td>27242.620</td>
</tr>
<tr>
<td>2009</td>
<td>6061.122</td>
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<tr>
<td>ii). Current Budget allocation to ANF, HQs and its allied units during 2008-09 was Rs.622,780,000/-</td>
<td></td>
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<tr>
<td>iii). Total development budget allocation for the ANF projects during the said period was Rs.93.625 million.</td>
<td></td>
</tr>
</tbody>
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Findings

Federal Ombudsman- A Toothless Appellant Body

Our experience of submitting information requests to government departments shows that Federal Ombudsman is a toothless appellant body in terms of making effective intervention and helping citizens have access to information when such a request to public bodies is unlawfully denied. Freedom of Information Ordinance 2002 does not empower Federal Ombudsman (FO) to impose penalty on public officials for wrongfully denying access to information. The experience also shows that Federal Ombudsman deals complaints with the narrow prism of maladministration and not denial of fundamental right of citizen which it is entrusted to protect. The case in point is decision made by Federal Ombudsman on request pertaining to Special Publicity Fund. Instead of instructing the Ministry of Information and Broadcasting to provide information, Federal Ombudsman denied this information request on the technicality that Special Publicity Fund had been declared a secret expenditure by a federal secretary. Even in cases where Federal Ombudsman instructed to provide information, as in case of FBR and Ministry of Law and Justice, these public bodies opted to file representation to the President of Pakistan instead of providing the requested information.

Filing Representation to the President-Last Refuge of Public Bodies

Ineffectiveness of FOI Ordinance 2002 and the role envisaged therein of the appellant body can be gauged from the fact that even when FO directed the public bodies to provide information, the path these bodies took was to file representation to the president of Pakistan. In office of the President, it takes eternity to decide these representations. One such representation filed by Ministry of Law and Justice against the decision of FO in favour of CPDI is pending since June 06, 2009. Furthermore, continuation with this practice of filing representation with the President is not desirable from the standpoint of conflict of interest. How is president going to decide judiciously if information request pertains to a scandal involving members of his own party holding public offices? How the section dealing with representations with the President established at Ministry of Law and Justice is going to move those representations files wherein the ministry itself is a party as is the case with information request about fees paid to the lawyers by Ministry of Law and Justice?

Use of pretensions and Implicit Threats by Public Officials

Instead of deciding an information request, officials used undesirable tactics to discourage CPDI to pursue the information requests. In case of information request filed to Anti Narcotics Force, an official visited CPDI office and demanded registration documents and harassed the staff member who had filed the information request. Similarly, official of Ministry of Law and Justice wrote in his response to our request: “If the required information was provided to the requester, then it create unnecessary problems, embarrassing situations, and open a pindora box, further, it would be direct interference in the internal working of this division”
Recommendations

Based on the experience of using Freedom of Information Ordinance 2002, CPDI makes following recommendation.

1. Federal Ombudsman as an appellant body should be replaced with an effective and autonomous information commission with powers to impose penalty on officials who wrongfully and unlawfully deny access to information.
2. Members of the proposed information commission should be from judiciary and civil society.
3. Decisions of the proposed information commission should be legally binding and not recommendatory as in the case of the office of the Ombudsman.