



USAID
FROM THE AMERICAN PEOPLE



Comments on Draft Khyber Pakhtunkhwa Right to Information Ordinance 2013

July 2013

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

Centre for Peace and Development Initiative (CPDI)

409B | Main Nazim-ud-Din Road | F-11/1 | Islamabad.

Tel: + 92 51 210 82 87, 211 23 15

+ 92 51 431 94 30

Fax: + 92 51 210 15 94

E-mail: info@cpdi-pakistan.org

Web: www.cpdi-pakistan.org

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.

**Comments on
Draft Khyber Pakhtunkhwa Right to Information Ordinance 2013**

Comments on Draft Khyber Pakhtunkhwa Right to Information Ordinance 2013

CPDI's comments and suggestions on various sections of the draft Ordinance, as presented in the table below, are based on:

1. International standards, which include, among others, maximum disclosure, minimal exceptions subject to harm test and public interest override, obligation for proactive disclosure, effective implementation mechanisms, and low cost/ easy access for applicants;
2. Review of regional legislation (e.g. Indian Right to Information Act 2005 and the Bangladesh's Right to Information Act 2009) and the implementation experience of these laws; and
3. Our own experience of advocacy and using existing laws in Pakistan (e.g. Freedom of Information Ordinance 2002) and discussions on the subject with renowned experts across the world including in developing countries.

Section/ Sub-section	Comments
-----------------------------	-----------------

In our view, the existing draft has serious flaws and, in its present form, it would not be able to achieve its objectives. It is also in contravention of PTI's public commitment in terms of promoting maximum transparency and accountability. It may be noted that this draft is sketchy, leaves a lot of space for official discretion and interpretations, provides a weak implementation mechanism, and does not provide an efficient and an easy mechanism for access to information. Most importantly, it provides a cleverly drafted list of extensive exemptions whereby almost any requested information can be declared as exempt on one pretext or the other.

It is recommended that a Committee may be constituted with participation from relevant civil society groups for a thorough clause by clause review of this draft. We have made some preliminary suggestions and comments in the following pages. However, we shall be happy to make more detailed input and comments, if we are provided an opportunity to contribute to this very significant effort.

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

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

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

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

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

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

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

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

(3) It shall come into force at once.

It should not be issued as an Ordinance. It should be presented in the Provincial Assembly and enacted after thorough review by the relevant standing committee.

<p>2. Definitions.---In this Ordinance, unless there is anything repugnant in the subject or context,-</p> <p>(a) “applicant” means any citizen of Pakistan making a request for information to a public body under this Ordinance and includes any person acting for and on behalf of an applicant;</p> <p>(b) “Chief Information Commissioner” means the Chief Information Commissioner appointed under section 7 of this Ordinance;</p> <p>(c) “complaint” means a formal representation in writing by an applicant alleging that-</p> <p>(i) access to information has been wrongfully denied to him by a public body; or</p> <p>(ii) access to or correction of his personal information has been wrongfully denied to him by a public body having the custody or control of the information; or</p> <p>(iii) the information requested by him has been delayed by a public body; or</p> <p>(iv) the designated public information officer has refused to receive and process the information requested; or</p> <p>(v) the information furnished by the designated public information officer is false or misleading;</p>	<p>2(a) The definition of “applicant” should also include a legal person registered or incorporated in Pakistan or a person authorized by a legal person, seeking information under this Act;</p> <p>2(c) The words “on a plain paper” may be added after “representation in writing” in the definition of "complaint". It is to ensure that there will be no requirement of a prescribed/ printed Form under this Act, which would be difficult to access and make access to information difficult.</p> <p>2(c)(v) The words ‘uncertified’ and ‘incomplete’ may also be included after “information officer is”.</p> <p>Following grounds for complaints may also be added under 2(c):</p> <ul style="list-style-type: none">• charging fee or cost in excess of the prescribed amounts;
--	---

<p>(d) “Government” means the Government of the Khyber Pakhtunkhwa;</p> <p>(e) “information” subject to the restrictions imposed under this Ordinance means any information relating to the constitution, structure and official activities of a public body relating to its transactions, budgetary allocations, expenditures, purchases, contracts, licenses, allotments, appointments, promotions, salaries, programs and includes any memo, book, design, map, contract, data, log book, order, notification, document, sample, letter, report, statement of accounts, project proposal, photograph, audio, video, drawing, film, any instrument prepared through electronic process, machine readable documents or any other documentary material regardless of its physical form or characteristic;</p> <p>(f) “Information Commission” means the Khyber Pakhtunkhwa Information Commission constituted under section 5 of this Ordinance;</p> <p>(g) “prescribed” means prescribed by rules made under this Ordinance;</p> <p>(h) “Principal Officer” means, in the case of a Government Department, the Secretary of the</p>	<ul style="list-style-type: none"> • deliberate destruction of information to avoid its disclosure; • failure of a public body to meet its obligations in respect of proactive disclosure; and • violation of any other provision of the Act by a public body. <p>2(e) The definition needs to be more inclusive. The sub-section may be substituted by the following:</p> <p>““Information”, subject to any restrictions under this Act, means any information or record held in any form relating to functioning of a public body, exercise of official authority or use of public funds and include any data, document, memo, voucher, file noting, meeting minutes, e-mail, map, advice, press release, brochure, circular, order, decision, notification, logbook, contract, agreement, budget, report, paper, sample, model, map, drawing, CD, disk, audio record, mobile device, film and video. It also includes, among others, any information relating to procurements, meetings, proceedings, transactions, budgetary allocations, revenues, expenditures, licenses, allotments, approvals, benefits, disposals, appointments, postings, promotions, perks and privileges, plots, salaries, programs, projects or activities performed by and records held by or maintained by or within the purview of a public body, or within the powers and authority of a public body to lawfully obtain from a private body or a bilateral or multilateral institution.”</p> <p>2(g) The word “and regulations” should also be added after “rules”.</p>
---	--

<p>Department and in all other cases, the head or chief executive of the public body by whatever designation he is identified.</p> <p>(i) “public body” means-</p> <p>(i) any department or attached department of the Government;</p> <p>(ii) a Local Council or any other body constituted under the Khyber Pakhtunkhwa, Local Government Act, 2012 (Khyber Pakhtunkhwa Act No. XIV of 2012);</p> <p>(iii) Secretariats of Chief Minister and Governor of the Khyber Pakhtunkhwa;</p> <p>(iv) any office of any Board, Commission, Council, or other body established by or under any law;</p> <p>(v) any tribunal;</p> <p>(vi) any organization or institution, owned or controlled, substantially financed or subsidized directly or indirectly by funds provided by the Government or local councils;</p>	<p>The definition of “public body” excludes several bodies established by or under the Constitution, laws, rules or executive orders. Most evidently, such exclusions include courts and provincial assembly secretariat.</p> <p>2(i)(i). The words “autonomous or a semi-autonomous institution” may also be added.</p> <p>2(i)(ii). The words “or any other law for the time being in force” may be added at the end just before semi-Collins.</p> <p>2(i)(iii). The word “provincial assembly” may be added after “Chief Minister”. The omission of provincial assembly from the preview of this law is illogical and unreasonable under Article 19A of Constitution.</p> <p>2(i)(v). The words “court or” may be added before the word “tribunal”. There is no justification to exclude courts and commissions, as these also use public funds and are subject to Article 19A of the Constitution. RTI laws in India and Bangladesh cover courts. Even in Pakistan, the Federal Freedom of Information Ordinance 2002, Sindh Freedom of Information Act 2006, and Balochistan Freedom of Information Act 2005 are applicable to courts.</p> <p>2(i)(vi). The words “company or a corporation” may also be added.</p>
---	--

<p>(vii) any organization or institution that undertakes public functions in accordance with any contract made on behalf of the Government or made with any public organization or institution; or</p> <p>(viii) any organization or institution notified by the Government as public body for the purposes of this Ordinance; and</p> <p>(j) “Public Information Officer” means an officer of a public body designated as such under this Ordinance;</p>	<p>The definition of a public body must also include:</p> <ul style="list-style-type: none">• any private organization, institution, body or a non-government organization controlled, financed or subsidized, directly or indirectly, through funds or concessions by Provincial or a local government or administration or through funds from foreign or private sources accessed in lieu of government guarantee or support. <p>The term “Right to Information” also needs to be defined as suggested below:</p> <p>“Right to Information” means the right to access information or record under this Act, which is held or maintained by, or is under the control of or can be lawfully accessed by a public body and includes the right to—</p> <ol style="list-style-type: none">a. inspection of work, files, registers, documents, and records;b. taking notes, extracts or certified copies of information, documents or records;c. taking certified samples of materials; andd. obtaining information or records in the form of diskettes, letters, floppies, tapes, audio or video cassettes, films, papers, maps, diagrams or in any other physical or electronic mode or form or through printouts where such information is stored in a computer or in any other device.” <p>There should also be a definition of “Third Party”, which may be defined as follows:</p> <p>“Third Party” means a person other than the public body and the applicant, and about whom the requested information may relate to, and includes a legal person registered or incorporated in Pakistan.”</p>
--	---

<p>3. Access to Information.---(1) Subject to the provisions of this Ordinance and any rules made under this Ordinance, every person shall have the right to access all information held by a public body.</p> <p>(2) This Ordinance shall be interpreted so as,-</p> <ul style="list-style-type: none">(a) to advance the purposes of this Ordinance; and(b) to facilitate and encourage, promptly and at the lowest reasonable cost, the disclosure of information. <p>4. Access to Information not to be denied.---(1) Notwithstanding anything contained in any other law for the time being in force, and subject to this Ordinance, no applicant shall be denied access to any information other than those mentioned in sub-section (2).</p> <p>(2) The following information shall be exempted from disclosure if it would:</p> <ul style="list-style-type: none">(a) risk the life, health, safety or another vital interest of a person;(b) imperil, obstruct or impede the prevention or detection of criminal offence, indictment for criminal offence, pre-trial proceedings, trial execution of sentence enforcement of	<p>Section 3(2) may be substituted by the following:</p> <p>“(2) This Act shall be interpreted so as to,-</p> <ul style="list-style-type: none">a. advance and promote the right to information as a fundamental human, democratic and a constitutional right;b. facilitate and encourage, promptly and at the lowest reasonable cost, the disclosure of and access to information;c. assist and facilitate the illiterate, disadvantaged, weak and disabled persons in the exercise of their right to access information; andd. timely and effective redress of any complaints made under this Act.” <p>Sub-section 4(2) should be made a separate Section and titled as “Exempt Information”. Besides, these exemptions are loosely defined and, when interpreted and applied by government officers, would effectively result in denial of almost all kinds of information on one pretext or the other</p> <p>4(2)b: It needs to be more clearly and tightly phrased in order to minimize the possibility of any ambiguity.</p>
---	---

<p>punishment, any other legal proceedings, unbiased treatment or a fair trial;</p> <p>(c) imperil, compromise or prejudice national defense, national security, national and public safety, or international relations and information received in confidence in foreign Government;</p> <p>(d) significantly impede or compromise the fulfilment of justified national economic interests;</p> <p>(e) official documents that are legally considered as state, official, military, business, or other secrets, that are accessible only to a specific group of persons and their disclosure could seriously, legally or otherwise prejudice the interests that are protected by the law;</p> <p>(f) no information which relates to personal information the disclosures of which has no relationship to any public activity or interest, or, which cause unwarranted invasion of the privacy of the individual unless the Public Information Officer or the Information Commission is satisfied that the larger public interest justifies the disclosure of such information; and</p> <p>(g) documents for internal working maintain in files, any intermediary opinion or recommendation, Cabinet papers including records of the deliberations.</p>	<p>4(2)c: Again, it is too loosely defined, and may result in arbitrary denials of access to information. Further, the wording “in confidence in foreign Government” is not clear.</p> <p>4(2)d: It needs to be more clearly and tightly defined. As it is, its wording may be used to deny access to a whole range of information in the name of “justified national economic interests”.</p> <p>4(2)(e): This exemption is not justified at all; and is not needed in the presence of other exemptions mentioned under Section 4. If retained in its present form, it would render the whole law ineffective.</p> <p>4(2)g: There is no justification whatsoever to keep such information exempt, especially after a decision or a determination has been made. As it is, this exemption is not reasonable in view of regional and international best practice. In many countries around the world, including India, all such information including proposals, cabinet papers, noting on the file, intermediary opinions and minutes of meetings can be accessed under</p>
--	--

	<p>the right to information laws.</p> <p>Moreover, in relation to the exempt information, the following provisions need to be added:</p> <ul style="list-style-type: none">• “Notwithstanding anything contained in this law, if the Information Commission determines that the public interest in disclosure outweighs the harm that shall or is likely to be caused by the disclosure of otherwise exempt information, it shall direct the public information officer to provide the information.”• “If the information is denied, the public information officer shall, within the duration specified under this Act, inform the applicant about:<ul style="list-style-type: none">(a) the specific reasons of refusal of the request including references to relevant provisions of this Act and the basis of any interpretations thereof; and(b) the procedure for internal review or complaint against the decision of public information officer.”• “Information and records declared as exempt under this Act, or under any other law for the time being in force shall automatically become accessible under this Act immediately after the expiry of 10 years since their initiation or creation. However, if a public body still required any such information or record to continue to be treated as exempt information, it shall submit a justification, on a case to case basis, to the Information Commission and seek its approval before the expiry of 10 years limit since the initiation of creation of the record.”
<p>5. Maintenance of official website.---(1) Subject to the provisions of this Ordinance, each public body</p>	<p>Section 5: This Section is too general and does not clearly specify the obligations of a public</p>

shall maintain its own official website, containing complete details about its organizational structure, functions, budget, names, designations, telephones and e-mails addresses of its key officers particularly the designated Public Information Officer.

(2) Each public body shall ensure easy access to information to the official website by person with disabilities including blind persons by making special software.

(3) Each public body shall ensure to take steps to provide as much information proactively to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Ordinance to obtain information.

body for maintenance of records, computerization or proactive disclosures. It is suggested that it may be titled as “Obligations of a Public Body” with the following provisions:

“1). Every public body shall maintain all its information and records duly catalogued, indexed and well preserved in a manner and form, which facilitates easy access, ready availability and retrievability, and ensures that the information and records that are appropriate to be computerised are, within a reasonable time, computerised and connected through a network all over the country on different systems so that prompt and cost effective access to information can be facilitated and ensured;

2). Every public body shall designate or appoint one or more Public Information officers as stated in section 10 of this Act.

3). Every public body shall publish on its website, within sixty days from the enactment of this Act,—

- a. its organizational structure, functions and duties;
- b. the powers, duties and job descriptions of its officers and employees;
- c. the procedure followed in the decision making process, including channels of supervision and accountability;
- d. the norms and criteria set by it for the discharge of its functions;
- e. the rules, regulations, bye-laws, standing instructions, manuals, notifications and circulars held by it or under its control or used by its employees for discharging its functions;
- f. a statement of the categories of documents that are held by it or are under its control;
- g. the categories of information that it can access from private bodies or bilateral or multilateral institutions under the powers that it can exercise under various laws and

	<p>rules for the time being in force;</p> <ul style="list-style-type: none">h. the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;i. name, designation, postal address, telephonic and e-mail contacts of its key officers, including the designated Public Information Officers, in the form of a directory;j. contracts and agreements made by a public body including about, but not limited to, loans, public works and major procurements;k. the budget of each of its administrative unit, geographically defined jurisdictions (e.g. zone, division or district), agency, project and program including quarterly expenditures statements, reports on financial commitments and disbursements, and particulars of beneficiaries;l. particulars of recipients of subsidies, amenity plots, licenses, grants, concessions, rebates and the justifications thereof;m. information about revenue targets and any revisions thereof, quarterly reports on actual revenue receipts, collection of utility bills and quarterly reports about arrears, lists of defaulters of tax or utilities related arrears, and list of tax or utilities related arrears not recovered due to pending cases in related courts, tribunals or any other appellate forum;n. third party reports about the performance of a public body;o. reports of official inquiries or investigations in matters of public interest or importance;p. procedure that may be used by public for obtaining information, including any additional facilities established to facilitate public's easy access to information; and
--	---

<p>6. Khyber Pakhtunkhwa Information Commission.---(1) The Government shall as soon as may be, by notification in the Official Gazette, constitute an Information Commission to be known as the Khyber Pakhtunkhwa Information Commission to exercise the powers conferred on, and to perform the functions assigned to it under this Ordinance.</p> <p>(2) The Information Commission shall consist of the Chief Information Commissioner, who shall be supported by such necessary staff as the Government may determine.</p> <p>(3) Government shall make initial and on-going budgetary outlays, adequate to enable the</p>	<p>q. such other information as may be prescribed for proactive publication under this Act.</p> <p>4). Each public body shall proactively publish on the website and, where needed, in a physical form an annual report by September following the end of each financial year. The annual report shall include information about (a) its goals and objectives, (b) progress vs. the targets set during the year, (c) major challenges faced, (d) feedback of beneficiaries about the performance of the public body, (d) analysis of complaints against the public body and actions taken, (e) analysis of annual budget, actual expenses, receipts, any shortfalls and inefficiencies fixed or needed to be fixed, and (f) targets and plans for the next year.</p> <p>5). It shall be a continuous endeavour of each public body to take steps to proactively provide maximum information to the public through various means of communications including websites, social media, notice boards, various outreach programs, and print and electronic media.”</p> <p>The Commission should consist of not less than 3 members, one of whom should be designated as Chief Information Commissioner. Such a constitution will ensure availability of diverse expertise (e.g. law, civil service, civil society, media, etc.) within the Commission, and would enable the Commission to make competent decisions on complex matters involving interpretations and decisions about, for example, exempt information and whether disclosure of a certain type of information would outweigh the possible harm or not.</p>
--	---

Information Commission to perform its role effectively.

7. Powers and Functions of the Information Commission.

---(1) The Information Commission shall, subject to the provisions of this Ordinance, receive, inquire into and dispose of complaints on-

- (a) non-appointment of Public Information Officer by any public body, or its refusal to accept an application for information;
- (b) refusal or delay in providing information;
- (c) leaving application for information unattended;
- (d) withholding information beyond 21 days after receipt of application or non communication of reasons for refusal;
- (e) provision of incomplete, incorrect, misleading or false information; and
- (f) any other matter adversely affecting the application of the principles laid down in this Ordinance.

(2) Where the Information Commission is satisfied that there are reasonable grounds to inquire into a matter having bearing on right to access to information, it may initiate an inquiry in respect thereof.

(3) The Information Commission, shall, while inquiring into any matter under this Ordinance, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of the following matters, namely:

Section 7: The following suggestions may be considered:

- The Commission should also have suo moto powers to initiate inquiry about any of the violations of the provisions of or under this Act;
- The grounds of complaints should also include:
 - demand or levy of fee or any other charges in excess of the prescribed amount;
 - failures or omissions of a public body in proactive disclosure of information.

7(1)f: It should also specific mention ‘any other violation of a provision of or under this Act’.

7(2): The Commission should not only be empowered to ‘initiate inquiry’ but also to make decisions and issue appropriate directions vis-à-vis its suo moto powers or complaints received.

<p>(a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or record;</p> <p>(b) requiring the discovery and inspection of documents;</p> <p>(c) receiving evidence on affidavit;</p> <p>(d) requisitioning any public record or copies thereof from any public body;</p> <p>(e) where required, to pass order for compensating the applicant for any loss; and</p> <p>(f) issuing summons for examination of witnesses or documents.</p> <p>(4) In cases where the Information Commission arrives at a conclusion that the complaint was based on facts, it shall either direct the Controlling Authority of the respondent to take departmental action or it may forward the complaint along with its findings to a court of competent jurisdiction for criminal proceedings against the respondent.</p> <p>(5) In cases where the information commission arrives at a conclusion that the complaint was false, frivolous or vexatious, it shall dismiss the complaint and direct the complainant to compensate the public body by bearing the cost of the process.</p> <p>(6) Decision of the Information Commission, with regard to complaints shall not be subject of appeal in any court.</p> <p>(7) The Khyber Pakhtunkhwa Information Commission shall have the powers to require any public body to-</p>	<p>7(4): The Commission should itself have the powers to (a) direct the public body to provide the requested information, (b) impose fine on the public information officer, and (c) direct the principal officer or the Government to take disciplinary action the relevant public information officer. Further, the situations requiring initiation of criminal proceedings (e.g. destruction of record) and referral to the courts must be clearly spelled out</p> <p>7(5): This must be deleted, as it is likely to be misused to discourage and harass citizens, who would file information requests.</p>
---	--

<p>(a) take such steps as may be necessary to secure compliance with the provisions of this Ordinance;</p> <p>(b) discharge its obligation of providing access to information;</p> <p>(c) publish certain information or categories of information;</p> <p>(d) amend its procedures and practices in relation to the maintenance, management and destruction of records;</p> <p>(e) enhance the provision of training on the right to information for its officials;</p> <p>(f) take specified steps to facilitate access to information; and</p> <p>(g) financially or otherwise compensate an applicant for any loss, expenses or other detriment suffered due to refusal of Public Information Officer or any other person in the public entity to receive an application for information or did not furnish the information, or did not provide reasons for refusal to provide information or knowingly gave incorrect, incomplete or misleading information or destroyed information which was the subject of a request or obstructed, delayed or denied in any manner in furnishing the required information.</p> <p>(8) Notwithstanding anything contained contrary in any other law for the time being in force, while inquiring a complaint under this Ordinance, the Information Commission or its representative may examine on spot any information relating to the complaint kept in the custody of any public body.</p>	<p>7(7)d: It should also include “rules, regulations, bye-laws, manuals or orders”, which are in conflict with the provisions of this Act.</p> <p>7(7)e: The word “enhance the provision of” may be substituted by “organise”.</p> <p>The following suggestions may also be considered:</p> <ul style="list-style-type: none"> • One of the powers of the Commission should be to “analyse potential harm of any disclosure or access to requested information in terms of exempt information vis-à-vis the benefits of disclosure and the public interest that access to information may serve.” • Commission should be empowered to “resolve any inconsistencies in the application of the provisions of this Act or the rules or regulations.” <p>This Act will not be effective until and unless it empowers the Commission to impose adequate penalties on officers, who fail to comply with the provisions of or under this Act. Indian RTI Act</p>
---	---

<p>8. Appointment of Chief Information Commissioner.---(1) Soon after the commencement of this Ordinance, the Government shall appoint the Chief Information Commissioner on such terms and conditions as may be prescribed.</p>	<p>2005 has proved to very effectively largely because of the empowered Commission, which can impose fine on information officers or anyone responsible for delays or unlawful denials. It is, therefore, suggested to include the following provision:</p> <p>“In addition to any other penalties applicable under other laws, the Commission may, while deciding a complaint, impose such fine on a public information officer or on the principal officer in the following manner:</p> <p>a) if the public information officer has not provided the requested information within the prescribed limit, he shall be fined by an amount equivalent to one day of his salary for each day of delay in providing the requested information.</p> <p>(b) if a public information officer has provided incomplete or misleading or uncertified information or has charged fee or costs in excess of prescribed amounts, he shall be fined with an amount up to the sum of six months of his salary.</p> <p>(c) if a public information officer or any other officer of a public body has failed to fully comply with any other provision of this Act, he shall be fined with an amount up to six months of his salary.</p> <p>(d) if it can be established that non-compliance under this Act, including under the above sub-sections a, b and c was caused, solely or partly, as a result of non-cooperation, negligent behaviour or late response by other officers, who were bound to assist or give timely approvals to public information officer or principal officer, any such officer shall be liable to be fined as per the above provisions.”</p> <p>Section 8: As suggested above, instead of just appointing a Chief Information Commissioner, a Commission comprising not less than 3 Commissioners may be established, one of whom should be designated as Chief Information</p>
---	--

<p>(2) The Chief Information Commissioner shall be a person of eminence in public life with distinguished record, knowledge and experience in law, science and technology, public service, academics, management, journalism, mass media or administration and governance.</p> <p>9. Tenure of Chief Information Commissioner.---(1) The Chief Information Commissioner shall hold office for a term of four years from the date on which he assumes his office and shall not be eligible for reappointment.</p> <p>(2) Notwithstanding anything contained in sub-section (1), the Chief Information Commissioner shall not hold office after he has attained the age of sixty-five years.</p> <p>10. Designating Public Information Officer.---(1) Every public body shall, designate an officer as Public Information Officer to provide information to applicants requesting for information under this Ordinance.</p> <p>(2) In case no such Public Information Officer has been designated or in the event of the absence or non availability of the Public Information Officer, the Principal Officer shall be the Public</p>	<p>Commissioner.</p> <p>8(1): Terms and conditions of Commissioners, especially in terms of remunerations, perks and privileges, may be specified in the Act as equivalent to a judge of the provincial High Court. It is important to ensure independence of Commissioners, and limit any possibility of abuse of authority on the part of the Government.</p> <p>Out of 3 suggested commissioners, one should be a former judge of high court or qualified to be judge of a high court, the second with a civil service experience of not less than 15 years, and the third one from the civil society with experience of right to information, media or governance related work.</p> <p>9(2): It means that if a Commissioner is appointed at the age of 64 years, his term will expire within a year. This would undermine the Commission and its effectiveness. Instead, it should be provided that, at the time of appointment, the age of a person should not be more than 64 years.</p> <p>Section 10: It is sketchy and does not provide a practical and effective mechanism for easy access to information. For instance, it would be difficult for persons in D. I. Khan to approach just one designated officer by a public body, who would most likely be sitting in Peshawar. Therefore, it is suggested that Section 10 may be substituted by the following:</p> <p>“1) Every public body shall, within four-five days of</p>
---	--

<p>Information Officer of the respective public body.</p> <p>(3) Notwithstanding any other responsibilities, the Public Information Officer shall, subject to the provisions of this Ordinance, provide complete, correct and certified information to the applicant within 21 days of the receipt of his request.</p> <p>11. Application procedures.---(1) Any citizen of Pakistan having a genuine cause may make an</p>	<p>the enactment of this Act, designate at least one and, where required, more officers as Public Information Officers for each of the administrative unit or geographical zone under it to provide information to applicants under this Act.</p> <p>2) Subject to provisions of this Act, a Public Information Officer shall expeditiously provide complete, correct and certified information to the Applicant within 15 working days of the receipt of request. He shall also perform such other functions, as prescribed or may be necessary to efficiently implement various provisions of this Act or rules and regulations made under it.</p> <p>3) In the case that no Public Information Officer has been designated, the Principal Officer of public body shall be deemed to be the public Information Officer.</p> <p>4) The Public Information Officer may seek assistance of any other officer in order to respond to the request by an applicant.</p> <p>5) Any officer whose assistance has been sought under subsection (4) shall render all assistance to the public information officer seeking his assistance and for purposes of any contravention of the provisions of this Act, such other officer shall be deemed as public information officer.</p> <p>6) In a case when it is established that contravention of the provisions of this Act or rules thereunder occurred due to the acts of omission or commission of officers superior to Public Information Officers, such senior officers will be responsible to that extent and liable for any penalties under this Act.</p> <p>7) Name, phone number, and postal and e-mail address of Public Information Officers shall be proactively shared and disseminated through multiple media including through official publications, press releases, notice boards, websites and partnership with educational institutions or non-governmental organizations.”</p> <p>Section 11: The procedure provided here is too sketchy, and leaves a lot of room for ambiguity</p>
---	--

application to the Public Information Officer on a prescribed form that shall be made easily available to the public both electronically and on paper by the public body.

(2) An applicant having submitted the necessary particulars and fee as prescribed in the rules, shall be provided the required information or reason for refusal, in writing, within the prescribed period.

(3) The information or the copy of any public record supplied to the applicant shall contain a certificate signed by the Public Information Officer to the effect that the information therein is correct or, as the case may be, the copy is the true copy of such public record.

and interpretations. Besides, the use of words “genuine cause” is unnecessary and would allow information officers to arbitrarily deny access to requested information. Besides, it should be possible for any person to apply on a plain paper. It is suggested that this section may be substituted by the following:

“1) A person seeking any information or record under this Act shall make a request in writing, on a plain paper or electronically, to the Public Information Officer, specifying the particulars of the information or record sought and his contact details. In the case that a Public Information officer has not been designated, the person may directly make the request to the Principal Officer.

2) Where the person seeking information is illiterate or disabled or in need of assistance for whatever reason, the Public Information Officer shall render all reasonable assistance to him to write and submit the request in an effective and prescribed manner.

3) Where access to information or a part thereof is required to be provided to a disabled person, the Public Information Officer shall proactively ask for any special needs and provide all the reasonable assistance accordingly.

4) A person making request for information or record shall not be required to give any reason or justification for requesting the information or any other personal details except those that may be necessary for contacting him.

5) Subject to section 7, the Public Information Officer shall provide the requested information as soon as possible but not later than 15 working days since the receipt of request. If the requested information is determined as exempt under section 7, the Public Information Officer shall communicate to the applicant the decision and the reasons thereof.

6) If the requested information is related to life, liberty, safety or detention of a person, it shall be

<p>12. Procedure for complaint.---(1) If the information is not provided in 21 days or if the applicant is not satisfied with completeness or correctness of response, he may directly lodge complaint with the Information Commission.</p> <p>(2) In case of a complaint, the Information Commission will enquire into the reasons for non-compliance.</p> <p>(3) Public bodies will be bound to respond to the Information Commission within twelve days, when asked by the Information Commission to explain the reasons for not entertaining an application for provision of information, or any other aspect of non-compliance relating to the observance of the Ordinance.</p> <p>(4) The Information Commission shall dispose of a complaint within thirty days of its receipt or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the</p>	<p>provided as soon as it may be possible but not later than 24 hours.</p> <p>7) No request for information shall be completely rejected on the ground that one or more parts of requested information fall under section 7. In such an instance, the parts of information or related documents not covered by section 7 and reasonably separable shall be provided to the applicant.</p> <p>8) Where a request for information or its subject matter more closely relates to another public body, the public body, which has received the request, shall immediately transfer the application or such part of it as may be appropriate to that other public body and inform the applicant about such transfer: provided further that such application or a part thereof shall be transferred as soon as possible but not later than 7 working days of its receipt.</p> <p>9) If a Public Information Officer fails to either provide information or reject the request within 15 working days, he shall be deemed to have failed to comply with the requirements of this Act.</p> <p>Section 12: The time limit should be restrict to 15 working days.</p> <p>Nowhere in this draft, it is specified what kind of directions the Commissions can make, and what kind of penalties it can impose. This ambiguity effectively renders the Commission powerless, which can only make inquiries and recommend certain disciplinary actions. This is in violation of best practices, and would render this Act useless.</p>
--	---

case may be, for reasons to be recorded in writing.

13. Offence.---Any member of a public body who destroys a record which at the time when it was destroyed was the subject of a request or of a complaint with the intention of preventing its disclosure under this Ordinance commits an offence punishable with the imprisonment which may extend to six months or with fine not exceeding rupees fifty thousand or both:

Provided that before the penalty is imposed by the Court upon the wrongdoer, the Chief Information Commissioner shall conduct an inquiry that the offence has been committed by him.

14. Annual and other reports.---(1) The Information Commission shall submit an Annual Report to the Governor within three months of the conclusion of the calendar year to which the report pertains;

(2) The Information Commission may, from time to time, provide to the Governor such other reports relating to its functions as it may deem appropriate or as may be required by the Governor;

(3) The Information Commission shall simultaneously release such reports for publication and copies thereof shall be provided to the public at reasonable cost;

(4) The Information Commission may also, from time to time, make public any of its studies, research, conclusions, recommendations or suggestions in respect of any matter pertaining to the right to have access to information; and

(5) The reports and publications mentioned in this section shall be placed before the Provincial Assembly, as soon as possible.

15. Power to make rules.---(1) Government in consultation with the Information Commission, by notification in the official Gazette, shall make rules for carrying out the purposes of this Ordinance.

Section 13: Destruction of record is a serious offence; and its punishment should be at least up to 2 years of imprisonment. Fine should not be specified in terms of amounts, as the same become meaningless with the passage of time in view of inflationary impacts. It is suggested the amount of fines should be linked with salaries, for example, up to a sum of 6 months of salary.

This Act should provide for an Advisory Committee, as suggested below:

“Advisory committee.- The Information Commission shall establish, within sixty days of its establishment, an advisory committee or advisory committees to advise the Commission and assist the Information Commission in public awareness, removal of any difficulties in the performance of its responsibilities, and review of official rules, regulations, procedures, manuals, bye-laws and orders in the light of this Act to prepare appropriate recommendations. The reports or recommendations of such a committee or committees shall be submitted to the Information Commission for decisions or onward submission to the Government.”

There should also be a section on “Power to Make Regulations”. Commission may be authorized to make regulations.

(2) The rules shall, at a minimum, define the following provisions of this Ordinance:

- (a) procedure for proper maintenance, indexing and storage of information and records, including details of information to be published in electronic form;
- (b) procedure for filing of request for information and an easy mechanism for calculating reasonable fee for the information;
- (c) grounds on which a request may be refused and actions to be taken by the Public Information Officers in such cases;
- (d) procedure for filing of complaints to the Information Commission;
- (e) application handling mechanism, including any appeals mechanism within public body, and maximum permissible time for disposal of appeals;
- (f) procedure for publishing, displaying and obtaining the annual report;
- (g) designation of Public Information Officers, their duties and responsibilities;
- (h) finances, budgeting and staffing related to the Information Commission and its offices;
- (i) provisions regarding compensating applicants in compliance with directives of the Information Commission;
- (j) any fees that may be imposed by the public body for carrying out the provisions of this Ordinance; and
- (k) any other matter necessary for giving effect to the provisions of this Ordinance.

16. Removal of difficulty.---Government may, by order, provide for the removal of any difficulty which may arise in giving effect to the provisions of this Ordinance.

17. Immunity.---No suit, prosecution or other legal proceedings shall lie against any person for anything which is done in good faith or intended to be done in pursuance of this Ordinance or any Rules.

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

Centre for Peace and Development Initiatives, (CPDI) is an independent, non-profit 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 issue 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.



USAID
FROM THE AMERICAN PEOPLE



Centre for Peace and
Development Initiatives

409-B, Nazim-ud-Din Road, F-11/1, Islamabad
t: +92 51 210 82 87, 211 23 15
f: +92 51 210 15 94 e: info@cpdi-pakistan.org

A Company setup under Section 42 of the Companies Ordinance, 1984

www.cpdi-pakistan.org