

CPDI-CWP Model Federal Right to Information Bill 2013

It is a modified version of the draft prepared by Mr. Toby Mendel, Executive Director, Centre for Law and Democracy for the World Bank. CPDI and CWP reviewed the draft of Mr. Mendel and made significant modifications based on the input of local experts based on their experience of governance in Pakistan.

CPDI-CWP Model Federal Right to Information Bill 2013

A BILL

To provide for transparency and right to information in the Islamic Republic of Pakistan

WHEREAS right to information is a globally recognized human right under various international conventions, and 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 public access to and free flow of information are vital to the functioning of democracy and realization of human rights, and also to improve governance, reduce corruption and inefficiencies, enable meaningful participation of people in public affairs, protect consumers and to hold Government and other organizations and institutions that receive public funds or perform public services, more accountable to its citizens and for matters connected therewith and incidental thereto;

It is hereby enacted as follows:

1. Short title, extent and Commencement

- (1) This Act may be called the Right to Information Act, 2013.
- (2) It shall extend to the whole of Pakistan.
- (3) It shall come into force at once.
- (4) Notwithstanding sub-section (3), public bodies shall have 45 days to appoint Right to Information (RTI) Officers, in accordance with section 6, and to provide information on a proactive basis, in accordance with section 5.
- (5) Notwithstanding sub-section (3), the government shall have 90 days to establish the Commission, in accordance with section 24.

2. Definitions

In this Act, unless there is anything repugnant in the subject or context:

- (a) “Commission” means the Federal Information Commission established under section 24 of this Act;
- (b) “complaint” means any allegation in writing made by or on behalf of a requester that his or her request for information has not been dealt with by a public body in accordance with the rules and procedures provided in or under this Act, including where he or she has been wrongfully denied access to all or part of that record;
- (c) “Right to Information Officer” means an officer of a public body designated under section 6 of this Act;
- (d) “employee or official”, in relation to a public body, means a person employed in a public body whether permanently or temporarily and includes consultants;
- (e) “Government” means the Government of Pakistan;

- (f) “information” means, subject to any restrictions under this Act, any information or record held in any form relating to functioning of a public body, exercise of official authority or use of public funds and includes any data, document, memo, voucher, noting on the file, minutes of meeting, e-mail, map, advice, press release, brochure, circular, order, decision, notification, logbook, contract, agreement, budget, report, paper, sample, model, map, drawing, CD, USB, disc, audio record, mobile device, film, video, any instrument prepared through electronic process, machine-readable documents, and any other documentary material regardless of its physical form or characteristics. It also includes, among others, any information relating to procurements, meetings, proceedings, transactions, budgetary allocations, revenues, expenditures, licenses, allotments, approvals, benefits, disposals, appointments, postings, promotions, perks and privileges, plots, salaries, programs, projects or activities performed by and records held by or maintained by or within the purview of a public body, or within the powers and authority of a public body to lawfully obtain from a private body or a bilateral or multilateral institution;
- (g) “prescribed” means prescribed by rules or regulations made under this Act;
- (h) “Public body” means:
- (i) any Ministry, Division, an attached department, authority or an institution, autonomous or a semi-autonomous body or any other body which forms part of the Government;
 - (ii) National Assembly and Senate including their secretariats, committees and members;
 - (iii) any office, board, Commission, Council or any other body established by, or under, the Constitution, a Federal law or executive authority;
 - (iv) courts and tribunals;
 - (v) any body which is owned, controlled or substantially funded by one of the above, including enterprises, companies or corporations; and
 - (vi) any other body, including a non-governmental organization or an institution, which undertakes a public function or receives public funds, subsidies or concessions;
- (i) “record” means information which is recorded in any form;
- (j) “request for information” shall include a request for information and a request for a specific record;
- (k) “requester” means any legal or natural person who has made a request for information under this Act; and
- (l) “Third party” means a person other than the person making a request for information or a record.

3. Right to information (1) Every natural and legal person shall, subject only to the provisions of this Act, have the right to access any information or record held by a public body.

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

(3) This Act shall be interpreted so as to:

- (a) advance the purposes of this Act, including the ones set out in the Preamble, and with a strong presumption in favour of disclosure of information;
- (b) facilitate and encourage, promptly and at the lowest reasonable cost, the disclosure of information; and
- (c) assist and facilitate the illiterate, disadvantaged, distressed and disabled persons in an effective exercise of their right to access information.

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

5. Publication and availability of records (1) The following categories of information shall be duly disclosed or published, including through publications, notice boards and websites, by public bodies in an up-to-date fashion and in a manner which best ensures that they are accessible to those for whom they may be relevant:

- (a) Acts and subordinate legislation such as rules, regulations, procedures, notifications, by-laws, manuals and orders having the force of law in the country;
- (b) information about the public body, including its organisation, functions, duties, powers and any services it provides to the public;
- (c) a directory of its officers and employees, including a description of their powers and functions, and their respective remunerations, perks and privileges;
- (d) norms and criteria set by the public body for the discharge of its functions, including any rules, manuals or policies used by its employees to this end;
- (e) a description of its decision-making processes and any opportunities for the public to provide input into or be consulted about decisions;
- (f) relevant facts and background information relating to important policies and decisions which are being formulated or have been made and which affect the public;
- (g) a detailed budget and related updates of a public body and its constituting functional or administrative units, including original or revised revenue targets, actual revenue receipts, proposed and actual expenditures, revisions in approved budget, and supplementary budget;
- (h) lists of defaulters of taxes, charges, utility bills or any other official dues;
- (i) details about any subsidy or benefit programmes operated by the public body, including details about the amount of any subsidies or benefits provided and the beneficiaries;
- (j) all documents related to a tender or a procurement after the decision has been made;
- (k) particulars of the recipients of concessions, permits, licences or authorisations granted by the public body;
- (l) reports like performance reports, audit reports, evaluation reports, inquiry or investigation reports or any other report that has been finalized;
- (m) the categories of information held by the public body;

- (n) a description of the manner in which requests for information may be made to the public body, including the name, title and contact details of all Right to information officers; and
- (o) such other information as may be prescribed by the Commission.

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

(3) The annual report under sub-section (2) shall be formally forwarded to the Government and to the Commission and, within 30 days of its submission, it shall be published on the website of the Commission.

6. Designation of Right to Information Officers (1) Within 45 days of commencement of this Act, a public body shall designate and notify one or more Right to Information Officers with whom requests for information under this Act may be lodged.

(2) In case no such official has been designated or in the event of the absence or non availability of the right to information officer the person in charge of the public body shall be deemed to be the Right to Information officer.

(3) The Right to Information Officer shall be responsible for ensuring that requests for information are dealt with in accordance with this Act and generally for promoting full compliance by the public body with its obligations under this Act.

(4) The Right to Information shall have the powers to seek assistance from any other officer for the purpose of collecting and furnishing the requested information to the requester within the prescribed time.

7. Request for information (1) Subject to this section, any person may lodge a request for information with a public body through the Right to Information Officer.

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

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

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

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

(6) Where a request for information is received by a public body, the requester shall be provided with a receipt acknowledging the request, including the date and name of the official responsible for processing it, which shall be provided as soon as possible and in any case within three working days in the same form as the request was made, or any such reasonable form as may be available to the public body.

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

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

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

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

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

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

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

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

(2) The notice may be served through email, web portal, text message or any other efficient means of communication and shall indicate that:

- (a) the request has been accepted and, since no fee is applicable, the requested information is attached; or that the requester is entitled to receive the information or record, subject to the payment of any applicable fee;
- (b) the request has been rejected on the basis that it does not comply with the rules relating to such requests, but only after assistance has been offered to the requester in accordance with section 8;
- (c) the request has been rejected on the basis that the information is already available in published form, including in the Official Gazette or in another generally accessible form, such as a book or a website, in which case the notice shall direct the requester to the place where the information may be found;
- (d) the request has been rejected on the basis that it is vexatious, including because it relates to information which is substantially the same as information that has already been provided to the same requester; or
- (e) the request has been rejected, in whole or in part, on the basis that the information is exempt, in which case the notice shall specify the exact exception relied upon and include details regarding the right of the requester to appeal against this decision;

Provided that if the requested information is not provided within the specified duration for whatever reasons, it shall be deemed to have been denied.

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

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

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

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

12. Form for providing information Where an applicant has indicated a preferred means for accessing information, such as a physical copy or a sample, an electronic copy or an opportunity to inspect certain records and take notes, the public body shall provide access in that form unless to do so would unreasonably disrupt its operations or harm the document.

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

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

(3) No fee shall be charged for the first twenty pages of information provided, or where the requester requests waiver on the basis of some evidence about his or her being poor.

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

- (a) this Act shall take precedence over other laws for the time being in force, and that exceptions or limitations in other laws shall not extend the scope of the exceptions in this Act;
- (b) where only part of a record or the information falls within the scope of the exceptions provided for in this Act, that part shall be severed and the rest of the record or information shall be provided to the requester;
- (c) even where information falls within the scope of an exception provided for in this Act, the information shall still be provided to the requester where, on balance, the overall public interest favours disclosure of the information;
- (d) for purposes of sub-section (c), there shall be a strong presumption in favour of the disclosure of information that exposes corruption, criminal wrongdoing, other serious breaches of the law, human rights abuse, or serious harm to public safety or the environment; and
- (e) the exceptions set out in sections 15 to 18 shall cease to apply after a period of fifteen years, provided that this may be extended, in exceptional cases, for up to a maximum of another ten years, with the approval of the Commission.

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

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

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

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

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

18. Policy making A public body may refuse a request for information the disclosure of which would be likely to cause serious prejudice to the deliberative process in a public body by inhibiting the free and frank provision of advice or exchange of views, or cause serious prejudice to the success of a policy through premature disclosure of that policy; provided that information about the deliberative process shall become accessible after a final decision has been made.

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

(2) The exception in sub-section (1) shall not apply where:

- (a) the third party has effectively consented to the disclosure of the information;
- (b) the person making the request is the guardian of the third party, or the next of kin or the executor of the will of a deceased third party; or
- (c) the third party is or was an official of a public body and the information relates to his or her function as a public official.

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

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

- (a) was obtained from a third party and to communicate it would constitute an actionable breach of confidence;

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

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

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

23. Complaints (1) Anyone who believes that a public body is not effectively implementing one or more provisions of this Act, or that his or her request has not been dealt with in accordance with the provisions of this Act has the right to lodge a complaint on a plain paper or electronically with the Commission to this effect.

(2) Complaints in accordance with sub-section (1) shall be free of charge. The Commission shall examine the complaints proactively without requiring the complainant to represent himself through a lawyer.

(3) The Commission shall decide any complaint in accordance with sub-section (1) within 30 days.

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

24. Information Commission (1) Within 90 days of the commencement of this Act, the Government shall establish a Commission to be called the Federal Information Commission.

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

(3) The Commission shall comprise not less than three Commissioners. The Government, in consultation with Leader of the Opposition, shall appoint Commissioners as follows:

- (a) one former senior government servant;
- (b) one retired judge of the Supreme Court or a person qualified to be a judge of the Supreme Court;
- (c) one respected representative of civil society with experience in right to information, transparent governance or human rights;

Provided that if the workload requires appointment of more than three commissioners, all such commissioners shall be taken from the civil society;

Provided further that no commissioner shall be of more than 64 years of age at the time of his or her appointment; and

- (d) one of the commissioners shall serve as the Chief Information Commissioner. The office of Chief Information Commissioner shall rotate among the commissioners in alphabetical order, each term being for one year.

(4) A commissioner shall hold office for four years, and may be reappointed for one further term of office; provided that he is not over 64 years of age at the expiry of his first term, and that his performance in the first term is objectively assessed as the best among the commissioners.

(5) Commissioners may not hold any other public office, or be prominently connected with any political party at the time of their appointment to the Commission. Once appointed, they shall work on full time basis and disassociate themselves from any professional or business interests or political affiliations.

(6) A Commissioner shall be liable to removal on grounds of misconduct or physical or mental incapacity or falling foul of conditions for being a commissioner as set out in sub-section (5) above, or poor performance. However, before removing a Commissioner, the Government shall communicate the charges to the Commissioner and afford him reasonable opportunity to explain his position. If the Government is not satisfied with the defence offered, it shall refer the case to the Senate of Pakistan for an open enquiry by a multi-party Special Committee to be constituted by the Senate of Pakistan. If the Committee finds the Commissioner guilty of any of the charges mentioned above, the Government shall remove the Commissioner.

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

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

- (a) set rules and minimum standards regarding the manner in which public bodies are required to manage their records, in accordance with section 4;
- (b) designate further categories of information which may be subject to proactive disclosure, in accordance with sub-section 5(1);
- (c) adopt a schedule of the fees that public bodies may charge for providing information to requesters, in accordance with sub-section 13(2);
- (d) approve or reject extensions to the maximum period that information may be kept exempt, in accordance with section 14(f);
- (e) compile a user-friendly handbook, in Urdu and English, describing in easily comprehensible form the rights established by, and how to make a request for information or complaints under, this Act;
- (f) refer to the appropriate authorities cases which reasonably disclose evidence of criminal offences under this Act;
- (g) compile a comprehensive annual report both describing its own activities and performance, including the challenges faced, remedial steps taken and an overview of its audited accounts; and providing an overview of the activities undertaken by all public bodies to implement this Act, taking into account the information provided by individual public bodies pursuant to sub-section 5(2);
- (h) establish, within sixty days of its establishment, an advisory committee or advisory committees to advise or assist the Commission in public awareness, removal of any difficulties in the performance of its responsibilities, and review of official rules, regulations, procedures, manuals, bye-laws and orders in the light of this Act to prepare appropriate recommendations. The reports or recommendations of such a committee or committees shall be submitted to the Commission for decisions or onward submission to the Government; and

- (i) have an accredited accountant conduct an audit of its accounts on an annual basis, and furnish copies of its audited accounts in the National Assembly and Senate of Pakistan.

(3) The Commission shall have the power, in accordance with its means, to:

- (a) monitor and report on the compliance by public bodies with their obligations under this Act;
- (b) make recommendations for reform or improvement both of a general nature and in relation to existing laws, rules, regulations, procedures, forms, bye-laws, manuals, training programs and specific public bodies;
- (c) make formal comments on any legislative or other legal proposals which affect the right to information;
- (d) undertake training activities, on its own or in partnership with established training institutions, for public officials on the right to information and the effective implementation of this Act; and
- (e) publicise the importance and requirements of this Act and the rights of individuals under it.

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

(2) The Commission shall also have the power to conduct inquiries, on its own initiative or on a complaint or other matters connected with the proper implementation of this Act, and when conducting such an inquiry, the Commission shall have the powers of a Civil Court in respect of the following matters:

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

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

- (a) to order a public body to disclose information to a requester or to take such other reasonable measures as it may deem necessary to compensate a requesters for any failure to respect the provisions of this Act;
- (b) to fine a Right to Information Officer as follows:
 - i. if the right to information officer has not provided the requested information within the prescribed time limit, he or she shall be fined by an amount equivalent to one day of his or her salary for each day of delay in providing the requested information;
 - ii. if the right to information officer has provided incomplete or misleading or uncertified information or has charged fee or costs in excess of prescribed amounts, he or she shall be fined with an amount up to the sum of three months of his or her salary;

iii. if the right to information officer has failed to fully comply with any other provision of this Act, he or she shall be fined with an amount up to six months of his or her salary; and

iii. if it can be established that non-compliance under this Act, including under the above sub-sections i, ii and iii was caused, solely or partly, as a result of non-cooperation, negligent behaviour or late response by other officers, who were bound to assist the right to information officer or to give timely approvals to the right to information officer, the onus shall shift to such an officer or officers, who shall be liable to be fined as per the above provisions.

- (c) to require a public body to take such general measures as may be required to address systematic failures to respect the provisions of this Act, including by appointing a right to information officer, by conducting training for its employees, by improving its record management, by publishing information on a proactive basis and/or by preparing and publishing an annual report.

(4) A decision of the Commission under sub-section (3) shall be final and any failure to respect or implement the decision shall be dealt with by the Commission in the same way as any contempt of court.

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

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

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

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

(3) The remuneration and benefits of Commissioners shall be set at the equivalent level of a Supreme Court Judge.

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

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

(2) Anyone who commits an offence under sub-section (1) shall be liable on summary conviction to a fine not exceeding an amount equivalent to salary of six months of the right to information officer and/or to imprisonment for a period not exceeding two years.

29. Indemnity No one may be subject to any legal, administrative or

employment-related sanction for anything which is done in good faith or intended to be done in pursuance of this Act or any rules made there under.

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

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

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

32. Power to make rules The Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.