

# **The Right of Access to Information Act, 2017**

## **Analysis and Recommendations for Reforms**



## The Right of Access to Information Act, 2017

### Analysis and Recommendations for Reforms

On October 13, 2017, the Federal Government notified the enactment of the Right of Access to Information Act 2017 (Act No. XXXIV of 2017), which had earlier received the assent of the President of Pakistan on October 12, 2017. This Act is a significant improvement over the Freedom of Information Ordinance 2002 but it still suffers from numerous flaws, which need to be fixed in the light of international best practices and the requirement of Article 19-A of the Constitution. The following matrix provides analysis of several sections of the Act and makes suggestions for improving the Act for more effective realization of citizens' right to information.

Legal provision	Comments	Recommendation
<p>Preamble:</p> <p><i>An act to provide for the right of access to information in transparent and effective manner, subject only to reasonable restrictions imposed by law</i></p> <p>Whereas Government believes in transparency and the right to have access to information to ensure that the people of Islamic Republic of Pakistan have improved access to records held by public authorities and promote the purpose of making the government more accountable to its people, of improving participation by the people in public affairs, of reducing corruption and inefficiency in Government, of promoting sound economic growth, of promoting good governance and respect for human rights.</p> <p>AND whereas it is expedient to provide for a law which gives effect to the fundamental right of access to information, as guaranteed under Article 19A of the Constitution of Islamic Republic of Pakistan and international law, whereby everyone shall have the right to have access to all information held by public bodies subject only to reasonable restrictions imposed by the law and for matters connected therewith or incidental thereto:</p> <p>It is hereby enacted as follows:</p>	<p>The Preamble of the Act is very well drafted, as it covers all the key objectives that a good right to information must seek to achieve.</p>	<p>None</p>

Legal provision	Comments	Recommendation
<p><b>1. Short title, application and commencement - (1)</b> This act may be called the Right of Access to Information Act, 2017.</p> <p>(2) It shall apply to all public bodies of the Federal Government.</p> <p>(3) It shall come into force at once.</p>	<p>None</p>	<p>None</p>
<p><b>2. Definitions</b>—In this Act, unless there is anything repugnant in the subject or context—</p> <p>(i) “appeal” means any grievance lodged in writing by an applicant with the Information Commission in accordance with section 17;</p> <p>(ii) “applicant” means a citizen of Pakistan, as defined in law, who lodges a request or any person who is acting for or on behalf of such a person;</p> <p>(iii) “designated official” means an official of a public body designated in accordance with section 9;</p> <p>(iv) “Information Commission” means the Pakistan Commission on Access to Information established in accordance with section 18;</p> <p>(v) “information” means information based on record;</p> <p>(vi) “national security” means the matters pertaining to the integrity, security or defence of Pakistan or any part thereof;</p> <p>(vii) “prescribed” means prescribed by rules or regulations made under this Act;</p> <p>(viii) “principal officer” means-</p> <p>(a) in case of the Federal Government Ministers and Divisions, the Secretary thereof; and</p>	<p>Definition of “applicant”, as provided in Section 2(ii), is not inclusive because it does not mention a legal person.</p> <p>The term “designated official”, as provided in Section 2(iii), is a bit vague. It does not convey the responsibilities that the official will be expected to perform. In the Punjab Transparency and Right to Information Act 2013, such officials are referred to as ‘Public Information Officers’.</p> <p>Section 2(v) does not provide inclusive definition of “information”. In its current form, it gives the impression that information that can be accessed is to be ‘based on record’, and may not include records themselves.</p>	<p>Section 2(ii) may be amended to include legal persons in the definition of “applicant”.</p> <p>Section 2(iii) may be amended to substitute the words “designated official” by the words ‘Public Information Officer’.</p> <p>Section 2(v) may be amended to provide a comprehensive and inclusive definition of “information”. The suggested text is as below:</p> <p>“information” means any information held by a public body and includes any memo, book, design, map, contract, representation, pamphlet, brochure, order, notification, document, plans, letter, report, accounts statement, project</p>

Legal provision	Comments	Recommendation
<p>(b) in all other cases, the head or chief executive of the public body by whatever designation identified;</p> <p>(ix) “public body” means—</p> <p>(a) any Ministry, Division, attached department or subordinate office, including autonomous bodies of the Federal Government;</p> <p>(b) any Federal and any municipal or local authority set up or established by or under any Federal law;</p> <p>(c) the National Assembly and the Senate including their secretariats, committees and members;</p> <p>(d) any statutory corporation or other body corporate or institution set up or established or owned or controlled or funded by the Federal Government</p> <p>(e) any court, tribunal, commission, or board under the Federal law;</p> <p>(f) any incorporated or unincorporated body of the Federal Government functioning under the control or authority of another public body or wherein one or more public bodies own or have controlling interest or provide substantial funding;</p> <p>(g) any other organization which undertakes a public function, to the extent of that function; and</p> <p>(h) a non- government organization which directly or indirectly receives or has received public funds, subsidy, tax exemptions, piece of land or any other benefit involving public funds and any other non-governmental organization or body registered under any law for the time being in force;</p> <p>(x) “record” means a public record as defined in section 6;</p> <p>(xi) “request” means a request for access to information and includes a request for access to a specific record; and</p>	<p>Section 2(ix) doesn’t explicitly mention organizations and institutions established by or under the Constitution. As a result, several organizations including the Election Commission of Pakistan have been resisting disclosure of information under the Act by arguing that the Act does not apply on bodies established by or the under the Constitution. This ambiguity needs to be cleared through more inclusive and clearer definition of the public body in the Act. It may be noted that the Indian Right to Information Act 2005 explicitly covers bodies established by or under the Indian Constitution.</p> <p>Section 2(ix) does not explicitly mention the offices and secretariats of the President and the Prime Minister, and hence allows space for relevant officials to argue that these offices are not covered by the definition of the “public body”. This ambiguity needs to be clarified within the Act for smooth implementation.</p>	<p>proposal, photograph, audio, video, drawing, film, any instrument prepared through electronic process, machine-readable documents and any other documentary material regardless of its physical form or characteristics;”</p> <p>Section 2(ix) may be amended to explicitly declare bodies established by or under the Constitution as public bodies under the Act.</p> <p>Section 2(ix) may be amended to explicitly include the offices and secretariats of the President and the Prime Minister in the definition of the “public body”.</p>

Legal provision	Comments	Recommendation
<p>(xii) “right of access to information” means the right of access to information accessible under this Act which is held by or under the control of any public body and includes the rights of access to information, documents, or record in digital or printed form, as the case may be,</p>	<p>Section 2(ix)(g) mentions the term ‘public function’ but the same is not defined in this Act.</p> <p>Section 2(x) provides a very restrictive definition of “record”, as it is evident from section 6, which lists only a few categories of “records” – and those too are subject to section 7, which is about exclusion of records.</p> <p>Section 2(xii) does not mention the forms in which a citizen can exercise his or her right of access to information.</p>	<p>Another sub-section may be inserted in Section 2 to provide definition of ‘public function’.</p> <p>Section 2(x) may be amended to provide a more inclusive and comprehensive definition of “record”, while keeping in view the suggestion about improving the definition of “information” in section 2(v) as well.</p> <p>Section 2(xii) may be amended to provide that the right of access to information shall include right to (a) seek certified copies of record, (b) inspect official records and take notes, and (c) inspect official facilities, services and works being performed, etc.</p>
<p><b>3. Right to have access to information not be denied—</b> (1) Subject to the provisions of the Act, no applicant shall be denied access to information or record held by the public body.</p> <p>(2) This Act may be interpreted so as to advance its purposes as set out in the preamble and to—</p> <p style="padding-left: 40px;">(a) promote the right of access to information; and</p> <p style="padding-left: 40px;">(b) facilitate and encourage promptly the disclosure of the information at the lowest and reasonable cost.</p>	<p>None</p>	<p>None</p>
<p><b>4. Maintenance and indexing of record—</b> (1) Subject to the provisions of this Act and rules made thereunder, the principal officer of each public body shall ensure that the</p>	<p>None</p>	<p>None</p>

Legal provision	Comments	Recommendation
<p>record held by that body is properly maintained, so as to enable it to comply with its obligations under this Act.</p> <p>(2) Each public body shall bring its record management practices in line with the secretariat instruction, 2004 or any other instructions of the Federal Government.</p>		
<p><b>5. Publication and availability of the record—</b> (1) The principal officer of each public body shall, within six months of the commencement of this Act, ensure that the following categories of the information and record are duly published including uploading over the internet or in a manner which best ensures that these are accessible subject to reasonable restrictions based on limited resources:</p> <ul style="list-style-type: none"> <li>a) description of the public body’s organization and functions, duties, powers and any services it provides to the public, including a directory and any services it provides to the public, including a directory of its officers and employees, indicating their duties that these are accessible subject to reasonable restrictions based on limited resources;</li> <li>b) statutes, statutory rules, regulations, bye-laws, orders and notifications, etc. applicable to the public body disclosing the date of their respective commencement or effect;</li> <li>c) substantive or procedural rules of the general application evolved or adopted by the public body, including any manual or policies by its employees;</li> <li>d) relevant facts and background information relating to important policies and decisions which have been adopted, along with a statement of policies adopted by the public body and the criteria, standards or</li> </ul>		

Legal provision	Comments	Recommendation
<p>guidelines upon which discretionary powers are exercised by it;</p> <p>e) the condition upon which members of the public body can acquire any license, permit, consent, approval, grant, allotment or other benefits of whatsoever nature from any public body or upon which transactions, agreements and contracts, including, contracts of employment which can be entered into with the public body, along with particulars about the recipients of any concession, permit, license or authorization granted by the public body;</p> <p>f) a description of its decision making processes as defined in the Federal government's secretariat instructions, 2004 and any instructions for the time being in force for the public to provide any input into or be consulted about decisions;</p> <p>g) detailed budget of the public body; including proposed and actual expenditures, original or revised revenue targets, actual revenue, receipts, revision in the approved budget and the supplementary budget;</p> <p>h) the methods whereby information in the possession or control of the public body may be obtained and the prescribed fee required along with the name, title and contact details of the designated officials;</p> <p>i) reports including performance reports, audit reports, evaluation reports, inquiry or investigative reports and other reports that have been finalized;</p> <p>j) such other matters which the principal officer of the public body deems fit to be published in the public interest;</p> <p>k) such other information as may be prescribed; and</p>	<p>There is also the need to require public bodies to proactively disclose what kind of</p>	<p>The word 'and' at the end of clause 'k' may be deleted; and the full stop at the</p>

Legal provision	Comments	Recommendation
<p>l) camera footages at public places, wherever available, which have a bearing on a crime:</p> <p>Provided that if the information or record pertains to a period earlier than the year 2008, the same shall be published within reasonable time.</p>	<p>information is held by them. Without such information being proactively disclosed, it would be hard for applicants to decide which public body they should approach for the information they need.</p>	<p>end of clause 'l' may be substituted by '; and'.</p> <p>Another clause may be inserted at the end of the section, which may read as below:</p> <p>'m) description of categories of information and records held by a public body.'</p>
<p><b>6. Declaration of the public record</b>– Subject to the provisions of section 7, the following record of all public bodies is hereby declared to be the public record, namely:-</p> <ol style="list-style-type: none"> <li>a) policies and guidelines;</li> <li>b) transactions involving acquisition and disposal of property and expenditures are undertaken by a public body in the performance of its duties and functions;</li> <li>c) information regarding grant of licenses, allotments and other benefits, privileges, contracts and agreements made by a public body;</li> <li>d) final orders and decisions, including decisions relating to members of public; and</li> <li>e) any other record which may be notified by the Minister-in-Charge of the Federal Government as public record for the purposes of this Act.</li> </ol>	<p>There is no need to provide a list of records that will be accessible to citizens. All good laws on right to information, including the Indian Right to Information Act 2005, provide a negative list and declare all other records as public records, which are accessible to citizens. In its current form, Section 6, which is subject to Section 7, makes the Act restrictive from the perspective of access to information and complicated for a common reader.</p>	<p>Section 6 may be substituted by a Section, which states that any information or record not declared as exempt from disclosure shall be made accessible to citizens either proactively or in response to information requests made by applicants.</p>
<p><b>7. Exclusion of certain records.</b>— Nothing contained in section 6 shall apply to the following records of all public bodies, namely:—</p> <ol style="list-style-type: none"> <li>a) Noting on the files, subject to a final decision by the public body;</li> </ol>	<p>Section 7 provides absolute exclusions, as the records or categories of information listed in this Section are not subject to any harm test. Such absolute exclusions are not consistent with international best practice, nor are they logical by any standards. Why, for instance, all types of 'noting on file' or 'minutes of meetings' be excluded in</p>	<p>Section 7 may be deleted, as it is not needed in the presence of Section 16, which provides a comprehensive list of public interests about which information shall not be disclosed in situations where the disclosure being sought may be likely</p>

Legal provision	Comments	Recommendation
<p>b) Minutes of meetings,, subject to a final decision by the public body;</p> <p>c) Any intermediary opinion or recommendation, subject to a final decision by the public body;</p> <p>d) Record of the banking companies and financial institutions relating to the accounts of their consumers;</p> <p>e) Records relating to defence forces, defence installations or connected therewith and ancillary to defence an national security excluding all commercials and welfare activities</p> <p>f) Records declared as classified by the Minister-in-charge of the Federal Government</p> <p>Provided that the Minister-in-Charge of the Federal Government shall have to record reasons as to why the harm from disclosure of information outweighs public interest and further that information pertaining to allegation of corruption and violation of human rights shall not be excluded;</p> <p>g) Record relating to the personal privacy of any individual; and</p> <p>h) Record of the private document furnished to a public body either on an express or implied condition that information contained in any such document shall not disclosed to a third party</p>	<p>absolute terms? Why 'noting on file' or 'minutes of meetings' in relation to simple matters like education planning or municipal services be declared as excluded from public access? Therefore, it is important that the Act must simply provide a list of public interests (e.g. national security, defence of Pakistan, privacy of a person, safety and security of a person, commercial interests of public body, etc.), which must be protected and the records connected therewith may be declared as exempt from disclosure i.e. if it could be established that the disclosure being requested would cause harm to protected public interests.</p>	<p>to cause harm to the protected public interest.</p>
<p><b>8. Computerization and Voluntary Disclosure of record—</b> Each public body shall endeavour to ensure within the time prescribed in section 5 and, that all record accessible under this Act is computerized and is available online so that authorized access to such public records is facilitated.</p>	<p>None</p>	<p>None</p>

Legal provision	Comments	Recommendation
<p><b>9. Designated Official</b> – Each public body shall, within thirty days of the commencement of this Act, notify one or more designated officials, not below the rank of an officer in BPS -19 or equivalent;</p> <p>Provided that where no designated official has been notified or he is absent or not available, principal officer of the public body shall be the designated official:</p> <p>Provided further that in case of non- government organization, it may designate a senior officer as per its organizational structure.</p>	<p>The term ‘Designated Official’ does not convey the objective of designating such an official under this Act. It would, therefore, be better to substitute it by the term ‘Public Information Officer’.</p>	<p>The words ‘Designated Official’ in section 9 of the Act may be substituted by the words ‘Public Information Officer’.</p>
<p><b>10. Function of Designated Official</b> - (1) Subject to the provisions of this Act and the rules made thereunder, the designated official shall be responsible for ensuring that requests are dealt with promoting full compliance by the public body of its obligation under this Act.</p> <p>(2) A designated official, as may be prescribed, assist applicant who is having problems due to any disability in describing the information sought in sufficient detail to enable the public body to locate that information.</p>	<p>As above</p>	<p>The words ‘Designated Official’ in section 10 of the Act may be substituted by the words ‘Public Information Officer’.</p>
<p><b>11. Requests...</b>(1) Subject to the provisions of this Act and the rules made thereunder, a citizen of Pakistan may make a request to a public body through the designated official.</p> <p>(2) A request under sub-section (1) shall be in writing and made in any manner in which the public body has the facilities to receive it, including in person, by email, fax, online or e-mail.</p> <p>(3) Any written request that identifies the information or record sought in sufficient detail, to enable the public body to locate it, and which includes a complete address and contact details for delivery of the information or record, shall be treated as request.</p>	<p>The expression ‘citizen of Pakistan’ should not be used, as the term ‘applicant’ has already been defined in Section 2.</p>	<p>In Section 11(1), the expression ‘a citizen of Pakistan’ may be substituted by ‘an applicant’.</p> <p>The words ‘Designated Official’ in section 11 of the Act may be substituted by the words ‘Public Information Officer’.</p>

Legal provision	Comments	Recommendation
<p>(4) Subject to sub-section (3), a public body may provide a prescribed form for making requests.</p> <p>(5) In no case shall an applicant be required to provide reasons for his request.</p>		
<p><b>12. Where information requested for is not held</b>— Where a public body does not hold information or record, the applicant shall be informed accordingly within ten working days of the receipt of the request.</p>	<p>The public information officer/ designated officer should also be required to forward the application to the concerned public information officer/ designated officer, where he/ she knows about the public body which may be in possession of the information that the applicant needs.</p>	<p>Section 12 may be amended to also provide that, where a public body does not hold information or record that is being requested but the principal officer or the public information officer knows which public body may be in possession of it, the concerned public information officer/ designated officer shall forward the application to the public information officer/ designated officer in the relevant public body, and intimate the applicant accordingly.</p>
<p><b>13. Procedure for acceptance and refusal of requests</b>— (1) The designated official shall provide a written acknowledgement in response to a request.</p> <p>(2) The designated official shall process the request and by notice in writing inform the applicant that—</p> <p>a) A request has been acknowledged and the applicant is entitled to receive the information or record, subject to the payment of the prescribed fee. On payment of the fee, the designated official shall provide the requested record, or</p> <p>b) The request has been rejected-</p> <p>i) on the basis that it does not comply with the provisions of this act and the rules made thereunder but only after requisite assistance has been offered to the applicant as mentioned in sub-section (2) of section 10;</p>	<p>Section 13(2) (a)) talks about payment of prescribed fee, which is not an appropriate term and may be substituted by ‘cost of reproducing information to the applicant’.</p>	<p>Section 13(2) may be amended to substitute the word ‘fee’ by ‘cost of reproducing information for the applicant’.</p>

Legal provision	Comments	Recommendation
<p>ii) on the basis that the information is already available in a generally accessible form in which case the notice shall indicate to the applicant the place from where the information may be found;</p> <p>iii) on the basis that it is incorrect, because it relates to information which is substantially the same information that has already has been provided to the same applicant during last six months; or</p> <p>iv) in whole or in part, on the basis that the information is exempt subject to section 7 or section 16, in which the notice shall specify the exact exception, relied upon and specifying details regarding the right of the applicant to appeal against this decision.</p> <p>(3) Where information or a record is provided in accordance with clause (a) of sub-section (2), it shall be accompanied by a certificate which may be affixed to the information or record at the foot thereof, or as appropriate, to the effect that the information is incorrect or, as the case may be, copy is a true copy of the original records and such certificate shall be dated and signed by the designated official.</p> <p>(4) Where the designated official refuses a request, he shall, before informing the applicant of such refusal, obtain written approval of the principal officer of the public body</p>	<p>Section 13(2)(iv) refers to Section 7 which, as proposed above, must be deleted.</p> <p>Requirement of written approval of principal officer under Section 13(4) is not appropriate. The designated officer/ public information officer should be the competent officer both for accepting or rejecting information requests. It does not make sense that an officer who is competent for disclosure is not competent for refusing disclosure. This requirement is also likely to make the process inefficient, as obtaining approvals may take time.</p>	<p>In Section 13(2)(iv), the expression 'Section 7' may be deleted.</p> <p>Section 13(4) may be omitted.</p>

Legal provision	Comments	Recommendation
<p><b>14. Time-limit of responding—</b> (1) Subject to the provisions of this Act, a public body shall be required to respond to a request as soon as possible and in any case within ten working days of receipt of the request</p> <p>(2) The period stipulated in sub-section (1) may be extended by maximum of further ten working days, where it is necessary when the request requires a search through a large number of records or records located in different offices or consultation is required with third parties or other public bodies.</p> <p>(3) Information needed to protect life and liberty of any individual shall be provided within three working days.</p>	<p>Section 14(1) says that “a public body shall be required to respond to a request” but it doesn’t clarify the nature or particulars of the expected response.</p>	<p>Section 14(1) may be substituted by the following:</p> <p>“(1) Subject to the provisions of this Act, a public body shall be required to provide the requested information to the applicant or explain to him the reasons of denial of requested information or a part thereof as soon as possible and in any case within ten working days of receipt of the request.”</p>
<p><b>15. Fee for requests—</b> Prescribed fee may be charged for the cost of reproducing information and sending it to the applicant.</p>	<p>This Section should be titled as ‘Cost of reproducing information for applicants’, as the word ‘fee’ is not appropriate for it. Moreover, it may be specified that the ‘Cost’ will be charged in accordance with a ‘Schedule of cost’ to be prescribed by the Commission. In its existing form, the Section 15 effectively means that the Federal Government decision through rules will have precedence over any determination by the Commission by regulations, as the word ‘prescribed’ has been defined in Section 2 to mean as “prescribed by rules or regulations made under this Act.”</p>	<p>Section 15 may be amended to provide that the cost of reproducing information for applicants will be charged in accordance with a schedule of cost to be notified by the Commission.</p>
<p><b>16. Information exempt from disclosure—</b>(1) Subject to the provisions of this Act--</p> <p>(a) a public body shall not be required to disclose exempt information—</p> <p>(i) provided that where only part of a record or the information falls within the scope of the exceptions</p>	<p>There is a need to add a sub-section under Section 16, which may provide for public interest override in accordance with international best practice.</p>	<p>Section 16 may be amended to insert another sub-section (2), which may read as follows:</p> <p>“Notwithstanding anything contained in sub-section (1), if the Commission determines that the public interest in</p>

Legal provision	Comments	Recommendation
<p>provided for in this Act, that part shall be severed and the residual record or information shall be provided to the applicant; and</p> <p>(ii) if its disclosure is likely to cause damage to the interests of the Islamic Republic of Pakistan in the conduct of International Relation.</p> <p><i>Explanation:</i> – In this section, “international relations” means the relations between Pakistan and</p> <p style="padding-left: 40px;">(i) the Government of any other foreign state; and</p> <p style="padding-left: 40px;">(ii) organization of which only States are members.</p> <p>(b) information may be exempt if its disclosure is likely to-</p> <p style="padding-left: 40px;">(i) result in the commission of an offense;</p> <p style="padding-left: 40px;">(ii) harm the detection, prevention, investigation or inquiry in a particular case;</p> <p style="padding-left: 40px;">(iii) reveal the identity of a confidential source of information</p> <p style="padding-left: 40px;">(iv) facilitate an escape from legal custody; or</p> <p style="padding-left: 40px;">(v) harm the security of any property or system, including a building, a vehicle, a computer system or a communication system;</p> <p>(c) information is exempt if its disclosure under this Act would involve invasion of privacy of an identified individual, including a deceased individual other than the applicant. This exception shall not apply where...</p> <p style="padding-left: 40px;">(i) third party has consented to the disclosure of the information;</p>		<p>such disclosure outweighs the harm that shall or is likely to be caused by such disclosure, it may direct the designated officer/ public information officer to provide the information”.</p>

Legal provision	Comments	Recommendation
<p>(ii) the person making the request is the guardian of the third party or the next of kin or the executor of the will of the deceased third party;</p> <p>(iii) the third party is or was an official of a public body and the information relates to his functions as a public official;</p> <p>(d) information is exempt if and so long as its disclosure is likely to cause-</p> <p>(i) damage to the economy as a result of premature disclosure of a proposed introduction, abolition or variation of any tax, duty, interest rate, exchange rate or any other instrument of economic management;</p> <p>(ii) damage to the financial interests of the public body 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 for acquisition or disposal of property or supply of goods or services; or</p> <p>(iii) damage to lawful commercial activities of the public body;</p> <p>(e) information may be exempt if its disclosure is likely to cause serious prejudice to the—</p> <p>(i) defence or security of Pakistan; or</p> <p>(ii) the capability, effectiveness of armed forces of Pakistan or other law enforcement agencies;</p> <p>(f) information is exempted if its disclosure is likely to endanger life, liberty, health or safety of any individuals;</p> <p>(g) information may be exempt if—</p>		

Legal provision	Comments	Recommendation
<p>(i) the information was obtained from a third party and on its communication it would constitute an actionable breach of confidence; or</p> <p>(ii) the information was obtained in confidence from third party and it contains a trade secret or if communicated it may prejudice the commercial or financial interests of that third party;</p> <p>(h) information may be exempt if it is privileged from production in legal proceedings, unless the person entitled to the privilege has waived it;</p> <p>(i) information may be exempt if its disclosure is likely to-</p> <p>(i) cause prejudice to the effective formulation or development of government policy;</p> <p>(ii) frustrate the success of policy, by premature disclosure of that policy;</p> <p>(iii) undermine the deliberative process in a public body by inhibiting the free and frank provision of advice or exchange of views;</p> <p>(iv) undermines the effectiveness of a testing or auditing procedure used by the public body;</p> <p>(v) prejudice the proceedings in a court or a tribunal; and</p> <p>(vi) disclose privileged information shared between counsel and the client;</p> <p>(j) information in respect of a crime may not be exempt, except information relating to-</p> <p>(i) the prevention or detection of crime;</p> <p>(ii) the apprehension or prosecution of offenders;</p> <p>(iii) the administration of justice;</p>		

Legal provision	Comments	Recommendation
<p>(iv) the operation of the immigration controls excluding exit control list (ECL);</p> <p>(v) the maintenance of the security and good order in prisons or in other institutions where persons are lawfully detained; and</p> <p>(vi) any civil proceedings which are brought by or on behalf of a public body or arise out of an investigation conducted; and</p> <p>(k) the exemptions set out in section 16 shall cease to apply after every twenty years and that record of public bodies shall be made public</p>		
<p><b>17. Appeal—</b> (1) An applicant who is not satisfied by decision of the designated official or where no decision has been communicated to him within the time fixed for such decision, he may, within a period not exceeding thirty days after either receiving a decision or after the time-limit for such a decision has passed, prefer an appeal to the Information Commission.</p> <p>(2) An appeal under sub-section (1) shall be free of charge.</p> <p>(3) The Information Commission established under section (18) shall decide an appeal under sub-section (1) within a period of sixty days.</p> <p>(4) The public body shall, in an appeal under sub-section (1), bear the burden of proof of showing that it acted in accordance with the provisions of this Act.</p>	None	None
<p><b>18. Information Commission—</b> (1) Within six months of the commencement of this Act, the Prime Minister shall establish Pakistan Commission on Access to Information be known as the Information Commission.</p>		

Legal provision	Comments	Recommendation
<p>(2) The Information Commission shall enjoy operational and administrative autonomy, except as specifically provided for by this Act.</p> <p>(3) The Information Commission shall comprise of three commissioners to be appointed by the Prime Minister, with the following composition; namely</p> <ul style="list-style-type: none"> <li>a) one member shall be from amongst the persons qualified to be a Judge of a High Court;</li> <li>b) one member who has been in service of Pakistan in BS-22 or equivalent; and</li> <li>c) one member shall be from civil society having a degree based on sixteen years of education from a recognized institution and experience of not less than fifteen years in the field of social sciences;</li> </ul> <p>(4) No person shall be considered for appointment as Commissioner under sub-section (3) unless he is less than sixty-five years of age at the time of such appointment.</p> <p>(5) The Information Commission shall be headed by the Chief Information Commissioner, who shall be appointed by the Prime Minister from amongst the Commissioners.</p> <p>(6) The Chief Information Commissioner and the Commissioners shall hold office for a term of four years from the date on which they assume charge of their office and shall not be eligible for such reappointment.</p> <p>(7) The Chief Information Commissioner and the Commissioners shall not hold any other public office or be connected with any political party at the time of or during their appointment in the Information Commission and, once appointed, they shall work on full time basis and may not run any business or pursue any profession during their</p>		

Legal provision	Comments	Recommendation
<p>tenure as the Chief Information Commissioner and Commissioners.</p> <p>(8) The Chief Information Commissioner and Commissioners shall be removed if there are serious complaints of mental and physical incapacity and misconduct against them, which are materially inconsistent with the status of being Chief Information Commissioner or, as the case may be, a Commissioner. The complaint shall be lodged before a five member Parliamentary Committee comprising two Senators nominate by the Chairman Senate and three Members of National Assembly nominated by the Speaker National Assembly. The Speaker National Assembly shall nominate one of the five members as the Chairperson of the said Parliamentary Committee:</p> <p>Provided that where the National Assembly stands dissolved the Parliamentary Committee shall comprise five Senators and Chairman Senate shall nominate one of the five Senators as Chairperson of the Parliamentary Committee.</p> <p>(9) The parliamentary Committee shall consider the complaint, record reasons and present its recommendation to the Prime Minister who shall implement the recommendations within thirty days from the date of receipt of such recommendations.</p>	<p>Section 18(8) mentions that complaint against a Commissioner or Chief Information Commissioner can be lodged before a five member Parliamentary Committee, but it does not clarify how it can be done when the mentioned Committee is not a Standing Committee, and would actually need to be established for the purpose. So, it is suggested that the complaint will be filed with the Speaker Office, who shall establish the Committee within 30 days of the receipt of the complaint.</p>	<p>Section 18(8) may be amended to provide that the complaint will be lodged with the Speaker Office, who shall establish the five member Parliamentary Committee within 30 days of the receipt of the complaint.</p>
<p><b>19. Functions of the Information Commission-</b> (1) The Information Commission shall have the primary responsibility to receive and decide on appeals under Section 17.</p> <p>(2) The Information Commission shall, in addition to its functions under sub- section (1), performs the following functions, namely;---</p>	<p>None</p>	<p>None</p>

Legal provision	Comments	Recommendation
<p>(a) compile a user friendly handbook in Urdu and English describing in easily comprehensible form the rights established by and how to make request under this Act;</p> <p>(b) have an accredited accountant to conduct an audit of its accounts on annual basis;</p> <p>(c) compile a comprehensive bi-annual report both describing its own activities, including an overview of the audited accounts and providing an overview of the activities undertaken by all public bodies to implement this Act. This report shall be laid before the Parliament;</p> <p>(d) ensure that all the information under section 5 is made public; and</p> <p>(e) ensure implementation of this Act and the record to be made public under this Act.</p>		
<p><b>20. Powers of the Information Commission—</b> (1) The Information Commission shall have all the powers, direct or incidental, as are necessary to perform its functions as provided for in this Act and the power to acquire, hold and dispose of property including power to—</p> <p>a) monitor and report on the compliance by public bodies with their obligation under this Act;</p> <p>b) co-operate with or undertake training activities for public officials on the right of access to information and the effective implementation of this Act;</p> <p>c) publicize the requirements of this Act and the rights of individuals thereunder;</p> <p>d) conduct inquiries in relation to an appeal and for this purpose shall have the powers of a civil court in respect for the following matters:—</p>	<p>Section 20(1)(b) says ‘cooperate with’ but does not clarify with whom. This ambiguity needs to be clarified.</p> <p>Section 20(1)(d)(ii) refers to Section 6, which should be deleted. The Commission should be empowered to require production of any record that pertains to the appeal.</p>	<p>Section 20(1)(b) may be substituted by the following:</p> <p>“b) undertake training activities on its own or in cooperation with civil society organisations or government training institutions for public officials on the right of access to information and the effective implementation of this Act;”.</p>

Legal provision	Comments	Recommendation
<p>i. summoning and enforcing the attendance of witness and compelling them to give oral or written evidence on oath; and</p> <p>ii. requiring public bodies to produce records as defined in section 6 pertaining to the appeal;</p> <p>e) order a public body to disclose information to an applicant or to take such other reasonable measures as it may deem necessary to remedy any failure to implement the provisions of this Act;</p> <p>f) impose on the official a fine equivalent to his salary for one day, for a maximum of a hundred days, who has acted willfully to obstruct any activity which is required to be undertaken by this Act; including preventing or delaying the disclosure of information to an applicant;</p> <p>g) appoint its employees in prescribed manner; and</p> <p>h) the Information Commission after determination of willful destruction of record shall refer such matters to the relevant agencies.</p> <p>(2) Non-compliance of a decision of the Information Commissioner under the clauses (e) and (f) of sub-section (1) may, if it has not been appealed against within thirty days, be dealt with in the same way as contempt of court.</p>	<p>Section 20(2) does not clarify how exactly the contempt of court proceedings shall be carried out, and whether the Commission itself shall be conducting those proceedings.</p>	<p>Section 20(1)(d)(ii) may be amended to delete mention of Section 6, and to provide that the Commission shall be empowered to require production of any record that pertains to the appeal.</p> <p>Section 20 (2) may be amended to provide that the Commission shall initiate contempt of court proceedings and impose punishment against any official, who has not complied with an order of the Commission.</p>
<p><b>21. Funding for the information Commission</b>— The federal Government shall make annual budgetary allocation to the information commission to discharge its functional under this Act;</p>	<p>None</p>	<p>None</p>
<p><b>22. Offences</b>— (1) Any person who acts willfully to obstruct the implementation of this Act including by-</p>	<p>None</p>	<p>None</p>

Legal provision	Comments	Recommendation
<p>a) obstructing access to any information or record with a view to preventing the exercise of a right provided for in this Act;</p> <p>b) obstructing the performance by a public body of a duty under this act;</p> <p>c) interfering with the work of the Information Commission; or</p> <p>(d) destroying a record without lawful authority,</p> <p>shall be punishable with a fine not exceeding fifty thousand Rupees.</p> <p>(2) In addition to any other action that may be taken under any other law for the time being in force, any person who willfully destroys a record which at the time it was destroyed was the subject of an application for access to information or appeal, with the intention of preventing its disclosure under this Act, commits an offence punishable with imprisonment for a term which may extend to two years or with fine which shall not be less than one hundred thousand Rupees or with both.</p>		
<p><b>23. Indemnity</b>—No suit, prosecution or legal proceedings shall lie against the principal officer, designated official or any other person of a public body in respect of anything which in good faith is done or purported to have been done under this Act and the rules made thereunder.</p>	None	None
<p><b>24. Recruitment in Information Commission</b>—Excluding the Chief Information Commissioner and commissioners, appointment of officers and staff in information commission from BS-16 and above shall be made through Federal Public Service Commission in line with the Federal Public Service Commission Ordinance, 1977 (XLV Of 1977)</p>	<p>So far, the Commission has not been able to fill vacancies of officers and staff from BS-16 and above, as the Federal Public Service Commission is of the view that its mandate does not extend to autonomous bodies like the Information Commission. Moreover, even if the Federal Public Service</p>	<p>Section 24 may be substituted by the following:</p> <p>“24. Recruitment in Information Commission—Excluding the Chief Information Commissioner and commissioners, appointment of officers and staff in information commission shall</p>

Legal provision	Comments	Recommendation
	Commission could lawfully perform this role, it would take years to complete the recruitment process in view of the quite heavy existing workload.	be made by the Commission through a transparent and a competitive process and, for this purpose, the Commission may obtain services of a reputable recruitment agency in the public or private sectors.
<p><b>25. Act to override other laws</b>— The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.</p>	None	None
<p><b>26. Power to make rules</b>—The Federal Government may, by notification in the official gazette and within one hundred and twenty days from commencement of this Act, make rules for carrying out the purposes of this Act.</p>	It would be better if the Federal Government is required to consult Commission in the process of drafting rules.	Section 26 may be amended to provide that the Federal Government shall consult the Commission in the process of drafting rules or making any amendments thereof.
<p><b>27. Powers to make regulations</b>—The Information Commission may make regulations, not inconsistent with the provisions of the rules made under section 26, regarding its internal procedures and, without limiting the generality for the forgoing, it may make regulations regarding –</p> <ul style="list-style-type: none"> <li>(a) record management standards; and</li> <li>(b) fee that may be charged for requests; and</li> <li>(c) procedure for processing of appeals</li> </ul>	Section 27(b) mentions ‘fee that may be charged for requests’. This needs to be deleted, as it gives the impression that fee for filing requests can be charged, as opposed to actual cost of reproducing information for the applicants..	Section 27(b) may be substituted by ‘schedule of costs for reproducing information for the applicant’.
<p><b>28. Power to remove difficulty</b>—If any difficulty arises in giving effect to any of the provisions of this Act, the Federal Government may make such order, not inconsistent with the provisions of this Act, as deemed necessary for the purpose of removing the difficulty;</p>	None	None

Legal provision	Comments	Recommendation
Provided that no such order shall be made after expiry of one year from the commencement of this Act.		
<b>29. Repeal</b> —The Freedom of Information Ordinance, 2002(XCVI of 2002) is hereby repealed.	None	None

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 issue of peace and development in a 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, media watch and legislative watch and development.



Centre for Peace and  
Development Initiatives

☎ +92 51 831 27 94, 831 27 95

☎ +92 51 844 36 33

✉ info@cpdi-pakistan.org

f /cpdi.pakistan

📍 /cpdi\_pakistan

📷 /cpdi\_pak

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

[www.cpdi-pakistan.org](http://www.cpdi-pakistan.org)

