



GOVERNMENT OF KHYBER PAKHTUNKHWA
KP INFORMATION COMMISSION
7th Floor, Tasneem Plaza, Near Benevolent Fund Building,
6th Saddar Road, Peshawar
Email: complaints.kprti@kp.gov.pk

Ph: +92-91-9212643
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Complaint No. 05857

Mr. Zia Ullah Afridi (Complainant)

Vs.

Establishment Department Peshawar (Public body)

Dated: June 5, 2020

Order:

Riaz Khan Daudzai: Commissioner II

Mr. Zia Ullah Afridi, hereinafter referred to as complainant, filed a complaint with the Commission on April 8th, 2019 stating that he had sought certain information through an information request on March 13th, 2019 from the Establishment Department hereinafter referred to as public body, under the Khyber Pakhtunkhwa Right to Information Act 2013 as the public body has failed to provide the same as per the provisions of the Khyber Pakhtunkhwa Information Act 2013.

The complainant provided copy of the information request filed with the public body seeking copies of all inquiries conducted by Brig (Retd) Tariq Hussain, ex-director IM & PC, Khyber Pakhtunkhwa Ehtesab Commission and he also claimed to have record contained in the following files purportedly possessed by the public body.

- 1) File No. DGEC/KP/1-32/2015
- 2) File No. EC/HR/41-8/2015

The complainant contended that the public body did not provide the information sought by him by stating that the information had not been available with it vide letter No. SO(HRD-II)/ED/1-10/2014(RTI)/Zia Ullah Afridi dated: 25-03-2019.

In his handwritten complaint the complainant further submitted that the public body failed to provide the requested information vide their letter dated: 25-03-2019 by stating that the information was not available with the department even though the handing and taking over record attached with the letter state that they have already received the same from the Khyber Pakhtunkhwa Ehtesab Commission.

The complainant furnished, enclosed with the complaint, copies of the handing-and-taking inventory which he informed was received in response to his earlier information request he filed



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to the Khyber Pakhtunkhwa Ehtesab Commission (KPEC). The inventory shows a litany of the files handed over to the

Establishment Department by KPEC on its abolition in pursuance of Khyber Pakhtunkhwa Ehtesab Commission repeal Act.

He further submitted that the Establishment Department vide letter No. dated: 22nd March, 2019 admitted that the record sought by the complainant was part of the record already handed over to the Anti – Corruption Establishment (ACE) and only the details and record pertaining to the human resource (HR) of the defunct KPEC had been retained in the custody of the Establishment. Therefore, the record requested by the complainant pertaining to the inquiries carried out by the defunct KPEC was not available with the concerned section of the Establishment Department.

By Invoking Section 23 (1) of the KP RTI Act 2013 which provides that *"Anyone who believes that his request has not been dealt in accordance with the provisions of this Act has the right to lodge a complaint with the Information Commission to this effect,"* the complainant filed a complaint to the Khyber Pakhtunkhwa Information Commission (KPIC) diarized on 8th April 2019, stating that as the public body did not provide information sought by the complainant and that the KPIC may direct the public body for needful as per the provisions of KPRTI Act 2013.

The Commission examined the complaint and decided to summon the PIO of the public body vide letter No KPIC/AR/ 1-5857/2019/3961-63 with the direction to attend the proceedings fixed for 23rd May, 2019 along with the relevant record pertaining to the subject case.

In response to the Commission's summon, the representative of the public body Mr. Shams Ur Rehman, section officer (SO) Establishment Department, attended the proceedings whereas the complainant was also present. During the course of Proceedings the complainant stated that the file mentioned at serial No. 01 consisted of 136 pages, which was available with the public body and that he was ready to pay the photocopy charges of the documents as laid down in Section 13 of the KPRTI Act 2013.

However, He further added that he required the File No. IM&PC/EC/HR Review-2(a) which was also available at serial No.04 of the HR Inventory. The Commission directed the PIO to confirm or otherwise the availability of the information the complainant sought within a week time positively.



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On 26-06-2019, the complainant submitted an application to the Commission stating that the PIO had not yet provided him the required information. The Commission issued a summon letter to the public body dated: 24-07-2019.

In compliance to the Commission summons's letter Mr. Shahbaz, SO (E-V)/PIO, of the public body attended the proceedings on 30-07-2019 and initially argued that the information sought falls in the categories exempted under Section 10 and 22 of the KPRTI Act terming the record as third party information. The PIO also sought time to locate the same. However, during the course of proceedings a copy of the relevant page of the inventory was provided to the PIO with the direction to respond within a week, as none of the exempt categories under the KPRTI Act covers his plea.

The complainant asserted during the proceedings that record was still held by the Anti-Corruption Establishment and produced copy of the letter of Khyber Pakhtunkhwa Directorate Anti-Corruption Establishment Khyber Pakhtunkhwa Peshawar No. /DACE/Peshawar, Dated Peshawar the 29.03.2019 to the Secretary. Establishment Department referring to the information request of the compliment and wrote,

"... Enclose herewith a copy of application submitted by Mr. Zia Ullah Afridi, Ex-Advisor to Chief Minister, Khyber Pakhtunkhwa requesting therein for provision of photocopies of minutes sheets of case / reference against him in the defunct Khyber Paktunkhwa Ehtesab Commission.

It is to state here that the provision of requisite record may directly result in altering the decision of reference in Court, moreover, rules needs to be examined as to whether photocopies of note sheets can be provided to an applicant or otherwise.

Considering the above position, it is, therefore, requested that the case may be referred to the Regulation Wing of E&A Department for necessary advice in the matter, please."

The complainant contended that both the departments (ACE and Establishment) were using delaying tactics wasting his valuable time and resources.

The Commission placed the letter of the Directorate of the Anti-Corruption Establishment on record and held that as such neither any specific provisions of the KP RTI Act or any other law had been referred to whereby exemptions has been sought in the matter in question nor prima facie requested information hit any exempt category. Therefore, the Commission directed the public body to expeditiously settle the queries on the provision of minutes sheets and provide the requested information to the complainant under section 26(2) (b&d) of RTI Act, 2013.



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The Commission in its instant observations on the matter held that the documents referred to as minute sheets sought by the complainant may be provided to the Commission for examination and onward transmission to the complainant under Section 26 (2) (b & d) of KP RTI Act, 2013.

However, it was observed with concern that the public body seemingly kept entwined in internal corresponding and has failed to comply with the directives of the Commission and even after the passage of five months it did not provide the requested information neither to the complainant nor Commission for onward transmission to the complainant under provision of Act *ibid*.

During course of proceeding the PIO shared a letter No. SO (HRD-II)/ED/1-10-2014 (RTI))/Zia Ullah Afridi, dated 30th January 2020 written to the SO (E-V) of the Establishment Department requesting provision of requisite record to the Commission within three days.

On consistent failure on the part of the public body to perform as per provisions of the KP RTI Act, 2013, the Commission re-summoned the PIO vide summon letter No. KPIC/AR/15857/2020/1131-34 dated: 14-02-2020.

In compliance to Commission's summon letter Mr. Muhammad Waseem, Assistant of the Establishment Department and Mr. Usman Ud Din, AD (Complaints) Anti-Corruption Department attended the proceedings of the Commission.

After having heard the representatives of both the public bodies, the Commission directed Anti-Corruption Establishment to provide the requested minutes/record of the meetings to the Commission within five working days for examination under Section 26 of KP RTI Act, 2013.

In compliance to the Commission directions issued during the course of proceedings held on 20-2-2020, the representative of the Anti-Corruption Directorate informed the Commission while referring to his department letter No. 413P-40 dated: 03-02-2020 received to the Commission on 04-03-2020 that the required information had been forwarded to Establishment Department for onward transmission to the Commission.

Similarly, in response to the assertions of the ACE, the Establishment Department representative referred to the department letter No. SOE-V (E&AD)/4-10/Info. RTI/2016 dated: 12-03-2020 and informed that they had already requested the Anti-Corruption Establishment to provide the requested information directly to the Commission.



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The Commission in its instant observations directed the ACE to comply with the directives of the Establishment Department and furnish the requested record to the Commission.

The PIO of the Anti-Corruption Establishment complying with the directions of the Commission provided the requested record to the Commission along with a covering letter No. 4834 dated: 17/03/2020 authenticating the record provided by the public body for onward provision to the complainant.

The recorded provided by the public body includes:

- 1) Minutes Sheet dated 9.12.2015 written by Nawaz Khattak Law Officer (one page)
- 2) Minutes Sheet dated 10.03.2016 written by Nawaz Khattak Law Officer (Two pages)
- 3) Minutes Sheet dated 21.04.2016 written by Qazi Babar Irshad, Addl. DPG (Two pages)
- 4) Minutes Sheet dated 17.05.2016 written by Qazi Babar Irshad, Addl. DPG (three pages)
- 5) Minutes Sheet dated 9.12.2015 written by Qazi Babar Irshad, Addl. DPG (two pages)

The record received to the Commission was diarized on 18-03-2020.

However, due to the Pandemic Covid-19 holidays and subsequent notification of the provincial government dated March 16, 2020 regarding standard operating procedures (SOPs) the Commission limited its activities and could not take further action.

Order:

The Commission examined the information provided by the public body, particularly the record pertaining to the legal observations of the additional deputy prosecutor general and decided on June 5, 2020 to dispose of the complaint by transmitting record to the complainant accordingly.


Chief Information Commissioner


Commissioner-II