

TRAINING MANUAL FOR PUBLIC INFORMATION OFFICERS  
**IMPLEMENTING THE KHYBER PAKHTUNKHWA  
RIGHT TO INFORMATION ACT, 2013**

Trainers' Manual - 2018



**Khyber Pakhtunkhwa Information Commission  
Government of Khyber Pakhtunkhwa**

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**KHYBER PAKHTUNKHA  
INFORMATION COMMISSION**

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# Foreword

The incumbent provincial government of Khyber Pakhtunkhwa enacted the KP RTI Act in November 2013 through the Provincial Assembly as part of its Good Governance Legislative Framework. The purpose of the law was twofold. First to provide a legal mechanism to the citizens of Pakistan to have access to information of public importance, as enshrined in the constitution of Pakistan. Secondly to promote transparency and accountability in the functioning of public bodies of the province. For implementing the Act, the provincial government has so far notified more than 3000 officers/ officials to act as Public Information Officers (PIOs) in different public bodies of the province except the seven districts of Provincially Administered Tribal Areas (PATA). Where the law has hitherto not been extended.

In order to train the PIOs about their responsibilities, the Information Commission undertook a series of initiatives, however keeping in view the enormity of the task it was felt necessary to associate our development partners' i-e. the Gesellschaft für Internationale Zusammenarbeit (GIZ) in the exercise of training the PIOs in a professional manner, for the ultimate benefit of citizens. The first step in this regard is the preparation of a Training Manual for use by Master Trainers in all the training sessions to be organized for PIOs in different districts of the province in the days to come. I am confident that the Training Manual so prepared will be a comprehensive document covering all aspects relating to efficient disposal of information requests of citizens. I will take this opportunity to thank the GIZ, Center for Law and Democracy (CLD), Canada, and Center for Governance and Public Accountability (CGPA) for their assistance in preparation of the Manual. I also hope that such endeavours shall pave the way for effective implementation of the KP RTI Law in the province and promote state-citizen dialogue.

Azmat Hanif Orakzai  
Chief Information Commissioner  
KP, Information Commission  
Government of Khyber Pakhtunkhwa



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## INTRODUCTION TO THE MANUAL

The first law giving individuals the right to access information held by public bodies (the right to information or RTI) in Pakistan was the federal Freedom of Information Ordinance, 2002. Balochistan then passed an essentially carbon copy of this in its Freedom of Information Act 2005, followed by the Sindh Freedom of Information Act 2006, again a very similar law. These were all very weak laws indeed. A breakthrough came in 2013, when both Khyber Pakhtunkhwa and Punjab provinces adopted much stronger RTI Acts, which included provision for powerful, independent oversight bodies or Information Commissions. More recently, in 2017, the federal government adopted a stronger Right of Access to Information Act, 2017 and Sindh adopted the Transparency and Right to Information Act.

Although Khyber Pakhtunkhwa and Punjab are now into their fifth years of implementing these laws, there is still a huge need for further training, especially for the Public Information Officers (PIOs) who bear most of the burden of implementing these laws within public bodies. It is of the greatest importance that these officials receive good training on implementation of the Act, and that is the main goal of this manual.

Specifically, this manual is designed as a trainers' manual for a two-day training course for PIOs from Khyber Pakhtunkhwa. The course aims to improve PIOs understanding about RTI and, in particular, how to discharge their responsibilities under the Khyber Pakhtunkhwa RTI Act.

The manual is divided into seven substantive sessions followed by a role play exercise and a final session, involving a group test. The first three sessions can be described as introductory in nature, while the following four focuses on the specific duties of PIOs under the Act.

The first session introduces participants to the idea of RTI, traces its recognition as a human right, outlines the benefits and describes the key international trends in this area. The second session focuses on the key international principles underpinning this right, and how to measure the quality of RTI laws. The third session provides an overview of the provi-

sions and structure of the Khyber Pakhtunkhwa RTI Act, followed by an overview of the responsibilities of PIOs and then of public bodies.

The next four sessions delve into far more detail on the responsibilities of PIOs in terms of: handling requests for information, interpreting and applying exceptions, dealing with complaints and undertaking various other duties (such as proactive disclosure of information and reporting to the Information Commission).

The role play is intended to give participants a chance to apply the knowledge and skills they have learned in this course in a practical context, while the final group test is designed to assess how much knowledge participants have retained from the course at its end.

This manual can be used in the following three ways.

- As a teaching guide for trainers running an actual course for PIOs;
- By PIOs as self-learning tool, even if they have not taken the course; and
- By PIOs who have gone through the training course, as a reference manual.



# AGENDA

This agenda is intended as a guide only for those responsible for delivering the course. It can be adapted and also applied somewhat flexibly depending on how long different sessions and activities are taking.

## TWO-DAY TRAINING COURSE

### DAY ONE

0830 – 0900	Registration
0900 – 0930	<b>Opening Session</b>
0930 – 1030	<b>Session 1:</b> What is the Right to Information, Global Trends and why is it Important?
1030 – 1100	Refreshment Break
1100 – 1230	<b>Session 2:</b> RTI Legislation Principles
1230 – 1330	Lunch
1330 – 1500	<b>Session 3:</b> Khyber Pakhtunkhwa RTI Act
1500 – 1530	Refreshment Break
1530 – 1700	<b>Session 4:</b> Handling RTI Requests

### DAY TWO

0900 – 1030	<b>Session 5:</b> Exceptions
1030 – 1100	Refreshment Break
1100 – 1230	<b>Session 6:</b> Complaints
1230 – 1330	Lunch
1330 – 1500	<b>Session 7:</b> PIOs' Other Duties
1500 – 1530	Refreshment Break
1530 – 1630	<b>Role Play Exercise</b>
1630 – 1700	<b>Final Session: Test and Closing</b>



## OPENING SESSION

### Purpose of the Session

The purpose of the session is to introduce participants to each other, to assess expectations and to introduce the course (style and content).

### Expected Learning Outcomes

After attending this session, the participants will be able to:

- Interact together well
- Understand what they can realistically expect to gain from the course
- Participate appropriately in the course activities

### Material Required

Flip charts, markers, multi-media or overhead projector, note books and pens/pencils (to be handed out to each participant at the beginning of the course)



### Introductory comments

The moderator should start by introducing him- or herself and then cover the following points.

In November 2013 the Khyber Pakhtunkhwa Right to Information Act was passed by the Provincial Assembly. The Act has implications for all public bodies in Khyber Pakhtunkhwa. It requires them to put in place systems to make information readily available to citizens. This includes appointing and training Public Information Officers (PIOs).

Pakistan also has a federal law, the Right of Access to Information Act, 2017, which replaced the earlier, much weaker, Freedom of Information Ordinance 2002. In Balochistan, there is also a Freedom of Information 2005, which is very similar to the old federal Ordinance. Just around the same time as Khyber Pakhtunkhwa, Punjab adopted the Punjab Transparency and Right to Information Act 2013, a strong law. Finally, in 2017, Sindh adopted the Transparency and Right to Information Act, 2016, which also replaced a much weaker earlier law.

You have all been appointed as Public Information Officers by the respective departments/organizations you work for. This course is designed to help you understand exactly what that entails and how you can carry out your role.

### Activity 1: 'Ice-breaker'

Pair up participants and ask them to interview each other and then introduce each other briefly to the whole group (this can also serve as introductions).

### Discussion of expectations from the course

Expectations should be written on a flip chart and the moderator should then indicate to participants which expectations the course aims to cover and which (if any) are outside of its scope. At the end of the course, the moderator should go through the flip chart sheet of expectations and ask participants whether they feel that those expectations were met.

### Discussion about course objectives or purposes

Following this, the facilitator will introduce the purposes of the course. These are, broadly:

- To raise awareness about international standards and developments regarding the right to information (RTI).
- To raise awareness about the Khyber Pakhtunkhwa legal framework for the right to information.
- To help participants – Public Information Officers – to understand better their responsibilities under the Act (i.e. all of the activities that the Act requires them

- to do in terms of implementation).
- To help participants think about how they will discharge those responsibilities, including in terms of what their priorities are.



#### Discussion Point

Are there any other purposes that you feel are important and that should be added? Does this largely conform to your expectations?

#### Discussion about course style

The course is designed to be **interactive**. Please feel free to jump in and ask questions at any stage; we see this very much as a collaborative effort in which we all work together, but this will only be possible through your active participation. So please get involved and make the most of this opportunity to learn about RTI and the critical role you will be playing in implementing RTI in Khyber Pakhtunkhwa. Among other things, this will help ensure that the course is as responsive as possible to participants' needs and that participants understand the material being covered.

The course will employ various **methodological approaches**. These will include presentations, open discussions and different sorts of exercise; we believe in 'learning by doing'! We also draw heavily on examples from other countries where RTI is already being implemented, so you can see how RTI works in practice.

The course will include a number of **exercises**. The purpose of exercises is to allow participants to work together in smaller groups to discuss the material and thereby to obtain a greater understanding of it. In most cases, the exercises will ask participants to work in groups to prepare a response to the question posed in the exercise. In most cases, there will be a plenary discussion about these responses, so each group should appoint someone who will be ready to provide feedback on their discussions to all participants. One exercise – on exceptions – is more involved and consists of a role play, with different members of the group playing different roles.

#### Introduction of the Agenda

The manual is for a two-day course, divided into seven substantive sessions followed by a role play exercise and a final session, involving a group test. The first three sessions can be described as introductory in nature, while the following four focuses on the specific duties of PIOs under the Act.

The first session introduces participants to the idea of RTI, traces its recognition as a human right, outlines the benefits and describes the key international trends

in this area. The second session focuses on the key international principles underpinning this right, and also how to measure the quality of RTI laws. The third session provides an overview of the provisions and structure of the Khyber Pakhtunkhwa RTI Act, followed by an overview of the responsibilities of PIOs and then of public bodies.

The next four sessions delve into far more detail on the responsibilities of PIOs in terms of: handling requests for information, interpreting and applying exceptions, dealing with complaints and undertaking various other duties (such as proactive disclosure of information and reporting to the Information Commission).

The role play is intended to give participants a chance to apply the knowledge and skills they have learned in this course in a practical context, while the final group test is designed to assess how much knowledge participants have retained from the course at its end.



## SESSION ONE: WHAT IS THE RIGHT TO INFORMATION, GLOBAL TRENDS AND WHY IS IT IMPORTANT?



### Purpose of the Session

The purpose of the session is to introduce participants to the core idea behind the right to information, to look at how the right has been recognised as a human right globally and in Pakistan, to describe recent global trends in this area and to outline its benefits, illustrating these with actual examples of RTI use from across the world.

### Expected Learning Outcomes

After attending this session, the participants will be able to:

- Understand better what the right to information is and the key modalities for accessing information (reactive, proactive, open data)
- See how the right is protected as a human right under international law and the Constitution of Pakistan
- Describe the various benefits of the right
- Situate Pakistan RTI within a wider global framework of trends on this issue

### Material Required

Flip charts, markers, multi-media or overhead projector

### What do we Mean by 'Right to Information'?

Right to information is the term used for the right to access information from government. Citizens can ask government (public bodies) for information, and government has to provide it because accessing that information is a right.

The core concept behind the right to information is that public bodies do not hold information just for themselves. Instead, they hold it on behalf of the public as a whole, which, at least in democracies, has given them a mandate to do this work and to whom the funds which support public bodies (i.e. public funds) ultimately belong.

If you think about it this makes sense, because all the information government holds is about the people and the country, about all of us. Of course there is some information that cannot be disclosed; it is universally recognised that the right to information is not absolute and that certain types of information should not just be disclosed to anyone who asks for it. This includes, for example, sensitive information relating to the security of the nation and private information about individuals. The core idea behind the right to information is that access is the default or presumed position, and that any refusal to provide information is exceptional in nature (so that we call the rules on withholding of information 'exceptions'). One of the important consequences of the creation of a presumption in favour of access is that public bodies must justify any refusal to make information public.

It is easy to talk about this idea in theoretical terms but as a matter of reality it is important to recognise that creating a presumption in favour of openness is a radical change in most countries. Indeed, it represents an almost complete reversal from the historical situation, which was that governments and public bodies operated for the most part in secret, and that they treated the information they held as belonging to them, and not something they needed to share with the public.

It is often difficult for officials to implement right to information laws, due to the radical nature of the changes these laws bring. In essence, these laws turn officials' whole world upside down, from a situation where they could assume secrecy of 'their' information to a situation where they have to share information with anyone who happens to ask for it. Even you, as Public Information Officers or specialists, may find this a difficult adjustment. And you can certainly expect some resistance from your colleagues when you are pressing them to provide information to the public.

### Something for you to think about:

What is the traditional relationship between government and citizens (in developing countries)? Who has ownership of information? Is information

shared freely?

How does RTI change this traditional relationship?

Will this be difficult for officials to adjust to?

As a matter of practice under most RTI laws, there are two main ways of exercising this right:

- Reactive or responsive provision of information: Anyone can make a request to a public body for information that he or she wants, and that body should provide the information to the requester within a set timeframe.
- Proactive provision of information: Public bodies should publish key types of information even without a specific request for that information, so that everyone can access it.

Although people often do not see proactive disclosure of information as part of the right, in fact it is a very important means of providing information held by public bodies to the public. The number of individuals who actually make requests for information will in most countries be relatively low. Even in a developed country like Canada with a long-standing right to information law (since 1982), only five percent of all citizens have ever made a request for information. For the rest of the public, the main means of accessing information held by public bodies is via proactive disclosure.

There is also a very close relationship between the two types of disclosure: proactive and reactive. The more information that is made available on a proactive basis, the less need there is for citizens to make requests to get this information. So, as the amount of information made available proactively increases, the number of requests for information naturally decreases. In practice, it is far quicker and easier to make information available proactively than to process a request for the same information, due to the fact that the latter must be registered, a receipt must be sent to the requester, the information must be found and then assessed for exceptions and so on. As a result, most countries are moving forward very strongly in terms of making information available on a proactive basis.

Another idea has emerged in recent years which is very closely related to the right to information, namely the idea of open data, sometimes referred to more generally as open government. At its heart, this is really a form of proactive disclosure, since it involves public bodies making information available on a proactive basis. However, it has a few added features, as follows:

1. Information, especially numerical or statistical data, should be made available in machine-readable formats such as Word for text and Excel for spreadsheets, rather than as .jpg scans or .pdf files. Because the former can be processed by computers and other digital devices, users can manipulate the information

electronically and combine it with other information or databases to create new products, or reveal broader statistical trends.

### Example

The website <https://data.gov.uk> showcases a number of innovative ways in which information released by the United Kingdom government is being used. These include an interactive map developed by a university researcher showing traffic accident statistics, which allows people to locate danger spots. Another application, developed by a private sector company, tracks crime statistics street by street, allowing people to see what offences have been committed in their neighbourhood, as well as the resolution of every incident (i.e. whether the offender was apprehended).

2. Information and data are made available for free instead of for a fee. While governments once used to sell most higher value data, the trend now is simply to give it away for free. This means that even high value data becomes accessible to everyone, and this has resulted in very innovative and commercially beneficial products being developed.

### Example

In the United Kingdom, the government used to sell very detailed maps, known as ordinance survey maps. These maps are now available in electronic formats for free and they have been used by numerous 'app' developers to create useful products for the public.

3. Finally, information produced or owned by public bodies is provided without being subject to any copyright restrictions (i.e. free of any intellectual property constraints). Usually, this is done by attaching an open licence to the information, allowing individuals to use the information for whatever purpose they may wish. This is also key to the commercial reuses noted above.

### Example

There are various initiatives in place around the world which use mapping and survey information to help people with disabilities get around. Governments naturally produce highly accurate maps. Releasing these maps to the public, in an open electronic format and under open licence, has allowed developers to build applications that let users report on accessibility features or obstacles they encounter. These modified maps now allow users to search for routes that are accessible for persons with a particular disability, such as requiring a wheelchair. For more information, see: <https://wheelmap.org>.

## RTI is a Fundamental Human Right

The right to information is a fundamental human right. Perhaps to the surprise of some, it is over the last 15 years that the right to information has become recognised under international law as being a fundamental human right. Although

there are several potential sources for this right, the core basis for its recognition is as part of the wider right to freedom of expression. It is included in Article 19 of the Universal Declaration of Human Rights (which is almost the same as Article 19 of the International Covenant on Civil and Political Rights (ICCPR), a formally binding international treaty which Pakistan ratified on 23 June 2010):

***“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”***

Article 19, Universal Declaration of Human Rights

Under international law, as reflected above, the right to information is included in the wider international guarantee of the right to freedom of expression, which includes the right to seek and receive, as well as to impart, information and ideas. These words reflect the fact that the right to freedom of expression under international law not only protects speakers but also listeners and, in a more general sense, those who wish to receive information. This provides a grounding for the right to information.

Perhaps surprisingly, prior to 1999 there was very little recognition of the right to information in international law but authoritative bodies started to make some clear statements about the right starting around that time.

***“Implicit in freedom of expression is the public’s right to open access to information and to know what governments are doing on their behalf, without which truth would languish and people’s participation in government would remain fragmented.”***

The (then) three special mechanisms on freedom of expression at the UN, OAS and OSCE, 1999 Joint Declaration

***“The right to access information held by public bodies is a fundamental human right which should be given effect at the national level through comprehensive legislation (for example Freedom of Information Acts) based on the principle of maximum disclosure, establishing a presumption that all information is accessible subject only to a narrow system of exceptions.”***

The (then) three special mechanisms on freedom of expression at the UN, OAS and OSCE, 2004 Joint Declaration

The issue was first raised before the European Court of Human Rights in a case in 1985. While the Court did not totally rule out the idea of a right to information, it refused to recognise it in that case, saying that the right to receive information and ideas primarily protected the exchange of information between private parties rather than the right to access information held by public bodies. It continued to hold this position in a number of other cases where a right to information was claimed.

In a case in 2006 – *Claude Reyes et al. v. Chile* – the Inter-American Court of Human Rights broke new ground and clearly recognised the right to information as part of the right to freedom of expression, as indicated in the quote below:

***“Article 13 of the Convention protects the right of all individuals to request access to State-held information, with the exceptions permitted by the restrictions established in the Convention. Consequently, this article protects the right of the individual to receive such information and the positive obligation of the State to provide it.... The information should be provided without the need to prove direct interest or personal involvement in order to obtain it.”***

Inter-American Court of Human Rights, *Claude Reyes et al. v. Chile*

The Court recognised that the right to information, as an element of the right to freedom of expression, was not an absolute right and could be restricted. However, a restriction would need to meet the same three-part test as any restriction on freedom of expression. It would need to be set out clearly in law and serve one of the legitimate interests recognised in Article 13 of the Inter-American Convention (which are identical to those recognised under Article 19 of the ICCPR). Importantly, the Court also held the following in relation to any restrictions on the right to information:

***“Lastly, the restrictions imposed must be necessary in a democratic society; consequently, they must be intended to satisfy a compelling public interest. If there are various options to achieve this objective, that which least restricts the right protected must be selected. In other words, the restriction must be proportionate to the interest that justifies it and must be appropriate for accomplishing this legitimate purpose, interfering as little as possible with the effective exercise of the right.”***

Inter-American Court of Human Rights, *Claude Reyes et al. v. Chile*

Pushed by the Inter-American Court of Human Rights, the European Court of Human Rights finally recognised the right in a case decided in 2009, *Társaság A Szabadságjogokért v. Hungary*. The UN Human Rights Committee also recognised the right in 2011 in its General Comment No. 34 on Article 19 of the ICCPR, as indicated in the quote below.

***“Article 19, paragraph 2 embraces a right of access to information held by public bodies. Such information includes records held by a public body, regardless of the form in which the information is stored, its source and the date of production.”***

Human Rights Committee, 2011 General Comment No. 34

### Terminology: Right to information or freedom of information?

Another term you might have heard of is freedom of information or FOI. Both RTI

and FOI are used in literature and legislation to refer to accessing government information; some countries have RTI Acts and others have FOI Acts. However, FOI often gets confused with freedom of expression and press freedom. RTI is thus a better term because it more clearly conveys the sense that citizens have the right to access government information.

### Constitutional Guarantees

It is essential to have legislation guaranteeing the right to information and setting out the modalities by which this right will be exercised. Constitutional guarantees are also important as they give overriding status to the right and make it clear that it is a human right, not simply a right guaranteed by law. About 60 national constitutions include guarantees for the right to information and in some countries courts have also found this right to be implicit in wider guarantees of freedom of expression.



#### Discussion Point

Do you agree that it is important to have a constitutional guarantee of the right to information? Why or why not?

In Pakistan, in addition to being protected by federal and provincial legislation, RTI is a constitutional right, guaranteed in Article 19-A under the 18th Constitutional Amendment. Since the 18th Constitutional Amendment also devolved considerable functions and powers to the provinces, responsibility for ensuring citizens can enjoy their constitutional right to information rests to a considerable extent with provincial governments.

### Benefits of RTI

So far we have talked about what RTI means. Let us now consider why RTI is important: what is it about RTI that has led so many countries and international organizations to take it up?

The direct benefit of RTI is, of course, transparency: it brings information into the public domain and allows citizens to see what government is doing. The 'knock on' effects of RTI, however, are much wider. Its benefits include:

#### Why is Transparency Important?

- To do away with the culture of secrecy
- To keep check on authority delegated under law
- To hold government accountable
- To build confidence of citizens in various policies and initiatives of government
- To ensure just use of public funds

• **Promoting accountability** – the public have the right to scrutinise the actions of



to information RTI promotes accountability.

***“Without information, accountability will merely be the shadow of an idea lacking any substance.”***

<sup>1</sup>Patrick Birkinshaw, *Freedom of Information and Openness: Fundamental Human Rights?*

• **Reducing corruption** – secrecy and lack of information create a breeding ground for corruption and abuses of power. By promoting transparency and accountability RTI curbs such abuses. Indeed, one of the most high profile benefits associated with the right to information is its power to combat corruption and other forms of wrongdoing in government. Different social actors – including investigative



journalists, watchdog NGOs and opposition politicians – can use the right to information law to obtain information which would not otherwise be available to them and to use it to expose wrongdoing. Once wrongdoing is exposed, this normally helps root it out. As U.S. Supreme Court Justice Louis Brandeis famously noted: “A little sunlight is the best disinfectant.” This benefit is so clearly recognised that one of the measures in the UN Convention Against Corruption is to call on States to adopt right to information laws.

***“It is not coincidental that countries perceived to have the most corrupt governments also have the lowest levels of development or that countries with***

<sup>1</sup> Patrick Birkinshaw, “Freedom of Information and Openness: Fundamental Human Rights” (2006) *Administrative Law Review* 58:1, p. 194.



*access to information laws are also perceived to be the least corrupt. In 2002, of the ten countries scoring best in Transparency International's annual Corruption Perceptions Index, no fewer than eight had effective legislation enabling the public to see government files. Of the ten countries perceived to be the worst in terms of corruption, not even one had a functioning access to information regime."*

Commonwealth Human Rights Initiative website, RTI Resources



• **Improving service delivery** – by making those in office accountable for their actions and by giving citizens a voice, RTI helps ensure the former work for the benefit of the latter. It promotes better planning and service delivery, i.e. improved education facilities, improved health care, and so on, leading ultimately to better human development outcomes. Although it requires some resources to implement an effective right to information system, there is evidence to

suggest that these systems can also help to create efficiencies, by fostering public oversight. Having a set of “fresh eyes” look over processes can lead to useful inputs for how they may be improved. Although not always pleasant to receive, constructive criticism is, nonetheless, important to fostering positive changes.



• **Promoting access to services/entitlements** – when citizens have access to information about service delivery and other government functions, they know what they are entitled to and they know how and where to demand their right to those services and other benefits. RTI thus empowers citizens to obtain their rights and entitlements.

• **Promoting political participation** – citizens who understand public affairs and what government is doing can voice their opinion on issues that affect their lives: they can participate in the business of government. This is true not just for voting at election time, but also for other mechanisms for citizen participation, e.g. expressing opinions in a policy debate, citizen oversight of services. Consider the policy process: it is not possible to provide useful input into this without access to the policy itself, as well as the background information policy-makers have relied upon to develop the policy. RTI supports citizens in making political and economic choices and participating in public affairs and thus strengthens democracy.



• **Strengthening press freedom** – the media are sometimes referred to as the ‘fourth pillar of the state’. They have an important role to play in keeping citizens informed, keeping those in office ‘on their toes’, highlighting issues of public interest, and so on. In order to be able to perform this role properly the media need access to information. RTI strengthens the media, and thus democracy.



• **Promoting economic growth** – by promoting transparency and reducing corruption, RTI creates a rule-based environment in which, for example, information about business opportunities is equally accessible to everyone, contracts are awarded in an open and transparent manner, investor confidence is high. RTI thus creates an environment conducive to investment and business. In many countries, commercial businesses are a significant user group. Public bodies collect and hold vast amounts of information on a wide range of issues, much of

which is relevant to economic matters or social trends, which businesses can put to good use. This is an important benefit, which also helps respond to the concerns which are often voiced about the high cost of implementing right to information legislation. The economic value of the information released under right to information requests has been assessed at many billions of dollars.



• **Improving government functioning** – it is important to stress that it is not just citizens and civil society groups who benefit from RTI, but also government itself. RTI makes information available to all. Increased access to information by government officials and public bodies makes it easier for them to carry out their duties. When governments become more open and share information on a formal basis (i.e. under the right to information law rather than just informally through personal contacts), this can help control rumours and build a more solid basis for the

information that circulates in society. This, in turn, helps build better overall relations between citizens and the government, which are based more on trust than on the rumours which can circulate in the absence of solid information. RTI thus increases the efficiency of government itself.



• **Supporting dignity and personal goals** – Although issues such as corruption and accountability tend to attract more attention, the right to information also serves a number of other important individual goals. The right to be able to access information about oneself that is held by public bodies is part of one's basic human dignity. It can also be useful to help individuals make personal decisions. For example, individuals may not be able to make decisions about medical treatment, financial planning and so on if they cannot access their medical records. It

may also be necessary to access information to correct mistakes, which can lead to serious problems. There has, for example, been a growing problem of individuals with the same names as actual suspects being put on no fly lists. Right



to information requests can also reveal information that directly impacts one's health or livelihood, such as environmental information related to a person's community.

As you can see, the benefits of RTI are indeed far-reaching. RTI is an essential pre-requisite for democracy, good governance, development and poverty reduction.

### Activity 2: How can RTI help me?

Imagine you are each of the following, and think of the ways in which RTI could be useful to you:

1. A journalist investigating a story about corruption in a government privatization scheme.
2. A man who applied for a passport but is still waiting for it after two months.
3. A contractor who submitted a tender for a government road building contract but it was awarded to a rival.
4. A parent with children attending the local school, worried about the lack of teachers.
5. A provincial level civil servant tasked with presenting monthly summaries of district-wise data.
6. A human rights activist concerned about police treatment of prisoners.
7. An environmental activist concerned about the impact of development schemes on local forests.
8. A widow with five children who has been told she is not eligible for payments under the local social protection program.

In each scenario, first define your objectives – what you are trying to achieve. Then consider which type of information would help you to achieve that goal. This is the information you would use the RTI law to access.

[To be followed by discussion.]

### Actual RTI Examples from other Countries

The case studies below have been taken from a range of countries across the world. They show RTI being used in practice to achieve the benefits – accountability, improved services, entitlements and so on – listed above.

**South Africa: Using RTI to get water for a village** – People in the South African village of Emkhandlwini had no water, while neighbouring villages were getting water deliveries from municipal tankers. The villagers filed an RTI request for minutes from the council meetings at which water programmes had been discussed and agreed, and for the council's Integrated Development Plan (IDP) and the IDP budget. This information showed that there were plans to deliver water throughout the region, but that somehow

Emkhandlwini had been left out. Armed with this information, the villagers were able to successfully demand water for their village.

**Uganda: Using RTI to stop corruption in the education system** – In the Ugandan education system in the 1990s, large sums of money used to be transferred to schools via local authorities. However, a survey in the mid-1990s found that 80% of these funds never reached the schools. In response, the central government started publishing figures in local newspapers about the monthly transfers that had been made to local authorities. This meant that both officials at the schools and parents could access information about the (intended) size of the transfers. A few years after the programme was started, the funds not reaching schools had dropped from 80% to 20%.

**India: Using RTI to repair a village bridge** – In one village in India, the bridge spanning the stream next to the village had broken six years ago. Local people had been petitioning the government every year to have the bridge repaired, but the officials told them that the government had not yet allocated the required funds. As a result they had to travel an extra ten kilometres every day in order to go to the neighbouring town or to catch a bus from the main road.

After the Indian RTI Act was introduced, the villages submitted an RTI application asking the government for reasons why the bridge had not been repaired. In fifteen days they got a most surprising reply where the Commissioner's office informed them that as per official records the funds for the repair of their bridge had been sanctioned five years ago and that the bridge had already been repaired. In fact, last year additional funds had been sanctioned to repaint the repaired bridge! However, as their RTI application suggested that the bridge had not actually been repaired, an inspection team was being sent to enquire into the matter. The inspection team found that the local officials had pocketed the money and had certified on paper that the bridge had been repaired. Therefore, action was initiated against the guilty officials and the bridge was finally repaired.

**Spain: Using RTI to support participation** – In 2015 the Mayor of the Spanish town of Villar de Canas volunteered to host a nuclear waste storage facility. The decision was a highly controversial one, with proponents of the project arguing that it would bring jobs and economic security, while opponents worried about the potential environmental and health dangers. In the midst of this debate, activists from Transparency International-Spain successfully appealed for the release of the Nuclear Safety Council's full assessment of the site, including a dissenting opinion which cited significant concerns. Using this information, they were able to campaign against the facility.

**India: Using RTI to 'scare' officials to issue a passport** – An 80-year old widow in India had applied for a passport to visit her children who lived abroad. Months had gone by and she still didn't have her passport. Whenever she went to the passport office to try and find out what the hold up was, she was accosted by touts who offered to get her the passport if she was willing to pay a hefty bribe. She then prepared an RTI request asking why she had not yet received her passport, who was responsible for

the delay and what action the government intended to take against the responsible officer. When she arrived at the passport office and gave her RTI application to the concerned official, the official read her application, asked her to wait for a minute, went inside and came back with her passport, which he then handed to her, along with a request that now that she had got her passport, she should not file the RTI application!

**Canada: Using RTI to promote accountability** – A few years ago in Canada, the then Defence Minister called the search and rescue service to provide him with a helicopter to transport him back from an ice fishing holiday, even though these helicopters are supposed to be used only for emergency situations (and not as ‘taxis’ for senior officials). The initial response by the search and rescue service to this request was telling: “If we are tasked to do this, we of course will comply,” the official said. But he added that, “given the potential for negative press though, I would likely recommend against it, especially in view of the fact the air force receives regular access-to-information requests specifically targeting travel on Canadian Forces aircraft by ministers.” In other words, the right to information law led to the official taking a more responsible attitude to wasteful or improper uses of public resources. Although he was overruled by the Minister, the official’s warning was prescient. Shortly after, the office indeed received a media request for the information, and the Minister’s wrongdoing was the subject of extensive public debate.

**Pakistan: Using RTI to ensure safe drinking water in Islamabad** – The Capital Development Authority (CDA) has installed water filtration plants in various locations in Islamabad to provide citizens with safe drinking water. However, following numerous complaints from residents about the quality of the water, an NGO submitted a freedom of information request to the CDA Water Management Division. They sought details related to water testing, frequency of changing the water filters, and display of information for the public. CDA did not respond to the FOI request, so the NGO complained to the Federal Ombudsman, following which the information was provided. This FOI request led to CDA taking more care to ensure safe drinking water, and even inviting the NGO’s representatives to accompany CDA officials when they changed some filters.

**Thailand: Using RTI to secure education entitlements** – In early 1998, shortly after the Thai RTI law was first adopted, a parent, Sumalee Limpa-owart, used it to fight against corruption in the education system. Her daughter had been refused entry to a prestigious state-funded school. Admission was supposed to be based on a competitive entrance examination. Surprisingly, however, the student body was largely composed of children from elite families, suggesting that some form of bribery was involved. Sumalee sent a letter to the school requesting the marks and answer sheets of her daughter and the 120 students who were admitted. When she received no reply, she filed a petition under the Official Information Act and eventually appealed the case to the Official Information Commission, which ordered disclosure of the information. Sumalee was eventually given access to the answer sheets and marks in March 1999. By that time, the school had already admitted to corrupt practices in the processing of the admission of 38 students.



**Slovakia: Using RTI to protect the environment** – Slovak law requires companies that engage in the harvesting of trees in forests to prepare a forest management plan, which must be approved by the Ministry of Agriculture. Historically, these plans were classified documents. A local NGO eventually managed to gain access to these plans under the country's RTI law. Using information in the plans, the NGO managed to campaign successfully for larger areas of forest to be protected as nature reserves. This was followed in 2005 by amendments to forestry legislation requiring that the information and background material used in developing forest management plans be made public on a proactive basis. The new amendments also promoted public participation in the development of forest management plans by allowing representatives of NGOs to be present at official meetings where the plans were discussed.

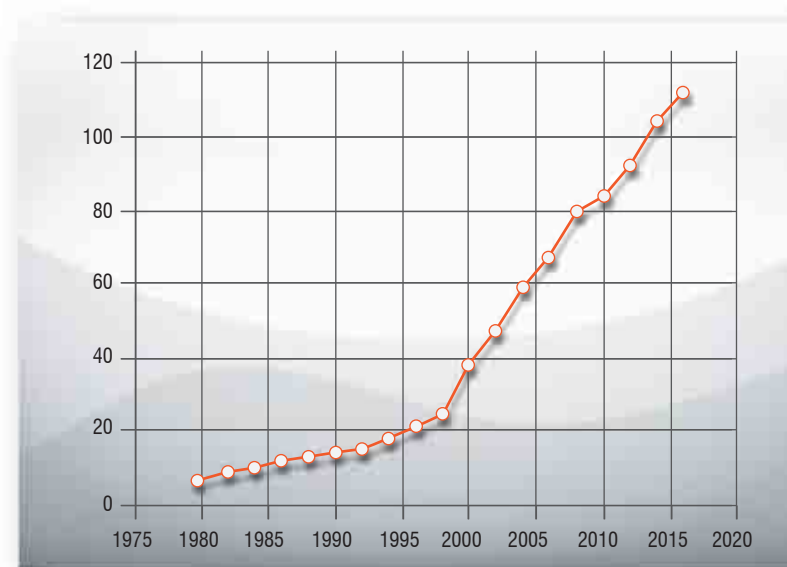
**United States: Using RTI to protect prisoners' rights** – In the United States, information requests filed by Muckrock, a website, have helped to track a range of abuses taking place in the country's privately run prisons, including charging prisoners extortionate prices for basic necessities, staffing shortcuts and insufficient access to medical care. Documents made available as a result of information requests have also helped to shed light on human rights abuses committed by the Central Intelligence Agency on suspects captured as part of the "War on Terror", as well as allegations of torture by detainees held at Guantanamo Bay.

**Global Trends on the Right to Information** – There are now over 110 countries around the world which have adopted right to information laws (115 as of April 2017), up from just 14 in 1991. The rate of growth of these laws is shown graphically in Figure 1. That graph also shows that the rate of adoption of these laws has increased sharply over the last 20 years. Until around 1997, the rate of adoption was only about one per year, but that increased after that to around four per year as the chart (opposit page) illustrates.

As Figure 2 shows, the first countries in the world to adopt right to information laws were western democracies, starting with Sweden. The next regions to engage heavily in this process, starting around 1995, were countries in Eastern and Central Europe and Asia. This was followed by laws being adopted in Latin America and the Caribbean (LAC), starting around 2000. Countries in sub-Saharan Africa started adopting laws at around the same time, but the rate of penetration in this region is much lower. Finally, since 2007, led by Jordan, countries in the Arab World have started to adopt laws.

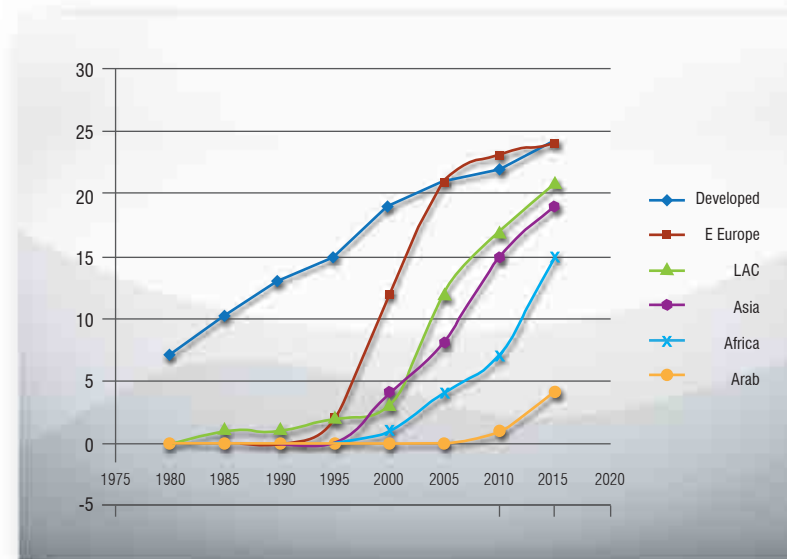
Within South Asia, Pakistan was the first country to adopt such legislation in the form of the federal Freedom of Information Ordinance 2002. Since then India adopted an RTI act in 2005, Nepal in 2007, Bangladesh in 2009, Afghanistan and the Maldives in 2014 and Sri Lanka in 2016.

The spread of RTI is not confined to countries and national governments. Many international organizations now have access to information policies, e.g. the World Bank, Asian Development Bank. The World Bank first adopted an access to information policy in 1994, and a new more robust policy came into effect in July 2010. The Bank is now recognized as being one of the most open inter-governmental bodies.



**Figure 1: Number of RTI Laws Over Time**

Source: RTI Rating by the Centre for Law and Democracy and Access Info Europe



**Figure 2: Number of RTI Laws by Region, Over Time**

Source: RTI Rating by the Centre for Law and Democracy and Access Info Europe

## International Right to Know Day <sup>2</sup>

International Right to Know Day began on 28 September 2002, when freedom of information organizations from around the world came together in Sofia, Bulgaria and created the FOI Advocates Network (FOIANet), a global coalition working together to promote the right of access to information for all people and the benefits of open, transparent, and accountable governments. The members of FOIANet decided to commemorate this day as a way to share ideas, strategies, and success stories about the development of freedom of information laws and genuinely transparent governance in their own nations.

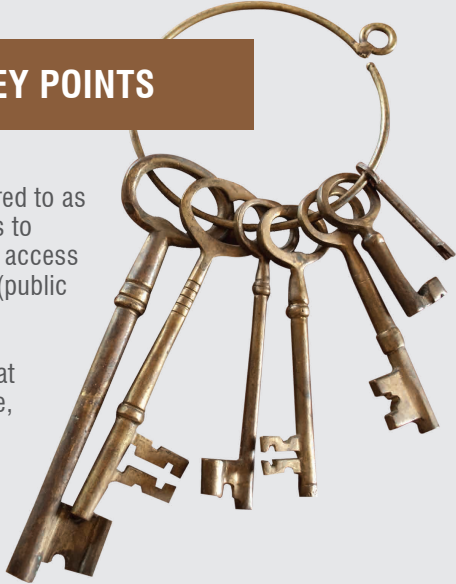
Running somewhat in parallel to pure right to information developments is the creation of a number of international bodies promoting greater openness. The most well-known is the Open Government Partnership (OGP), which Pakistan joined in 2016. Facilitating access to information is one of the four main pillars of the OGP. Other similar movements include the Extractive Industries Transparency Initiative (EITI), the International Aid Transparency Initiative (IATI) and Publish What You Fund (PWYF).

### The Open Government Partnership

The OGP (<https://www.opengovpartnership.org>) was founded to support member countries to make commitments in three areas, namely openness, participation and government accountability. Each member is required to adopt an Action Plan every two years, which is supposed to be done in consultation with civil society. There is then a process for assessing whether or not members have implemented the commitments in their Action Plans, including through an independent reporting mechanism.

<sup>2</sup> See: <http://www.freedominfo.org/features/20050928.htm>.

## SUMMARY OF KEY POINTS

- 
- Right to information (also referred to as freedom of information or access to information) refers to the right to access information held by government (public bodies)
  - RTI is based on the principle that information belongs to the people, not government
  - RTI is a fundamental human right under international law, while in Pakistan it is a constitutional right
  - RTI promotes transparency, in turn helping strengthen accountability, curb corruption, improve service delivery and empower citizens to obtain their entitlements
  - In the past couple of decades there has been a huge expansion in the number of countries with RTI/FOI legislation; many of these are from the developing world
  - Pakistan was the first country in South Asia to have an RTI law: the federal FOI Ordinance 2002 (now replaced by the RTI Act 2017); Balochistan and Sindh have FOI laws dating to 2005 and 2006 respectively (with a new 2017 law in Sindh), while in 2013 both KP and Punjab passed RTI Acts



## SESSION TWO: RTI LEGISLATION PRINCIPLES



### Purpose of the Session

The purpose of the session II is to highlight, why an RTI law is needed, to outline the key features that are needed in a good law, and to present the RTI Rating as a tool for assessing the quality of RTI laws.

### Expected Learning Outcomes

After attending this session, the participants will be able to:

- Understand the importance of adopting RTI legislation
- Describe the key features of a strong RTI law
- Know how international actors rate the strength of RTI laws

### Material Required

Flip charts, markers, multi-media or overhead projector

### Why Have a Legal Framework for RTI (RTI Law)?

As we saw, RTI is a fundamental human right – included in the Universal Declaration of Human Rights – which makes it obligatory for states to guarantee it. In many countries, including Pakistan, it is also a constitutional right. Despite this, it is still very important for every country/sub-national government to have specific RTI legislation. This is vital both for public bodies (those providing information) and for citizens (those accessing information).

RTI legislation makes it mandatory for all government entities/departments covered to comply with requirements to provide citizens with information; it removes the element of discretion. Moreover, it pushes public bodies to put in place the systems and personnel to provide information to citizens. Having a law also helps public bodies because it defines exactly what they have to disclose and what information is exempt.

In relation to citizens, RTI legislation articulates the principle that providing them with information is not something done as a favour by government, but is the citizen's right. It thus empowers citizens to demand information from public bodies. An RTI law will also spell out the procedure for accessing information and for making appeals, and will include a list of the types of information that public bodies have to provide proactively, i.e. even without submission of an RTI request. All these provisions make it easier for citizens to access information.

In sum, an RTI law spells out everyone's roles and responsibilities and, of course, makes it mandatory for them to carry these out.

### Getting the Right Law: Key RTI Principles

Merely having an RTI law is not enough. The content of the law, the specific provisions in it, will determine whether it is effective or not. As you will see if you review different countries' laws, RTI laws come in 'all shapes and sizes'. Depending on their content, some are more effective than others.

Pakistan's federal Freedom of Information Ordinance 2002 illustrates this point perfectly. It is an 'RTI' law but – as many of you will be aware – it has failed to deliver access to information in practice, in large measure because of its many shortcomings.

What this shows is that it's not enough to have an RTI law. It has to be a good RTI law.

What determines if an RTI law is a good one? Well, there are certain principles which all RTI laws should include. A law which has all/most of these will be a good one, while laws that are deficient in most of the key principles will be weak.

The RTI principles that should be included in all RTI laws are as follows:

- Maximum disclosure, i.e. the law applies to the maximum number of public



bodies and the maximum types of information

- Proactive disclosure, whereby public bodies have to make certain types of common interest information available to citizens automatically (even without a request being submitted)
- Defined procedures, i.e. the law should spell out how to request information, timelines to respond, fees, and so on
- Defined and limited exceptions, i.e. information which is not covered under the law should be clearly defined and should be narrow in scope
- Appeals mechanism, including a strong enforcement mechanism, to ensure that citizens' complaints are handled properly
- Promotional measures, to raise public awareness of the law, as well as to ensure public bodies take steps to facilitate the release of information

These RTI principles, and the rationale behind them, are elaborated below.

### Terminology: Right to information or freedom of information?

Another term you might have heard of is freedom of information or FOI. Both RTI and FOI are used in literature and legislation to refer to accessing government information; some countries have RTI Acts and others have FOI Acts. However, FOI often gets confused with freedom of expression and press freedom. RTI is thus a better term because it more clearly conveys the sense that citizens have the right to access government information.

### Maximum Disclosure

This is perhaps the cornerstone of effective RTI: the principle that the maximum amount of information should be made available to the public. The starting point of RTI is maximum disclosure or the presumption that information should be disclosed. Exceptions and limitations on information are applied later. As opposed to governments starting with a list of information they are willing to release, and anything not included on the list of exceptions is open.

Ideally, this should be supported by a set of purposes or objectives in the law. These should not only emphasise aspects of the right of access – for example that it should be rapid and low cost – but also point to the wider benefits of the right to information that were discussed above – such as fostering greater accountability, encouraging participation and combating corruption. This can provide an important basis for interpreting complex parts of the law, such as the exceptions.

### Quotations

The Indian Right to Information Act states:

“Subject to the provisions of this Act, all citizens shall have the right to information.”

This is a rights-based statement.

The South African Act states:

“A requester must be given access to a record of a public body if that requester complies with the procedural rules.”

This is more of a procedural rights statement.

Both the Indian and South African laws include clear statements of purposes/objectives.

A key way the principle of maximum disclosure is translated into practice is by ensuring that the RTI law applies to the maximum number of public bodies. One definition of bodies to which RTI legislation is applicable is as follows:

- a) established by or under the constitution, including all three branches and levels of government – legislature, executive, local administration, judiciary
- b) established by statute – commissions, public sector enterprises, public sector banks
- c) established by executive order or otherwise controlled and/or owned by government – corporations, boards, committees
- d) financed directly or indirectly by government and public bodies – NGOs, schools, colleges, trusts
- e) providing public services – electricity, water, transport, telecommunications

A second way the principle of maximum disclosure is translated into practice is by ensuring that RTI provisions apply to the maximum range of types and forms of information. ‘Information’ is thus defined broadly to include all information held by a public body, regardless of form, date of creation, who created it and whether or not it has been classified. Examples of types of information are: documents, reports, memos, minutes of meetings, photos, videos and maps.

### Example

As an example of the breadth of the definition of information, a Swedish request for information was for the ‘cookies’ on the Swedish Prime Minister’s computer. The authorities decided that ‘cookies’ indeed counted as ‘information’ under the law and the request was granted. As it happened, the response revealed that there were in fact no cookies on his computer because, at that time, the Swedish Prime Minister did not use the Internet.

A third way the principle of maximum disclosure applies relates to who is eligible to request information: under a good RTI law this should be not just citizens but any ‘legal persons’, i.e. legally registered entities such as NGOs, corporations and the media. Ideally, an RTI law should also provide access to information to anyone – even non-citizens of a country.

### Quotation

Article 4(1) of the Indonesian law states: “Every person has the right to obtain Public Information pursuant to the provisions of this Law.”

Finally, a fourth implication of the principle of maximum disclosure is that people do not have to justify or give reasons for requesting information. Accessing government information is a fundamental right: they should not have to explain why they want it, and the law should specify this so that no one can ask them to provide a reason.

### Proactive Disclosure

Proactive disclosure refers to public bodies placing information in the public domain (such as on their website) without anyone submitting an RTI request for it.

In terms of getting information to citizens, proactive disclosure is an important step up from simply responding to RTI requests. Lots of citizens will not know about RTI and fewer still will make the effort to submit RTI requests. If they do, the response is something that will be sent to them alone; very few will have the resources and means to make it available to the wider public, i.e. it reaches a very limited number of people.

Proactive disclosure addresses all these issues. It makes information available to all citizens, without anyone having to submit an RTI request. It thus greatly facilitates access to information. It also helps public bodies because it reduces the administrative burden on them of responding to lots of similar RTI requests.

***“The ideal openness regime would have governments publishing so much that the formal request for specific information... would become almost unnecessary.”***

Thomas Blanton, *The World’s Right to Know*<sup>3</sup>

Automatic disclosure helps ensure that all citizens, including the vast majority of citizens who will never make an access to information request, can access a

<sup>3</sup> S. Thomas Blanton, ‘The World’s Right to Know’, *Foreign Policy*, No. 131, July-Aug 2002, p. 56.

minimum platform of information about public bodies. The law should place an obligation on public bodies to publish, on an automatic or proactive basis, an extensive range of types of information of key public importance.

Typically, proactive disclosure will cover all the common types of information that citizens could need, for example:

- the institutional set-up of the public body
- the services it provides and how to access these
- the types of information it holds
- its annual report
- its budget and other financial information
- the contracts and licences it has concluded
- its staff strength
- procurement opportunities (tenders, contract award, etc.)

Because of the benefits of proactive disclosure, it is being increasingly seen as one of the key pillars of an effective RTI set up. More and more focus is being placed on proactive disclosure. With this has come the realization that – just as simply having an RTI law is not enough, it must be a good law – so simply making information available to the public is not enough. For proactive disclosure to be effective, public bodies must also ensure that information is easily accessible to the public, that it is easy for them to understand and that it is up-to-date.

### Defined Requesting Procedures

Most people are clear on the need for RTI law to define the scope of disclosure and exceptions, but what about procedures?! A lot of people assume that procedures don’t belong in the law, but should be covered in secondary rules and regulations. This is a common mistake. For effective RTI implementation, it is extremely important that the RTI law specify the main procedures. For example, for submitting requests, the law should specify that these can be made on plain paper as well as on standard request forms, and can be submitted electronically, by hand and even orally. A second critical example is timelines; the law should clearly state how long public bodies have to respond to RTI requests.

***“(W)hen writing an access to information law, it is important to consider the processes and procedures necessary for its effective implementation and full enforcement. ... While national security exceptions may be more interesting and controversial than the implementation procedures, they are often much less important in determining the bill’s overall effectiveness in promoting real transparency.”***

Making the Law Work: The Challenges of Implementation<sup>4</sup>

Setting out procedures in the law removes or limits scope for ad hoc Setting out

<sup>4</sup> Laura Neuman and Richard Calland, “Making the Law Work: The Challenges of Implementation” in Ann Florini, ed., *The Right to Know: Transparency for an open world*, pp.188-9.

Setting out procedures in the law removes or limits scope for ad hoc interpretations and decisions. Since procedures can have such a critical impact on RTI effectiveness – consider timelines, for example, and the huge difference between allowing ten working days to respond and allowing 40 working days – they cannot be left to the rules and regulations. It is impossible to predict who will prepare the rules, what the political climate will be at the time and the will for RTI, how much debate will be allowed on these, and so on. Much better to ensure key procedures are covered at the outset in the law. The rules and regulations will then elaborate on the procedures rather than set them.

The following are the key procedural rules that should be included in a right to information law:

- Requesters should not be required to provide reasons for their requests.
- It should be simple to make a request, which should be permitted to be submitted by any means of communication (including electronically). A request should only be required to contain a clear description of the information sought and some form of address to deliver it to the requester.
- Public officials should be required to provide assistance to help requesters where they need it either to formulate their requests or to submit a request in writing due to special needs, for example because they are illiterate or disabled.
- Requesters should be provided with a receipt or acknowledgement upon lodging a request within a reasonable timeframe, which should not exceed five working days.
- There should be clear rules for cases where the public body does not have the requested information, including a requirement to inform the requester that the information is not held and to transfer the request to another public body where the first public body knows of another one which has the information.
- Public bodies should be required to comply with requesters' preferences regarding how they access information (for example getting a paper or electronic copy, inspecting documents, etc.), subject only to clear and limited overrides (for example to protect the record).
- Public bodies should be required to respond to requests as soon as possible and in any case within clear and reasonable maximum timelines (i.e. of 20 working days or less). There should also be clear limits on timeline extensions (also of 20 working days or less).
- It should be free to file requests and there should be clear and centrally set

rules relating to fees, with these being limited to the cost of reproducing and sending the information (i.e. inspection of documents and electronic copies should be free). Fee waivers should be established for impecunious requesters.

- There should be no limitations on or charges for reuse of information received from public bodies, except where a third party (which is not a public body) holds a legally-protected intellectual property right over the information.



#### Discussion Point

Do these rules seem reasonable or rather excessive? If the latter, what would you suggest cutting? Can you think of additional rules that may be useful to clarify?

#### Defined and Limited Exceptions

While RTI is based on the presumption that everything should be disclosed, there will of course be some information that cannot be disclosed, for example for security reasons, or because it is private information about individuals.

How to reconcile maximum disclosure with necessary exceptions? The answer is to define clearly what the exceptions are, and to define these as narrowly as possible. This removes the scope for discretion (ad hoc interpretations), and ensures that only information which it would really be harmful to disclose is exempted and that exceptions cannot be expanded.

Exceptions to the right to information must meet a strict three-part test. First, it is not specific categories of information that should be exempted, but rather information relating to specific interests. Thus, for example, rather than saying all information relating to the armed forces is exempt, the exception should refer to the idea of national security. A second example is personal records: rather than exempting all personal records, the law should exempt information relating to legitimate privacy concerns.

Typical interests which would be protected under RTI law in this way include:

- National security
- Personal privacy
- Economic interests of the country
- Relations with other countries
- Commercial interests of a third party
- Law enforcement
- Legally privileged information
- Ability of government to make decisions/policies

bodies and the maximum types of information

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- d) financed directly or indirectly by government and public bodies – NGOs, schools, colleges, trusts
- e) providing public services – electricity, water, transport, telecommunications

A second way the principle of maximum disclosure is translated into practice is by ensuring that RTI provisions apply to the maximum range of types and forms of information. ‘Information’ is thus defined broadly to include all information held by a public body, regardless of form, date of creation, who created it and whether or not it has been classified. Examples of types of information are: documents, reports, memos, minutes of meetings, photos, videos and maps.

### Example

As an example of the breadth of the definition of information, a Swedish request for information was for the ‘cookies’ on the Swedish Prime Minister’s computer. The authorities decided that ‘cookies’ indeed counted as ‘information’ under the law and the request was granted. As it happened, the response revealed that there were in fact no cookies on his computer because, at that time, the Swedish Prime Minister did not use the Internet.

A third way the principle of maximum disclosure applies relates to who is eligible to request information: under a good RTI law this should be not just citizens but any ‘legal persons’, i.e. legally registered entities such as NGOs, corporations and the media. Ideally, an RTI law should also provide access to information to anyone – even non-citizens of a country.

### Quotation

Article 4(1) of the Indonesian law states: “Every person has the right to obtain Public Information pursuant to the provisions of this Law.”

Finally, a fourth implication of the principle of maximum disclosure is that people do not have to justify or give reasons for requesting information. Accessing government information is a fundamental right: they should not have to explain why they want it, and the law should specify this so that no one can ask them to provide a reason.

### Proactive Disclosure

Proactive disclosure refers to public bodies placing information in the public domain (such as on their website) without anyone submitting an RTI request for it.

In terms of getting information to citizens, proactive disclosure is an important step up from simply responding to RTI requests. Lots of citizens will not know about RTI and fewer still will make the effort to submit RTI requests. If they do, the response is something that will be sent to them alone; very few will have the resources and means to make it available to the wider public, i.e. it reaches a very limited number of people.

Proactive disclosure addresses all these issues. It makes information available to all citizens, without anyone having to submit an RTI request. It thus greatly facilitates access to information. It also helps public bodies because it reduces the administrative burden on them of responding to lots of similar RTI requests.

***“The ideal openness regime would have governments publishing so much that the formal request for specific information... would become almost unnecessary.”***

Thomas Blanton, *The World’s Right to Know*<sup>3</sup>

Automatic disclosure helps ensure that all citizens, including the vast majority of citizens who will never make an access to information request, can access a

<sup>3</sup> S. Thomas Blanton, ‘The World’s Right to Know’, *Foreign Policy*, No. 131, July-Aug 2002, p. 56.

minimum platform of information about public bodies. The law should place an obligation on public bodies to publish, on an automatic or proactive basis, an extensive range of types of information of key public importance.

Typically, proactive disclosure will cover all the common types of information that citizens could need, for example:

- the institutional set-up of the public body
- the services it provides and how to access these
- the types of information it holds
- its annual report
- its budget and other financial information
- the contracts and licences it has concluded
- its staff strength
- procurement opportunities (tenders, contract award, etc.)

Because of the benefits of proactive disclosure, it is being increasingly seen as one of the key pillars of an effective RTI set up. More and more focus is being placed on proactive disclosure. With this has come the realization that – just as simply having an RTI law is not enough, it must be a good law – so simply making information available to the public is not enough. For proactive disclosure to be effective, public bodies must also ensure that information is easily accessible to the public, that it is easy for them to understand and that it is up-to-date.

### Defined Requesting Procedures

Most people are clear on the need for RTI law to define the scope of disclosure and exceptions, but what about procedures?! A lot of people assume that procedures don’t belong in the law, but should be covered in secondary rules and regulations. This is a common mistake. For effective RTI implementation, it is extremely important that the RTI law specify the main procedures. For example, for submitting requests, the law should specify that these can be made on plain paper as well as on standard request forms, and can be submitted electronically, by hand and even orally. A second critical example is timelines; the law should clearly state how long public bodies have to respond to RTI requests.

***“(W)hen writing an access to information law, it is important to consider the processes and procedures necessary for its effective implementation and full enforcement. ... While national security exceptions may be more interesting and controversial than the implementation procedures, they are often much less important in determining the bill’s overall effectiveness in promoting real transparency.”***

Making the Law Work: The Challenges of Implementation<sup>4</sup>

Setting out procedures in the law removes or limits scope for ad hoc Setting out

<sup>4</sup> Laura Neuman and Richard Calland, “Making the Law Work: The Challenges of Implementation” in Ann Florini, ed., *The Right to Know: Transparency for an open world*, pp.188-9.



<p>applies</p> <p>No/vague listing of public bodies to which RTI law applies</p> <p>No/vague listing of types of information covered under the law</p> <p>No designated official responsible for handling RTI requests</p> <p>No requirement for training of public officials responsible for handling RTI requests</p> <p>No defined procedure for how to submit RTI requests</p> <p>No appeals mechanism in case of denial of information requests</p> <p>No sanctions for officials who deny citizens information</p> <p>No requirement for improved record management</p>	<p><i>and difficulty for citizens, and public bodies take excessive time to respond to</i></p>
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### Measuring the Quality of RTI Laws

As you can see, inclusion of RTI principles in an RTI law is extremely important to ensure the effectiveness of those laws.

As noted above, a law that includes all/most of the RTI principles will be a good law, and one that is missing most of these will be weak. It is actually possible to measure the strength or weakness of RTI laws, based on the extent to which they comply with RTI principles.

Two organizations - the Centre for Law and Democracy (CLD) and AccessInfo Europe (AIE) – have developed a framework for scoring RTI laws, known as the RTI Rating ([www.RTI-Rating.org](http://www.RTI-Rating.org)). The RTI Rating has now become accepted as the gold standard methodology in this area and is relied on regularly by organisations like the World Bank

and UNESCO. The core standards in the RTI Rating are drawn from two sources, namely international standards on the right to information and established better national practice as reflected in national right to information laws.

The RTI Rating looks at the quality of RTI laws broken down into seven main categories – the Right of Access, Scope, Requesting Procedures, Exceptions and Refusals, Appeals, Sanctions and Protections, and Promotional Measures – for a maximum possible score of 150.

Points are allocated as follows:

Category	Max Points
1. Right of Access	6
2. Scope	30
3. Requesting Procedures	30
4. Exceptions and Refusals	30
5. Appeals	30
6. Sanctions and Protections	8
7. Promotional Measures	16
<b>Total score</b>	<b>150</b>



#### Discussion Point

Does this seem to capture the main issues and give them appropriate weight? Can you think of issues that do not seem to fit into this framework?

The four main categories – Scope, Requesting Procedures, Exceptions and Refusals, and Appeals – are each allocated 30 points while other categories are worth less points, based on the idea that they are not as important. In turn, each category is broken down into a total of 61 separate indicators. Each indicator assesses whether or not a key feature of a strong right to information framework is present in the legal system. A large majority of the indicators have a maximum score of two points, although some have higher values. The maximum score possible in the Rating is 150 points.

For each category, there is a detailed breakdown of provisions to look for in the law. For example, the category 'Requesting Procedures' is scored as follows:

NO.	Requesting Procedure	Max. Points
13	Requesters are not required to provide reasons for their requests.	2
14	Requesters are only required to provide the details necessary for identifying and delivering the information (i.e. some form of address for delivery).	2
15	There are clear and relatively simple procedures for making requests. Requests may be submitted by any means of communication, with no requirement to use official forms or to state that the information is being requested under the access to information law.	2
16	Public officials are required to provide assistance to help requesters formulate their requests, or to contact and assist requesters where requests that have been made are vague, unduly broad or otherwise need clarification.	2
17	Public officials are required to provide assistance to requesters who require it because of special needs, for example because they are illiterate or disabled.	2
18	Requesters are provided with a receipt or acknowledgement upon lodging a request within a reasonable timeframe, which should not exceed 5 working days	2
19	Clear and appropriate procedures are in place for situations where the authority to which a request is directed does not have the requested information. This includes an obligation to inform the requester that the information is not held and to refer the requester to another institution or to transfer the request where the public authority knows where the information is held.	2
20	Public authorities are required to comply with requesters' preferences regarding how they access information, subject only to clear and limited overrides (e.g. to protect a record).	2

NO.	Requesting Procedure	Max. Points
21	Public authorities are required to respond to requests as soon as possible.	2
22	There are clear and reasonable maximum timelines (20 working days or less) for responding to requests, regardless of the manner of satisfying the request (including through publication).	2
23	There are clear limits on timeline extensions (20 working days or less), including a requirement that requesters be notified and provided with the reasons for the extension.	2
24	It is free to file requests.	2
25	There are clear rules relating to access fees, which are set centrally, rather than being determined by individual public authorities. These include a requirement that fees be limited to the cost of reproducing and sending the information (so that inspection of documents and electronic copies are free) and a certain initial number of pages (at least 20) are provided for free.	2
26	There are fee waivers for impecunious requesters	2
27	There are no limitations on or charges for reuse of information received from public bodies, except where a third party (which is not a public authority) holds a legally-protected copyright over the information.	2
<b>TOTAL</b>		<b>30</b>

Based on the score a law gets it is ranked against others from across the world. Currently, 111 countries with national RTI laws are assessed on the RTI Rating (it does not include sub-national laws). Mexico, with 136 points, is the top ranking law followed in second place by Serbia with 135 points, Sri Lanka with 131 points and then Slovenia with 129 points. Pakistan's federal Freedom of Information Ordinance 2002 scores just 67 points and is ranked 91st in the world (the new 2017 Right of Access to Information Law has not yet been assessed).

Figure 3 shows the distribution of the scores of all of the national legal frameworks which have been assessed. Perhaps unsurprisingly, this falls into a Bell Curve, or normal distribution, which suggests that the Rating methodology is sound, since this is

the most natural distribution for this sort of phenomenon (hence the use of the term 'normal' in relation to it). The distribution also shows that some countries have managed to achieve very high scores.

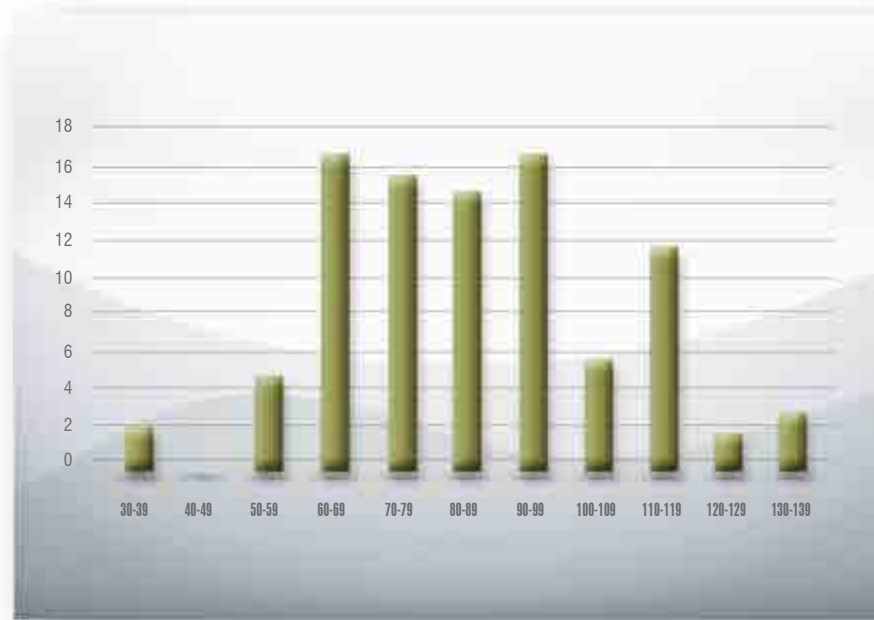


Figure 3. Number of RTI Laws per 10-point Score Ranges

While the RTI Rating does not include sub-national laws, when the KP and Punjab RTI laws were assessed using the scoring framework, the KP law would be in top position globally with 137 points and the Punjab law would get 123 points, also placing it among the top ten laws globally.

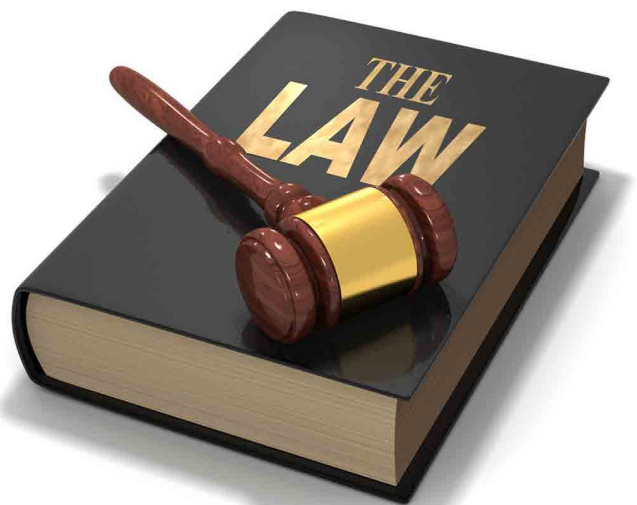
Note: It is important to stress that having a good law does not automatically mean strong RTI implementation. India has a strong RTI law and implementation is very strong in the country. But some countries which have strong laws, like Ethiopia, are considered weak on implementation. Thus the CLD-AIE scoring and ranking is simply a measure of the strength of legislation – not of implementation. However, it stands to reason that having a strong law is an essential prerequisite for good RTI implementation.

## SUMMARY OF KEY POINTS

- RTI is a fundamental human right, but it is still very important to have an RTI law that spells out everyone's responsibilities
- Simply having an RTI law is not enough; in order to be effective, it must be a good law, which means it must comply with key RTI principles
- The key RTI principles which should be reflected in RTI legislation are: maximum disclosure, proactive disclosure, defined procedures, defined and limited exceptions, an independent appeals mechanism and promotional measures
- Two organizations (Centre for Law and Democracy and AccessInfo Europe) have developed a framework to score RTI laws where the maximum possible score is 150; based on different countries' scores they are ranked and Mexico's RTI law currently ranks top in the world
- The Khyber Pakhtunkhwa RTI Act scores 137 points, making it a very strong law
- RTI legislation should be seen as the first step in setting up a strong RTI regime; it has to be followed by strong implementation.



## SESSION THREE: KHYBER PAKHTUNKHWA RTI LAW



### Purpose of the Session

The purpose of the session is to look at the features of the Khyber Pakhtunkhwa RTI Act and see to what extent it includes the RTI principles elaborated in the previous session: maximum disclosure, proactive disclosure requirements, requesting procedures, exceptions, the appeals mechanism (enforcement body) and promotional measures. We will also look at the specific obligations of PIOs and public bodies under the Law.

### Expected Learning Outcomes

After attending this session, the participants will be able to:

- Describe the main features of the Khyber Pakhtunkhwa RTI Law
- Understand the extent to which the Law complies with better practice principles
- Know what public bodies are supposed to do to implement the Law

### Material Required

Flip charts, markers, multi-media or overhead projector

The Khyber Pakhtunkhwa Right to Information Act was passed in November 2013. It is considered to be a very strong law (scoring 137 points on the CLD-AIE framework). Let us examine its provisions in detail.

### The Strengths and Weaknesses of the Khyber Pakhtunkhwa RTI Law

#### Maximum Disclosure

Section 3(1) of the Khyber Pakhtunkhwa RTI Law, set out below, does create a presumption in favour of disclosure, but it is more of a procedural than rights based statement, which is preferable

#### Quotations

The Indian Right to Information Act states:

Subject to the provisions of this Act, all citizens shall have the right to information.

This is a rights-based statement.

The South African Act states:

A requester must be given access to a record of a public body” if that requester complies with the procedural rules.

This is more of a procedural rights statement.

Both the Indian and South African laws include clear statements of purposes/objectives.

This is a rights-based statement.

The South African Act states:

“A requester must be given access to a record of a public body if that requester complies with the procedural rules.”

This is more of a procedural rights statement.

Both the Indian and South African laws include clear statements of purposes/objectives.

The Preamble to the Law does include reference to certain benefits of RTI, but these are limited. Section 3(3), for its part, calls on those tasked with interpretation to do so in a manner that advances the purposes, as well as rapid, prompt and low-cost access to information.

## Preamble

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

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

Section 3(3). Right to information

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

(a) to advance the purposes of this Act; and

(b) to facilitate and encourage, promptly and at the lowest reasonable cost, the disclosure of information.

Under the Khyber Pakhtunkhwa law any citizen of Pakistan can access information. However, the law does not allow non-citizens or even local 'legal persons', i.e. corporations, NGOs and so on to request information.

In terms of public bodies, the law applies broadly to:

## Section 2. Definitions

(i) "Public body" means:

(i) any department or attached department of the Government;

(ii) Secretariats of the Provincial Assembly, Khyber Pakhtunkhwa along with the Members of the Assembly and the Assembly itself;

(iii) Any Office, Board, Commission, Council or any other Body established by, or under, any law;

(iv) subordinate judiciary i.e. Courts of District and Session Judges, Courts of Additional District and Sessions Judges, Courts of Senior Civil Judges, Courts of Civil Judges and Courts of Magistrates;

(v) Tribunals;

(vi) anybody which is owned, controlled or substantially funded by one of the above, including enterprises owned by the Province; and

(vii) any other body which undertakes a public functions;

This does not, however, cover the High Court, unlike best practice.

The term 'information' is defined very broadly:

## Section 2. Definitions

(e) "information" means material which communicates meaning and which is held in recorded form;

Consistent with the principle of maximum disclosure, the law does not require requesters to give a reason for why they want information:

## Section 7(5). Request for information

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

## Proactive Disclosure

The Khyber Pakhtunkhwa law has a very extensive list of proactive disclosure requirements:

## Section 5. Publication and availability of records

(1) The following categories of information shall be duly published 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, including over the Internet, subject to reasonable restrictions based on limited resources:

(a) Acts and subordinate legislation such as rules, regulations, notifications, bye-laws, manuals and orders having the force of law in the Province, including being made available at a reasonable price at an adequate number of outlets to ensure reasonable access by the public;

(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 of the public body, including proposed and actual expenditures;

(h) details about any subsidy or benefit programmes operated by the public body, including details about the amount of any benefits provided and the beneficiaries;

(i) particulars of the recipients of concessions, permits, licences or authorisations granted by the public body;

(j) the categories of information held by the public body;

(k) 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 Public Information Officers; and

(l) such other information as may be prescribed.

An important issue with proactive disclosure is how the information is to be disseminated. The Khyber Pakhtunkhwa RTI Law is silent as to this. Better practice is for disclosure to take place via the website but also via other means – such as on local bulletin boards – where necessary to reach people who need to access the information.

### Requesting Procedures

The Khyber Pakhtunkhwa RTI Act lays out in considerable detail the procedure for requesting information:

#### Section 7. Request for information

(1) Subject to the provisions of this Act, any citizen may lodge a request for information with a public body through the designated 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 persons, by mail, by fax 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.

(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.

#### Section 8. Assistance to requesters

(1) A designated officer shall take all reasonable steps to assist any requester who needs such assistance.

(2) In particular, a designated 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.

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

#### Section 10. Procedure for disposal of request

(1) A designated officer shall provide a written notice in response to a request for information.

(2) The notice shall indicate that:

(a) the request has been accepted and the requester is entitled to receive the information or record, subject to the payment of any applicable fee; or

(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; or

(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, in which case the notice shall direct the requester to the place where the information may be found; or

(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.

(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, 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 designated officer.

### Section 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 ten 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.

### Section 12. Form for providing information

Where an applicant has indicated a preferred means for accessing information, such as a physical copy (attested), an electronic copy or an opportunity to inspect certain records, the public body shall provide access in that form unless to do so would unreasonably interfere with its operations or harm the document.

### Section 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 Information Commission.

(3) No fee shall be charged for the first twenty pages of information provided, or where the requester is below the poverty line.

#### Note the following key points:

- No fee is payable simply for making an RTI request
- No reason has to be given and only limited information needs to be provided on a request (namely a description of the information sought and a address for delivering it)
- Applications can be made on plain paper or on designated forms
- The PIO has a duty to assist requesters who need help with their applications
- Applicants can specify what form they want to receive information in

- The PIO has to give a receipt for each RTI request submitted
- The PIO has to respond to the request as soon as possible and in any case within ten working days (but can take an extra ten days if needed); this is in line with best practice which is to respond within ten working days
- Where information relates to the life or liberty of a person, it has to be provided within two working days
- In case of providing information, the only fees that may be charged are for reproducing and sending the information, and this has to be in accordance with the central fee schedule adopted by the Commission
- If information cannot be given, the reason must be given in writing; where information is provided, a signed certificate must be attached by the PIO stating it is correct

The Khyber Pakhtunkhwa law also lays down the procedure if an RTI request is submitted to the wrong official or the wrong public body:

### Section 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 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 return the request to the requester, informing him or her of this.

If some official other than the PIO receives an RTI request, they must pass it onto the PIO. If the information relates to another public body, the PIO must pass it onto the correct one; they do not give it back to the requester and tell them to do this. Only where the PIO does not know which public body holds the information do they return the RTI request to the applicant. This will be discussed in more detail in Session 4: Handling Requests.

Section 10(2)(e) of the Act elaborates on the information that must be provided in a notice when an information request is refused:

### Section 10. Procedure for disposal of requests

(2) The notice shall indicate that: ... (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.

### Exceptions

You will recall from the previous session that a three-part test is applied to see if information is to be exempted: a) does it relate to defined interests?; b) would disclosure cause harm to those interests?; and c) is there a greater public interest in disclosure?

The Khyber Pakhtunkhwa RTI law is consistent with RTI principles in relation to exceptions, in that it only allows for exceptions where disclosure could harm a defined interest:

#### Section 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.

#### Section 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.

#### Section 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.

#### Section 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.

#### Section 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.

#### Section 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.

#### Section 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; and
- (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.

As seen, the Khyber Pakhtunkhwa law applies both the first two parts of the exceptions three-part test. It also includes the third part, the public interest override:

#### Section 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 of this Act, provided that:

- (d) 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;
- (e) for purposes of sub-section (d), 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

Note that the public interest override should be applied at all stages of the decision-making process: first by the PIO and then by the Commission.

A further provision in the Khyber Pakhtunkhwa RTI law which conforms to international best practice is that it includes the principle of severability. This means that if only part of a document/information is exempt, the rest of the document/information can be disclosed:

#### Section 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 of this Act, provided that:

- (c) 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;

The Act takes precedence over other laws, meaning that they can only elaborate on the exceptions given in the RTI Act and not expand on them:

#### Section 3. Right to information

- (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.

#### Section 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 of this Act, provided that:

- (a) exceptions in other laws (secrecy provisions) may not extend the scope of the exceptions in this Act, although they may elaborate on an exception that is provided for in this Act;
- (b) the fact that information has been classified is irrelevant to the question of whether or not it falls within the scope of the exceptions provided for in this Act, which must always be assessed directly, at the time of a request, based on clear and objective considerations;

This fully reflects better practice inasmuch as it not only overrides other laws, but also makes it clear that classification of information is not a barrier to its disclosure.

The Law also provides for overall time limits on exceptions:

#### Section 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 of this Act, provided that:

- (f) the exceptions set out in sections 15 to 18 shall cease to apply after a period of twenty years, provided that this may be extended, in exceptional cases, for up to a maximum of another fifteen years, with the approval of the Commission.

Such limits are useful and it is positive that extensions beyond the first twenty years need to be approved by the Commission.

The Khyber Pakhtunkhwa RTI Law also provides for consultation with third parties in relation to requests for information provided by them. This is better practice, so as to determine whether the third-party objects to disclosure or consents to it. But the test should always be whether disclosure of the information will cause harm to the protected interest and the views of third parties should only be one factor to consider. Section 22 of the Khyber Pakhtunkhwa Right to Information Act 2013 has a rule on consulting with third parties along these lines, as follows:

## Section 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.

### Appeals Mechanism

As seen in the previous session, a good RTI law has an internal review (appeals) mechanism (within the public body concerned) as well as an external appeals mechanism.

#### a) Internal Review

The Khyber Pakhtunkhwa RTI law does not provide for an internal review procedure. Although strictly speaking, this is not in line with best practice, some observers believe that an internal appeal is not always that useful. In particular, they feel that if a public body has refused access in the first place, they are unlikely to release the information after an internal review. If this is correct, the internal review simply wastes time.

#### b) External Review

We saw in the previous session that there are generally three types of external appeals mechanisms for RTI: courts, Ombudsmen and Information Commissions. The third of these is considered the best, and the Khyber Pakhtunkhwa law takes this approach by setting up the Khyber Pakhtunkhwa Information Commission.

Section 24 deals with the composition of the Commission. It is to comprise three members, chosen by the Government, with the Chief Information Commissioner being a senior civil servant (Grade BPS-20 or higher), and two other Commissioners drawn from the following: a High Court judge (or equivalent); and a civil society representative with at least 15 years of relevant experience. Commissioners serve for three-year terms. Section 27 establishes the funding system for the Commission.

## Section 24. Information Commission

(1) On the commencement of this Act, Government shall within a period of one hundred and twenty (120) days, establish an Information Commission to be known as the Khyber Pakhtunkhwa Information Commission.

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

(3) The Information Commission shall be headed by the Chief Information Commissioner, who shall be a retired Senior Government Servant not below the rank of BPS-20 and shall be appointed by Government.

(4) The Information Commission shall comprise of three other Members to be known as Commissioners, who shall be appointed in the following manner:

(a) one Advocate of High Court or Supreme Court, who is qualified to be a Judge of the High Court; and

(b) a person from civil society having experience of not less than fifteen years in the field of mass communication, academic or right to information.

(5) The Chief Information Commissioner and the Commissioners shall hold office for a term of three years from the date on which they assume office and shall not eligible for re-appointment.

(6) Notwithstanding anything contained in sub-section (5), the Chief Information Commissioner and Commissioners shall not hold office after they have attained the age sixty-five (65) years.

(7) Commissioners may not hold any other public office, or be connected with any political party or be running any business or pursuing any profession at the time of or during their appointment to the Information Commission.

(8) A Commissioner may be removed by a positive vote of not less than two of the other Commissioners on grounds of failure to attend three consecutive meetings of the Information Commission without cause, inability to perform the duties of a Commissioner, falling foul of the conditions for being a Commissioner as set out in sub-section (6), or conduct which is materially inconsistent with the status of being a Commissioner, provided that a Commissioner who has been removed pursuant to this sub-section shall have the right to appeal that removal before the courts.

## Section 27. Funding for the Commission

(1) Government shall make such a budgetary allocation to the Information 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 shall provide the funds indicated through a reasonable schedule of payments throughout the year.

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

(3) The Chief Information Commissioner and Commissioners shall be entitled to such remuneration and allowances as the Government may determine.

This is a good system for appointments but it could be improved in the following ways:

- Providing for stronger protection against political interference in the appointments process
- Providing for stronger protections for the budget process against political interference, for example by having the budget approved by parliament

The role and powers of the Commission in relation to RTI complaints/appeals is detailed in section 26:

### Section 26. Powers of the Information Commission

(1) The Information 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 Information Commission shall also have the power to conduct inquiries, in relation to either a complaint or other matters connected with the proper implementation of this Act, and when conducting such an inquiry, the Information Commission shall have the powers of a Civil Court under Code of Civil Procedure (CPC) 1908, in respect of the following matters:

- summoning and enforcing the attendance of witnesses and compelling them to give oral or written evidence under oath;
- requiring public bodies and to produce documents or things;
- inspect the premises of public bodies; and
- examining and inspecting information.

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

- 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 requester for any failure to respect the provisions of this Act;

(b) to impose a daily fine of up to Rs. 250 per day, up to a maximum of Rs. 25,000, on any official who has acted wilfully to obstruct any activity which is required to be undertaken by this Act, including with a view to preventing or delaying the disclosure of information to a requester; and

(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 designated 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, if it has not been appealed against within 30 days, be registered with the court and any failure to respect the decision shall be dealt with in the same way as any contempt of court.

This is a strong package of powers. Key points to note are that the Commission can take action on a complaint or of its own accord. It has the powers of a civil court in terms of forcing people to attend and give evidence, getting information from any office, and so on.

The Commission has to decide on a complaint within 60 days. Apart from time limits, though, there are no other procedures in the Law for processing requests. In the absence of legal rules, it would be good for the Commission itself to adopt procedures in this area. Section 23(4) of the Khyber Pakhtunkhwa RTI Law provides that the public body bears the burden of proof on appeal, i.e. the burden of showing that it acted in compliance with the law. This is important both because this is a human right and because the public body is the one who has all of the information (for example as to whether or not an exception should apply).

The Commission has the power to order a public body/PIO to disclose information.

In cases where the Commission finds that a PIO has not carried out their duties properly, it can impose penalties in the form of fines of up to Rs. 250 per day of delay in providing information, or up to Rs. 25,000:

The Commission can also require public bodies to undertake structural measures where they are systematically failing to implement the Law. This is important because, in many cases, failures to respond appropriately to requests for information are not the fault of just one person but reflect wider structural problems within the public body as a whole.

The Law also provides for other sanctions, in the form of criminal penalties, for offences such as destroying information subject to an RTI request:

### Section 28. Offence

- (1) It is a criminal offence wilfully to:
- (a) obstruct access to any 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 Information Commission; or
  - (d) destroy a record without lawful authority.
- (e) Use the information obtained for malafide purposes with ulterior motives with facile, frivolous design.
- (2) Anyone who commits an offence under sub-section (1), shall be liable to a fine not exceeding rupees fifty thousand (50,000) or imprisonment for a period not exceeding two years.

In addition to these sanctions, the RTI Law also provides for protection for officials who, in good faith, take action to implement the Law. This is very important for you, as PIOs, since it means that you cannot be punished for releasing information, as long as you do that in good faith even if, later on, it is decided that the information was exempt. This protection is in section 29, as follows:

### Section 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.

The Khyber Pakhtunkhwa RTI Act also provides protection to whistle-blowers, namely individuals, including officials, who, in good faith, release information about wrongdoing. Better practice is to have an entire law devoted to this issue.

### Section 30. Whistle-blowers

- (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, or which would disclose a serious

threat to health, safety or the environment, as long as they acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing 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.

### Promotional Measures

Under the Khyber Pakhtunkhwa RTI Act, much of the promotional work in relation to RTI is to be carried out by the Khyber Pakhtunkhwa Information Commission. Its functions are far more wide-ranging than just dealing with RTI complaints:

### Section 25. Functions of the Commission

- (1) The Information Commission shall have a primary responsibility to receive and decide on complaints.
- (2) The Information 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 of this Act;
  - (b) designate further categories of information which may be subject to proactive disclosure, in accordance with sub-section (1) of section 5 of this Act;
  - (c) adopt a schedule of the fees that public bodies may charge for providing information to requesters, in accordance with sub-section (2) of section 13 of this Act;
  - (d) approve or reject extensions to the maximum period that information may be kept confidential, in accordance with clause (f) of section 14 of this Act;
  - (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 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, including 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 (2) of section 5 of this Act; and

(h) have an accredited accountant conduct an audit of its accounts on an annual basis, and provide a copy of its audited accounts to the Provincial Assembly and the Department of Finance.

(3) The Information Commission shall have the power to:

(a) monitor and report on the compliance by public bodies with their obligations under this Act;

(b) make recommendations for reform both of a general nature and in relation to specific public bodies;

(c) make formal comments on any legislative or other legal proposals which affect the right to information;

(d) co-operate with or undertake training activities for public officials on the right to information and the effective implementation of this Act; and

(e) publicise the requirements of this Act and the rights of individuals under it.

Note that the Commission has the power to make rules and regulations governing the detailed implementation of the Act, such as the application procedure for information and the schedule of fees.

It is also tasked with carrying out public awareness-raising, e.g. by compiling a user handbook in Urdu and English for ordinary citizens, setting up a website, and carrying out a mass awareness campaign.

In addition to facilitating citizens, the Commission is tasked with facilitating public bodies and PIOs, e.g. through technical support for public bodies, and by developing guidelines for and training of PIOs.

Finally, the Commission has a monitoring and reporting role. It must compile an annual report on RTI implementation aimed not just at seeing which public bodies are in compliance with the RTI Act and which are not, but also at advising the Government on how to improve implementation.

The role of the Commission in formulating rules for the Khyber Pakhtunkhwa RTI Act is elaborated in section 32:

### Section 32. Power to make rules

Government in consultation with the Information Commission may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

**Activity 4: What are the strengths and weaknesses of the Khyber Pakhtunkhwa RTI Act?**

Describe what you think are the three best features of the Khyber Pakhtunkhwa RTI Act and then three features which are most problematical.

### Responsibilities of Public Bodies/PIOs

The specific responsibilities of public bodies in relation to ensuring/facilitating implementation of the RTI Act are elaborated in sections 4-6:



### Section 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, including 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.

## Section 5. Publication and availability of records

(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, and how they have processed these requests.

## Section 6. Designation of official

(1) A public body shall designate and notify one or more designated 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 designated officer the person in charge of the public body shall be the designated officer.

(3) The designated 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.

The main responsibilities of public bodies under the law can be summed up as follows:

- *Appoint Public Information Officers* – Public Information Officers are responsible for assisting citizens to make RTI requests and responding to these. All public bodies must appoint Public Information Officers. The Act calls for a public body to appoint as many Public Information Officers as may be needed.
- *Information request forms* – Citizens can make RTI requests on plain paper or on information request forms provided by the public body. The public body must ensure these forms are easily available to members of the public in both electronic and print form (soft and hard copies).
- *Maintain and index information* – Each public body should maintain information relating to it in an easily accessible form. This will greatly facilitate finding information in response to RTI requests. The Act also calls for them to computerize their information/records, again to allow easy retrieval. Note: the precise requirements and timeline for computerization of records will be decided by the Khyber Pakhtunkhwa Information Commission, see below.
- *Publish annual reports* – Public bodies must publish annual reports detailing their activities to implement the Act over the previous financial year.

- *Proactive disclosure of information* – Public bodies must proactively disclose a long list of information (see above) relating to their functions and operations.

When it comes to designating PIOs, a number of considerations need to be taken into account:

- Public bodies that have a greater volume of requests should consider appointing committees or a group of PIOs to oversee RTI implementation across the public body. The role of this entity will be coordination, monitoring and enforcement, but also to provide technical and other support as needed.
- This is a very different role than a press officer. The primary role of press officers is to create a positive image of the public body through the press, what might be termed a propaganda role without suggesting that there is anything negative about this. The role of the information officer, on the other hand, is to ensure that all information which is not exempt is made available, even if it is not very complimentary or positive for the public body. The tension between these functions is obvious.
- Having a senior level officer/entity responsible for RTI will signal the importance the public body assigns to RTI implementation, and encourage compliance by other officials.
- It is good practice to include a set of Terms of Reference (ToRs) in the official designation of the PIO. This will clarify what the individual is supposed to do and make those tasks official.
- There needs to be an official allocation of time for this position. The post of information officer can be quite a demanding one. Individuals cannot be expected to continue to deliver all of their ongoing duties and also take on this extra burden any more than they could be expected to deliver a new project on top of their regular work.
- There needs to be a clear understanding that other officers at the public body are required to cooperate with the information officer. Public Information Officers cannot possibly do their jobs (i.e. providing information in response to requests) if other officials (for example those who are responsible for the information which has been requested) do not cooperate with them. Ideally, this should be part of the ToRs for the position, but there also needs to be a communication from a higher official about this, preferably something formal. Officials need to be informed about this. In most cases Public Information Officers do not hold any formal power over other officials, so someone higher up in the system of management of the public body needs to make it clear that all officers are required to cooperate with the information officer where this is necessary to implement the Act properly.

Beyond these requirements in the Act, there are also some other tasks that need to be undertaken for effective implementation of RTI, as follows:

- *Incentives* – Providing incentives for good performance in terms of implementing the right to information law can be important. This can include incorporating performance in this area into the regular evaluations that take place (or should take place) for officials. There are other potential ways to do this, including informal ways, such as awards for good performance.
- *Aligning internal rules* – It may be necessary to review internal rules to make sure that they are in line with the RTI Act. In many cases, internal rules establish various types of secrecy or place obstacles in the way of disclosing information. Even the contracts which are concluded with employees (i.e. contracts of employment or personal rules of service) may need to be amended to ensure that they do not impose personal obligations of secrecy on officials, in breach of the RTI Act.
- *Integration into central planning* – The right to information needs to be integrated into central planning systems, just as this would be needed for any other type of activity. A public body cannot deliver any major project without budgetary and staffing allocations, and the same is true of the right to information. At a very minimum, time and resources need to be allocated to this work.
- *Tracking requests* – Public bodies need to track the requests they receive. Best practice, as described below, is to have a central tracking system for this. However, unless and until something like that is put in place, each public body will need to track its own requests. This can be done manually (i.e. on paper, in a request register) or through an electronic database (something simple, in Excel, will work).
- *Development of RTI systems and procedures* – RTI implementation involves numerous steps and activities. By developing systems and standard operating procedures (SOPs) for each of these, and especially for processing requests, the public body can ensure consistency in RTI implementation. Often, the PIO is responsible for preparing at least the first draft of the SOP.
- *Development of an RTI action plan* – Preparation of an action plan will greatly help the public body prioritise activities (what needs to be done in the short-term, medium-term and long-term), indicate who is responsible for undertaking the activity, and set timelines for RTI implementation. An action plan will also help the public body prepare a budget for RTI activities. Finally, an action plan can be an invaluable monitoring and evaluation tool, since it will provide the standards against which evaluation should take place (i.e. did the public body achieve the targets it set for itself in the action plan?). In most cases, the PIO leads on the development of the action plan.

- *Training of Public Information Officers* – Public Information Officers have a very prominent role in RTI implementation, since they receive RTI requests and have to respond to these. Training of Public Information Officers will be very important to enable them to carry out their tasks effectively.

These are considerable responsibilities. RTI implementation by any public body requires considerable planning and preparation. But there is guidance available.

First, public bodies will be assisted in carrying out their assigned role by the Khyber Pakhtunkhwa Information Commission. As seen, its functions include laying down the detailed regulations and procedures for RTI applications and for record keeping, compiling guidelines for Public Information Officers, and preparing a user-friendly handbook on RTI for citizens.

Second, public bodies in Khyber Pakhtunkhwa can also learn from the experience of other countries in the region and further afield.

The above steps will greatly facilitate public bodies in fulfilling their obligations under the Khyber Pakhtunkhwa RTI Act.

### Central Tasks

A number of implementation tasks need to be undertaken centrally. In some cases, the Commission can lead on these, but in other cases other actors need to be involved.

### Law Reform

A first central activity, which cannot be undertaken by the Commission, is the need to review other laws to ensure that they are in line with the right to information law. There are likely to be a number of existing legal provisions that do not conform to international standards relating to openness. In some cases, there are apparent inconsistencies in the legal framework and officials may find themselves in the position of being required, under the right to information law, to disclose information while they are also prohibited from disclosing that information pursuant to another law.

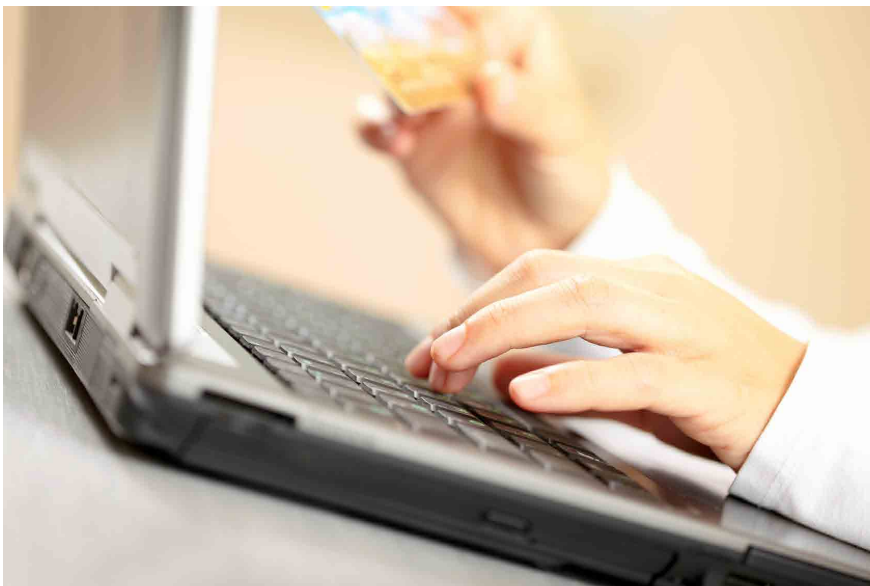
Formally, legal rules of interpretation provide a basis for resolving inconsistencies between laws, but it is far better to resolve at least the main inconsistencies through law reform for two main reasons:

- First, officials are not legal experts and they cannot be expected to be able to engage in difficult legal interpretation exercises.
- Second, in many cases this can be very complex. For example, in many countries one rule provides that, in case of conflict, later laws dominate while another rule provides that more specialised laws dominate. What if the



more specialised law is the earlier law?

In the end, reviewing and amending other laws so that the rules are coherent is the best way to resolve the problem of potential inconsistencies in the legal framework.



### Central Request Tracking Systems

We noted above that each public body needs to track their requests for information. To make this easier, many countries have put in place central electronic request tracking tools. These are essentially central online electronic databases which Public Information Officers use to register requests for information as they come in. Public Information Officers are required to fill in various fields, such as the date of filing of the request, the name of their public body, etc., and then they are required to update the file as steps are taken to process the request (for example filing information on such things as the time of notification of the decision on the request, any fees charged, any exception relied upon to refuse the request and so on).

These sorts of databases are an extremely efficient way of tracking requests centrally and they can be used to analyse how requests are being processed. They also make the job of preparing annual reports much easier, since most of the information required for the report will be available at the click of a button. For obvious reasons, only a central authority can develop something like this for the whole civil service (although there is nothing to prevent an individual public body from creating one for its own internal use).

In some countries – notably Mexico – a central tracking tool has been created by the oversight body, but this can also be done by a central, internal, government body.

### Training

Training for implementation of the right to information law is a huge task. Over time, all public officials should receive some training. Absent at least some awareness raising or training, officials will not understand their responsibilities, even if this only extends to an obligation to cooperate with PIOs. And absent this cooperation, there will always be challenges in terms of implementing the law.

Given the magnitude of this task, there is clearly a need to prioritise. It makes obvious sense to start by providing training to PIOs, given that they are tasked with leading on most implementation efforts. Furthermore, these officers need to receive far more intensive and detailed training than other officers. Once they have been trained, Public Information Officers can then play a role in providing less intensive training to other staff.

In most cases, it makes obvious sense to start with a training of trainers approach to training, especially during the early phases of implementation. These trainers can then provide specialised training to Public Information Officers, which should at the very least consist of a dedicated two-day training programme on the right to information. Almost by definition this cannot be provided by individual public bodies so some central approach is needed here.

Ultimately, as noted above, all civil servants and officials should receive some type of training or at least awareness-raising on the right to information. Because this is such a large task, some sort of plan will be required to make sure that every official is covered, say within a period of three to five years. This plan should be part of the broader action plan that each public body should adopt, with clear milestones (such as to reach one-half of all staff by the end of the second year). Some approaches to consider in terms of reaching out to all staff:

- It is useful to build modules on the right to information into any ongoing training programmes of different types that may be offered to officials. Such training may include initial training for new officials, all of whom should receive training on this issue, upgrade training for officials who are already in post and training for more senior officials.
- Public Information Officers can provide some internal awareness-raising within their own public bodies. This could be more or less formal. For example, it could include informal discussions at lunchtime or more formal workshops.
- For most ordinary officers, a relatively modest amount of training should suffice. A two-hour module is probably sufficient, at least at the beginning, in

an attempt to try to reach as many officials as possible.

In due course, modules on the right to information should be included in school curricula, for example for children in the 14-16 year age range. That way, over time, all citizens will become aware of this right.

Consideration should also be given to incorporating modules on the right to information into university courses, such as general courses on human rights for law students, or courses for students of public administration, journalism and so on.



#### Discussion Point

Do you feel you could provide a short awareness-raising or training session (say of two hours) to other staff at your public body after receiving this training? If not, what more would you need?

You should by now be familiar with the provisions of the Khyber Pakhtunkhwa RTI Act, including the responsibilities it places on public bodies.

As you can see, the Act is largely consistent with the RTI principles elaborated on in the previous session, particularly in relation to scope, proactive disclosure, exceptions and procedures. However, it is very important to stress that legislation is simply the first step; it has to be followed by effective implementation. Without this, even the best law in the world will fail to deliver RTI in practice.

#### Something for you to think about:

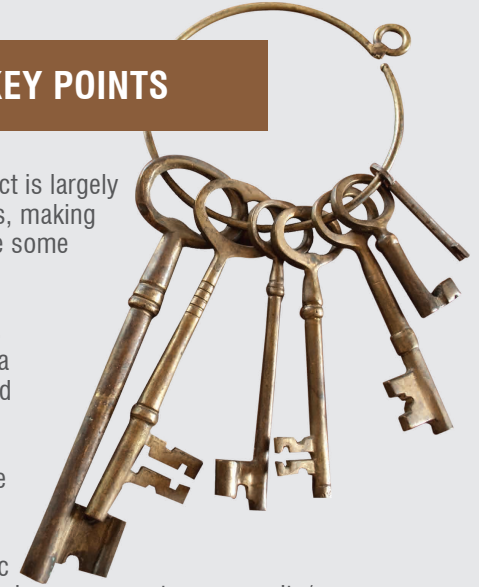
Which aspects of the Khyber Pakhtunkhwa RTI Act do you think will be easy to implement?

Which will be harder? Why will they be hard: because of capacity constraints or because of other sensitivities?

How could these difficulties be overcome? Can you think of measures that would facilitate implementation of the Khyber Pakhtunkhwa RTI Act?

## SUMMARY OF KEY POINTS

- The Khyber Pakhtunkhwa RTI Act is largely consistent with key RTI principles, making it a strong law, although there are some gaps and weaker points
- The Khyber Pakhtunkhwa Act is wide-ranging in scope, covering a large number of public bodies and types of information
- It has a very extensive proactive disclosure requirement list, including the institutional and organizational set-up of the public body, its budget, services provided, procurement, any permits/concessions, and opportunities for citizen input
- The Khyber Pakhtunkhwa Act has a clearly defined list of exceptions: information, disclosure of which could cause harm to defined interests (e.g. national security) is exempt, there is a public interest override and the principle of severability applies
- The Khyber Pakhtunkhwa Act lays out in considerable detail the procedure for requesting information and handling RTI requests; no justification is needed and there is no fee for submitting an RTI request
- The Khyber Pakhtunkhwa Act establishes an independent Khyber Pakhtunkhwa Information Commission tasked with hearing RTI appeals, but also raising public awareness about RTI, supporting public bodies to implement RTI and monitoring RTI implementation
- Responsibilities of public bodies under the Act include: appointing and training Public Information Officers, improving records management, proactive disclosure, public awareness-raising, integrating RTI into internal systems, including planning, and reporting on RTI implementation to the Information Commission
- There are also a number of tasks which need to be done centrally, including law reform, central tracking systems for requests and training



## SESSION FOUR: HANDLING RTI REQUESTS



### Purpose of the Session

The purpose of the session is to provide a detailed overview of the procedures for receiving and processing RTI requests, including the PIO's role in assisting citizens, what to do with the requests received, how to fine the information requested, timelines for responding, the format for responding, and what to do if the public body does not have the information.

### Expected Learning Outcomes

After attending this session, the participants will be able to:

- Receive requests in the manner provided for in the Act
- Provide appropriate assistance to requesters
- Ensure that requests are processed properly inside their public bodies
- Provide appropriate responses to requesters regarding their requests

### Material Required

Flip charts, markers, multi-media or overhead projector

### Introduction

This is the first session dealing specifically with your responsibilities as Public Information Officers. As a Public Information Officer, you are the person citizens will come to in relation to anything to do with right to information. For most people, you will be the first 'port of call' when it comes to RTI. As such, it is extremely important that you have a good understanding of the law (which, hopefully, the previous day's sessions have provided!) and of your specific responsibilities.

The bulk of your work in relation to RTI will be to respond to RTI requests by citizens. This session is divided into three parts covering:

- Procedure for receiving requests
- Initial filters and finding information
- Responding to requests (writing back to citizens)



### Procedure for Receiving Requests

You will receive RTI requests in different ways. Some will be submitted in person by citizens. Others will be sent to you in the post, electronically (e-mailed to you) or faxed to you. Some requests will simply be narrated to you orally by people who cannot write because of disability, illiteracy or other difficulty (see below on providing assistance).

For electronic requests, you should establish a dedicated email address. It is also ideal to establish an online system for submitting requests via the website.

Receiving physical requests is more difficult. There should be a dedicated address for mailing requests. But better practice is also to receive requests delivered in person, ideally via any of the public offices of a public body throughout the province. In this case, the public body will need some system for ensuring that requests lodged in various places are somehow transmitted to the centre for processing by the information officer. An alternative is to enable the processing of requests where they are received, but this depends on having staff at that location who know how to do this, as well as the availability of the information there.

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- Form in which information to be provided - In the request form, requesters can also state the form in which they would like the information to be provided to them. For example, they could ask for a photocopy of documents, or the chance to inspect documents, or an electronic copy to be sent to them, or a CD, or even transcripts of a meeting/video. Note that where no preference is given, the 'default' approach will be to provide photocopies of documents.
- Fee – there is no fee merely for submission of RTI requests. Hence citizens should not be paying any money with their RTI requests. [However, you should explain to requesters that, should some costs be incurred in providing the information (e.g. photocopying of documents) they will be charged for that at that stage. You should also explain the schedule of such charges (this will have been set by the Information Commission).]
- Justification – requesters do not have to give a reason, explanation or justification for why they are seeking information.
- Urgent requests – the Khyber Pakhtunkhwa RTI Act has a provision whereby RTI requests that relate to the life or liberty of a person must be responded to



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### Example

In the Six Question campaign, where six questions were lodged in 80 countries, the average time taken to respond to requests was 62 calendar days, significantly longer than the 10-20 working days (30 calendar days) period established as a maximum in most right to information laws. Only nine countries responded to all six questions in an average time of 30 days or less, and only three managed to meet this timeline for each of the six requests.

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- Form in which information to be provided - In the request form, requesters can also state the form in which they would like the information to be provided

can give a preference for the form in which they would like information provided to them, e.g. they want to inspect original documents, they want electronic copies, they want it on a CD, and so on. As far as possible, you should try to provide information in the form in which it has been requested, as long as this does not interfere with the functioning of the department or harm the document. Should it not be possible to do so, you should explain why and provide it in the form closest to that. Where no preference has been given, the 'default' action should be to provide a photocopy of the requested documents. If the requester wants to inspect the documents, you will need to have a location (i.e. a room) where this can happen and the facilities for this (for example a chair and desk). In some cases, you may need to scan a physical document that is not yet available electronically.

b) Fee – Depending on which form the information is to be provided in, there could be a fee charged. The fee is designed simply to cover the costs incurred by your department/organization in providing the information. Thus, for sending an electronic copy by e-mail, no cost would be incurred and hence no fee charged. Similarly, for allowing physical inspection of documents within the premises of your department, no cost is incurred by your department and hence no fee is charged. Costs could be incurred mainly for photocopying and postage, or for CDs. The Khyber Pakhtunkhwa Information Commission will have set a schedule for such fees.

You need to write to the requester and tell them of the fee they will have to pay. You will also need some sort of system for actually collecting fees, preferably in different ways (e.g. through electronic transfer, in cash, by cheque, by bank card, etc). Receipts will need to be issued and there will need to be some system for entering the fee into the books and making sure that it is processed in accordance with the general rules relating to collection of fees. Some public bodies will already have systems for this in place while others, which do not normally collect fees from the public, may not. Where the request is likely to cost a lot, the public body may wish to consult with the requester in advance to make sure he or she is willing to pay that fee, before it actually goes ahead with copying the documents.



#### Discussion Point

Do you have a system in place for collecting fees? Do you think this is likely to be a problem?

c) Exceptions and severing information – The next session looks at exceptions in detail. The information may need to be assessed to determine if exceptions apply. It could be the case that only part of a requested document is exempt

under the RTI Act, and the rest can be disclosed. In such cases, under the principle of severability included in the Khyber Pakhtunkhwa RTI Act, the exempted information should be removed and the rest of the document provided. You also need to explain why some information is 'severed', i.e. the exception under which it falls.

d) Certification of authenticity – Along with providing the requested information, you must provide a stamped, dated and signed certificate attesting to the authenticity of the information being provided.

A common problem is providing wrong or incomplete information. This can happen for a number of reasons:

- The official responsible for the information does not do a good job in identifying the information requested.
- The request is not as clear as it could be, or the officials processing the request do not read it carefully.
- There is bad faith and some information is deliberately hidden or withheld.
- It is complicated to find all of the information responding to a request and so shortcuts are taken and only part of the information is provided.

#### Requested Information is Exempt under Khyber Pakhtunkhwa RTI Act

As already explained, the next session looks at exceptions. Should the information requested be exempt under the RTI Act, you need to respond to the requester by telling them this (including which particular exception it falls under). This sort of notice is normally communicated to the requester in the same way as the request was made (by mail, electronically, by phone if the request was made in person).

In cases where only part of the information is exempted, the rest can be provided (under the principle of severability of exempted information), it needs to be made apparent where sections have been removed and, again, the reason for not providing that information (i.e. exempt under the Khyber Pakhtunkhwa RTI Act) needs to be explained.

Finally, in all cases where an information request is being refused, you also need to inform requesters that they can appeal the decision by filing a complaint with the Khyber Pakhtunkhwa Information Commission. Basic contact details for this body should be provided.

Requested Information cannot be found

In addition to exceptions, there could be rare cases where, despite trying, you cannot trace the requested documents, or these have been destroyed/damaged/lost. In such cases you need to respond to the requester that you cannot provide the information and give the reason why not.

Again, you should also inform them that they have the right to appeal this decision through an appeal to the Khyber Pakhtunkhwa Information Commission.

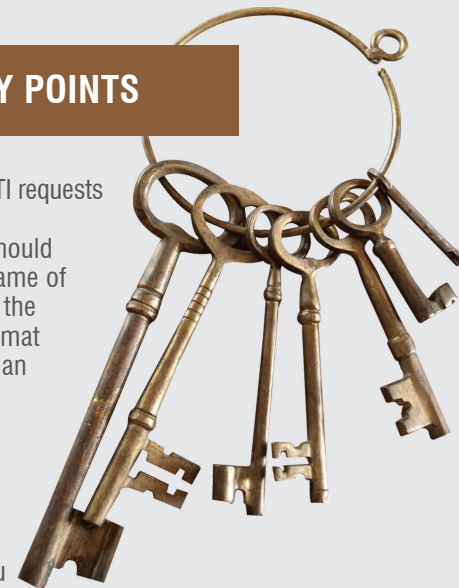
If you follow these guidelines and deal with RTI requests in a systematic manner with the following steps, you should not face any difficulties:

- first checking to see the request has been submitted correctly
- if not, you may need to provide assistance to the requester to make the request proper
- issuing a receipt
- considering whether the requested information is already being proactively disclosed or relates to a different public body
- if neither of the above apply, finding the requested information,
- responding to the requester accordingly: in case of refusals, providing appropriate notice, and in case of providing the information, giving it in the appropriate format and for an appropriate fee

Also note that your department/organization should have developed its own SOPs for dealing with RTI requests – these will be along the lines of the guidelines provided in this manual. As long as you follow the set procedure, you should be fine.

## SUMMARY OF KEY POINTS

- Your main task as PIO will be to handle RTI requests
- When you receive an RTI request you should check it has the requester's details, the name of the public body, sufficient detail to enable the requested information to be found, the format in which this is to be provided, and if it is an urgent request
- You have a duty under the Khyber Pakhtunkhwa RTI Act to assist those needing help to prepare RTI requests
- Upon submission of an RTI request, you should issue a receipt for this to the requester and register the request in your department's RTI tracking system
- You should apply two 'filters' to all RTI requests: is the information requested already being proactively disclosed or does it relate to a different public body
- If the information has been disclosed, you should direct the requester to where he or she can find it
- If it relates to a different public body and you know which one, you must transfer it to the appropriate PIO and inform the requester; if you don't know which one, you should inform the requester of this
- If an RTI request has cleared the two filters, you must try and find the information including, if needed, directing other officials in your department to provide it; under the law it is mandatory for them to help you
- When responding to requesters by providing them with the information they want, you must provide a signed, stamped and dated certificate of authenticity
- When refusing to provide information, you must explain the reason and give details about the appeals procedure
- The basic timeline for responding to RTI requests is ten working days; an additional ten days can be taken if needed, but the requester must be informed of this within the first ten days; urgent requests relating to life/liberty of a person must be responded to within two working days





## SESSION FIVE: EXCEPTIONS



### Purpose of the Session

The purpose of the session is to explain the different exceptions under the RTI Act and the rationale behind them, as well as how the three-part test for exceptions works. A number of examples are given to help explain how this works.

### Expected Learning Outcomes

After attending this session, the participants will be able to:

- Assess whether information relates to one of the interests protected in the Khyber Pakhtunkhwa RTI Act
- Determine whether release of that information would harm the relevant interest
- Undertake a public interest balancing to see whether the information should nevertheless be released
- Think about how severing some information might allow the remaining information to be released

### Material Required

Flip charts, markers, multi-media or overhead projector

When assessing exceptions to the right of access, only the RTI Act should be relied upon. According to section 14(a) of the Act, where there is a conflict between the RTI Act and another law, the RTI shall “take precedence”. Similarly, the fact that information has been classified is not relevant to the assessment of whether or not it is exempt. Otherwise, administrative action could defeat the law (i.e. anyone could put a classification mark on a document which would render it secret and the right to information would have no meaning). Even where information has been marked classified, it is important to consider carefully whether its disclosure would cause harm to a protected interest. It is possible, for example, that circumstances have changed since the classification mark was applied, and the information’s release is no longer sensitive.

Applying exceptions in practice is a complex matter and public bodies need to agree on how this will be done. It should be clear who decides on whether exceptions are applicable and the way this is done should be designed in such a way as to ensure that it can be completed within the timelines.

This can be tricky because the person who is responsible for the information will normally be in the best position to determine whether or not an exception is applicable, but this person may also have conflicting incentives regarding whether or not to release the information. For example, the author of a document may have a sense of ownership over the document and not necessarily want to release it publicly. If the document exposes weaknesses or inefficiencies or worse within the public body, these may reflect badly on the author or person responsible.

Ideally, the official responsible for the information would work with the PIO to determine whether or not an exception applies. Where these two officials cannot resolve the matter between themselves, there needs to be a way to resolve it (for example by giving the PIO final say or by providing for the matter to be considered by a superior officer).

There may also be cases where, due to the sensitivity or difficulty or implications of making a decision about disclosure, the matter needs to be referred to a more senior officer. At the same time, it should be noted that as the seniority of the person who makes this decision increases, so does the complexity of the decision-making process and this takes time. More senior officers tend to be very busy and are also often more concerned about political implications than less senior officers. It is of fundamental importance that the decision be made on an objective basis (i.e. an objective consideration of whether or not the exceptions apply) rather than a political basis.

The precise systems for this need to be agreed within your department and, ideally, including in your Standard Operating Procedures (SOPs) on RTI.

### Three-Part Test

Under international law there is an accepted three-part test for exceptions to the right of access and this is also found in the Khyber Pakhtunkhwa RTI Act:

- a. The exception must aim to protect one of a limited number of interests set out in



the Act which conform to the list of protected interests noted above.

b. Information may be withheld only where disclosure would cause harm to one of the protected interests (as opposed to information which merely relates to the interest).

c. Information must be disclosed unless the harm to the protected interest outweighs the overall benefits of disclosure (the public interest override). It may be noted that, under international law, as under the Khyber Pakhtunkhwa RTI Act, the public interest override only works one way: to mandate the disclosure of information where this is in the overall public interest, and not to allow additional secrecy beyond the specific exceptions spelled out in the law.

### Quotations

Principle IV of the Council of Europe's (COE) Recommendation of the Committee of Ministers to Member States on access to official documents, titled "Possible limitations to access to official documents", reflects the test outlined above and also provides an indication of what sorts of interests might need to be protected by secrecy. It reads as follows:

1. Member states may limit the right of access to official documents.

Limitations should be set down precisely in law, be necessary in a democratic society and be proportionate to the aim of protecting:

- i. national security, defence and international relations;
- ii. public safety;
- iii. the prevention, investigation and prosecution of criminal activities;
- iv. privacy and other legitimate private interests;
- v. commercial and other economic interests, be they private or public;
- vi. the equality of parties concerning court proceedings;
- vii. nature;
- viii. inspection, control and supervision by public authorities;
- ix. the economic, monetary and exchange rate policies of the state;
- x. the confidentiality of deliberations within or between public authorities during the internal preparation of a matter.

2. Access to a document may be refused if the disclosure of the information contained in the official document would or would be likely to harm any of the interests mentioned in paragraph 1, unless there is an overriding public interest in disclosure.

This clearly reflects all three parts of the test.

### Interests to be Protected

The underlying principle of RTI is that information belongs to the people, to citizens, and as such they are entitled to access it. However, there will always be some information which cannot be disclosed to the public, e.g. for security reasons. Under international law, only a few interests are deemed sufficiently important to override the right to information. These are listed in Article 19(3) of the ICCPR as:

- a. the rights or reputations of others;
- b. national security;
- c. public order; and
- d. public health and morals.

A good RTI law spells out the types of information that are exempt from disclosure, and the Khyber Pakhtunkhwa RTI Act does just that, in sections 15-21. It gives a list of interests which must be protected and any information which, if disclosed, would harm those interests is exempt. Each of these interests is discussed below:

#### a) National defence or security, public order or international relations of Pakistan

National security is an obvious interest that has to be protected. Examples of information which would be exempt in this regard are: details of military installations, plans to respond to an attack from another country, sensitive weapons research and security arrangements. Disclosure of such information would be useful to the country's enemies, e.g. facilitating them to attack Pakistan.

Pakistan's international relations could be harmed, for example, if details of sensitive talks or negotiations were to be disclosed.

#### b) a legitimate privacy interest, unless the person concerned has consented to disclosure of the information

Legitimate privacy interests would include, for example, a person's medical history, their bank statements and details of spending and personal files (e.g. mortgage application, tax returns). There could be situations in which some such information would have to be disclosed, e.g. corruption investigation, but as a norm such information is private and people's privacy should be respected.

#### c) the protection of legally privileged information or of the rules relating to breach of confidence

Discussions between a client and his/her lawyer are a good example of legally privileged information. The freedom with which a person talks to their lawyer will clearly be affected if there is a risk that those discussions could later be shared with others.

This is why such information cannot be disclosed by law, and the RTI Act upholds that principle.

d) the legitimate commercial interests of a public body or a third party, including information subject to third party intellectual property rights.

Examples of information that would be exempt here are new products that a company is developing (new lines of research it is pursuing), its marketing plans, its plans for expansion/merger/takeover of other companies. 'Intellectual property rights' would apply to books, videos, electronic products, other inventions, patents for technology and so on that have been developed by a company. Release of such information into the public domain would obviously harm the commercial interests of the companies involved, hence the exception.

e) the life, health or safety of any person

One example of this could be the whereabouts of a person who has been targeted by terrorist organizations or criminal elements and has been moved to a secure location by the authorities. Release of that information would obviously place that person at great risk. Another example would be releasing the names of security personnel involved in tracking and capturing terrorists; they and their families would be at risk if that information were disclosed.

f) the prevention or detection of crime, the apprehension or prosecution of offenders, or the administration of justice

An example of the kind of information which needs to be kept out of the public domain in this regard would be an enquiry that is being pursued by the police in a criminal investigation, or details of the evidence they have gathered or arrests that they are planning. Release of such information would help criminals/terrorists evade capture and prosecution.

g) the ability of the Government to manage the economy

While economic policy is generally something that very much belongs in the public domain, release or premature release of some kinds of economic information could have serious consequences. For example, if the government was planning to raise or reduce interest rates, untimely release of their plans could trigger negative consequences in the stock market or the banking sector.

h) the effective formulation of or success of a policy either by its premature disclosure or by restraining the free and frank provision of advice within the Government

Civil servants and others need to have the confidence to give frank policy advice to government, so that ministers can make informed policy decisions. Similarly, the government needs the space to consider different policy options – including sensitive or

difficult ones – calmly and rationally. It could be the case, for example, that a ministry is considering a controversial plan and wants to get feedback on the implications, following which it might decide to shelve the plan. Public disclosure of such advice and such ideas could constrain the government's 'space' to consider different options.

These are the interests that have been protected under the Khyber Pakhtunkhwa RTI Act. Disclosure of any information that would be likely to harm those interests is exempt under the Act.

### Harm Test

In relation to the provisions for exceptions in the Khyber Pakhtunkhwa RTI Act, it is important to stress two related points:

- a) The exceptions apply to protect interests rather than particular types of information. Thus, for example, it is not all documents relating to the Ministry of Defence that are exempt, but only information relating to national security or public order.
- b) Even with the interests listed above, not all information related to them is exempt; only information that could harm those interests. Thus, continuing the example cited above, it is not everything related to national security that is exempt, but only where disclosure could harm national security.

The harm test is built into the description of the exceptions in sections 15-21 of the Act.

What this means is there are no blanket exceptions for certain types of information: each RTI request has to be considered individually and the assessment made as to whether disclosure of that information would cause harm to any of the interests listed in the Khyber Pakhtunkhwa RTI Act.

Note that it is up to the government to demonstrate that disclosure would, with a fair degree of certainty, cause harm to defined interests. It is always the responsibility of the government to prove that there will be substantial harm, not for the person requesting the information to prove that there will not be.

When considering whether making the information public poses a risk of harm to one of the interests, rational reasoning based on the standards in the Act must be applied rather than relying on preconceptions and previous practices/assumptions/prejudices.

This involves three key elements. First, the officials should identify the specific interests protected by the exception that might be affected by the release of the information, beyond a general sense that the exception might apply. It is useful to make a list of these.

Second, the official must establish that there is a causal relationship or a direct link between the disclosure of the information and the risk of harm and that the risk is not

based on other factors. In assessing the causal relationship, the imminence of the risk upon disclosing the information is an important consideration. If the risk would only materialise a long time after the information had been disclosed, it is likely that the causal relationship between the disclosure of the information and the realisation of the risk is low. As part of this, the official should consider whether or not the risk could be limited by removing/severing information. Put differently, the official should consider what, specifically, within a document is sensitive and remove only that part of the document. In most cases, refusals to disclose the whole of longer documents cannot be justified because it is very unlikely that the whole document is sensitive.

The third element is that the risk should be real, and not just speculative. It is not appropriate to deny a fundamental human right on the basis that something might result, if this is very unlikely. Otherwise, it would almost always be possible to refuse to disclose information. Once again, one way of ensuring this is to look at the imminence of the risk. If the harm would only materialise a long time after the information had been disclosed, then the risk probably not only depends on other factors (so that the second element is not met) but is also rather speculative in nature (the third element).



#### Discussion Point

Does this seem reasonable? If not, how has your own process differed from this?

### Public Interest Override

Even where disclosure causes harm to a defined interest, it could be the case that there is a greater public interest in disclosure of information, i.e. the harm caused is outweighed by the benefits to the general public. In such cases, the exception is set aside and the information is released. This is called the public interest override for exceptions (see examples below).

It is important to stress that 'public interest' does not refer to whether or not the public are interested in (keen to know about) the information. Public demand alone would not constitute a reason to set aside an exception under the RTI Act and disclose information. Rather, it refers to some benefit or good being done for the public by disclosing the information. Precisely what that benefit is will vary from one case and situation to another, but general examples of 'public interest' include:

- Detecting or exposing crime or a serious misdemeanour
- Protecting public health or safety
- Preventing the public from being misled by some statement or action by an individual or organisation

- Exposing misuse of public funds or other forms of corruption by public bodies
- Revealing potential conflicts of interest by those in positions of power and influence
- Exposing corporate greed
- Facilitating public participation in decision-making
- Exposing hypocritical behaviour by those holding high office

Sections 14(d) and (e) of the Khyber Pakhtunkhwa RTI Act contain the public interest override. As PIO, you will need to apply this test.

In practical terms, the first step in applying the public interest override is to identify the various public interests that may be served by disclosing the information. It is useful to make a list of them to make sure that all of them are captured (including by considering the list above).

Next, the potential public interest benefits should be compared with the harm posed to the protected interest, to see which is more weighty. Note that this can be difficult because it often involves comparing very different types of considerations. In particular, the harm is often a specific harm to a specific individual (such as the exposure of their privacy or a risk to their business). In contrast, the benefit is often much more general, and public, in nature, and may also involve longer-term considerations (such as the exposure of corruption). In most countries, more weight is given to a general public benefit than to a private harm, especially taking into account that the right of access to information is a human right.

If you apply the three-part test to any RTI request you receive, you should be able to tell whether or not the information can be disclosed.

### Other Issues

#### Principle of Severability

If only part of a document, report, etc. has information that is exempt from disclosure, but the rest of the document is not exempt, that information can be released. This is the principle of severability, whereby exempt information can be removed and the rest disclosed.

You will need a system for severing exempt information, if only part of a document is exempt (i.e. so that the rest of the document can still be provided). It is relatively simple for electronic documents, but even here it at least requires some thought (for example is the system to black out the exempt text or simply to cut it out of the document, which can have unintended effects, such as altering the formatting). And the appropriate

system for severing is less immediately obvious than for paper documents (at least it requires a special pen which can reliably blacken out exempt information). It is important that requesters be made aware that some information has been removed because it is exempt. This can be made apparent by blacking out pages/lines from a hard copy, or making it clear in a soft copy where deletions have been made.

### Sunset Clauses

The sensitivity of information declines over time and most information can be released after a period of time. In many countries, for exceptions relating to public interests – such as national security, public order, prevention and investigation of crime and international relations – there is an overall presumptive time limit on the duration of the exception. In many countries, this is 20 or 30 years, while according to section 14(f) of the Khyber Pakhtunkhwa RTI Act, it is 20 years. Thus, after 20 years, all information can be released.

The Act also allows the Commission to extend this period for another 15 years in appropriate cases. This will likely be for very sensitive national security information and is unlikely to concern any of you. However, if you are concerned that information that has been requested remains highly sensitive even after 20 years, you should discuss with your superior to determine whether or not you should apply to the Commission to extend the period of secrecy for this information.

### Consulting with Third Parties

Many RTI laws place an obligation on public bodies to consult with third parties where they are assessing a request for information that has been provided to them by that third party. This requirement is set out in section 22 of the Khyber Pakhtunkhwa RTI Act. Note that section 19(2)(b) of the Act provides for the protection of private information, unless the person concerned has consented to disclosure of the information, which you would not know unless you had consulted with that person. Section 21 protects “the legitimate commercial interests of a public body or a third party”. Again, consulting with a third party can help understand what those interests might be. And, once again, the third party might consent to disclosure in which case you will not need to consider the matter further.

## Examples <sup>6</sup>

The ‘case studies’ below show the three-part test for exceptions being applied to different scenarios. Studying these will help you to understand how the test works in practice.

### Example 1: Ministry of Defence

You are an information officer in the Ministry of Defence. You receive a request for information about the policy and practice of the Ministry on the procurement of boots for the army. The requester also asks about the quality of boots procured. Do you provide the requested information?

To decide whether this information can be disclosed under the law, you need to apply the three-part test:

#### 1. Does this request relate to one of the defined interests listed in the exceptions sections of the RTI Act?

The RTI Act contains a list of interests which must be protected, and any information - disclosure of which would harm those interests - is exempted under the law. ‘National security’, to which this requested information relates, is one of the interests listed in the Khyber Pakhtunkhwa RTI Act.

#### 2. Would the disclosure of this information cause substantial harm to that interest?

In this example, clearly not: the information does relate to national security, but making it public would not harm defence and security. The worst would be that a potential enemy might learn that the infantry have sore feet because of the poor quality of boots they are wearing, which is not a major threat to national security. Hence you would decide the information can be disclosed.

But let us suppose that the request for information was not about boots but about rifles. And let us suppose that the information would reveal that a large number of the rifles used by the infantry were often defective because they overheated and jammed when fired repeatedly.

Would this change your answer? Would you say:

- a) This information could be valuable to an enemy: it is very important that it should not be revealed, because it would harm national security; or
- b) The disclosure of this information is unlikely to cause actual harm to national

<sup>6</sup> Examples are based on those used in Article 19’s FOI: Training Manual for Public Officials.

security because no one is actually in a position to take advantage of it before the rifles could be replaced.

The appropriate answer may depend on circumstances. For example, if the country is under immediate threat of attack (or already at war), such information might be deemed more sensitive than in a time of stable peace.

Let us suppose, in this case, that it was decided that it would do substantial harm to national security to reveal information about the malfunctioning rifles.

### 3. Is there anyway a public interest in disclosing the information?

Is that the end of the story? No, because there is still the possibility of overriding this conclusion if it could be maintained that this was still in the public interest. In this example, it could be argued that, even though an enemy would benefit from learning about the malfunctioning rifles (a harm to national security), there are various other reasons why it would be in the public interest for the information to be disclosed. These reasons could include:

- Generating public pressure to have the rifles replaced
- Exposing weaknesses in the procurement system that led to the army buying defective weapons
- Holding incompetent or corrupt officials to account

Hence, in this case, the final decision could be to authorise disclosure of the information.

### **Example 2: State-Owned Company**

*You are the PIO of a state-owned manufacturing company. The research and development division of the company has developed a revolutionary new production technique. This technique is well in advance of anything developed by the company's international competitors. It will dramatically reduce the number of workers required. A request for information about the process has been lodged by an environmental group, which is concerned about the danger of liquid waste from the new technique seeping into water courses. Do you provide the requested information?*

Let us apply the same three-part test:

### 1. Does this request relate to a defined interest under the Khyber Pakhtunkhwa RTI Act?

Yes, clearly it does. The information requested is a commercial secret.

### 2. Would the disclosure of this information do substantial harm to that interest?

Of course, it is difficult to answer this question without knowing exactly what information would be revealed. But if this technique is so far ahead of the company's competitors, it seems as though revealing it may sacrifice the commercial advantage. So yes, there is likely to be substantial harm.

### 3. Is there anyway a public interest in disclosing the information?

Once again it seems that there could well be a public interest in the information, even though it would do substantial harm to a business secret. There are two possible grounds for concluding that there is a public interest:

- a) The first is the reason the environmental group sought the information – the potentially harmful impact of waste disposal, which should be open to public scrutiny.
- b) The other reason for public interest would be the impact of the new technique on employment. It is not automatically a positive development for a state-owned company to cut jobs. This too is an issue that should be open to public scrutiny.

Hence, in this case too, you could decide to disclose the information.

### **Activity 5: Exempt or disclose?**

Look at the following RTI requests, and decide whether or not you can disclose the requested information. Apply the three-part test to determine this.

- a) You are a PIO in the Department of Agriculture. You receive an RTI request asking for details of research being conducted by the department into genetically modified crops. The research is in an experimental stage.

### **Points to consider:**

- GM crops are a very sensitive issue, and one that many people have concerns about, so there is a strong public interest in disclosing any plans in relation to GM crops
- The research is at an early stage, and 'premature' disclosure of information about this



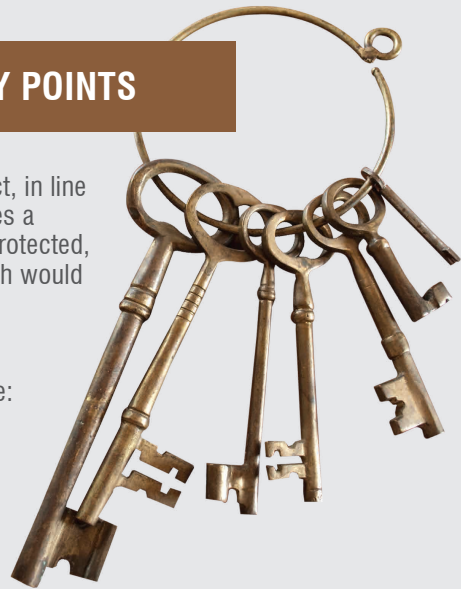
could trigger a backlash (notably from 'traditional' farmers) and scupper the research

- Successful development of GM crops could lead to substantially increased food production and security in Khyber Pakhtunkhwa
- b) You are a PIO in the Khyber Pakhtunkhwa High Court. You have been asked to provide information about the shareholdings and other sources of income of a judge, currently overseeing an inquiry into the award of a government contract to a private firm. There is concern that the judge or his close relatives could have shares in the company.

**Points to consider:**

- Under normal circumstances, such information would be regarded as 'private' (personal); where someone invests their money is their business and no one else's
- In this case, there is a potential conflict of interest between the judge heading an inquiry into potentially criminal behaviour by a firm and his holding shares in that firm
- Disclosure of the requested information could help ensure there is no bias towards the company in the inquiry on the part of the judge

## SUMMARY OF KEY POINTS

- 
- The Khyber Pakhtunkhwa RTI Act, in line with international standards, defines a number of interests that must be protected, and disclosure of information which would be likely to harm those interests is exempt
  - The interests listed in the Act are: national security; commercial interests; legitimate privacy interests; legally privileged information; the ability of the government to manage the economy; the ability of the government to make decisions; law enforcement; and the life, safety or health of any person
  - Not all information relating to the above interests is exempt; only information the disclosure of which would be likely to harm these interests
  - If the public interest in disclosure of information outweighs the harm caused, the information is to be released
  - The three-part test for determining if information is exempt from disclosure is as follows: i) does the information relate to any of the interests listed in the RTI Act?; ii) would disclosure of the information cause substantial harm to those interests?; and iii) If yes, is there a greater public interest in disclosure of the information?
  - If only part of a document is exempt under the Act, the rest can be disclosed but it must be made clear where information has been removed
  - If the information is more than 20 years old, it should (almost) always be disclosed
  - If the information was provided by a third party, it is good practice to consult with them

## SESSION SIX: COMPLAINTS



### Purpose of the Session

The purpose of the session is to describe what happens when requesters are not happy with the response to their RTI requests (or have some other complaint). The law provides for an external complaint to the Khyber Pakhtunkhwa Information Commission. This session will review the procedures for this, as well as the penalties that the Information Commission can impose.

### Expected Learning Outcomes

After attending this session, the participants will be able to:

- Describe the complaints procedure and how it works (procedurally and substantively)
- Ensure that they act in ways that minimise the risk of a complaint based on their handling of a request, and especially the risk that they will be penalised for this

### Material Required

Flip charts, markers, multi-media or overhead projector

### Introduction

There will be cases where requesters are not happy with the response to their RTI request, or did not get a response, or they are unhappy with the way they were treated, or they have some other complaint. The Khyber Pakhtunkhwa RTI Act has elaborate provisions for what to do in such a situation. There is an external complaints redress mechanism before the Khyber Pakhtunkhwa Information Commission. This is an entity that is completely independent of the public body concerned.

Better practice is for the law to provide for broad grounds for complaints, basically for any violation of the rules in the law relating to the processing of requests. This should clearly include refusals to provide information (i.e. application of the exceptions) but also the provision of wrong or incomplete information and procedural breaches, such as a failure to respond to a request within the established time limits. The grounds for complaint in the Khyber Pakhtunkhwa RTI Act, as provided for in section 23(1), are very broad (see below).

In practice, complaints can broadly be divided into two types: those that involve procedural issues and those that involve the application of the regime of exceptions. In most cases, procedural issues are relatively easy to resolve. These cases are often the result of an administrative error rather than a specific decision (for example, a failure to respond at all or to respond within the time limits). These cases can also involve issues such as the levying of excessive fees or a refusal to provide information in the format sought. At the same time, these sorts of cases rarely involve the sometimes very difficult issues that come up in relation to exceptions.

Disputes about exceptions, on the other hand, can be very difficult indeed to resolve. Furthermore, substantive issues relating to exceptions can be expected to keep coming up basically on an ongoing basis, even decades after the law has been adopted. These are complex issues and new claims regarding exceptions keep coming up.

### External Complaint Mechanism

It is important that there be some independent body – outside the public body concerned – that people can go to if they have an RTI related complaint. In the case of the Khyber Pakhtunkhwa RTI Act, this is the Khyber Pakhtunkhwa Information Commission. Details about the setup and functions of the Commission were given in Session 3. To give a brief recap: it is a three-member body headed by the Chief Information Commissioner. All members are senior personnel, either from government/judiciary or civil society. In addition to handling RTI related complaints, the Commission's responsibilities include raising RTI awareness, supporting public bodies to implement the law, enforcing and monitoring implementation, and advising the government on how to improve the RTI system.

In relation to RTI complaints, the procedure is as follows: complaints must be submitted in writing to the Commission.

Complaints must be submitted in writing, giving details of the original RTI request, public body and PIO concerned, response to the RTI request (if any) and the problem (complaint).

The Commission must decide on a complaint within sixty days of receiving it.

In handling complaints, the Commission can exercise the powers of a civil court. There are three main attributes of this:

- It has the power to review the information which is the subject of the complaint, whether or not it is classified or claimed to be exempt. Absent this power, the body cannot properly discharge its responsibility to decide complaints. Knowing what is actually in the documents is essential to being able to determine how sensitive they are.
- It can also hear witnesses and, for this purpose, to compel witnesses to appear before it. It may need to hear witnesses, for example, to gain an understanding of the sensitivity of a certain issue (whether this is a security issue, a business competition issue or a privacy issue) or to understand better the claims made by the public body or the requester.
- It can, where necessary, inspect information at the premises of public bodies. While this is a more extensive power, which would not often need to be used, in some cases inspections are needed to find out whether or not public bodies really do hold information which they claim they do not. Inspections may also help the oversight body to understand, and thus resolve, more structural problems at public bodies in terms of complying with the law.

The Commission can uphold the decision of the public body to refuse to disclose information, or it can uphold the complaint and order the public body to disclose the information. Under the law, the Commission can also decide if there is a public interest in disclosure of information that would otherwise be exempted under the Act. According to section 26(3)(c), the Commission can also order public bodies to undertake structural measures to address systemic problems in implementing the law. This is similar to the powers of the Commissions in India:

### Quotations

Article 19(8) of the Indian RTI law provides:

In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—

(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—

- i) by providing access to information, if so requested, in a particular form;
- ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;
- iii) by publishing certain information or categories of information;
- iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;
- v) by enhancing the provision of training on the right to information for its officials;
- vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;
- (b) require the public authority to compensate the complainant for any loss or other detriment suffered;
- (c) impose any of the penalties provided under this Act;
- (d) reject the application.

The Commission can, while inquiring into a complaint, impose a fine on a Public Information Officer. The amount and manner of the fine will be decided by the Commission.

You should also be aware that, pursuant to section 28 of the Khyber Pakhtunkhwa RTI Act, anyone who wilfully destroys or otherwise obstructs access to information that is subject to an RTI request or complaint to the Commission is committing an offence punishable by imprisonment of up to two years and/or a fine.

### Implications for PIOs

As you can see, the Khyber Pakhtunkhwa Information Commission is a body with strong investigative and enforcement powers.

As PIO you must ensure that you carry out your duties under the RTI Act properly. To avoid complaints being decided against you, you should in particular pay attention to:

- the manner in which you treat applicants (being polite and helping those who need assistance submitting RTI requests)
- the time that you take to respond to requests (remember the law allows ten days to deal with standard requests)
- and – critically – your decision on whether requested information can be disclosed or is exempt under the RTI Act

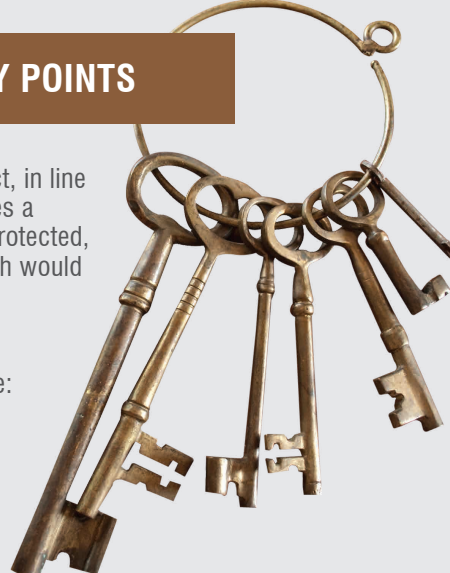
It could be that delays are caused by the actions of others, e.g. other officials in your department fail to provide you with the requested information in time. This is why it is very important that you document all the steps you take in handling RTI requests, including relevant dates.

The first type of complaint described above, namely in relation to behaviour, procedure or time taken, if well-founded, will generally be due to negligence on the part of someone, either yourself or colleagues in your department. If everyone carries out their duties properly, these should be minimal. The more difficult complaints are likely to be about rejection of RTI requests, i.e. refusals to disclose information. Deciding on exceptions will not always be 'black and white'; indeed, most requests will fall into 'grey areas' where it is not clear whether information can be disclosed or not. While there should be systems in place within your public body for you to consult other relevant officials to help you decide on this, those people will not be specialists in the RTI Act and its provisions and hence they could interpret these incorrectly.

It is important to stress that, in relation to exceptions, the role of the Information Commission is not simply punitive. Commissioners will have a thorough understanding of the Khyber Pakhtunkhwa RTI Act and of the regime of exceptions. They will have dealt with many other similar cases – deciding on whether certain information is exempt from disclosure – and will have built up a body of knowledge and prior decisions on this. In sum, they are in a very good position – much better than you or other officials in your department – to decide on exceptions.

Given this, should the Commission decide that certain information can be disclosed, you should not see that as a (negative) reflection on your performance; rather, you should see it as the Commission carrying out its responsibility to guide public bodies on RTI related matters. Furthermore, a decision by the Commission on disclosure of a certain type of information, will make it much easier for you to make the correct response next time you receive a similar request.

## SUMMARY OF KEY POINTS

- 
- The Khyber Pakhtunkhwa RTI Act, in line with international standards, defines a number of interests that must be protected, and disclosure of information which would be likely to harm those interests is exempt
  - The interests listed in the Act are: national security; commercial interests; legitimate privacy interests; legally privileged information; the ability of the government to manage the economy; the ability of the government to make decisions; law enforcement; and the life, safety or health of any person
  - Not all information relating to the above interests is exempt; only information the disclosure of which would be likely to harm these interests
  - If the public interest in disclosure of information outweighs the harm caused, the information is to be released
  - The three-part test for determining if information is exempt from disclosure is as follows: i) does the information relate to any of the interests listed in the RTI Act?; ii) would disclosure of the information cause substantial harm to those interests?; and iii) If yes, is there a greater public interest in disclosure of the information?
  - If only part of a document is exempt under the Act, the rest can be disclosed but it must be made clear where information has been removed
  - If the information is more than 20 years old, it should (almost) always be disclosed
  - If the information was provided by a third party, it is good practice to consult with them

## SESSION SIVEN: PIOs' OTHER DUTIES



### Purpose of the Session

The purpose of the session is to describe the functions of PIOs other than their main task of responding to RTI requests. These include proactive disclosure of information by the public body, improved records management, raising public awareness about RTI and reporting on RTI implementation to the Khyber Pakhtunkhwa Information Commission.

### Expected Learning Outcomes

After attending this session, the participants will be able to:

- Ensure that the public body meets its proactive publication obligations
- Work towards improving records management within the public body
- Consider the main activities that could be undertaken to raise public awareness
- Prepare proper reports about what they have done are prepared for the Khyber Pakhtunkhwa Information Commission

### Material Required

Flip charts, markers, multi-media or overhead projector

### Introduction

At the end of Session 3, there was a review of the responsibilities of public bodies under the Khyber Pakhtunkhwa RTI Act. You will recall that, as well as appointing and training PIOs and setting up systems to handle RTI requests, all public bodies have to carry out proactive disclosure of an extensive list of information, improve records management, raise public awareness about RTI and report on the measures they have taken to implement the RTI Act to the Khyber Pakhtunkhwa Information Commission.

It is likely that public bodies will assign officials other than PIOs to carry out some of these duties, especially proactive disclosure and improving records management. Among other things, these are significant jobs in themselves and it would be very hard for PIOs to do everything! However, until officials are designated for these tasks, under the law they are the responsibility of the PIO. It is therefore important that, as PIOs, you have some understanding of these other duties. This is the aim of this session.

Please note that we will not be looking at these other duties in great detail (each would require a manual by themselves!), but hopefully enough for you to understand the broad scope of work under each.

### Proactive Disclosure of Information

## Proactive Disclosure of Information



Proactive disclosure refers to public bodies placing information in the public domain (e.g. on their website) even without anyone submitting RTI requests for it.

Proactive disclosure is carried out for key types of information – e.g. services provided by a public body and its budget – that would commonly be of interest to a large number of citizens. According to recent trends, the extent of proactive obligations has been growing. If information is published proactively, then there will be no need for individuals to make requests for this information. It may be noted that it takes far longer to respond to a request for information – which requires providing the requester with a



receipt, registering and tracking the request, and providing a formal response in line with the requirements of the law – than to publish information on a proactive basis – which simply requires uploading it to a website.

Furthermore, when information is disclosed in response to a request, only one person can access it, while when it is disclosed proactively, everyone can access it.

It thus makes sense to extend proactive publication to any information which may be the subject of general public interest rather than waiting for a request for this information.

The Khyber Pakhtunkhwa RTI Act has an extensive list of proactive disclosure requirements. The full list was cited in Session 3 but to recap it includes:

- laws and rules under which a public body functions
- organizational details
- staff directory
- services provided
- policies and decisions
- a statement of the categories of information it holds
- decision-making processes and opportunities for public participation
- budget details (proposed and actual expenditure)
- procurement details
- details of subsidies and concessions/permits/licences
- RTI information

All public bodies covered under the Act must ensure the above information is made available to the public.

Of course, there is a big difference between making a list of information to be proactively disclosed and actually doing so. A number of challenges could be faced. For a start, all the information listed might not be readily available; it may need to be found and collated.

Information that is subject to proactive disclosure obligations can be divided into three main categories. The first category is information that is provided or updated periodically. An example of this is the budget, which is normally updated annually. The key challenge with this type of information is to make sure that it is updated on a periodic basis on the website. In many cases, public bodies make an effort to get information online once, but then forget to keep it updated. This requires some sort of system, as well as the active support of those officials who are responsible for producing these categories of information, since they are the ones who need to make sure that it is forwarded for updating. Ideally, the system would involve the producers of this information communicating directly with the individuals who are responsible for the website without necessarily involving the information officer. There is no need to involve

him or her and doing so simply places a greater burden on him or her and can lead to further delays.

The second category is information that is produced on an ongoing basis, which needs to be uploaded as it is produced. It may be noted that it is far more difficult to keep this sort of information flowing to the website because it is ad hoc in nature and is not produced at regular intervals. Also, the number of officials within the public body that are responsible for producing these categories of information is normally quite large, and so the risk that some of them will forget to present the information for proactive publication is higher. Systems are needed for this that will work in the context of each particular public body, taking into account the number of people involved in producing this sort of information, the way that final approvals of these types of documents are obtained and so on.

The third category is information about information (metadata), in particular a list of the categories of information that the public body holds. This is really important to help citizens make requests for information, so that they will know which public body they need to approach to obtain a certain type of information. This list should be updated periodically, as the types of information held by the public body change over time.

In addition, for information to be really useful to citizens, it must be in a format and language that they can easily understand (government terminology is often incomprehensible to ordinary citizens). This could well require ‘converting’ complex, lengthy documents into simple clear summaries. The budget is a good example of this. Most people would struggle to understand the full budget document, but a clear budget summary, explaining in layman’s terms the government’s sources of revenue, and main items of expenditure, would be more easily understandable. This too requires effort. Finally, of course, there is the actual process of dissemination itself: uploading information to a public body’s website or printing and disseminating hard copies.

In sum, proactive disclosure will not happen automatically – substantial effort will be needed for a public body to comply with the requirements for this under the Khyber Pakhtunkhwa RTI Act. Furthermore, simply releasing information is not enough: it must also be readily accessible (easy to find), easy to understand and up-to-date.

In order to carry out proactive disclosure of information properly, public bodies need to develop systems and procedures for this, and designate officials responsible for tasks, e.g. lower tier offices could be required to submit monthly updates in prescribed formats, other staff would be tasked with collating and analysing this information, others could be responsible for converting this into easily understood documents and disseminating these on the public body’s website/other sites. In addition, obtaining feedback from citizens/users about proactively disclosed information is important to identify areas for improvement.

As noted above, given that proactive disclosure is such a big job, it is almost certain that each public body will have to designate officials other than PIOs to carry this out. However, there is one aspect which you will have a direct role in. As PIO, you have the

most insight into the kinds of information people are requesting. Whenever you come across something that lots of people are asking for, and that is not currently being proactively disclosed, you should flag that. Clearly – since lots of people are asking for it – there must be strong demand for that, and hence it makes sense to start proactively disclosing it.



### Records Management

We have already seen that Khyber Pakhtunkhwa has a strong RTI law. All of you have been appointed as PIOs and are here to be trained, which shows strong commitment to implementing the law. However, even with all this, if you and your colleagues find it difficult to actually find the information that people are requesting, RTI in Khyber Pakhtunkhwa will fail.

This is why good records management is critical: it allows PIOs and others to find information.

Recognizing this, the Khyber Pakhtunkhwa RTI Act calls on public bodies to take steps for proper maintenance and indexing of records.

I'm sure you are all familiar with the problems with regard to records and filing in Pakistan! Some offices have computerised systems, but the norm remains paper filing systems. As public bodies generate vast quantities of documents and records, the task of managing these is correspondingly difficult, leading to records being lost or damaged/destroyed. Related problems are a lack of clarity about what needs to be preserved, what is a priority, and what can be destroyed, which leads to a tendency to keep everything.

Many of these issues could be addressed through automation of records management systems. This would allow for proper organization of records and easy and quick access to records, and also promote the preservation of records.

But again, as with proactive disclosure of information, so automation of records – particularly archival material – is a huge task. The first step here is to undertake a situation analysis of current records (e.g. which records exist?), records management systems (e.g. how are they currently stored and what problems are faced) and needs (e.g. what kinds of records are most commonly used by the public body?).

The next step will be to develop clear standards for managing records. Ideally, standards should be developed at the central level and all public bodies should be required to comply with those standards. This has several advantages:

- It ensures that all public bodies are held to the same records

management standards

- It is efficient inasmuch as each individual public body does not need to make the effort and build the expertise required to develop standards; this is a complex science and it will not be easy for all individual public bodies to develop this expertise
- It avoids a situation where smaller public bodies have less developed and less sophisticated or practical records management standards

Finally, once the system is designed, there needs to be a series of measures to implement the system. Depending on the nature of the system, this will likely involve investment in hardware and software, training of staff and ongoing implementation support.

There can also be challenges around whether digital media or paper is used as the primary medium of storage. In many respects, such as filing and organising, digital tools are much more powerful and efficient than paper. But there are also costs associated with going digital, as well as challenges where a system is partly digital, and partly still reliant on paper. However, given that digital is clearly the way of the future, it makes sense to bite the bullet and introduce a digital records management system, if one is not already in place.

Given this, public bodies will certainly have to assign dedicated staff and resources to carry out this huge task. As PIO, you can support this process by highlighting the kinds of information that people are most interested in (based on the RTI requests submitted to you). These could then be prioritized when records management systems are improved/automated. You should also ensure that your seniors are aware of the problems you face in carrying out your responsibilities (responding to RTI requests) if records are hard to find. This will create pressure for public bodies to comply with the law and improve their records management.

### Public Awareness-Raising about RTI

How many of you knew what RTI was before you were appointed as PIOs? Probably not many, and you all work in government. The level of awareness and understanding of RTI among ordinary citizens is much lower still. For RTI to succeed in Khyber Pakhtunkhwa, it is important that the public be made aware of RTI and how it can help them, and be guided on how to use the law.

We have already seen that PIOs have a duty under the RTI Act to guide people on the RTI application procedure and, if needed, assist citizens in preparing and submitting RTI requests.

In addition, you should try to raise awareness about the RTI Act among citizens who do not approach you, i.e. among the general public.

How to go about this?

Well, one of the bits of information that all public bodies have to proactively disclose is details of RTI arrangements, i.e. the names and contact details of PIOs, the procedure for submitting RTI requests, time involved and so on. To facilitate this it would be useful to produce a guide for citizens explaining all this.

Beyond this, public bodies also have a general responsibility to educate the public and raise general public awareness about the new right to information law. This is not a legal obligation under the Act, although it is under many laws. The Commission has a legal obligation here (see below), but it cannot do it without help from public bodies. Many public bodies reach out to the public in a lot of ways, and they should use these to raise awareness about RTI as well. Some of the key ways to engage in public education are as follows:



- In many countries, public bodies are required to prepare a guide for the public on how to use the law and how to make requests from that body. This can be quite simple – two or three pages – but it should be clear and be made available on the website and in physical format at the public body.

- The other measures that should be taken will depend on the nature of the public body and the extent of its interaction with the public. Some public bodies – like the departments of health and education and the police –

interact extensively with the public while others, like finance, may have less direct interaction.

- One simple measure is to place posters advertising the right to information in every public office or waiting room at each public body. If this were done by all public bodies, it would not be long before everyone had at least some idea about the right to information.

- There is no limit to other possibilities here, except for limits based on the imagination of Public Information Officers (and resources!). Some common activities include

holding public workshops and other events, hosting some activity annually on International Right to Know Day (28 September), and holding events to inform the private companies that interact with the public body about the right to information and the possible implications for them.

You should note, in this regard, that the Khyber Pakhtunkhwa Information Commission's functions include awareness-raising about RTI and – under the RTI Act – it has to produce a user-friendly guide on RTI for citizens. The same guide can be used/adapted by individual public bodies. Similarly, the Commission will be producing posters, videos and other promotional material which, again, can be adapted by individual public bodies. The point is that there is a lot of support available to PIOs for raising public awareness about RTI.

### Reporting to Khyber Pakhtunkhwa Information Commission

There is another requirement for all public bodies under the Khyber Pakhtunkhwa RTI Act: they must submit an annual report to the Chief Secretary and the Khyber Pakhtunkhwa Information Commission detailing all the activities they have carried out during the year to implement the RTI Act.

This report will cover the full gamut of responsibilities of public bodies under the Act, i.e. handling RTI requests, proactive disclosure, records management, public awareness-raising. The Commission will provide all public bodies with a format for the report.

On the first of these, RTI requests, as PIO you will need to present details of the number of RTI requests received (with appropriate breakdown into types of applicants, kinds of information requested, etc), the response to these (how many provided full/partial information, how many were rejected, timelines), the number of appeals. As we saw in Session 4: Handling Requests, each public body should have systems in place to keep track of this information. If a suitable tracking/monitoring system is established and data is entered into this on a regular basis, it will be relatively straightforward to compile annual figures for submission to the Information Commission. Otherwise, at least some sort of system will need to be put in place because it is not possible to wait until the end of the year to collect this information.

Reporting on other aspects of RTI implementation will be less quantitative and more descriptive. Some of the other issues you may want to consider including in the report are:

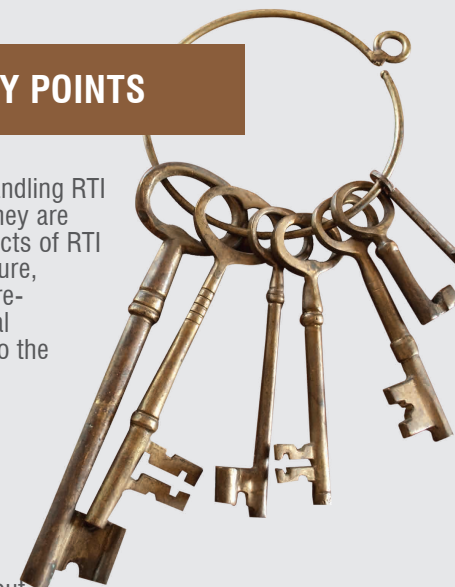
- The steps that have been taken to develop a protocol or SOP for processing requests (this will help public bodies to process requests properly and in a timely fashion).
- The plan of action: this is another step that should be taken by each public body to make sure they are implementing all of their obligations under the law.

- Steps taken to prepare a guide for requesters. This is another measure that all public bodies should put in place. However, it is not necessary to prepare a guide from scratch. It is perfectly possible to use a guide that has been prepared by another public body, and just adapt it. The guide should be quite simple and does not need to be more than a few pages. This should be made available on the website and also in physical format at each public office of the public body.
- The measures taken by the public body to meet its proactive publication obligations. This should include a description of the steps taken to make sure the website includes the required information, a list of the types of information made available on a proactive basis, any systems that have been put in place to ensure that proactive publication continues to take place over time and that information is maintained in an up-to-date form, and other means of disseminating information (i.e. in addition to on the website, taking into account that not everyone in Pakistan is online).
- A description of the main problems the public body, or the PIO, has encountered in terms of implementing the Law. This is important to help ensure that attention is brought to bear on these problems and that measures are taken to address them.
- Finally, a list of any recommendations for reform that the public body wishes to make. These might be of a legal or of a practical nature. Public bodies are a key stakeholder in the right to information system and, collectively, they are likely to have an enormous amount of information about how the system works and so on. It is very important for the government to receive their recommendations about how to improve the system.

It is important that PIOs and other relevant officials be fully briefed on reporting requirements so that they are able to complete their report on time and submit to the Commission by the 31 August annual deadline.

## SUMMARY OF KEY POINTS

- The main function of PIOs is handling RTI requests but, under the RTI Act, they are also responsible for all other aspects of RTI implementation: proactive disclosure, records management, public awareness-raising about RTI, and annual reporting on RTI implementation to the Khyber Pakhtunkhwa Information Commission
- The scope of this work is extensive, and public bodies will certainly have to appoint other officials to carry out some tasks, e.g. proactive disclosure, improving records management, but PIOs should have an understanding of all RTI related tasks
- The Khyber Pakhtunkhwa RTI Act has a long list of kinds of information that all public bodies must proactively disclose (i.e. even if no one submits RTI requests for it), which includes details of services provided, budget, staff and decision-making processes
- It is not enough simply to make information available to the public: it must also be readily accessible, easy to understand and up-to-date, so public bodies will have to set up systems for effective proactive disclosure
- Records management is critical if PIOs/other officials are to be able to find the information requested through the RTI Act and this requires a needs assessment, development of appropriate standards, followed by training people on how to implement them
- Public awareness-raising about RTI is important so people use the RTI Act and submit RTI requests properly; the Khyber Pakhtunkhwa Information Commission will be producing materials, e.g. a user-friendly guide to RTI, which public bodies could adapt for their own use
- Reporting to the Khyber Pakhtunkhwa Information Commission is an annual requirement for all public bodies under the RTI Act and it is important to set up systems for this so that reports are prepared in a timely and efficient manner





## ROLE PLAY EXERCISE



### Purpose of the Session

The purpose of the session is to allow participants to apply their knowledge from this course in a practical exercise.

### Expected Learning Outcomes

After attending this session, the participants will be able to:

- Think dynamically about claims for exceptions and apply them in a logical way.

### Material Required

Paper and pens/pencils for participants

**To conduct this exercise, participants should be divided in to two or three (or maximum four) groups, so that there are at least three members in each group**

Scenario:

Arnold Schwarzenegger, the Chief of Police of Peshawar, has been behaving strangely

in recent days. He gave a press conference where he spoke randomly for 10 minutes, and then stated that his officers were “engaged in a war” with the city’s journalists and media, before being hustled off of the platform by his aides. Alarmed by these comments, and his other unusual behaviour, a local NGO, PoliceWatch, has filed an access to information request for Mr. Schwarzenegger’s medical records, claiming that he has been suffering from a form of mental illness and needs to be replaced. The public information officer refused this request on the grounds that the information was private. PoliceWatch has made a second request for information about any action plans being implemented by the Peshawar City Police that specifically target journalists. The public information officer refused this request on the grounds that it related to information about law enforcement.

There has been speculation that Mr. Schwarzenegger’s dislike for the media stems from the ongoing media reporting about a major contract that was awarded to unnamed investors to build a large new hotel in Peshawar. The media has alleged that Mr. Schwarzenegger has shares in the private company that was awarded the contract, and that he used his influence to try to make sure that the contract was awarded to that company. An official investigation into the matter has been ordered, but although many months have passed, it has not yet started its work. PoliceWatch has made a third request for information about both the investigation and the extent of shares held by Mr. Schwarzenegger in the private company building the hotel. The public information officer refused this request on the grounds that it related to information about law enforcement and information that would undermine the commercial competitiveness of the company.

PoliceWatch has now started to question why Mr. Schwarzenegger was appointed in the first place, given his lack of diplomatic skills, questionable financial dealings and his tendency to make brash and reckless statements. They have filed a fourth request for information about records surrounding Mr. Schwarzenegger’s appointment, but this was refused as being private and also a professional secret.

Exercise:

PoliceWatch has now brought a case to the Commission, challenging these refusals. Divide your group up into three roughly equal sub-groups and allocate the following three roles to those sub-groups. One sub-group should represent the public information officer who has been refusing the requests, one should represent PoliceWatch and the third should be the Commissioners hearing the case.

Each sub-group should prepare detailed legal notes making arguments in support of its position and referring back to the standards that we have discussed during the course. One or two representatives of the sub-group should be prepared give a 5-minute presentation in support of their case as part of a role play, with the Commissioners making a final decision, based on the arguments.



**Notes for the Moderator:***General Comments*

- Ideally, participants should go through the three-part test for each request: does it relate to an interest which is protected in the Act, would disclosure of the information harm that interest and, if so, might disclosure still be justified by applying the public interest override
- Participants should try to make logical, deductive arguments rather than simply repeating the facts or relying on impressions/prejudice

*First Request: Medical Records*

- Clearly highly intrusive private information
- But also chief of police so senior official who has far less expectation of privacy
- Could restrict it to just information suggesting a mental disease

*Second Request: Action Plans against Journalists*

- Does not appear to be a proper investigation (you cannot investigate a whole sector, just suspects)
- In any case, high public interest in knowing about this given that it involves journalists and freedom of expression

*Third Request: Investigation and Shares*

- There might be some value in allowing the investigation to run its course, but many months have passed and it has not even started so that does not appear to be relevant (i.e. there is no ongoing investigation that might be affected)
- Re. the shares, there are moves in countries around the world for all of this sort of information (i.e. share ownership) to be made public
- In any case, there does not seem to be any particular commercial interest of the company that would be affected here

*Fourth Request: Appointment Process*

- Normally an appointments process does involve quite sensitive personal information
- But this is a very senior appointments process, which argues the other way
- Also there seem to be allegations of wrongdoing, which would be a public interest factor in favour of openness
- There is no protection for 'professional secrets' under the Khyber Pakhtunkhwa RTI Act

**FINAL SESSION: SUMMARY AND REVIEW****Purpose of the Session**

The purpose of the session is to test the extent to which participants have absorbed the material presented in this course.

**Expected Learning Outcomes**

After attending this session, the participants will be able to:

- Assess the extent to which they have succeeded in understanding and remembering the course material

**Material Required**

Paper and pens/pencils for participants

This is the final session of your training on the Khyber Pakhtunkhwa RTI Act and your role as Public Information Officers.

Over the past two days and seven sessions you've been given a lot of information to take in! In this session, we will review the key points from each session. This is an opportunity to recap, refresh your memory, improve learning (retention of information) and – very importantly – an opportunity for you to ask questions about anything you're not clear on. Following the review and question period, we will divide you into two groups and have an RTI quiz, to see which team has a better understanding of RTI!

**Review**

Read through the key points given at the end of each session quickly and address any questions to the moderator.

## RTI Quiz

*Divide participants into two teams and ask them alternate questions; the one with the most correct answers at the end is the winner.*

### 1. What does the term 'right to information' mean?

Right to information refers to the right to access information from government/public bodies.

### 2. Name three (potential) benefits of RTI.

*Choose three from among these. RTI can help promote accountability, reduce corruption, improve service delivery, improve access to services, promote participation, strengthen press freedom, promote economic growth, and support personal goals.*

### 3. How can RTI help public (government) bodies?

*RTI makes information readily available to public bodies (as well as citizens), thereby enabling them to carry out their work more efficiently. It also helps improve relations with citizens, and also engages citizens more in their work, thereby improving it.*

### 4. How many countries across the world have some form of RTI legislation?

*115 countries (as of April 2017).*

### 5. List five essential requirements for good RTI legislation.

*Good RTI legislation should include the following: wide scope in terms of public bodies and types of information covered, extensive proactive disclosure list, defined and limited exceptions regime, details of application procedures, an independent complaints/enforcement body, promotional measures.*

### 6. What is the CLD-AIE scoring framework and ranking for RTI legislation? What is the maximum possible score on the framework?

*This is a framework developed by two RTI NGOs which allows RTI/FOI laws to be assessed, scored and ranked. The framework awards points for inclusion of various essential components of good RTI legislation, with a maximum possible score of 150. Based on each country's score it is ranked against others.*

### 7. What score would the Khyber Pakhtunkhwa RTI Act get?

*137 points.*

### 8. Should an RTI law require people to give a reason for requesting information?

*No, RTI is a fundamental human right and requesters should be able to exercise that right without having to explain/justify why they need information.*

### 9. Under the Khyber Pakhtunkhwa RTI Act, is there a fee for submitting RTI requests?

*No, there is no fee for submitting RTI requests. [Some charges could apply to cover the costs incurred by a public body in providing information, e.g. for photocopying.]*

### 10. List the items that, as PIO, you need to check are included in any RTI request submitted to you.

*Contact details of the requester, name of public body, clear description of information requested, (optional) specification of form in which information is to be provided.*

### 11. What is the timeline for handling standard RTI requests?

*Ten working days*

### 12. Give two cases (scenarios) where this timeline would be altered? (In each case give the number of days to respond).

*i) If the information requires time to find – additional ten days allowed.*

*ii) If the information is already being proactively disclosed.*

*iii) If the information relates to the life/liberty of a person – must be treated urgently and responded to within 2 working days.*

### 13. What happens if someone submits an RTI request to the wrong public body?

*It is the PIO's duty to transfer it to the correct public body and inform the requester of this. If the PIO does not know which is the correct public body, s/he should inform the requester of this also.*

### 14. List five kinds of interests which should be protected through the exceptions in an RTI law?

*Choose five from: national security, public order, a country's international relations, management of the economy, law enforcement, legally privileged information, legitimate privacy interests, legitimate commercial interests, ability of government to formulate policies, life or health or safety of a person.*

### 15. What is the test for deciding if information is exempted under the law?

*Apply the three-part test: a) does the information requested relate to any of the interests that are to be protected in the exceptions regime of the Khyber Pakhtunkhwa RTI Act? b) would disclosure of information cause harm to that interest? c) does the public interest in disclosure outweigh the harm caused?*

### 16. Does the public interest override apply if lots of people demand that certain information be disclosed?

*No the public interest override is not based on popular demand, but on whether public interests such as exposing corruption, protecting public health and safety, exposing hypocritical behaviour by those in public office.... are involved.*

### 17. What happens if information disclosure is allowed under the Khyber Pakhtunkhwa RTI Act, but banned under some other law?

*The Khyber Pakhtunkhwa RTI Act takes precedence over other laws: other laws can elaborate the exceptions given in the RTI Act but not expand on these.*

### 18. Why is proactive disclosure of information by public bodies important?

*It saves lots of citizens having to submit RTI requests for commonly required information, and it saves public bodies having to respond to lots of similar requests.*

### 19. What principles should be followed for effective proactive disclosure?

*Proactively disclosed information should be readily accessible, easy to understand and up-to-date.*

**20. List five types of information that all public bodies must proactively disclose under the Khyber Pakhtunkhwa RTI Act.**

*Choose five from: functions of a public body; norms and procedures for carrying out these functions; laws and regulations by which a public body functions; staff directory; budget; details of concessions and permits; details of subsidies; decision-making processes and opportunities for public input in these; RTI information (including a list of categories of information held).*

**21. Why is good records management by public bodies important?**

*It enables PIOs/other officials to quickly find information requested under the RTI Act; it also greatly improves efficiency in functioning of a public body.*

**22. Public bodies have to deal with RTI requests, carry out proactive disclosure and improve records management. Name two other responsibilities they have under the Khyber Pakhtunkhwa RTI Act?**

*Raising public awareness of RTI and reporting on RTI implementation to the Khyber Pakhtunkhwa Information Commission.*

**23. What are the main functions of the Khyber Pakhtunkhwa Information Commission?**

*It is the external complaints/enforcement mechanism under the RTI Act; raising RTI awareness; supporting public bodies to implement the Act; training of PIOs; monitoring RTI implementation and making recommendations for improvement.*

**24. How long does the Commission have to respond to complaints?**

*The Commission must decide on complaints within 60 days of receiving them.*

**25. What powers does the Commission enjoy to investigate RTI related complaints?**

*The Commission enjoys the powers of a civil court: it can summon persons and compel them to give evidence or produce documents; it can examine and inspect information; receive evidence on affidavits; requisition information from any office; examine information on any spot.*

**26. What penalties can the Commission impose?**

*If a PIO is found negligent in his/her duties, the Commission can direct the PIO to pay a fine not exceeding Rs. 250 for each day of delay in providing requested information, or a fine of up to Rs. 25,000.*

**27. How often must public bodies report their progress on RTI implementation to the Khyber Pakhtunkhwa Information Commission?**

*All public bodies covered under the Act must submit an annual report detailing measures taken to implement the Khyber Pakhtunkhwa RTI Act.*

**28. How can the Information Commission support public bodies in RTI implementation?**

*The Commission can produce awareness-raising material for the public, which can also be used/adapted by individual public bodies; it can support training of PIOs; it can help public bodies develop systems and procedures for proactive disclosure, handling requests, records management and so on.*