

Exempt Information

There are certain types of information which is exempt from disclosure. However, there is no absolute or blanket exemption to any type of information in this Act. Information is only exempt from disclosure if giving the information would cause harm to one of the protected interests. These are set out in sections 15 to 21 of the Act. Following are the broad categories of information exempted from disclosure under this act:

- Disclosure of information harmful to law enforcement;
- Information disclosure of which may cause grave and significant damage to public economic affairs;
- Information disclosure of which may cause harm to policy making;
- Information that would encroach on the privacy of an individual;
- Information that is privileged from production in legal proceedings;
- Commercially sensitive information;

In case the request for information is rejected

While rejecting the request for information, the PIO will inform the applicant any of the following as the case may be:

- The request for application does not comply with the rules of Khyber Pakhtunkhwa Right to Information Act (but only after assistance has been offered);
- The requested information is available in the published form; (in this case the PIO will also guide the applicant as to where this information can be found);
- The requested information is the same as earlier provided to the applicant;
- The whole or part of the requested information belongs to the categories of information which is exempt from disclosure; in this case, the PIO will refer to the exact exception and also mention that the applicant has the right to appeal against the rejection of the application; if only part of the information is exempt, that part needs to be removed (blackened out) and the non-exempt information needs to be provided.

Fee for Providing Requested Information

Under **Section 13** of the Act:

- The PIO will not charge an applicant for filing the request for information.
- The PIO will not charge any fee for first 20 pages of photocopying.
- The PIO will only charge the actual fee for producing and sending the requested information according to the cost set by Khyber Pakhtunkhwa Information Commission.

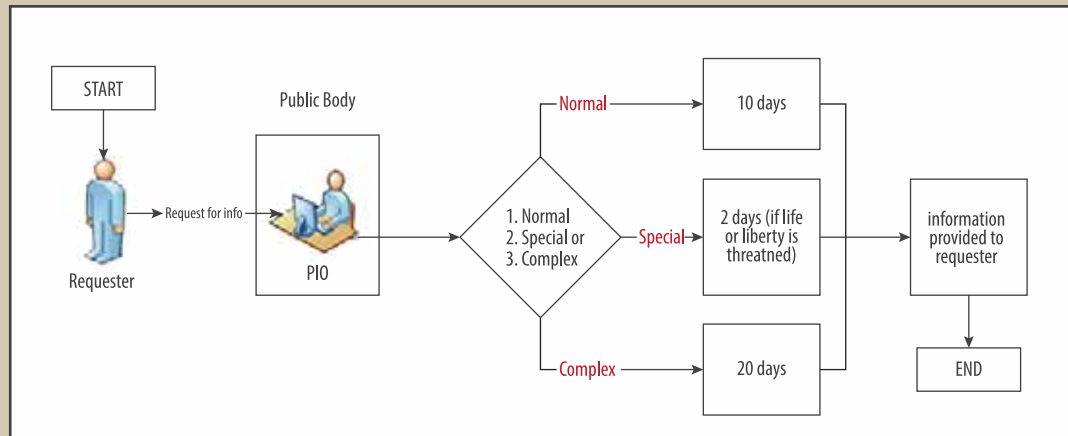
Complaints

Complaints go to the KP Information Commission, an independent oversight body with strong powers. The Commission can agree with the decision of the public body, order remedies for the requester (e.g. disclosure), impose fines on PIOs, or order the public body to put in place structural measures related to the smooth implementation of KP RTI Act 2013.

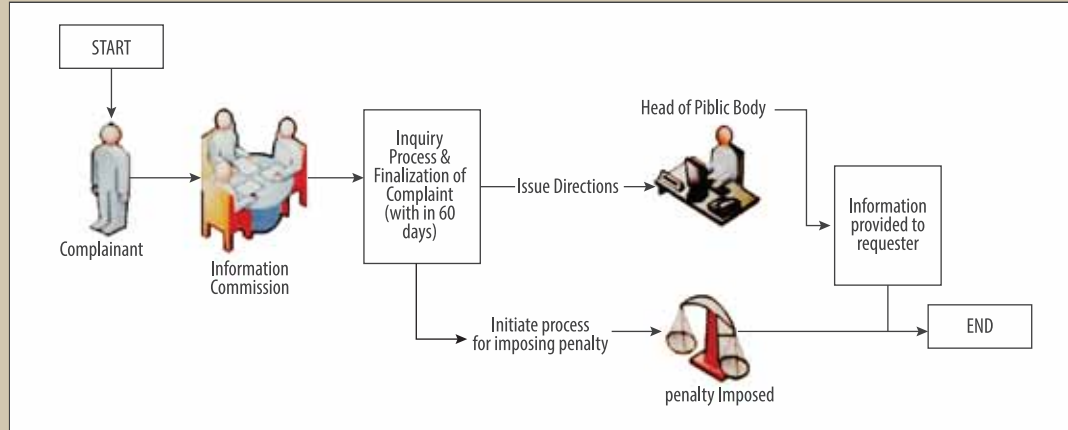


RTI Process Flow

Request Process Flow



Complaint Process Flow



- **Note:** PIOs should document all steps taken when processing requests to protect themselves

Burden of Proof

Section 23 (4) declares that:

"In an appeal against the decision of Khyber Pakhtunkhwa Information Commission, the Burden of proof will be on the public body to establish that it acted in line with the spirit of this law".

Right to Appeal

Under **Section 26**(4), A requester or a public body can appeal against the decision of Khyber Pakhtunkhwa Information Commission in a court.

If public bodies do not either appeal against a decision of the Commission or implement that decision within 30 days, the Khyber Pakhtunkhwa Information Commission can enforce its decision using contempt of court powers.

Penalty for Unlawfully Delaying or Denying Access to Information

Under Section 26 (3)(b), Khyber Pakhtunkhwa Information Commission can impose penalty of Rs. 250 on the public information official for each day of delay or unlawfully denying access to requested information and this fine can go up to Rs. 25,000.

Punishments for Criminal Offences

Section 28 states criminal offenses and punishment under this Act. The offenses are as under:

- **Obstructing access** to any record with *intention to prevent* the exercise of the right under this Act which is the right to have access to information;
- **Obstructing performance** of any public body to discharge its duties mentioned in the Act;
- **Interfering** in the work of Khyber Pakhtunkhwa Information Commission;
- **Destroying any record without lawful authority**.

Section 28 (2) mentions punishment for these offenses which can be imposed for these crimes. The punishment can be imposition of fine from Rs. 50,000 or imprisonment up to 2 years.

Protections

Public officials have been given protection against departmental actions and other (legal) sanctions in two situations. The first is for disclosing information pursuant to the Act in good faith. This means that as long as you act in good faith, you will not be punished. This protection is found in Section 29 of the Act. The second is for exposing corruption and other forms of wrongdoing. In this regard, key features of Section 30 are as under: Legal, administrative or employment related sanctions will not be imposed if;

- An official releases information in good faith exposing wrong-doing or share information about threat to public safety or environment;
- Wrongdoing means criminal offence, failure to comply with legal obligations, miscarriage of justice, corruption, dishonesty and maladministration in a public body.



Khyber Pakhtunkhwa Information Commission

Government of Khyber Pakhtunkhwa

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KHYBER PAKHTUNKHWA INFORMATION COMMISSION

Understanding The Khyber Pakhtunkhwa Right To Information Act, 2013



What is RTI?



Right to Information (RTI):

- Legal definition: "access by individuals as a right to information held by public authorities".
- In plain language: "right to ask for information from the government".
- Also known as: "access to information", "right of access", "right to know" and "freedom of information".

• UN General Assembly adopted Resolution 59 (1), in 1946 "Freedom of information is a fundamental human right ... the touchstone of all the freedoms to which the UN is consecrated". This was followed by the Universal Declaration on Human Rights in 1948.

• Article 19 of the UDHR, 1948: 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 regard less of frontiers.

Is RTI a Fundamental Right?

• In Pakistan, Article 19 of the Constitution of Pakistan 1973 includes "right to expression" however, under the 18th Amendment, Article 19-A has been inserted which recognizes right to information as constitutional right of every citizen of Pakistan.

• KP Right to Information Act, 2013 entitles the citizens to get information and records held by government departments and public bodies at provincial level, subject to the rules and procedures it sets out for this.

• Under Section 3 of KP RTI Act 2013: "Every citizen shall subject to the provisions of this Act and any rules made under it, have the right to access any information or record held by a public body".

- **More than 120 countries already have right to information laws.**



Purpose of the RTI law

To promote transparency and accountability in the functioning of public sector with the objective of:

- Improve governance
- Combat corruption
- Hold government officials accountable
- Building state-citizen trust.
- Help the citizens to participate meaningfully in democratic process.
- Raising the dignity of a common man.
- Promoting citizens integration in governance processes.

Salient features of KP RTI Law

- Applicable to all bodies performing public functions in KP as defined in Section 2 (i).
- Designation of Public Information Officers by all public bodies in the province.
- The law envisages-time bound provision of information to citizens (normally 10 working days).
- The law provides a simple procedure for accessing information, and there is no fee for citizens to file information requests.
- The KP RTI law has clearly defined a list of exempted information in Section 14-22; only information which falls within these exceptions can be refused.
- Effective oversight mechanism in the form of Khyber Pakhtunkhwa Information Commission. The Commission has punitive powers as well.
- Maintenance and indexing of record. (Section 4).
- Proactive disclosure of information (section 5).
- Protection for whistleblowers.

- **Information means** "material which communicates meaning and which is held in recorded form" defined in Section 2 (e) of RTI Act.

- **Public body is** any department/ organisation /secretariat /body which undertakes a public function.

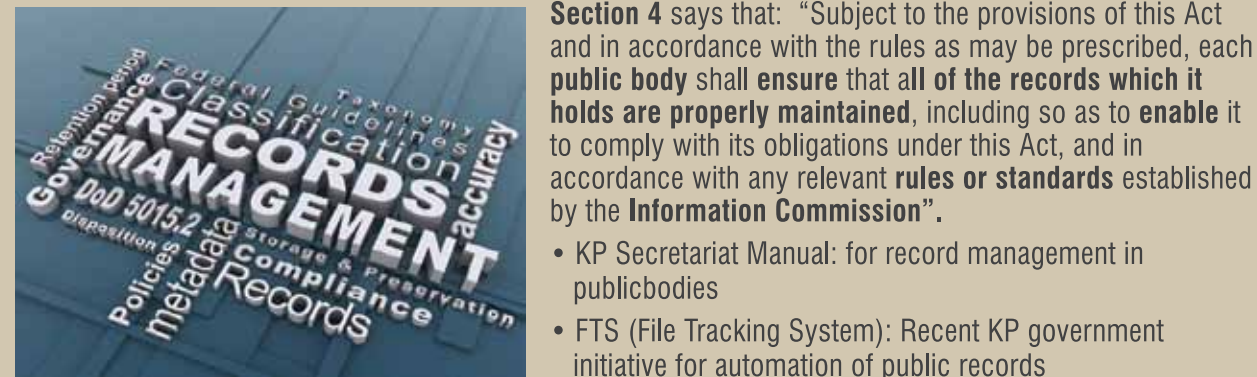


Role and Responsibilities of PIO

- The head of every public body is supposed to ensure that citizens seeking information are facilitated, hence an officer/official is designated for the purpose known as Public Information Officer (PIO).
- Responding to Information Requests: A citizen can file a request for information with a Public Information Officer (PIO) of any public body through a written application, in-person, fax or email.
- Providing assistance to requesters, including by writing down oral requests, as needed.
- Guide the citizens if information not held by the public body (section 9)
- Adopt the procedure for the disposal of requests (section 10)
- The PIO is bound to provide requested information within 10 or maximum 20 working days.
- Receive fees from requester in accordance with section 13 of the act, against photocopying charges if the requested information exceeds 20 pages.
- In case of denial of information, PIO must provide a reason in writing referring to the section of the Act relied upon for such refusal.
- Defending Complaints: the PIO needs to show burden of proof in front of KP Information Commission for the action taken in accordance with the provisions of RTI Act.
- **Report annually** to the Information Commission on the status of information requests and the steps taken by the public body for the implementation of RTI law.
- Ensure that the information indicated in section 5 of the KP RTI Act, 2013 is published proactively by the public body using all available means i.e. notice boards and internet etc.

Maintenance & Indexing of Record

Public bodies are required to computerize and index their records under Khyber Pakhtunkhwa Right to Information Act 2013.



Section 4 says that: "Subject to the provisions of this Act and in accordance with the rules as may be prescribed, each 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 Information Commission".

- KP Secretariat Manual: for record management in public bodies
- FTS (File Tracking System): Recent KP government initiative for automation of public records

Proactive Disclosure of Information

Section 5 lists categories of information that will have to be proactively disclosed by public bodies. Depending on the resources, public bodies will provide information listed in Section 5 in an accessible manner according to the needs of citizens and also put this information on their web sites. Following categories of information fall under the ambit of **Section 5**:

- Acts and subordinate legislations (rules, regulations, notifications, by-laws, manuals and orders having force of law);
- Organizational structure, functions, duties, powers and any services it provides to the public;
- Directory of employees, duties, powers functions and their remunerations, perks and privileges;
- Norms and criteria set by the public body for the discharge of its functions, rules, manuals and policies;
- Description of its decision-making process and any opportunities for the public to provide input into or be consulted about decisions;
- Relevant facts, background information relating to important policies and decisions which can affect public;
- Detailed budget and expenditure
- Details of any subsidy /benefit program including the details of the amount & beneficiaries
- Description of the manner in which a request for information may be made including the contact details of the designated official.

What Constitutes an Information Request?

Section 7 describes elements of an information request which are as under:

- The request will be in writing;
- The written request provides sufficient details of the information or record being requested; and
- Address for the delivery of the information or record being requested.
- In no case shall a requester be required to provide reasons for his request.

The Methods of Submitting Information Request:

An applicant can submit information request in the following manner:

- In person;
- By mail;
- By fax; and
- By email.

Note: A public body may issue a form to assist applicants for submitting information requests. However, submitting information requests on this form will be optional.

Duty to Assist

Section 8 makes it binding on the PIO to assist the applicants. Following are key elements of the assistance to be provided to an applicant.

- If an applicant is unable to describe the information in sufficient detail, PIO will help him describe the information he wants.
- PIO will provide assistance to persons with disabilities.
- If an applicant is illiterate, PIO's will write information on his behalf. After writing the request, the PIO will sign the information request; put date and provide copy of the information request to the applicant.