

Using Right to Information Legislation for Investigative Reporting



Centre for Peace and Development Initiatives

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Abbreviations

CIJ	Canadian Association of Journalists
COE	Council of Europe
CPDI	Centre for Peace and Development Initiative
DCO	District Coordination Officer
EDO	Executive District Officer
EU	European Union
FOI	Freedom of Information
ICCPR	International Covenant on Civil and Political Rights
KPK	Khyber Pakhtunkhwa
LGO	Local Government Ordinance, 2001
NAP	National Archives of Pakistan
NDW	National Documentation Wing
NIC	National Identity Card
OAS	Organisation of American States
PPRA	Public Procurement Regulatory Authority
RTI	Right to Information
UDHR	Universal Declaration of Human Rights, 1948
UN	United Nations

Glossary

'Access to information'	The policies, practices, laws and procedures that help guarantee openness in the conduct of public affairs.
'Freedom of expression'	The human right to express and exchange opinions, beliefs and information with others
'Freedom of Information'	The human right to secure access to publicly held information and the corresponding duty upon a public body to make information available.
'Habeas data'	The right to secure access to personal data held by public authorities.
'Horizontal right'	A right exercised by a private legal person against another private legal person e.g. By an individual against a corporation, as opposed to a vertical right which is exercised against a public body of some kind.
'Official information'	Information held by a public body.
'Ombudsman'	An administrative body established to receive and adjudicate upon complaints against public bodies-these can be local, national or service based, for example a health service Ombudsman.
'Principle of maximum disclosure'	The assumption that all documents held by public body should be open to the public.
'Public Body'	A 'Public Body' is defined by the type of service provided and includes all branches and levels of government including local government, elected bodies, bodies which operate under a statutory mandate, nationalized industries and public corporations, non-departmental bodies or quangos (quasi non-governmental organizations), judicial bodies, and private bodies which carry out public functions (such as maintaining roads or operating rail lines)
'Right to Information legislation'	Legislation that gives effect to the right to secure access to publicly held information and the corresponding duty upon a public body to make information available.
'Whistleblower'	Public official who releases information on wrongdoing or discloses a serious threat to health, safety or the environment, as long as she/he acted in good faith and in the reasonable belief that the information was substantially true and discloses evidence of wrongdoing or a serious threat to health, safety or the environment.

Introduction

1. About Right to Information

Right to Information (RTI) is a fundamental human right. It means the right of people to access information and records held by public bodies or Organisations that benefit from taxpayers' money. In countries that have appropriate RTI legislation individuals can easily seek and receive information from government departments and public bodies. RTI is recognised in the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1976) and the UN Guidelines on Consumer Protection (1985). RTI is essential to protect individuals' right to life and liberty, as well as to enable practice of freedom of expression.

2. About the Manual

This Reference Manual has been developed to guide journalists and media practitioners in Pakistan about the significance of RTI, the related legal framework in Pakistan and how the RTI laws can be used to access information for developing investigative reports. The Manual provides journalists and media practitioners nearly all of the relevant reference material on RTI, at local, regional and international levels, in an easy-to-use manner. The Manual is also designed to facilitate journalists in investigative reporting by guiding them on means and methods of developing investigative reports through the access of information from various sources, especially using RTI laws.

3. Why this Manual?

Since the promulgation of Freedom of Information (FOI) Ordinance 2002, only a few organisations and individuals have attempted to exercise the right to access information under this Ordinance. Journalists, in particular, have been conspicuous by their absence in terms of using FOI Ordinance, despite the fact that their professional responsibilities require them to seek and use information on a daily basis. Initially, people found it difficult to exercise their Right to Information because there were no rules of procedure available to use this law. However, with the passage of time, and through the continuous efforts of civil society organisations like CPDI, Government notified the FOI Rules in 2004. Following this, in order to promote the use of FOI Ordinance, some awareness materials explaining the procedure to request information under the law were also developed. However, these materials had a little focus on the needs of journalists and did not provide information about various aspects of FOI in a comprehensive manner.

This Manual seeks to provide all of the most relevant information to journalists regarding the RTI, international best practice thereof and the related legal framework in Pakistan. It also aims at guiding the journalists about the use of RTI laws to access information and develop investigative reporting. It is expected that this Manual will help facilitate journalists, especially those who have the will and desire to break new professional ground in terms of high quality investigative reporting in the media.

4. Objectives of the Manual

The objectives of this Manual are to:

- Educate journalists and media about the importance of RTI in investigative reporting and the legal framework relating to access to information;
- Educate journalists and media about the procedure to access information under the available legal instruments in the country;
- Provide relevant reference material including international best practices and text regarding laws on RTI in Pakistan;

- Provide updated information on RTI and related trends and practices at regional and international levels.

5. Who can use it?

The Manual is meant to provide reference materials on RTI laws to journalists who want to use them for investigative reporting. The Manual can also be used by individuals and organisations interested in probing government decision making processes on matters of public concern.

1 Right to Information: Concept, Background and Current Trends

1. What is Right to Information

Right to Information means that everyone should have the right to access information or records held by or under the control of any public authority. It includes the right to:

- Inspect works, documents, records;
- Take notes, extracts, or certified copies of documents or records;
- Take certified samples of materials;
- Obtain information in any form such as diskettes, floppies, tapes, video cassettes or through printouts where such information is stored in a computer or in any other device¹⁹.

2. Importance of Right to Information

Information is the oxygen of democracy²⁰ and Right to Information has been recognised as a fundamental right and touchstone of all the freedoms to which the UN is consecrated²¹. It ensures accountability and transparency in the functioning of public bodies and it empowers people to meaningfully participate in decision making processes at various levels of government. The concept of RTI is not new, rather it has evolved through recognition by internationally accepted and recognised legal and human rights instruments, as well as through continuous efforts on the part of various reputed individuals, social movements and non-governmental organisations.

Information Request Exposing Scandalous Amounts Given as Fee to Lawyers in judges Case:

Notwithstanding the limitation in the Freedom of Information Ordinance 2002, CPDI has submitted many information requests that led to the documentary evidence pertaining to malpractice, misadministration injudicious utilisation of public resources. We will be sharing here one particular information request that we submitted to the Ministry of Law, Justice and Human Rights, in May 2008, asking them the following questions:

1. Certified information about the total amount paid by Ministry of Law, Justice and Human Rights as fee or in other heads to the lawyers who represented Federal Government/ Federation in Supreme Court of Pakistan during the same tenure.
2. Certified information about the fee paid by Ministry of Law, Justice and Human Rights to each lawyer from October 01, 2002 to March 20, 2008, to represent The Federal Government/ Federation in Supreme Court of Pakistan.

The ministry denied the information request, saying it would open 'Pandora's box'. CPDI remained undeterred and persisted to open 'Pandora's Box'. We shared all the details with Ansar Abbasi, senior reporter 'The News International' and there was a front page story in lang' and 'The News' on Monday, July 14, 2008 titled 'Law ministry protecting Musharraf's legal extravagance.

Our endeavours in terms of taking the initiative of submitting an information request and launching a media campaign on this issue paid off when MNA Begum Nuzhat Siddiqi asked the minister for law, justice and human rights, on the floor of the house, the same question CPDI-Pakistan had been raising: "To show the names of lawyers, who pleased the cases on behalf of the government cases in the Supreme Court during the last five years and the total amounts of fees paid to them in each case."

The Ministry of Law, Justice and Human Rights had to divulge the information in parliament, which was published in 'The News' in a story titled 'Qayyum, Wasim Sajjad, Ranjha major beneficiaries in judges issue', filed by Rauf Clausra on Tuesday, August 12, 2008.

¹⁹ This definition is drawn from the Indian Right to Information Act, 2005. Moreover, similar definition was proposed by the ALPH Consultants and Advocates while conducting legislative research on RTI law in Pakistan in 2010

²⁰ The Public's Right to Know: Principles of Freedom of Information Legislation (<http://www.article19.org/pdfs/standards/righttoknow.pdf>)

²¹ The UN General Assembly adopted Resolution 59(1) in 1946

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Will Zardari protect Mush's legal eagles who made gold nests?

Ansar Abbasi

ISLAMABAD: Prime Minister Gilani's government appears hell bent upon keeping under wraps the hefty fees paid from the taxpayers' money to the Pirzadas, Bukharis, Qayyums of this world

Continued on Page 9

Will Zardari protect Mush's legal...

Continued from Page 1

during the tenure of the ousted dictator, General (retd) Pervez Musharraf.

It is unclear for the moment whether this overzealous attempt of maintaining the cloak of secrecy is due to the stakes of someone mighty in the current ruling dispensation or is it the consequence of deliberate and sinister bureaucratic foul-play linked with this issue. Whatever the underlying cause, the fact is that the government is steadfastly resisting a formal request to unveil the identity of all those lawyers who made fortunes during Musharraf's tenure.

Of late even an order from Federal Ombudsman directing the Law Ministry to provide the said information to an applicant-one Zahid Abdullah, who represents Centre for Peace and Development Initiatives, is not being honoured as the

Ministry preferred to approach the incumbent President to get a decision in its favour to keep the tracks of his predecessor covered.

The applicant had sought a certified copy of the list containing the names and addresses of lawyers, along with the total amount paid to them, hired by the federal government/federation of Pakistan in the Supreme Court of Pakistan from October 01, 2002 to March 20, 2008. But the Law Ministry in its representation to the President insists that if the required information is provided to the application then it would open a Pandora's box besides creating unnecessary problems and embarrassing situations.

The applicant after failing to get information from the Law Ministry by invoking the Freedom of Information Ordinance 2002, had

approached the Federal Ombudsman last year. Early this month the Federal Ombudsman decided in Zahid Abdullah's favour after rejecting the Law Ministry's request but now the Ministry has filed a representation against the Ombudsman's findings with the President, who is requested to set aside Ombudsman's decision "in the interest of justice".

In its argument, the Law Ministry wrote to the President that for the purpose of hiring advocates from outside existing central law officers or the panel of advocates, the Ministry had a Legal Advisors Committee comprising the law minister as its chairman and the attorney general for Pakistan and the law secretary as its members.

It explained that the cases of hiring of advocates were decided

box, further it would be direct interference in the internal working of this Division," the Law Ministry said, lamenting, "The Wafaqi Mohtasib vide his recommendation dated 4-5-2009 has decided the said complaint in the favour of complainant and directed this Division to provide the requisite documents to the complainant within 30 days."

Now it is for the president to decide whether he would side with the Law Ministry to keep it a secret as who amongst the lawyers made their fortunes while serving the dictator of the past or would he direct the government to make this information public thus allowing the taxpayers to judge how their money was squandered by the ousted dictator to perpetuate his unconstitutional rule. The Mohtasib has already given his mind and the ball is now in President Zardari's court.

[illegible][illegible][illegible]

3. Background

The concept of Right to Information was first internationally recognised in 1946 when the United Nations General Assembly passed one of its very earliest resolutions on freedom of information. The Resolution 59(1) of the UN General Assembly states:

“Freedom of information is a fundamental human right and ... the touchstone of all freedoms to which the United Nations is consecrated.”

Article 19 of the Universal Declaration of Human Rights 1948 - which is a subsequent international instrument on human rights - considers the Right to Information as part of the fundamental right to freedom of expression. The Article reads:

“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’.

The International Covenant on Civil and Political Rights 1966, which is another highly recognised international instrument, has a similarly worded freedom of information provision in its Article 19. It states:

“Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”

The UN Special Rapporteur on Freedom of Opinion and Expression, the Organisation of Security and Co-operation in Europe Representative on Freedom of the Media and the Organisation of American States Special Rapporteur on Freedom of Expression issued a joint declaration in November 1999, stating that:

“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.”

Thus, Right to Information is a core human right enabling citizens to more meaningfully exercise their rights, assess when their rights are at risk and determine who is responsible for any violations²².

4. Principles on Freedom of Information

Derived from international and regional law standards, evolving state practice and general principles of law, these principles of FOI have been published by Article 19 - Global Campaign for Free Expression, in ‘The Public’s Right to Know: Principles on Freedom of Information Legislation’ (1999)²³.

They were also endorsed by the UN Special Rapporteur on Freedom of Opinion and Expression in 2000 and the Organisation of American States (OAS) Special Rapporteur on Freedom of Expression in 1999.

The principles set out standards for national and international regimes giving effect to the Right to Information. They were primarily designed for national legislation on RTI or access to official information, but are equally applicable to information held by inter governmental bodies such as the UN and the European Union (EU). The following points illustrate some detail of the principles:

²² Global Trends on the Right to Information: A Survey of South Asia
(<http://www.article19.org/pdfs/publications/south-asia-foi-survey.pdf>)

²³ “The Public’s Right to Know: Principles of Freedom of Information Legislation
(<http://www.article19.org/pdfs/standards/righttoknow.pdf>)

- **Maximum Disclosure**
 - i. A Body seeking to deny access to information has the onus of proving that the information may be validly withheld.
 - ii. Everyone, not just citizens, should benefit from the right, and an individual requesting access should not have to demonstrate any particular interest in the information.
 - iii. Information or records should be broadly defined.
 - iv. No public body should be excluded from the ambit of the law.
- **Obligation to Publish**
 - i. Public bodies must be required to actively publish and disseminate key categories of information irrespective of any request.
- **Promotion of Open Government**
 - i. Public servants must be trained for promoting openness with government.
 - ii. Obstruction of access to information must be dealt with severely.
 - iii. Raise public awareness about Right to Information.
 - iv. Improved maintenance of records.
- **Limited Scope of Exceptions**
 - i. Exceptions should be clearly and narrowly defined and subject to strict 'harm' and 'public interest' tests.
 - ii. Exceptions should be subject to content-specific case-by-case review and non disclosure, only permitted where it is in the public interest and where release would cause serious harm.
- **Processes to Facilitate Access**

Requests for information processes should be rapid and fair.

 - i. There must be an independent review of any refusal to provide information.
 - ii. Refusal to provide information must be supported by reason/s.
 - iii. Law should provide a right of appeal to the courts from the independent review body.
- **Costs**
 - i. Individuals should not be deterred from making requests for information by excessive costs.
- **Open Meetings**
 - i. Meetings of public bodies should be open to the public.
- **Disclosure Takes Precedence**
 - i. Laws that are inconsistent with the principle of maximum disclosure should be amended or repealed.
 - ii. Wherever possible, laws must be interpreted consistent with freedom of information legislation.
 - iii. Review all laws that restrict disclosure of information to bring them in line with the freedom of information law.
- **Protection for Whistleblowers**
 - i. Individuals who release information on wrongdoing -whistleblowers- must be protected.

Crumbs! County council is a big biscuit spender Monday, April 14, 2008, Portsmouth News

Hampshire County Council has snubbed custard creams in favour of shortbread, oat and ginger biscuits. Documents released under Freedom of Information laws show the superior types of biscuit makes Hampshire the biggest spender on biscuits compared to every other council in our area. The council spent £1,520 of taxpayers cash in 2007 on biscuits, compared with a total spend of £5,000 spent by West Sussex, Portsmouth, East Hampshire, Fareham, Gosport, Chichester and Havant. The revelation follows the disclosure that Hampshire County Council also spent £141,000 - more than any council in the country - on bottled water. This sparked claims the authority needed to get a grip on how much it spends on providing refreshments at council meetings. The figures were obtained under Freedom of Information legislation after Hampshire County Council leader Ken Thornber refused to release them last month. He branded questions submitted by The News as 'time wasting' and 'inconsequential' even though the seven other councils responded within days of being asked. The campaign director of the pressure group the Taxpayers' Alliance, Mark Wallace, said: 'The guiding principle of all public servants should be that the public has got a right to know how their money is being spent. 'What did Hampshire County Council have to lose by simply answering these questions freely at the first time of asking like the other councils did?

'Hampshire should be trying to get a reputation for listening to taxpayers, not a reputation for ignoring them.' Cllr Thornber hit back and said: 'What is more important than the cost of a custard cream is running a county council with a budget of £1.6bn. 'We have other things to do and requests of this sort have to take their place in the order of things. 'We run a tight ship - we do not have staff coming out of our ears. 'We are recognised by pressure groups as being the second most frugal council in the land.'

Hampshire's head of information compliance, Judith Downing, said: 'The cost of providing biscuits for council meetings in 2007 was 0.3 pence per council taxpayer.' She added: 'Refreshments are provided taking into consideration that council meetings may last for two hours or longer. 'The make of biscuits provided varies, but is generally Coronet, Patersons, Jacobs or Walkers and they come in packs of two so that wastage is reduced. 'They are generally a mixture of oat, shortbread, ginger and chocolate chip. 'We get them from our in-house caterers and the brands were selected following market testing.' Ms Dowling also explained the reason it took so long for the council to provide the information. She said: 'The information in respect of refreshments is not held in one place by one department and it has therefore taken longer to locate the relevant statistics.'

<http://tpa.typepad.com/media/2008/04/portsmouth-ne-3.html>

5. Global Trends in Right to Information

Swedish law first legally recognised the right to access information more than two hundred years ago. However, during the last thirty years, this right has gained widespread recognition, both nationally and internationally. A growing number of international and regional organisations including the UN, the Commonwealth, the Organisation of American States and the Council of Europe, have issued a number of authoritative statements supporting the Right to Information. Collectively, this amounts to a clear international recognition of the right²⁴.

5.1 The United Nations

Within the UN, Right to Information was recognised early on as a fundamental right. In 1946, during its first session, the UN General Assembly adopted Resolution 59(1), which has been discussed above.

In 1948, the UN General Assembly adopted the Universal Declaration of Human Rights (UDHR), which includes Article 19, guaranteeing freedom of opinion and expression as well as freedom to seek, receive and impart information and ideas through any media, regardless of frontiers.

The UN General Assembly adopted a legally binding treaty, the International Covenant on Civil and Political Rights (ICCPR), in 1966. The corresponding provision in this treaty, Article 19, guarantees the right to freedom of opinion and expression.

²⁴ Global Trends on the Right to Information: A Survey of South Asia
(<http://www.article19.org/publications/south-asia-foi-survey.pdf>)

In 1993, the UN Commission on Human Rights established the office of the UN Special Rapporteur on Freedom of Opinion and Expression with a mandate to clarify the precise content of the right to freedom of opinion and expression. The Special Rapporteur in 1995 noted:

“The right to seek or have access to information is one of the most essential elements of freedom of speech and expression.”

There have been moves within the international community to recognise a special aspect of the Right to Information in relation to human rights. In 1998, the UN General Assembly adopted the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms [the Declaration on Human Rights Defenders]. Article 6 specifically provides for access to information about human rights. The article recognises that the right to seek, obtain and receive information on human rights is fundamental to the effective promotion and protection of human rights.

5.2. The Commonwealth

The Commonwealth - a voluntary association of 54 countries based on historical links, common institutional and legislative frameworks and shared values - has taken concrete steps during the last decade to recognise human rights and democracy as part of its fundamental political values. The importance of freedom of information, including the right to access information held by the State, has been recognised by the Commonwealth for more than two decades.

In March 1999, a Commonwealth Expert Group Meeting in London adopted a document setting out a number of principles and guidelines on the right to know and FOI as a human right. It included the following:

“Freedom of information should be guaranteed as a legal and enforceable right permitting every individual to obtain records and information held by the executive, the legislative and the judicial arms of the state, as well as any government owned corporation and any other body carrying out public functions.”

5.3. Organisation of American States

The Organisation of American States (OAS) adopted the American Convention on Human Rights (ACHR) in 1969 and recognised the Right to Information under its Article 13. The Article states:

“Everyone has the right to freedom of thought and expression. This right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one’s choice.”

In a 1985 Advisory Opinion, the Inter-American Court of Human Rights, interpreting Article 13(1), recognised FOI as a fundamental human right.

5.4. The Council of Europe

The Council of Europe (COE) is an intergovernmental organisation, composed of 43 Member States. It is devoted to promoting human rights, education and culture. One of its foundational documents is the European Convention on Human Rights (ECHR), which guarantees freedom of expression and information as a fundamental human right in Article 10:

Everyone has the right to freedom of expression. This right shall include freedom to hold

opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. ...

5.5. Developing versus Developed Countries

Currently there are approximately 95 countries in the world that have legislation on RTI. These countries include Albania, Angola, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Belgium, Belize, Bosnia and Herzegovina, Bulgaria, Canada, Colombia, Croatia, Czech Republic, Denmark, Dominican Republic, Ecuador, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, India, Ireland, Israel, Italy, Jamaica, Japan, South Korea, Kosovo, Latvia, Liechtenstein, Lithuania, Macedonia, Mexico, Moldova, Montenegro, Netherlands, New Zealand, Norway, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Tajikistan, Thailand, Trinidad and Tobago, Turkey, Uganda, Ukraine, United Kingdom, United States, Uzbekistan, and Zimbabwe.

Infants were given adult drugs at AIIMS: RTI 25 Aug 2008, 0830 hrs 1ST, Times Now

NEW DELHI: Just days after news broke of 49 babies dying during clinical trials at AIIMS, Times Now has managed to get the Right to Information (RTI) report that makes a shocking revelation. Two of the four drugs tried on the babies were meant only for adults and not for children below 18. (Watch) AIIMS, one of India's premier hospitals, now is in the eye of a storm after news that 49 babies died during clinical trials. The shocking RTI pointed out that that babies who died were administered medicines that were not meant for children below 18. Expressing shock at the incident, Dr CM Gulhati, Editor of Civil Society journal, Monthly Index of Medical Specialties said, "What is horrifying in the report that has come out of the RTI is that these tests were done from 1 year to 16 years and otherwise there was no division or sub division. It was not that it was tried from 12 to 16 and then you wait for 2 to 3 years and therefore small children over the age of 1 year but below the age of 16 years are all used as guinea pigs - this is the most serious problem with the tests." So far, AIIMS has remained silent on this

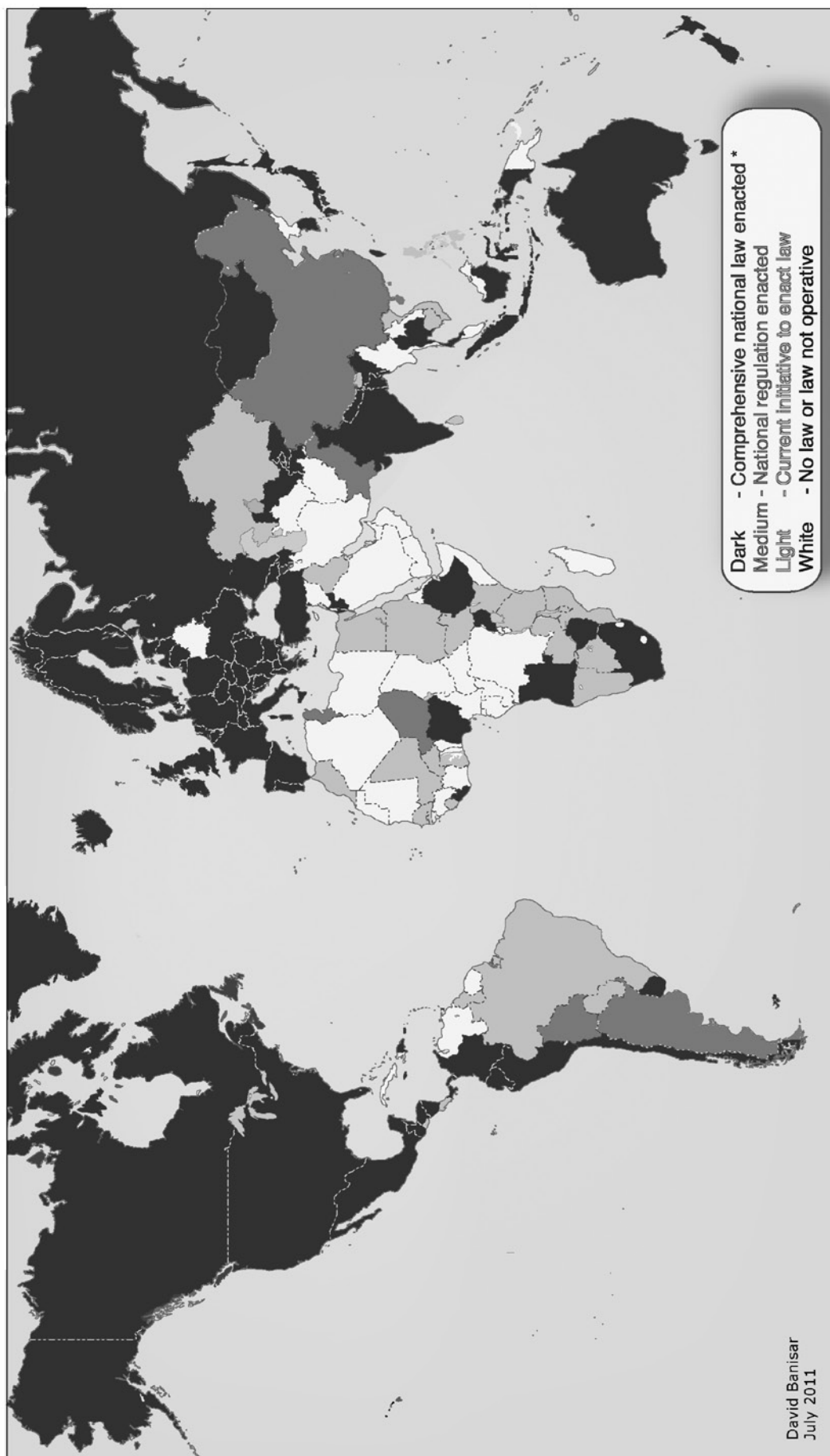
controversy but late Saturday night Veena Kalra, the head of the paediatrics ward did admit that some of the babies may have died during to the trials.

This revelation raises a number of questions about how was the hospital given permission to conduct trials of drugs meant for adults on babies. Were these children made guinea pigs because they were from poor families? Rahul Verma, who had filed for a RTI report said, "We are approaching National Human Rights Commission because now we feel that if we go by the former head of the department Veena Kalra by her statement that she gave to a certain newspaper that yes some of these were poor families and died because of clinical trials - its strictly violation of article 21 - the fundamental right to life. This RTI has opened up a Pandora's Box when it comes to how easy it is to get clinical trials conducted in India and with the matter being taken to National Human Rights Commission, AIIMS the premier medical institute has a lot of answering to do.

http://timesofindia.indiatimes.com/India/Infants_were_given_adult_drugs_at_AIIMS_RTII/articleshow/3401504.cms

An overview of existing legislation in these countries illustrates that RTI legislation in developing countries is relatively better than that in developed countries. The Indian Right to Information Act, 2005 is an example of such legislation on freedom of information or Right to Information in developing countries.

National Right to Information Laws, Regulations and Initiatives 2011



*Not all national laws have been implemented or are effective. See <http://www.article19.org/>

Electronic copy available at: <http://www.commonlawjournal.org/>

5.6. Freedom of Information (FOI) Acts from around the world²⁵

Ranking	Countries & territories	Year of formal approval or formal adoption of the FOI Act	Year in which the FOI Act came in power	Year of latest FOI Act revision	Name of the FOI Act, in English
1	Sweden	1766	1766	1976	Freedom of the press act
2	Colombia	1888	1888	1998	Law ordering the publicity of official acts and documents
3	Finland	1951	1951	2009	Act on the openness of government activities
4	USA	1966	1967	2009	Freedom of information act
5	Denmark	1970	1970	2000	Access to public administration files act
6	Norway	1970	1970	2006	Freedom of information act
7	Aland	1977	1977	2008	Act on the openness of government activities
8	France	1978	1978	2005	Law on access to administrative documents
9	Netherlands	1978	1980	2009	Wob: Act on public access to government information
10	Australia	1982	1982	2009	Freedom of information act
11	Canada	1982	1983	2001	Access to information act
12	New Zealand	1982	1983	2003	Official information act
13	Greece	1986	1986	1999	Code of administrative procedure
14	Austria	1987	1987	2005	Federal law on the duty to furnish information
15	Italy	1990	1990	2005	Law on administrative procedure and the right of access ...
16	Hungary	1992	1992	2005	Act on the protection of pers. data and public access ...
17	Spain	1992	1992	1999	Law on rules for public information
18	Ukraine	1992	1992	2002	Law on information
19	Kazakhstan	1993	1993	1993	FOIA
20	Portugal	1993	1993	1999	Law on access to administrative documents
21	Belgium	1994	1994	2000	Law on the right of access to administrative documents ...
22	Belize	1994	1994	1994	Freedom of information act
23	Greenland	1994	1995	1999	Law on openness in administration
24	Iceland	1996	1997	2003	Information act
25	Thailand	1997	1997	2003	Law on the principles and guarantees of FOI
26	Uzbekistan	1997	1997	2003	Law on the principles and guarantees of FOI
27	Hong Kong [SAR]	1995	1998	1998	Code on access to information
28	Ireland	1997	1998	2005	Freedom of information act
29	Latvia	1998	1998	2006	Law on freedom of information
30	South Korea	1996	1998	2004	Act on disclosure of information by public agencies
31	Albania	1999	1999	1999	Law on Right to Information for official documents
32	Israel	1998	1999	2009	Freedom of Information Law

²⁵ http://www.access-info.org/documents/Fringe_Special_-_90_FOIAs_-_sep_7_20091_resource.pdf

33	Aruba	1999	1999	2006	Lob: Act on public access to government information
34	Dutch Antilles	1999	1999	1999	Lob: Act on public access to government information
35	Bulgaria	2000	2000	2000	APIA: Access to public information act
36	Czech Republic	1999	2000	2006	Law on free access to information
37	Georgia	1999	2000	2001	General administrative code chapter III, Freedom of informs.
38	Liechtenstein	1999	2000	2000	Information act
39	Lithuania	2000	2000	2005	Law on the provision of information to the public
40	Moldova	2000	2000	2003	Law on access to information
41	Estonia	2000	2001	2009	Public information act
42	Japan	1999	2001	2003	Law concerning access to information
43	Romania	2001	2001	2007	Law on free access to public Information
44	Slovak Republic	2000	2001	2008	Act on free access to information
45	South Africa	2000	2001	2001	Promotion of access to information act
46	Trinidad & Tobago	1999	2001	2001	Freedom of information act
47	Angola	2002	2002	2006	Access to administrative documents
48	Bosnia & Herzegovina.	2001	2002	2002	Freedom of access to information act
49	Pakistan	2002	2002	2002	Freedom of information ordinance
50	Panama	2001	2002	2002	Law on transparency in public administration
51	Poland	2001	2002	2002	Law on access to public information
52	Tajikistan	2002	2002	2002	Law on information
53	Zimbabwe	2002	2002	2002	Access to information and privacy protection act
54	Argentina	2003	2003	2003	Improvement of the quality of the democracy and ...
55	Armenia	2003	2003	2003	Law on freedom of information
56	Croatia	2003	2003	2003	Act on the right of access to information
57	Kosovo	2003	2003	2003	Law on access to official documents
58	Mexico	2002	2003	2006	2006 Fed. transparency and access to publ. govt. information law
59	Peru	2002	2003	2003	Law of transparency and access to public information
60	Slovenia	2003	2003	2005	Access to public information act
61	St Vincent & Gren.	2003	2003	2003	FOIA
62	Antigua/Barbuda	2004	2004	2004	Freedom of information act
63	Dominican Republic	2004	2004	2004	Law on access to information
64	Ecuador	2004	2004	2004	Organic Law on Transparency and Access to Public Info.
65	Far Or	2004	2004	2004	Law on openness in administration
66	Jamaica	2002	2004	2004	Access to information act
67	Serbia	2004	2004	2007	Law on free access to information of public interest
68	Turkey	2003	2004	2004	Law on Right to Information
69	Azerbaijan	2005	2005	2005	Law on access to information

70	India	2005	2005	2005	RTI: Right to Information act
71	Montenegro	2005	2005	2005	Law on free access to information
72	Scotland	2002	2005	2005	Freedom of information act
73	Taiwan	2005	2005	2005	Freedom of information act
74	United Kingdom	2000	2005	2005	Freedom of information act
75	Germany	2005	2006	2006	Act to regulate access to federal government information
76	Honduras	2006	2006	2006	Transparency and Access to Public Information Law
77	Macedonia	2006	2006	2008	Law on free access to information of public character
78	Switzerland	2004	2006	2006	Federal law on the principle of administrative transparency
79	Uganda	2005	2006	2006	Access to information act
80	Jordan	2007	2007	2007	Access to information law
81	Kyrgyzstan	2007	2007	2007	Access to information law
82	Nepal	2007	2007	2007	Bill on Right to Information
83	Nicaragua	2007	2007	2007	Law on Access to Public Information
84	China	2007	2008	2008	Open government information regulations
85	Bangladesh	2008	2009	2009	Right to Information ordinance
86	Cayman Islands	2008	2009	2009	FOIA
87	Chile	2008	2009	2009	Law of Transparency of the Public Function and Access ...
88	Cook Islands	2009	2009	2009	Official information act
89	Guatemala	2008	2009	2009	Law for free access to public information
90	Uruguay	2008	2009	2009	Law on the right of access to public information

2

Investigative Reporting

1. Media in democratic society

Valid information is fundamental for a transparent, accountable and democratic government. Right to Information (RTI) facilitates transparency and accountability, both of which are essential to the health of democracy. Access to information helps develop a responsive society and empowers citizens to participate in the decision making processes of the government. The media has a huge part to play in this, having proved to be the major source of facilitating such access to information to citizens. As a watchdog, media monitors the functioning of the government and public officials. It informs and educates citizens about their rights and responsibilities, and holds the governments accountable. To perform these functions in an effective manner, the media needs to have an accurate account of events, complete information about government decisions and clear picture of the outcomes of these decisions²⁶.

Journalists prepare reports on the decisions and functioning of government with a focus on their outcome or impact on society. Newspapers publish these reports/stories to keep citizens informed in this respect. However, in most cases, the information is not available to journalists due to one reason or the other. Sometimes journalists do have access to information but the information is either incomplete or unauthentic. Such information does not provide a complete or true picture of events. Using unauthentic information can also have various legal implications due to a lack of evidentiary value. To make an authentic and comprehensive report and provide a complete picture of events, journalists need to dig out all relevant information. This digging out of information for reporting purposes is usually called an investigation and such reporting is known as investigative reporting.

2. What is investigative reporting?

Lucinda S. Fleeson authored a booklet teaching about investigative reporting. It was entitled "Dig Deep and Aim High"²⁷ and in it she said that this journalistic genre was not limited to exposing corruption and criminal activity, but included stories that explain how systems work or fail, or construct complex narratives. Common definitions, she wrote, include: stories that contain original work, not leaked investigations from law authorities; stories that show a pattern of systematic problems, not just one isolated incident affecting one individual; and stories that explain complex social problems, reveal corruption, wrongdoing or abuse of power.

In the United States, investigative journalism is best known for helping topple a president for abuse of power. Journalists like Bob Woodward and Carl Bernstein of the Washington Post helped set a standard for tough reporting in the public interest, taking on corrupt politicians, organised crime, consumer fraud, and corporate abuse²⁸. Indeed, investigative journalism has long been viewed as a natural outcome of free media. "Watchdog journalism", as media expert Butch Ward puts it, "is at the heart of a newspaper's commitment to public service."²⁹

²⁶ http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/pnace630.pdf

²⁷ Lucinda S. Fleeson, "Dig Deep & Aim High A Training Model for Teaching Investigative Reporting," International Center for Journalists, Copyright 2000, Washington, D.C.

²⁸ http://www.ned.orgkima/CIMA-Investigative_Journalism_Report.pdf

²⁹ (http://www.poynterorg/content/content_pript.asp?id=82...)

3. Importance/relevance of investigative reporting in current age

The media's duty to serve as a fourth estate requires investigative reporting on the conduct of public officials, cases of corruption, mismanagement or dishonesty in government and human rights issues among others. To unearth these stories of public interest, journalists must rely on reliable sources and information that is accessible and can be guaranteed by FOI legislation. Indeed, it would be impossible for the media to perform its role without access to documents at the heart of governmental functioning, such as budgetary information, policy papers, correspondence with contractors and information relating to health and the state of the environment. Without such access, journalists cannot effectively scrutinise governmental action; they would be condemned to rely on 'leaked' documents, second-hand information or even rumours, laying themselves open to defamation suits or other legal threats along the way.

As for obstacles faced by investigative reporters, Fleeson said the most common in developing and developed countries are: lack of information, inaccessibility to documents, unwillingness of media owners to publish controversial stories, fear of retribution by political or business interests, threats to personal security, inadequate time to complete assignments, unavailability of budgets for travel and expenses, loneliness, burnout, fear of failure, lawsuits, job loss & the lack of an investigative tradition³⁰.

The following table explains the important components of investigative reporting. An investigative report must include detailed information about the event, its blind spots, hidden agendas (if any) and feedback of the concerned persons. Investigative reporting is different from 'news'. News covers information and feedback about events, but an investigative report goes beyond the 'event' to dig out all 'blind spots' and 'hidden agendas' in addition to feedback regarding the persons concerned.

As per the table, the 'event' is known to the journalist (self) and known to those who have heard about or seen it. For example, a car hit the bicycle and bicycle rider got injured. This 'accident' is an event, which may be known to a journalist as well as all others who have come across. This 'event' can have some 'blind spots' e.g. who was the motor driver and who was the bicycle rider? These blind spots are unknown to the journalist. Similarly, there is a possibility of some 'hidden agenda' behind the 'event'. This 'hidden agenda' or motive behind the act of 'accident' is known only to the car driver who committed or done the 'event' of accident. An investigating journalist shall explore the 'blind spots' as well as 'hidden agenda.' To verify the information sought through the investigation, the journalist will contact all relevant person to get feedback on the event.

	Known to all	Unknown to self
Known to self	Event	Blind Spots
Known to operators	Hidden Agenda	Feed Back
	Unknown to self	Known to others

Source: Intermedia's manual on election reporting

4. Principles and methods of investigative reporting

Investigative reporting employs special methods that raise ethical and legal issues. The stories of investigative reporting may have serious consequences for individuals, organisations and society. Investigative reporting, therefore, has distinct responsibilities. The Canadian Association of Journalists (CAJ) has approved the following principles for investigative reporting.

4.1 Truthfulness

The primary duty of a reporter is to seek and report the truth as completely and independently as possible. A journalist should make every effort to ensure the accuracy of his or her report.

³⁰ (http://www.poynter.org/conterit/content_pratt.asp?i/=82...)

Acting as an independent voice for the public at large, a reporter must not be intimidated by power or influenced by special interests, advertisers or news sources. Use of confidential and relevant sources with verification through other independent sources is equally important and sources motivated by malice and bias must be avoided.

4.2 Transparency

Journalists must be transparent in their actions, especially where stories are controversial, have far-reaching impact, or require special techniques.

4.3 Accountability

Journalists are accountable for their actions. The public has the right to ask the nature and reasons for their investigations and they are supposed to explain why they used confidential sources or hidden recording devices, etc. A prompt and open response to public complaints and timely correction of inaccuracies and errors is essential.

4.4 Fairness

Individuals or organisations that are publicly criticised must be given an opportunity to respond. A genuine and exhaustive effort to contact them is mandatory. Where possible, journalists must give them an opportunity to respond before the story is published.

4.5 Privacy

Citizens have a right to privacy, yet they also have a right to know about public institutions and the people who are elected or hired to serve their interests. They have a right to know about the social impact of private organisations and corporations. Journalists must not infringe upon a person's privacy unless it is in the public interest. Where privacy is infringed, journalists must seek to minimize any harm done to people, especially the vulnerable, the traumatised and the young. Each situation should be judged in the light of common sense, humanity and the public's right to know.

4.6 Editorial Control and Approval

Wide consultation is strongly recommended when undertaking unusual or controversial newsgathering activities. Consultation with legal counsel and prior authorisation of a senior editor or manager is required when using surreptitious methods of gathering information.

Policies on editing and the rights of program participants may require senior editorial approval in order that journalists can hold themselves to the highest standards of professional performance.

In some cases, a final review and approval of the investigative issues within the report may be required prior to publication or broadcast.

4.7 Independence

Investigative reporters who uncover sensitive information can attract the interest of police, the justice system, government officials, organisations and institutions that wish to obtain the material for their own use.

A reporter must always protest attempts by police and other members of the justice system to involve them in their investigations. His or her first responsibility is to the public and the public should not perceive journalists to be agents of the police. When that happens, the reporter undermines his or her credibility and stifles the flow of future information from sensitive sources. The appearance of being affiliated with the police could threaten journalists' safety.

Where journalists become aware of impending public risk, they are beholden as citizens to warn authorities of what they have uncovered. But in the vast majority of circumstances, journalists serve public interest by maintaining strict independence from police, the justice system and government institutions.

4.8 Accuracy and Verification

Inaccuracies or missing information in stories undermines journalistic credibility. It raises questions about the overall truth and fairness of the information, and the story in general. The basic facts of a story can often be verified through sources, officials and documents. Journalists should make every effort to pursue all of these avenues.

He or she should remain vigilant or disciplined when using information from the web and e-mail. E-mails and other web postings pose particular problems for journalists because they frequently allow sources to remain anonymous or to assume a false identity. It is easy to manufacture an e-mail address from a government department or corporate headquarters. Conducting interviews by e-mail is acceptable providing the reporter has independently verified the interviewee's identity, but quotes from an e-mail interview should be identified as such.

Extreme caution should be used in using alleged facts or quotes from anyone participating in e-mail mailing lists, chat rooms and discussion groups. Always try to contact the participant directly.

Verify any information, facts or documents posted on the internet, preferably with a phone call to the source. Even information from a reliable site, such as a reputable news organisation or government ministry, should be checked. Extreme caution should be used when using information from lesser known or new websites.

There may be cases where it is deemed necessary to use web information that a reporter cannot verify independently. In such cases, the reporter must inform the readers or audiences about the nature and reliability of the news source. The general watchword for journalistic work on the web is: "Don't believe and don't deceive."

4.9 Misrepresentation

Misrepresentation by a journalist is justified only in cases where illegal or fraudulent activity is strongly suspected to have taken place, the public trust is abused or public safety is at risk. Documentary evidence of problems may not exist and officials may fail to respond to inquiries. Sources may not exist, or refuse to speak for fear of retribution. For example, when investigating controversial activities (i.e. illegal purchases over the web, or the dissemination of a hate speech), a reporter may find it necessary to cloak their identity.

Undercover research should be conducted with a strong moral compass, with sensitivity to those being investigated and with openness to readers and audiences.

Reporters should avoid duplicity or misrepresentation when conducting web-based research. For example, there should be no excuse to join a breast cancer discussion group or an AIDS mailing list and pretend you are anything other than you are; an inquiring journalist.

4.10 Technology and Techniques

A reporter should employ clandestine recording methods, such as the use of hidden cameras or microphones, only after due consideration is given to issues of legality, fairness and invasion of privacy.

Careful consideration must be given to employing individuals other than journalists in recording material clandestinely. The authenticity of recordings from non-journalistic sources should be verified and clearly identified.

4.11 Re-enactments, reconstructions and dramatisations

Re-enactments, reconstructions and dramatisations can be used as effective tools in the full and accurate reporting of a significant story, but they should reflect the event they portray as closely as possible. As a general rule, dramatisations and actuality should not be mixed because the audience must have the ability to judge the nature of the information for themselves.

4.12 Use of confidential and anonymous sources

- a. When is it appropriate to use them:
Journalists should strive to fully identify the sources in their stories - for credibility and accountability. When sources are secret, the reader or audience has less information on which to judge the reliability of the source's comments. Additionally, anonymity might encourage the source to make irresponsible statements. However, confidential sources can be a vital tool in the free flow of information. There can be clear and pressing reasons to protect anonymity. Reporters should use such methods only when the participation of the subject puts them at risk of harm or personal hardship (i.e., a whistleblower who might lose his/her job, or a mole within organised crime.)
- b. How they should be identified:
Reporters should explain the need for anonymity to the readers and audiences. Confidential sources should be identified as accurately as possible by affiliation or status, (for example, a "senior military source" must be both senior and in the military.) The reporter should also identify a source from a critical or opposing side of a controversy as such. Any vested interest or potential bias on the part of a source must be revealed.
- c. How they should be checked:
Use of anonymous sources requires the prior approval of at least one senior editorial person (or manager) who knows the full identity of the source. This ensures editorial control, verification and honesty. The disclosure of sources among journalists within a news organisation is not the same as the public disclosure of sources.

Reporters must know the full identity of the anonymous source (e.g. full name, phone number, method of contact, history and background). "Anonymous" does not mean the reporter knows little about the person. It means they know everything, and are offering an agreed-upon level of protection. More than one source should be used to verify a story or fact. Reporters must independently corroborate facts, if she/he gets them from a source she/he does not name. If only one source is available, the reporter must say so.
- d. How they should be protected:
 - What the level of confidentiality is
 - How far they are willing to go to protect the source

There are three levels of confidentiality:

Not for attribution: A reporter may quote statements directly but the source may not be named, although a general description of his or her position may be given ("a government official," or "a party insider").

On background: A reporter may use the thrust of statements and generally describe the source, but

may not use direct quotes.

Off the record: Reporters should not report information that is used solely to help their own understanding or perspective. There is not much point in knowing something if it can't be reported, so this undertaking should be used sparingly, if at all.

A reporter must make it clear from the start how far they are willing to go in protecting a source.

A reporter may be ordered by a court or judicial inquiry to divulge confidential sources upon threat of jail. If they are willing to go to jail to protect a source, they must say so, or otherwise, spell out the conditions. To protect your credibility or your company's finances, you may tell the source you will have to reveal their identity in order to win a damaging lawsuit.

A reporter should make it clear that if a source lies or misleads, all agreements are off. She/he should not make any commitments to anonymous sources without consultation with senior management. Journalists should be wary about entering into arrangements that they cannot fulfill.³¹

5. Prerequisites of investigative journalism

- a. **Initiated by journalist or editor/identify story idea/set a hypothesis**
Investigative reports may see the light as enterprise stories — those initiated by the journalists themselves as a result of observations, contacts or tips — or could be prompted by editors, but the former is the more likely scenario.
- c. **Full support of organisation/get Editorial Approval**
Once a topic has been decided upon, reporters are well advised to secure their media organisations' full support and to work closely with their supervisors to ensure the smooth execution of the operation.
- c. **Team work**
Quite frequently, investigative journalists operate in teams, since the work involved requires long hours, extensive research and follow-up. Journalists "investigating" unilaterally may find themselves overwhelmed by the volume of material they uncover, the lack of resources, the scarcity of sources, other pressures at work, intimidation or a combination of these factors. They would do better to team up with others in order to create a support system to alleviate the burden.
- d. **Time line**
An equally important factor to the subject matter to be investigated is deciding how much time the reporter and/or news organisation can spend on covering the story and how much will be budgeted for such coverage.
- e. **Weight-age of story**
While a topic may seem fascinating to the reporter, the editor, publisher or station manager/owner may find it only merits limited attention, or that it could lead to unwanted litigation and therefore avoid delving into very controversial matters or relegate the story to an inside page instead of highlighting it and headlining it on the front. How much weight it deserves is ultimately the editor's call, but a story's placement can be negotiated if it merits greater attention.

Supervisors must realize and be convinced that the reporter's assigned investigative reports may have to leave their regular coverage unattended. So editors will have

³¹ <http://www.caj.ca/principles/principles-statement-investigative-2004.htm>

to decide whether that is worth the time and effort and whether they wish to find temporary replacements for their reporters.

Finally, reporters who initiate investigative reports should not exaggerate the importance of their work or its impact and should certainly not promise more than they can realistically deliver.

In the final analysis, if a story does not live up to its reporter's investigative expectations, it may still be used as a news item or a feature to alert readers, listeners, viewers and browsers to the importance of the subject, and, may be pursued at some future date as a fully-fledged investigative story.

f. Budget/prepare budget

Budgets are also sticking points in investigative reporting because stories in this journalistic genre may require major, and often unavailable, funding to be pursued and completed. Thus, journalists have to rely on a detailed plan taking all costs into account over an extended period of time to play it safe with travel, accommodation, transport expenses, meals, copying or duplicating documents/videos/audio recordings, shooting footage, insurance, stationery supplies, translators' or fixers' services and other miscellaneous expenses.

While it is difficult to predict how long an investigative report may take or how much it will cost, good estimates may help avoid having to keep badgering the editorial board for constant support.

6. Investigative Reporting- A Process

Identify story idea, set a Hypothesis and a plan

- Get editorial approval and prepare the budget
- Info-gathering, investigate, research and interview
- Test your hypothesis, verify information
- Arrive at result, publish them

Investigate the issue. Reporters gather information on a particular subject matter through in-depth investigation and research. He or she should make an effort to obtain access to maximum information — from public officials/government and other sources of information, studies relevant literature, conducts interviews of the stakeholders and official, and investigated into the reality of the issue on the basis of information, literature review, and interviews. On the basis of this information gathering, the reporter tests the hypothesis and reaches a conclusion or a specific result.

Information is central to investigative reporting; however, not every piece of information in control of public officials/government is directly related to the public. Additionally, much of the information held by the government is not written in a consumable manner for the common man. Investigative reporting, in most cases, is a process of digging out/ accessing relevant information from public officials/government and conveying the same to the public in a consumable manner.

7. Information: The core

Information is the core of investigative reporting. Without relevant information, a reporter cannot build his or her hypothesis and then test the same. A hypothesis without relevant information can mislead the reporter in investigating the issue and therefore vitiate the objective of the reporting. Hence, the information - relevant and accurate - is a blood-life for investigative reporting.

Authenticity and accuracy of information is equally important for investigative reporting. An investigative reporter endeavours to highlight the mistakes or wrong doings of public officials and government, criticize official decisions and decision making process, or alarm citizens about possible implications of such decisions. A report based on inaccurate facts or unauthentic information can result in various legal and social complications, both for the reporter and the paper. Authenticity of information is directly related to the source. Therefore, it is important to discuss the benefits of formal sources of information and potential threats due to informal source of information in investigative reporting.

8. Formal versus informal sources of information: benefits and threats

Information received from an informal source always needs authenticity and verification. As discussed earlier, inaccurate and unauthentic information can put the reporter in serious trouble.

8.1 Problems/threats of using information from informal sources

- a. In cases of informal sources of information, there is a huge possibility of challenging the entire report. This can put into question the credibility of the reporter and the paper.
- b. An investigative report that is based on information from informal sources and questions the character of a public official/representative can result in litigation and criminal prosecution under defamation law.
- c. Impartiality and neutrality is another issue. An informal source might have his or her personal interests behind the leakage of information, thus potentially resulting in bias and partiality in the report. Questions may arise regarding public versus personal interest.

8.2 Benefits of information from formal sources of information

- a. Information from a formal source, such as official reports, officially attested documents for the purpose of reporting, official gazette, press release, press conferences of official spokespersons, etc, always help to develop credible reports.
- b. Authentic and officially attested information reduces the risk of litigation.
- c. Impartiality and neutrality, which are fundamental for investigative reporting, can be ensured.
- d. A reporter can question a decision, a decision making process, or any other issue if the information is accessed through a formal source. Only an official document, statement or report can be questioned. Officials can easily deny the authenticity and ownership of information accessed through informal sources.

9. Why RTI is important for investigative reporting

In view of the above, it is important to have a comprehensive legal and policy framework to provide journalists with access to information. Without such a framework, it is difficult to access authentic information. Access to information, as discussed earlier, is oxygen to democracy, necessary for media freedom and essential for investigative reporting. Valid information is the lifeblood of the media and it is therefore axiomatic that laws and policy on access to information is central to the media's proper functioning.

Right to Information: Legislative Framework in Pakistan

In previous chapters the concept and background of Right to Information (RTI), and the relationship between RTI and investigative reporting has been discussed in detail. It has been explained that RTI is a fundamental part of investigative reporting. An enabling environment governing the discourse of information that includes enabling policy and legal framework is inevitable for RTI. In Pakistan, there are various legal and policy instruments that directly or indirectly deal with the issues of RTI. The following paragraphs provide a detailed overview of these legal and policy instruments and their role in facilitating FOI in this country.

1. Policy Framework for Right to Information

Policy is an overarching plan (direction) for achieving an organisation's goals. At government level, policy is a line of argument rationalising the course of action of a government. The term may apply to government, private sector organisations or groups and individuals. It differs from rules and law. While law can compel or prohibit behaviours (e.g. a law requiring the payment of taxes on income), policy merely guides actions toward those that are most likely to achieve a desired outcome³².

Information policy, in this sense, can be a broader framework providing principles and guidelines regarding dissemination of information, freedom of or access to information and archiving of information, as well as privacy of personal information and secrecy of confidential state information. This may also include classification and declassification of official information. Information policy may also cover appointment of designated officers/spokespersons and their responsibilities, holding of press briefings, issuance of press releases and publication of departmental/ministerial reports. Electronic communication and web related issues might also come under this policy.

It appears that there is no such document publicly available in Pakistan. Nonetheless, there are some legislative arrangements in the shape of the Qanoon-e-Shandat Order, 1984, Freedom of Information Laws, the Archival Material (Preservation and Export Control) Act, 1975, the Official Secret Act, 1923, and Rules to publish annual report[s] of ministries and public departments. Article 19 A of the Constitution of Islamic Republic of Pakistan provides a fundamental policy framework on Right to Information.

2. Constitutional Framework

Right to Information is a fundamental right of every individual. Prior to 18th amendment in the Constitution of Pakistan, the access to information was not recognized as a constitutional right. Article 19, which apparently deals with the freedom of speech, was assumed to have the freedom of information in-built as a part of the freedom of speech and expression. Through 18th amendment, a complete article i.e. Article 19A has been inserted to make the freedom of information or Right to Information as a constitutional right in the country. The Article 19A reads:

"Right to Information: Every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions

³² <http://www.asq.org/glossary/p.html>, <http://wordnet.princeton.edu/perl/webwn?s=policy>, <http://en.wikipedia.org/wiki/Policy>

imposed by law.”

3. Legislative Framework for Right to Information

3.1 Background

History of civil society struggle for Right to Information in Pakistan does not date back very long although there has been a great contribution by civil society in promoting the right to freedom of speech and expression. The first significant initiative for the Right to Information dates back to 1990 when Professor Khurshid Ahmed, Naib Amir of Jamaat-i-Islami, introduced a Private Members Bill in the Senate. The House, however, did not take it seriously, nor did the government pay any significant attention to it. Later in 1990s, the government of former Prime Minister Benazir Bhutto established an anti-corruption committee, headed by late Malik Qasim, to look into the causes of corruption and make recommendations. One of the key recommendations of the committee was enactment of a freedom of information act, but it was also never implemented in view of strong resistance due to vested interests. In the meanwhile, however, the pressure from the civil society was increasing and there was growing realisation about the need of such legislation.

Fakharuddin G. Ibrahim, as a law minister in the interim cabinet of President Farooq Laghari, also introduced a law, Access to Information Ordinance 1996, but President Farooq Laghari did not promulgate the Ordinance.

First legislation on the subject came about on 29th of January 1997, when under the caretaker Prime Minister Malik Meraj Khalid (late) the Freedom of Information Ordinance 1997 was promulgated. This, however, proved to be a temporary success, as the succeeding government of former Prime Minister Nawaz Sharif failed to get the Ordinance enacted by the Parliament. Hence, the Ordinance lapsed.

In 2001, the Asian Development Bank (ADB) approved a comprehensive action plan for Pakistan that covered the judicial and administrative reform in the country. The programme to improve the state of access to justice to the people included legislative arrangements for FOI. As a part of the programme, the military government of General Pervez Musharraf promulgated the existing Freedom of Information Ordinance in October 2002. It was later sanctified by Parliament through a constitutional amendment that validated all laws promulgated by the military dictator.

Because the law was promulgated through an Ordinance, it has never been debated on in Parliament. The law remained inoperative for two years because the rules to practice the law were yet to be formulated. Finally, after a continuous and comprehensive campaign of civil society and other stakeholders, the rules were formulated and notified in 2004. Though the law has been promulgated and rules have been formulated, the exercise to rights enshrined in the law is very limited. Moreover, the response of government departments on information requests is equally not promising. Contrary to the India, wherein the Right to Information legislation is a result of a strong social moment, existing legislative arrangements for RTI in Pakistan lack such social ownership. Needless to mention here that the law is not an ideal one and it needs thorough revision and improvement. Considering the lacunas and weaknesses of the law, in 2008 the government introduced a Bill in Parliament to improve the existing legislation. The Bill is pending for approval in the Parliament at present.

Prior to the promulgation of Freedom of Information Ordinance in 2002, the issue of public documents/information was governed under the provisions of Qanoon-e-Shandat Order, 1984. Article 85 and 86 of the Order define public and private documents.

However, the provisions of the Qanoon-e-Shandat Order, 1984 could not serve the purpose of ensuring transparency, as it was mainly focusing on evidentiary value of documents in the courts. Moreover,

the presence of secrecy laws did not allow people to take benefit from this provision.

3.2 Freedom of Information Ordinance, 2002

The military government of General Pervez Musharraf promulgated the existing Freedom of Information Ordinance in October 2002. Main characteristics of Freedom of Information Ordinance 2002 are as follows:

- i. The Ordinance extends to the whole of Pakistan.
- ii. It came into force at once, meaning that since day one, it has been an effective law and can be used to access information.
- iii. It is only applicable to offices of the federal government.
- iv. No other law can stop its implementation.
- v. Officers designated under this Ordinance in various ministries and departments are required to provide the requisite information within 21 days.
- vi. Every citizen can apply for access to information.

3.3 Information accessible under the Ordinance

Subject to certain restrictions, the following record of all public bodies has been declared as public record and is therefore accessible under the Ordinance:

- i. Policies and guidelines;
- ii. Transactions involving acquisition and disposal of property and expenditure undertaken by a public body in the performance of its duties;
- iii. Information regarding grant of licenses, allotments and other benefits and privileges and contracts and agreements made by a public body;
- iv. Final orders and decisions, including decisions relating to members of public; &
- v. Any other record, which may be notified by the Federal Government as public record for the purposes of this Ordinance.

3.4 Exemptions

Section 8 of the Ordinance declares the following as EXCLUDED records:

- (a) noting on the files;
- (b) minutes of meetings;
- (c) any intermediary opinion or recommendation;
- (d) record of the banking companies and financial institutions relating to the accounts of their customers;
- (e) record relating to defence forces, defence installations or connected therewith or ancillary to defence and national security;
- (f) record declared as classified by the Federal Government;
- (g) record relating to the personal privacy of any individual;
- (h) record of private documents furnished to a public body either on an express or implied condition that information contained in any such documents shall not be disclosed to a third person; and
- (i) any other record which the Federal Government may, in public interest, exclude from the purview of this Ordinance.

In addition to the excluded records, any information that is declared as exempt would also be not accessible under the Ordinance. Various categories of exempt information are given below:

Section 15 of the Ordinance exempts information relating to international relations if its disclosure would be likely to cause grave and significant damage to the interests of Pakistan in the conduct of international relations, from the purview of the Ordinance.

Section 16 exempts the information from the operation of the Ordinance whose disclosure is likely to:

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

FAQs on Right to Information under FOI Ordinance 2002

Q: What is meant by Right to Information?

A: It means that citizens have right to access that information which is held by public or private bodies. The information is contained in a variety of forms and ways. It may be in the shape of documents, memos, e-mails, opinions, advices, press releases, circulars, orders, log books, contracts, reports, papers, samples, models, or data materials held in any electronic form.

Q: What is the difference between Right to Information and freedom of information?

A: The terms 'Freedom of Information' (FOI) and 'Right to Information' (RTI) are interchangeably used and the underlying meaning is the same. In some countries the term 'Right to Information' is more popular and in others 'freedom of information'. For example, in Pakistan, 'freedom of information' is more commonly used whereas, in India, 'Right to Information' has captured the imagination of the people.

Q: How many countries have framed freedom of information laws?

A: So far, over 90 countries of the world have enacted freedom of information laws. Sweden (1766) was the first country to enact the freedom of information law. Later half of the 20th century witnessed an increase in the number of countries enacting freedom laws and USA (1962), Australia (1982) and Philippines (1987) enacted legislation in this area. Pakistan (2002) was the first country in the South Asia to introduce freedom of information law in the shape of Freedom of Information Ordinance, followed by India (2005).

Q: What kind of information can I have access to under FOI Ordinance 2002?

A: The ordinance provides three lists i.e. list of pub-

lic records, of non-public records and the list of information exempted from disclosure. First list describes kinds of information and documents/records citizens can have access to. Second list gives detail of all those documents that cannot be disclosed to the public. The last one deals with that kind of information that may be in the first two lists but exempted from disclosure under this ordinance. These lists are as under:

1. List of Public Records
 - a) Policies and guidelines;
 - b) Transactions involving acquisition and disposal of property and expenditure undertaken by a public body in the performance of its duties;
 - c) Information regarding grant of licenses, allotments and other benefits and privileges and contracts and agreements made by a public body;
 - d) Final orders and decisions, including decisions relating to members of public; and
 - e) Any other record, which may be notified by the Federal Government as public record for the purposes of this Ordinance.
2. List of Non Public Records
 - a) Noting on the files;
 - b) Minutes of meetings;
 - c) Any intermediary opinion or recommendation;
 - d) Record of the banking companies and financial institutions relating to the accounts of their customers;
 - e) Record relating to defence forces, defence installations or connected therewith or ancillary to defence and national security;
 - f) Record declared as classified by the Federal Government;
 - g) Record relating to the personal privacy of any individual;
 - h) Record of private documents furnished to a

public body either on an express or implied condition that information contained in any such documents shall not be disclosed to a third person; and

- i) Any other record which the Federal Government may, in public interest exclude from the purview of this Ordinance.

3. List of Exempt information from disclosure Under this ordinance, a public body is not required to disclose the following information.

Information may be exempt if its disclosure would be likely to cause grave and significant damage to the interests of Pakistan in the conduct of international relation. Information may be exempt if its disclosure is likely to

- a) Result in the commission of an offence;
- b) Harm the detection, prevention, investigation or inquiry in a particular case;
- c) Reveal the identity of a confidential source of information;
- d) Facilitate an escape from legal custody;
- e) Harm the security of any property or system, including a building, a vehicle, a computer system or a communication system.

- Information is exempt if its disclosure under this Ordinance would involve the invasion of the privacy of an identifiable individual (including a deceased individual) other than the requester.
- Information is exempt if and so long as its disclosure:

- a) Would be likely to 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;
- b) Would be likely to cause significant damage to the financial interests of the public body by giving an unreasonable advantage to any person in relation to a contract which that person is seeking to enter into with the public body for the acquisition or disposal of property or the supply of goods or services, or
- c) By revealing information to a competitor of the public body, would be likely to cause significant damage to the lawful commercial activities of the public body.

Q: Can I get information from private bodies under this Ordinance?

A: No. Private bodies are not covered under this ordinance. FOI Ordinance covers only the federal ministries and the attached departments.

Q: Who will give me information under FOI 2002? Whom do I apply to?

A: Under FOI 2002, each ministry or an attached department is supposed to designate BPS-19 officer to handle information requests. In over forty ministries such officers have been designated. You have to file your applications with them. It is their duty to collect information sought by you from various wings of their ministries and provide that information to you.

Q: How do I locate the address of the Designated Officer?

A: Once you have identified the ministry or the Department from which you want information, you can get the details of the designated officer from that Department. But suppose you cannot visit that Department or they are not telling you the details, you can send your application to "The Head of that Department, (Address of that Department)." It shall be the duty of the head of that Department to forward it to the designated officer. You can also get a list of Designated Officer from Cabinet Division at website:

<http://www.pakistan.gov.pk/divisions/index.jsp?DivID=13&cPath=118>

Q: What if a particular ministry or department has not designated officer?

A: It is the responsibility of each ministry and the attached department to designate officers to deal with the information request. In case the officer has not been designated, you can apply to the head of the organisation for information.

Q: Is there any fee? How do I deposit the fee?

A: Any citizen of Pakistan can submit information request on a prescribed form and by depositing the initial fee of 50 rupees. The initial fee of fifty rupees is only for ten pages (or less than ten pages) of the copies of the public records. Five rupees will be charged for every extra copy. The fee can be submitted either in the cash branch of the said department or State Bank of Pakistan or National Bank of Pakistan or in the National Exchequer in the following respective heads:

- (a) Major Head 1300000 other receipts
- (b) Minor Head 1390000
- (c) Detailed Head 1391221 (fee payable for obtaining information & copies of public record)

Q: How do I submit my application?

A: You can do that in person, either yourself or by sending someone to the office of the designated officer. Or you can submit it by post also, by sending it at the address of the concerned ministry or department.

Q: Is there a time limit to receiving information?

A: Yes. Under FOI Ordinance, The designated officer has to provide the attested copies of the public records within 21 days of the receipt of the information request.

Q: Do I have to give reasons for demanding particular information?

A: Yes. You have to declare the reason for seeking the information. Q: Will I be told about the reasons on which information is denied to me?

A: Yes. The applicant has to be informed as to the grounds on which the information was denied.

Q: What can I do if I am not satisfied with the decision of denying information by the designated officer? Can I lodge a complaint against this decision?

A: Yes. You can lodge a complaint to the head of the public body and the head will have to take action on the complaint within 30 days of the receipt of complaint.

Q: Is there an appellant body where I can appeal against the decision of the head of a public body?

A: If you do not receive information from the head of the public body in thirty days, you can lodge complaint to the federal Ombudsman.

In cases relating to Revenue Division, its subordinate departments, offices and agencies, complaint can be lodged with the Federal Tax Ombudsman.

Q: Is there a prescribed form to lodge a complaint to the Federal Ombudsman?

A: No. Draft your appeal application on a blank sheet of paper addressed to the "Federal Ombudsman. Remember to attach a copy of your original application and a copy of the reply in whatever form (if received) from the designated officer.

Q: What are the addresses of Federal Ombudsman and Federal Tax Ombudsman?

FEDERAL OMBUDSMAN
The Federal Ombudsman Secretariat
Zero Point, Islamabad.
Phone: 051-9201665-9, Fax: 051-9210487,
email: mowasib@paknet.ptc.pk
In case the Complaint is against the Central Board of Revenue, it must be addressed to FEDERAL TAX OMBUDSMAN and sent to the following address:

FEDERAL TAX MOHTASIB
State Enterprises Complex,
Constitutional Avenue, Islamabad.
Phone: 051-9212316, Fax: 051-9210487,
email: mowasib@paknet2.ptc.pk

4. Public Procurement Regulatory Authority

"The Public Procurement Regulatory Authority (PPRA) is an autonomous body endowed with the responsibility of prescribing regulations and procedures for public procurements by Federal Government owned public sector organizations with a view to improve governance, management, transparency, accountability and quality of public procurement of goods, works and services. It is also endowed with the responsibility of monitoring procurement by public sector agencies/organizations and has been delegated necessary powers under the Public Procurement Regulatory Authority Ordinance 2002.³³"

4.1 Functions and powers of the Authority

- (1) Subject to other provisions of this Ordinance, the authority may take such measures and exercise such powers as may be necessary for improving governance, management, transparency, accountability and quality of public procurement of goods, services and works in the public sector.
- (2) Without prejudice to the generality of the powers conferred by sub-section (1), the Authority may
 - (a) monitor application of the laws, rules, regulations, policies and procedures in respect of, or relating to, procurement;
 - (b) monitor the implementation of and evaluate laws, rules, regulations, policies and procedures in respect of, or relating to, inspection or quality of goods, services and works and recommend reformulation thereof or revisions therein

³³ <http://www.ppra.org.pk/>

- as it deems necessary;
- (c) recommend to the Federal Government revisions in or formulation of new laws, rules and policies in respect of or related to public procurement;
 - (d) make regulations and lay down codes of ethics and procedures for public procurement, inspection or quality of goods, services and works;
 - (e) monitor public procurement practices and make recommendations to improve governance, transparency, accountability and quality of public procurement;
 - (f) monitor overall performance of procuring agencies and make recommendations for improvements in their institutional set up;
 - (g) provide and coordinate assistance to procuring agencies for developing and improving their institutional framework and public procurement activities;
 - (h) submit reports to the Government in respect of public procurement activities of procuring agencies;
 - (i) call any functionary of procuring agencies to provide assistance in its functions and call for any information from such agencies in pursuance of its objectives and functions; and
 - (j) perform any other function assigned to it by the Federal Government or that is incidental or consequential to any of the aforesaid functions.

4.2 Management and Administration of the Authority

Board

- (1) General directions and administration of the Authority and its affairs shall vest in a Board which may exercise all powers, perform all functions and do all acts and things which may be exercised, performed or done by the Authority.
- (2) The Board shall consist of the following Members, namely:

(a) Secretary, Finance Division	Chairperson
(b) Secretary, Ministry of Industries and Production	Member
(c) Secretary, Defence Production Division	Member
(d) Secretary Ministry of Water and Power	Member
(e) Secretary, Ministry of Housing and works	Member
(f) Secretary, Ministry of Communications	Member
(g) Three Members from private sector to be nominated by the Federal Government	Members
(h) Managing Director	Member
- (3) The Managing Director shall act as Secretary to the Board.
- (4) A member appointed from the private sector shall hold office for a period of three years and shall be entitled to such terms and conditions as the Federal Government may determine.
- (5) A member from the private sector may, by writing in his hand addressed to the Federal Government, resign his office.
- (6) A casual vacancy in the office of a private sector member shall be filled by appointment of another member from the private sector for the residue of the terms of his predecessor.

4.3 Annual Report

Within one hundred and twenty days from the end of each financial year, the Authority shall cause a report to be prepared on its activities including inquiries and investigations made by the Authority under this Ordinance during that financial year and release to the public after it has been seen by the Cabinet.

5. Provincial Legislation on Right to Information

Under the ADB Action Plan, the provincial governments have to enact laws on Right to Information in their respective jurisdictions. So far, only two provinces - Sindh and Baluchistan - have promulgated such laws.

5.1 Baluchistan Freedom of Information Act, 2005

After the promulgation of Freedom of Information Ordinance, 2002 at Federal level, Baluchistan was the first province to take a step towards FOL Provincial Assembly of Baluchistan approved the Baluchistan Freedom of Information Act and enacted in December 2005. The law is almost a ditto copy of the Federal law except a few structural changes keeping in view its jurisdiction. For example, the definition of "public body" in the Act includes only:

- (a) any department or attached department of Government³⁴ ;
- (b) secretariat of Provincial Assembly;
- (c) any office of any Board, Commission, Council, or other body established by, or under, a Provincial Law; and
- (d) courts and tribunal.

Similarly, the Ombudsman, in the Act, means the Provincial Ombudsman and not the Federal Ombudsman.

5.2 Sindh Freedom of Information Act, 2006

Similar to the law in Baluchistan, the Sindh Provincial Assembly passed the Sindh Freedom of Information Act, 2006. As mentioned earlier, the Act is a ditto copy of the Federal Freedom of Information Law and the Baluchistan Freedom of Information Act. The only substantial difference between the Baluchistan FOI Law and Sindh FOI law is that both are meant for different jurisdictions. Except provisions relating to the office of Ombudsman, rest of the law is same.

Notwithstanding the weaknesses and lacunas of existing legislation on FOI, the Honorable High Court of Sindh in *Indus Battery Industries vs. Federation of Pakistan and others* (2008 PTD 240) declared, "the public has a right to know everything that is done by public functionaries. The responsibility of public functionaries to disclose their acts works both against corruption and oppression."

6. Local Government System and Right to Information

The Local Government Plan, 2000 introduced a new system of government at local/district level. The system was based on principles of public accountability, transparency, and good governance. Fundamentals of the system were laid down in the Punjab Local Government Ordinance, 2001. The Ordinance contained a number of provisions to ensure citizens' access to information. For example, the Ordinance asked the district, tehsil and union councils to hold their meetings open for public participation. The Ordinance also requires the nazims to present the performance of their respective councils twice a year. Furthermore, the dissemination of information on matters of public interest was one of the functions of union administration. The system required local governments and related offices to place statements of monthly and annual accounts, performance of the office and other such necessary statements at a prominent place within the premises of the office for citizens' access. More importantly, the Ordinance authorized every citizen to access information about any office of the district government, tehsil municipal administration and union administration while it was the obligation of respective government or office to provide such information.

³⁴ Government is defined as 'government of Baluchistan' in section 2 (e) of the Baluchistan Freedom of Information Act, 2005

In 2010, when the Local Government System was devolved to the provinces, Punjab, Khyber Pakhtunkhwa (KPK), and Baluchistan enacted local laws to amend Local Government Ordinance 2001. Except Baluchistan, Punjab and KPK have not changed the provisions relating to RTI. However, the Baluchistan has enacted a new law i.e. The Baluchistan Local Government Act, 2010. This law provides completely different structure of local government from the local government system of 2001. Mere scanning of the Act shows that the provisions relating to RTI, which were part of the

FAQs on Right to Information under Local Government Ordinance 2001

Q: Under which provision of Local Government Ordinance 2001 (LGO 2001) can I get information from district government departments?

A: You can access information from district government institutions under article 137 of this ordinance.

Q: How can I submit an information request to a local government department? Is there a form for submitting information request?

A: There is no prescribed form for this purpose. Write an information request to the head of the department, which possesses the required information. The information request must refer to section 137 of Local Government Ordinance 2001, which recognises citizens right to information.

Q: How can I submit information request on simple piece of paper when article 137 of LGO 2001 requires the information request to be submitted on a prescribed form?

A: The prescribed form was to be made available to the citizens under rules that have not been framed yet. However, it does not mean that citizens cannot apply for information. Federal Ombudsman has given the verdict that the government cannot deny access to information to the citizens on the basis of the argument that the rules have not been framed.

Q. What is the fee for receiving information?

A: Local governments have not yet fixed any fee to be charged in order to deal with information filed under article 137. Till the time the fee is fixed, you can submit information requests without depositing any fee.

Q: How do I determine whom to contact for particular information?

A: You need to determine which government office has the desired information/ record? Then Find out Who Heads that Office. For example, if you need information regarding education department, you need to contact the EDO Education in the District Government. If your information is regarding numerous departments, then you must send the application to the District Coordination Officer.

Q: In how many days will I be able to get the desired information?

A: In the absence of rules, there is no stipulated period of time in which the information has to be provided to the applicant. It is very likely that you will be able to get the information within 20 days of filing the information request.

Q: Do I have a right to appeal if the information is denied to me?

A: In case of no reply or unsatisfactory reply within 20 days, you must send a written complaint to the Head of the concerned office. In case you are unable to get the desired information, you can lodge a complaint with the provincial Ombudsman.

Q: Is there a prescribed form to lodge a complaint to the Federal Ombudsman?

A: No. Draft your complaint on a blank sheet of paper addressed to the "Federal Ombudsman. Remember to attach a copy of your original application and a copy of the reply in whatever form (if received) from the district official.

previous law, have not been made part of the new law³⁵.

³⁵ Copy of the law is available on http://docs.google.com/viewer?a=v&q=cache:n5tLiN9tjz0J:www.balochistan.gov.pk/index.php%3Foption%3Dcom_docman%26task%3Ddoc_download%26gid%3D332+The+Balochistan+Local+Government+Act,+2010&hl=en&pid=bl&srcid=ADGEESjUmjRPqPsc7OVRolbf7U-2HREtOs89ACoAAJ6Ni5y1UXILAJl4MNuP1D_f6pqe2BpeUTd089_OVDWXt49EoZ3STSqwbbhqv-x-KD-hK0JHkSvCrF8uNIUwdMwnQ731f8-fBQIQ43&sig=AHIEtbQrW2R5uAzA6tdGhc9MMBSuMd-OTA

7. Other sources or mechanisms of accessing information

7.1 Qanoon-e-Shahadat Order, 1984

Qanoon-e-Shahadat Order, 1984 is a primary legal instrument that deals with the evidentiary value of information & documents. Article 85 of the Order declares that the following documents as public documents.

- Documents forming the act or record of the acts:
 - (i) of the sovereign authority
 - (ii) of official bodies and tribunals, and
 - (iii) of public officers, legislative, judicial and executive, of any part of Pakistan, or of a foreign country;
- Public records kept in Pakistan of private documents;
- Documents forming part of the records of judicial proceedings;
- Documents required to be maintained by a public servant under any law; and
- Registered documents, the execution whereof is not disputed.

As per the provisions of the Order, all court records are public records and can be accessed subject to payment of cost of the documents.

7.2 Police Records

According to above referred provision of the Qanoon-e-Shahadat Order, 1984, all documents that form part of the records of judicial proceedings are public documents. Moreover, all registers kept and maintained by the police under Rule 22- 44 of Police Rules 1934, Volume III, Chapter XXII, are public documents as these documents are meant to be part of judicial proceedings, one way or another. These registers include the first information (FIR) register, register of absconders and deserters, register of criminal tribes, village crime register, etc.

7.3 Freedom of information Policy for the police

Keeping in view the limitations of the FOI Ordinance 2002, the Punjab police framed a policy to achieve the objectives of freedom of information. This policy is designed to approach the issue of access to information in a phased manner while continuing to be cognizant of the paramount need for transparency in the justice sector.

Objectives

The Policy sets out the commitment of the Punjab Police to promote access to information and protection to people who use information for accountability purposes. The Policy deals with both substantive and procedural issues.

Guiding principles

In making information available the police shall be guided by the following principles:

- All Information regarding the working of the police institution is within the public domain unless there are legitimate privacy, security or public interest concerns
- The Punjab/Sindh Police will actively assist people in accessing and using information

Policy statements and components

- i. All information shall be deemed to be in the public domain except the following:
 - Information which is hit by legitimate privacy, security and law enforcement concerns

- Noting on files, intermediary opinions or recommendations
- ii. Information shall be supplied on request except:
 - Where the law imposes an obligation to provide information without request or it is necessary to provide information without waiting for a request (see No v and vi)
 - Where the Information is of a general nature (see No xvii) and the same has been made freely available by posting on the web/ publication and dissemination of public information literature/posting of information notices in police offices.
- iii. Anonymous or pseudonymous requests for information shall not be acceded to.
- iv. Without prejudice to the generality of No i) the following information shall be provided to all applicants within a period of 3 days
 - Copies of First Information Reports
 - Copies of challans in courts
- v. The following information shall be provided to the following immediately and free of cost
 - Copy of Daily Diary Report to the person who has made the report.
 - Copy of the First Information report to the person who has made the report.
 - Information about arrest of a person to a person nominated by the detainee
 - Copy of the list of items taken into custody as a result of a search under section 103(3) of the Code of criminal procedure to the occupant of the place searched
 - Copy of list of all things taken possession of under section 102(3) ibid to the person searched.
- vi. The information listed below shall be provided to the authorities mentioned against each within the mentioned timeline:
 - Report of apprehensions of persons without a warrant to the Zila Nazim, District Superintendent of police and District public safety commission –within 24hours
- vii. The Punjab Police shall design formats for applying for information and institute them (after obtaining approval of the Government where necessary)
- viii. Requests for information shall be recorded by maintaining registers in each police office.
- ix. Information access officers shall be designated in CPO, Regional, District and PS level to process requests for access to information
- x. Information which has been pledged to be kept secret will not be disclosed e.g. information about involvement in criminality
- xi. Information shall be provided for free (see No v) unless it is impracticable or costly to do so. In such the Punjab Police will draft a schedule of fees for provision of copies and submit the same to the Government for approval.
- xii. Targets shall be fixed in each policing plan with regard to provision of information requests. Provision of information will be monitored on a regular basis.
- xiii. Information which is necessary for the performance of the working of public Safety Commissions shall be supplied to them
- xiv. Punjab Police will make police officers aware of their obligations regarding provision of information through awareness campaigns and periodic trainings
- xv. Integrity of information will be ensured
- xvi. Unauthorized destruction of records/information with the intention to evade accountability shall be proceeded against in accordance with law including criminal action
- xvii. The following information shall be deemed to be information of a general nature and shall be

made available by posting on the web/ publication and dissemination of public information literature/posting of information notices in police offices.

- Police rules
- Standing Orders of the Inspector General of Police
- Police procedures regarding permission for holding public gathering/rallies/ fairs etc
- Police procedures regarding change of investigations
- Procedure for registration of FIR o
- Procedure for intimation of incident reports
- Criminal statistics
- Orders under section 144 Cr.PC
- Copies of local policing plans
- Information regarding property seized by the police as unclaimed

Action Plan for implementation

- Punjab Police will place all information of a general nature on District and Punjab Police web sites by December 2007
- Punjab Police will prepare and publish leaflets for access to information procedures. These will be available with all Information Access Officers, Station House Officers and other designated police officers.
- An awareness campaign regarding access to information procedures will be implemented by December 2007.
- Punjab Police will design formats for requesting for information and institute them by December 2007
- Information request registers shall be placed in all police offices by end of 2007.
- Punjab Police will designate Information access officers by June 2007
- Information boards will be installed by June 2007 in all police offices. The Boards will carry important information regarding police processes.
- Punjab Police will establish systems and procedures to periodically monitor its performance with regard to access to information under this policy
- The Punjab Police will publish data regarding requests for information received and granted.
- Punjab Police will prepare and implement procedures pertaining to records management by December 2008
- Punjab PolicewillpublishitsannualreportbyDecember2007. • Punjab police will computerize all police records and provide computer connectivity all over Punjab by June 2007
- Punjab Police will prepare procedures for the use and storage of E-mails by June 2007

7.4 Official Gazette

The Government publishes all the laws in the [Official] Gazette of Pakistan, which is primary and authentic source of the text of laws, on regular basis. Both, the Federal and the Provincial Governments, separately publish their Gazettes. The Gazettes consist of all notifications ranging from Ordinances promulgated by the President at Federal level and governors at provincial level, Acts passed by parliament and provincial assemblies, rules of business for the purpose of these Acts, advertisements and notices of federal and provincial governments and Bills to be presented before the parliament and provincial assemblies for debate and approval. Official gazettes also contains

inter and intradepartmental information about transfers, vacations and other regular business, etc, of officers and ministries/departments.

7.5 Annual Reports

According to Rule 23 of the Rules of Business, the Government of Pakistan and all ministries and departments funded by public money are under obligation to prepare and submit their annual report to the Government. These reports are public documents and should be accessible to every citizen with or without cost.

7.6 Websites

Under the Freedom of Information Law, all government departments/ ministries are under obligation to computerize their entire record. Many of the departments/ministries have already developed their websites and put their information online for journalists and citizens to access.

8. National Documentation Wing - Cabinet Division

The National Documentation Wing (NDW) of the Cabinet Division was initially established as the National Documentation Centre in 1974 at Lahore. The Centre was shifted to the Cabinet Block in Islamabad in 1992. Later in 2008, the Centre was declared a Wing of the Cabinet Division in 2008. The National Documentation Wing is responsible to acquire and preserve the State Documents.

Over a period of 33 years NDW has built up a sizeable collection of records. It is now the largest repository of primary source material in Pakistan comprising over 27 million pages of documents on microfilms, acquired either from the local sources or from abroad. This repository facilitates scholars/ researchers to have an easy access to the record of historical importance.

The record and book collection in the NDW comprises:

1. Official record, on microfilm or in photocopy, selected from the Provincial Archives in Baluchistan, the NWFP, the Punjab and Sindh;
2. Official record, on film or in photocopy, of the British India relevant to Pakistan selected from the India Office Library and Records in London and other British Collections;
3. State Documents, a category of official record so designated by the Government of Pakistan; and
4. A limited number of books, official publications, catalogues and bibliographies, on the range of subjects covered in (a) & (b) above.

8.1 Access Rules

1. The NDW collection may be used by any person who has obtained a Users' Ticket. Applications for Users' Tickets should be made on a form that is available at the NDW Office. The form can also be obtained by post through a letter addressed to the Director, NDW. The signing of the form shall be taken as an assent to these rules as well as to the observance of the discipline and decorum in the Cabinet Block.
2. Tickets will be granted to university teachers, bona fide researchers on the recommendation of their parent organization and to employees of the federal government or of the provincial governments in Pakistan or of bodies subordinate to them on the recommendation in writing of a responsible officer in the federal government or the provincial government concerned; and Other applicants recommended by a person of recognized position.

Applications for Users' Ticket should be complete in all respects and accompanied by:

- (a) A letter of recommendation as elaborated at Para 2-(i) &(ii) above
 - (b) Photocopy of the I.D. Card of the applicant
 - (c) Two copies of a recent photograph of the applicant (1x1 size).
3. Tickets may be refused or cancelled at any time at the discretion of In charge, NDW.
 4. Users must notify the NDW of any change of address.
 5. Users' Tickets must be shown on demand. Visitors will, on each visit, be required to enter their names and addresses in the visitors' book
 6. No NDW material of any sort may be taken out of the NDW Reading Room except copies obtained in accordance with the prescribed procedure.

9. The National Archives of Pakistan

The National Archives of Pakistan (NAP) has a duty to preserve public and private record, having it's bearing on the history, culture and heritage of Pakistan, and to make them available to researchers on demand and pass on to the posterity. As per the website of NAP, the organisation has a large collection of newspapers and periodicals. This collection consist 1530 titles. The oldest volume relates to 1848. NAP is a record manager and a record disposal bin for the nation. The functions of NAP, as per the National Archives Act, 1993, include:

- To ensure the conservation and, where necessary, the restoration, of all public records and other archival material entrusted to its care
- To make use of all types of reprographic techniques for reproduction of them where necessary
- To describe and arrange all public records and other archival material acquired by the National Archives
- To provide facilities for research and reference subject to the terms and conditions on which they are acquired, to reproduce or publish any public records and other archival material
- To examine any records in the custody of a public office and to advice such office as to the care and custody of such records
- To accept and preserve records which are transferred to the National Archives
- At the request of any administrative head of a public office, to return to that office for such period as may be agreed upon between the Director General and the administrative head concerned, the public records transferred from that office to the National Archives
- To acquire by purchase in accordance with the delegated financial authority, donation, requestor otherwise any document, book or other material which is, or is likely to be, of enduring national or historical value
- To perform such other functions as are necessary for the purpose of the management and control and as may be assigned by the Federal Government or the Board³⁶.

NAP is an organisation that is important to the maintenance and preservation of record and information in the country. People must know about the organisation and the government should make it more 'journalist friendly'.

³⁶ <http://www.nap.gov.pk/>

10. Restrictions on Access to Information and Secrecy

Having all above means of access to information, the country still has a legacy of British colonial regime in the shape of the Official Secret Act, 1923 which puts extreme restriction on citizens' Right to Information. Besides the Official Secrets Act, 1923, government officials could withhold information in the name of national security, national interest and privacy. Furthermore, misuse of provisions of the Punjab Maintenance of Public Order, 1960, worsened the situation. All this necessitated a comprehensive legal instrument to promote RTI in the country.

4

A Comparative Analysis of Freedom of Information Legislation

Pakistan was one of the few countries in the world in 2002 that had special legislation on Freedom of Information (FOI). Since then, a large number of countries have joined the group and, at the moment, the number of countries having FOI legislation has gone beyond 68. Considering the variety of legislation on FOI in various parts of the world, it seems appropriate to make some comparisons of different legislations to that in Pakistan, and to understand the differences between certain different legal structures.

In view of the above, this chapter of the manual consists of a comprehensive comparison of freedom of information legislation in India, Pakistan, Turkey, South Africa, and United Kingdom. The purpose of the comparison is to explain the salient features of FOI legislation in these countries and to highlight major differences in them. The following pages will also help to understand reasons for the effectiveness/ineffectiveness of these laws, as well as the difference these laws are making in their respective jurisdictions.

Countries/ Provisions	India	Pakistan	South Africa	Turkey	United Kingdom
	Right to Information Act 2005	Freedom of Information Ordinance 2002	Promotion of Access to Information Act 2000	The Law on Right to Information 2003	Freedom of Information Act 2000
Who has the Right to Information?	All citizens of India have the right to access information. The Act extends to the whole of India except the State of Jammu and Kashmir [S. 1(1) and 31].	All citizens of Pakistan have the right to access public records [S.3].	Every person has the right to access to information upon request [S. 11, S.501].	Everyone (citizens and legal persons) has a Right to Information. Non-citizens and foreign corporations based in Turkey also have a Right to Information related to them or their interests if the country they are from allows Turkish citizens to demand information from their authorities [Article 4].	Any person, upon request, has a right to be informed about the possession of information by the concerned authority and to have the information communicated [S. 1(1)]
Meaning of Right to Information	Right to Information means the "Right to Information accessible under this Act which is held by or under the control of any public authority and includes the right to (i) inspection of work, documents, records; (ii) taking notes, extracts, or certified copies of documents or records; (iii) taking certified samples of materials; (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device" [S. 2(i)].	No such provision.	No such provision.	"Access to information and document: Depending on the nature of the information and the document, providing a copy of the information or the document to the applicant; in cases where it is not possible to give a copy, permitting the applicant to examine the original information or the document and to take notes or to see the contents, or to listen to" [Article 3 (e)1].	No such provision.
Definition of information and record	Information means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, log books, contracts, reports, papers, samples, models, data materials held in any electronic form and information relating to any private body which can be accessed by a public body under any law for the time being in force" [S. 2(f)]. Records includes "(a) any document, manuscript and file; (b) any microfilm, microfiche and facsimile copy of a document; (c) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and (d) any other material produced by a computer or any other device" [S. 2(i)].	Information not defined. Record means "record in any form, whether printed or in writing and includes any map, diagram, photography, film, microfilm, which is used for official purpose by the public body which holds the record".	"Record" of, or in relation to, a public or private body, means any recorded information- (i) regardless of form or medium; (ii) in the possession or under the control of that public or private body, respectively; and (iii) whether or not it was created by that public or private body, respectively [S. 1].	"Information: Every kind of data that is within the scope of this law and are included in the records of the institution" [Article 3 (c)]. "Document: Any written, printed or copied file, document, book, journal, brochure, etude, letter, software, instruction, sketch, plan, film, photograph, tape and video cassettes, map of the institutions and the information, news and other data that are recorded and saved in electronic format that are within the scope of this law" [Article 3 (d)].	No definitions given in this Law; as these are to be understood as defined in Data Protection Act 1998 and the Public Records Act 1958.
Applicability/ Scope of Law	Any authority or body established or institution of self-government established or constituted: (i) by or under the Constitution; (ii) by any other law made by Parliament or a State Legislature, (iii) by notification made by an appropriate government and includes (a) any other	Any Ministry, Division or attached department of the Federal Government; Secretariat of Majlis-e-Shoora (Parliament); any office of any Board, Commission, Council, or other body established by or under, a Federal law, courts and tribunals [S.2]	Any Department of Government, body performing public function under any legislation and private bodies where the information is required for the exercise or protection of any rights [S.4].	Public institutions and private organisations, which qualify as public institutions [Article 2].	Public authorities specifically listed in Schedule 1 of the Act or designated as such by an order of the Secretary of State (e.g. bodies which appear to exercise functions of a public nature, or are providing under a contract made with a public authority any service whose provision is a function of that authority); or a publicly owned company [S.3].
Application on Private Bodies	Includes (a) any other body owned, controlled or substantially financed and (b) non-government organisation substantially financed; by funds provided directly or indirectly by the appropriate Government [S.2(h)].	Not applicable on private bodies	A requester must be given access to any record of a private body if that record is required for the exercise or protection of any rights [S. 501]	Private organisations that qualify as public institutions [A. 21].	Bodies, which appear to exercise functions of a public nature, or are providing any service whose provision is a function of an authority under a contract made with that public authority can be covered, by Order of the Secretary of State [S.5(1)].

Suo Motu/ Proactive Disclosure	It shall be a constant endeavour of every public body to provide as much information as possible suo moto to the public at regular intervals through various means of communications. Information shall be disseminated as widely as possible and in such form and manner which is easily accessible to the public, including through notice boards, newspapers, public announcements, media, internet or any other means including inspection of offices of any public authority. Every public body shall publish the following information: i) the particulars of its organisation; its functions and duties; ii) the powers and duties of its officers and employees; iii) the procedures followed in the decision making instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions; a statement of the categories of documents its control; vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or that are held by it or under implementation thereof; a statement of the boards, councils, committees, etc., and whether their meetings are open to public, or the minutes of such meetings are accessible to public; ix) a directory of its officers and employees; x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations; xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made; xii) the manner of execution of subsidy programmes, incl. the amounts allocated and details of beneficiaries; xiii) particulars of recipients of concessions, permits or authorizations granted by it; xiv) details in respect of the information, available to or held by it, reduced in an electronic form; xv) the particulars of facilities available to citizens for obtaining information; xvi) the names, designations and other particulars of the Public Information Officers; xvii) any other information as may be prescribed [S.41]. In addition, every public authority is required to: i) publish all relevant facts while formulating important policies or announcing the decisions which affect public; ii) provide reasons for its administrative or quasi-judicial decisions to affected persons [S.4].	The acts and subordinate legislation such as rules and regulations, notifications, by-laws, manuals, orders having the force of law in Pakistan shall be duly published and made available at a reasonable price [S. 51].	Human Rights Commission to compile in each official language a guide containing easily comprehensible info as may reasonably be required by a person wishing to exercise a right under the Act [S. 10]. Public bodies to publish in three official languages: description of structure, functions, services; details of info officers and procedures for applying for access; categories of records available; opportunities for consultation; remedies available for an act or failure to act [S. 141]. Private bodies to publish: contact details for head of body; access procedures; records held by the body; records available under other legislation. Updated at least every 12 months [S. 521].	N/a	Public authorities to make their publications available through Publication Scheme formulated by the public authority and approved by the Information Commissioner. The Scheme must specify classes of information that the authority publishes or intends to publish, the manner of publication, if available for charge or free [S. 191].
Information Request Procedure	Request in writing or through electronic means to the Public Information Officer with reasonable assistance to be provided in the case of oral requests [S. 61]. The application for information should include particulars of the requested information, contact details of applicant and application fee as prescribed. Applicant is not required to give any reason for requesting the information or any other personal details except those necessary for contacting him/her [S. 6 (2)].	Application to the Designated Official in the form prescribed. Must furnish necessary particulars and pay such fee and at such time, as may be prescribed [S. 121]. Duty on public body to take necessary steps, as may be prescribed, to assist the requester [S. 91]. Under the Rules, it is necessary for the applicant to give the purpose for requesting the information; and to declare that the requested information would not be used for any other purpose. [Annexure I of The Freedom of Information Rules, 2004].	Application in the prescribed form to the Information Officer (public bodies) and private bodies, with sufficient details to identify the information and requester and stating the manner and language of access preferred [S. 18]. Litterated/disabled persons can make the request orally to be converted into prescribed form by the Officer. There is also a duty to provide help to the requester [S. 191].	Requests are to be made in writing or in electronic form if the identity of the applicant and their signature can be verified using for example a digital signature [A. 61]. Oral requests are to be treated "with, hospitality and kindness" and immediately reviewed and resolved if possible [Circular 2004/121].	S.8: Request to be made in writing to a public authority stating the requester's name, address for correspondence and description of the information requested. Text through electronic means considered to be in writing [S. 81]. It is a duty of officials to provide the requester a reasonable assistance [S.16].

Public Records/ Exemptions	<p>Exemptions include:</p> <p>(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an Offence;</p> <p>(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court; (c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature; (d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of information; (e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information; (f) information received in confidence from foreign government; (g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes; (h) information which would impede the process of investigation or apprehension or prosecution of offenders; (i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers; Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over; Provided further that those matters which come under the exemptions specified in this section shall not be disclosed; (j) information which relates to personal information the discloser of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information: Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person (S. 81).</p> <p>Without prejudice to the provisions of section 8, the Public Information Officer may reject a request for information where it would involve an infringement of copyright subsisting in a person other than the State [S. 91. Certain specified intelligence and security agencies, except where the information Commissioner holds that the requested information pertains to allegations of corruption or human rights violations [S. 24 and Schedule 21.</p>	<p>Only the following, subject to a large number of exemptions and exclusions, have been declared as public records:</p> <p>a) policies & guidelines;</p> <p>b) Transactions involving acquisition and disposal of property and expenditures undertaken by a public body;</p> <p>c) information regarding grant of licenses, allotments and other benefits and privileges and contracts and agreements made by a public body; d) final orders and decisions, including decisions relating to members of public; and e) any other record, which may be notified by the Federal Government as public record for the purpose of this Ordinance [S. 7].</p> <p>However, even the limited number of above listed public records are subject to a large number of exclusions.</p> <p>Exclusions include:</p> <p>a) noting on the files; b) minutes of meetings; c) any intermediary opinion or recommendation; d) record of the banking companies and financial institutions relating to the accounts of their customers; e) record relating to defence forces, defence installations, or connected therewith or ancillary to defence and national security;</p> <p>f) record declared as classified by the Federal Government; g) record relating to the personal privacy of any individual; h) record of private documents furnished to a public body either on an expressed or implied condition that information contained in any such document shall not be disclosed to a third person;</p> <p>i) any other record which the Federal Government may, in public interest exclude from the purview of this Ordinance. [S. 81</p> <p>Restrictions imposed on access also relate to:</p> <p>a) international relations;</p> <p>b) disclosure harmful to law enforcement; c) privacy and personal information; economic and commercial affairs [S. 14, 15, 16, 17, 18].</p>	<p>Exemption relating to records of public bodies include:</p> <p>a) privacy of third party;</p> <p>b) certain records of South African Revenue Service; c) commercial information of third party; d) certain confidential information, and protection of certain others;</p> <p>e) safety of individuals, and protection of property; f) police dockets in bail proceedings, and protection of law enforcement and legal proceedings; g) records privileged from production in legal proceedings; h) defense, security and international relations; i) economic interests and financial welfare of Republic and commercial activities of public bodies; j) research information of third party, and protection of research information of a public body; k) operations of public bodies; l) manifestly frivolous or vexatious requests, or substantial and unreasonable diversion of resources [Ch. 41.</p> <p>Categories of exemption records of private bodies include: a) privacy of third party; b) commercial information of third party; c) certain confidential information of third party; d) safety of individuals, and protection of property; e) records privileged from production in legal proceedings; f) commercial information of private body; g) research information of third party, and protection of research [Ch. 41.</p>	<p>Exemptions include:</p> <p>a) state secrets which would clearly cause harm to the security of the state or foreign affairs or national defense and national security; b) harmful to the economic interests of the state or cause unfair competition or enrichment; c) the duties and activities of the civil and military intelligence units;</p> <p>d) administrative investigations; e) judicial investigations or prosecutions; f) violate the private life or economic or professional interests of an individual; g) privacy of communications; h) trade secrets;</p> <p>i) intellectual property; j) internal regulations; internal opinions, information notes and recommendations if determined by the institution to be exempt; and k) requests for recommendations and opinions [Part 41</p>	<p>Categories of exemption include:</p> <p>a) information accessible by other means; b) information intended for future publication; c) informations supplied by, or relating to, bodies dealing with security matters; d) national security; e) certificates under ss. 23 and 24, supplementary provisions; f) defence; g) international relations; h) relations within the United Kingdom; i) the economy; j) investigations and proceedings conducted by public authorities; k) law enforcement; l) court records, etc;</p> <p>m) audit functions; n) parliamentary privilege; o) formulation of government policy; etc; p) prejudice to effective conduct of public affairs; q) communications with Her Majesty, etc. and honours; r) health and safety; s) environmental t) personal information; u) information provided in confidence; v) legal professional privilege; w) commercial interests; x) prohibitions on disclosure; y) Ministerial certificates can be issued to exempt certain information; z) vexatious requests; aa) repeated requests; bb) costs of complying with request would exceed fee recovery limits [Part II].</p>
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Public Interest Disclosure	But notwithstanding anything in the Official Secrets Act or exemptions, information may still be disclosed if the public interest in disclosure outweighs the harm to protected interests [S. 8(2)1.	No public interest override. Revere public interest test included, such as that the Government can broadly refuse to disclose any other record from the purview of this Ordinance in the public interest [S. 8(i)].	Both public and private bodies must disclose information when it reveals evidence of substantial contravention of law or imminent and serious public safety or environment risk AND the public interest in disclosure outweighs the public interest in refusing [S.461.	N/a	Exemptions are qualified by a public interest override whereby access will only be refused where the public interest in maintaining the exemption outweighs the public interest in disclosing the information [S. 2]
Partial Disclosure / Severability	Information to be given if reasonably severable [S. 10(1)1.	No such provision.	Severance is allowed, where exempt information can be reasonably severed [S. 281.	Severance allowed, where such information shall be set aside if separable [A. 91.	No such provision.
Fees and Waiver	Must be reasonable & will not be imposed where the applicant is below the poverty line. Amount to be prescribed [S. 7(5)]. Information is provided free if the public authority fails to comply with time limits [S. 7(6)1.	Fee to be prescribed in Rules by the Government. [S. 12 & 25(2)1. But the decision to prescribe fee should take into account Section 3, which reads that the Ordinance shall be interpreted so as 'to facilitate and encourage, promptly and at the lowest reasonable cost, the disclosure of information'. Under the Rules, the applicant is required to pay an initial fee of RS. 50 for 10 or less than 10 pages. An amount of RS. 5 per page of photocopy shall be paid for every additional page i.e. exceeding 10 pages [The Freedom of Information Rules, 20041.	Application fee as prescribed. Additional fees for reproduction and for search and preparation. Fees can be waived by notice in Gazette by the Minister [S. 221.	N/a	Fee can be charged in accordance with regulations framed by Secretary of State. Regulations may include provisions for fee waiver, set a maximum limit, advise re manner of calculation. Requests will not be processed until required fees are paid [S. 91
Time for Providing Access to Information	30 working days for granting or refusing the information request [S. 71. 40 days where confidential third party information has been requested [S. 11(3)1.	Required information or, as the case may be, a copy of any public record must be provided with 21 days of receipt of the request [S. 131.	Decision to be made and notified within 30 days of receipt of request [S. 251	Government bodies are required to respond in 15 working days. This can be extended to 30 days if the information is held in another unit of that institution or if it is held by another institution or if the opinion of another institution is required [A. 111	A public authority must provide info promptly, and in any event not later than 20 working days from receipt of the request [S. 101.
Urgent Requests	Where the information requested concerns the life and liberty of a person, it should be provided within 48 hours of receipt of the request [S. 7(1)1.	No such provision.	No such provision.	No such provision although Circular 2004/12 states that oral requests are to be immediately reviewed and resolved if possible.	No such provision.
Decision/ Reasons for Refusal	Decision made by the Public Information Officer must give notice concerning right to review re decision on fees and form of access and/or refusal, including reasons for refusal, the period for appealing the decision and the particulars of the appellant authority [S. 7(3)(b) and (8)1.	Designated Official shall record his/her decision in writing and the applicant shall be informed about such decision [S. 131.	Information Officer decides the request for public body and the head of the private body decides for requests to private body. The decision must contain details about access fee, form of access, right of appeal to court and reasons in case of refusal [S. 25 & 291	Institutions notify the applicants, or inform them in electronic format, of the result of their applications regarding access to information. If the application is rejected, the applicant will be notified of the reasons and the appeal mechanism against the decision [A. 12].	Decision made by the "public authority". Where access is refused: must state facts, the applicable exemption and reason for application of the exemption; procedures for internal complaints (if any); and info re the right to apply to the Information Commissioner [S. 171.

Review/ Appeals Process	One internal appeal to the officer senior in rank to the Public Information Officer. Second appeal to the Central or State Information Commissions, which are independent appeal bodies set up under the Act. Jurisdiction of Courts is barred [S. 19(1), 19(3), S. 23].	Applicant can file a complaint with the head of the public body within 30 days of notification, "On failing to get the requested information from him within the prescribed time", the applicant may file a complaint with the Mohtasib (Ombudsman) or Federal Tax Ombudsman [S. 19].	Public body: Internal appeal can be made by the applicant or a third party to a specified authority within 60 days of notice. An appeal to the Courts is then available. Private bodies: Appeal to the Courts directly from the decision of the head of the body [S. 751].	Appeals are lodged with the Board of Review of the Access to Information within 15 days of notification on the original decision. The Board shall render a decision within 30 days. Appeals can then be made to a court. For judicial review [A. 131].	The law requires the Secretary of State to issue a Code, which among other things, should provide guidance on setting up internal complaints procedures. Complaint from any such procedures lies to the Information Commissioner, who can make a binding decision. A second appeal lies to the Information Tribunal by either the complainant or the public authority. A third appeal lies to the High Court (England, Wales and Northern Ireland) or Court of Sessions (Scotland) [Part V].
Penalties	Where a Public Information Officer has, without any reasonable cause, refused to receive an application, has not furnished information within time limits, or denied the request in bad faith, or knowingly gave incorrect, incomplete or misleading information or destroyed information subject to a request or obstructed the process, a penalty of Rs 250 per day will be imposed until the application is received or information furnished. Total penalty not to exceed Rs 25 000. In the above cases, the Information Commission can also recommend disciplinary action against the Officer at fault under the applicable service rules [S. 201].	Any person who destroys a record, which was the subject of a request, or of a complaint with the intention of preventing its disclosure under this Ordinance, commits an offence punishable with imprisonment for a term not exceeding two years, a fine or both [S. 211]. Where a complaint instituted is found to be malicious, frivolous or vexatious, the complaint may be dismissed by Mohtasib, and fine may be imposed on the complainant up to an amount not exceeding Rs. 10,000 [S.20].	Any person intentionally destroying, damaging, altering concealing or falsifying records commits an offence punishable with imprisonment not exceeding two years [S. 901].	Sanctions can be imposed under the criminal law and administratively against officials for negligently, recklessly or deliberately obstructing the application of the law.	An employee, officer or person subject to the direction of a public authority who alters, defaces, blocks, erases, destroys or conceals any record held by that public authority intending to prevent the disclosure by that authority commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale" [S. 77].
Protection for Actions Under the Act / Whistle-blower Protection	Protection to officials against suits, prosecution or any other legal proceeding for anything done in good faith under the Act [S. 211]. Specific whistleblower protection not provided under this Act. authorities about their activities; and d) train public information. officers and produce relevant training materials for use by the public authorities themselves [S. 261].	No suit, prosecution or other legal proceedings shall lie against any person for anything which is done in good faith or intended to be done in pursuance with the Ordinance or its Rules Act [S. 221. # Specific whistleblower protection not provided under this Act.	No person is criminally or civilly liable for anything done in good faith in the exercise of any power or duty in terms of the Act [S. 89]. Specific whistleblower protection not provided under this Act. [See the Protected Disclosures Act 20001. c) promote timely and effective dissemination of information by public bodies about their activities; and d) on request, assist people to exercise their rights [S. 831.	N/a	No action for defamation if info provided to a public authority by a third person which contains defamatory material is released, if publication is made without malice. Specific whistleblower protection not provided under this Act. [See the Public Interest Disclosures Act 19981 promoting observance by public authorities of the Records Management Code [S.471.

Reporting & Ongoing Monitoring/ Review	Information Commissions required to monitor the Act and produce Annual Reports on the implementation of the Act, including recommendations for improvements. Annual reports to be forwarded to the appropriate Government for tabling in Parliament. Each Ministry or Department shall, in relation to their public authorities, collect and provide to the Information Commissions such information as needed to comply with their monitoring duties [S. 251.	No such provision.	The Human Rights Commission must report annually to the National Assembly on the implementation of the Act in public bodies and may at that time make recommendations regarding the development, improvement, modernisation, reform or amendment of the Act or other legislation having a bearing on access to information [S. 841.	Institutions must prepare reports on the application of the law and submit them to the Board of Review. The Board must produce an annual report for submission to the National Assembly, which will be made public,	The Information Commissioner (IC) shall submit an annual report on his/her functions before each House of the Parliament. The requirements of the Act and the practice codes are monitored and enforced through the IC. The IC may, with the consent of any public authority, assess whether that authority is following good practice. The IC can make good practice recommendations and issue notices seeking compliance [S. 49(1)].
Implementation: Public Education, Training for Officials, etc.	Where resources are available, appropriate Government must: a) develop and organise educational programmes for the public (in particular of disadvantaged communities) on how to exercise rights under the Act; b) encourage public authorities to participate in programmes organised under clause (a), and to undertake such programmes themselves; c) promote timely and effective dissemination of accurate information by public	Each public body shall endeavour within reasonable time and subject to availability of resources that all records covered by the provisions of this Ordinance are computerized and connected through a network all over the country on different systems so that authorized access to such records is facilitated [S. 61.	Where resources are available, Human Rights Commission must: a) conduct educational programmes for the public (in particular of disadvantaged communities) on how to exercise rights under the Act and encourage public and private bodies to do the same; b) train information officers in public bodies;	No such provision.	The Information Commissioner must promote the following of good practice by public authorities and arrange for dissemination of information to the public re the operation of this Act, good practice, and other matters within the scope of his functions. The Commissioner shall from time to time consult the Keeper of Public Records about

Use of RTI for Investigative Reporting in Pakistan

I. Obtaining information under FOI Ordinance, 2002

The Freedom of Information Ordinance, 2002 empowers every citizen of Pakistan to apply for access to information. The Ordinance allows access to information from the institutions of the Federal government including ministries, courts and parliamentary secretariat only. Access to information contained in government records requires the seeker of information to go through a particular process. This process involves both analysis and practical steps that need to be taken to access information. Understanding this process helps save time and money and helps enable the requester access to the targeted information. This chapter explains the modus operandi of submitting information requests.

2. Accessing Information from Federal Institutions

The following five steps need to be taken when seeking information from federal public bodies.

STEP 1

We have understood that all government records are not public records. Therefore, at the very outset, we need to determine whether the information being sought is contained in the records that have been declared as public records under section 7 of FOI Ordinance 2002. In other words, we will have to make sure that the information we intend to seek pertains to the following:

- a) Policies and guidelines;
- b) Transactions involving acquisition and disposal of property and expenditure undertaken by a public body in the performance of its duties;
- c) Information regarding grant of licences, allotments and other benefits and privileges and contracts and agreements made by a public body;
- d) Final orders and decisions, including decisions relating to members of public; and
- e) Any other record, which may be notified by the Federal Government as public record for the purposes of this Ordinance.

Furthermore, the information being sought should not be related to the matters exempted from disclosure under FOI Laws. For list of exemptions refer to chapter three.

STEP 2

You must conduct your own research to find out which government department has the desired information/ record. Then establish who the concerned officer designated in that department is, and also their address. (It is noteworthy that a list of Designated Officers for access of information has been displayed on the Cabinet Division Website: see www.cabinet.gov.pk)

STEP 3

Fill in the form issued by the government for access to information in such a way as to write very clearly about your desired information. (A copy of the Application Form is attached for your guidance.)

**APPLICATION FORM
FOR OBTAINING RECORD UNDER FREEDOM OF INFORMATION
ORDINANCE, 2002 (XCVI OF 2002)**

Name of Applicant

NIC No. (attach a photocopy of the NIC)

Father's Name.....

Address.

Phone No.

Name of Public Body from which information is to be obtained.....

Subject matter of record requested.

Nature of record requested

Purpose of acquisition of the information or record

DECLARATION

(a) Application Fee of Rs.50/- (Non-refundable) has been deposited with the cash branch of the department or in State Bank of Pakistan or National Bank of Pakistan or Treasury vide challan or receipt No..... dated....., and original copy of which is attached.

Signature of Applicant

STEP 4

Submit Rs. 50/- only as Processing Fee and attach the said Receipt with the completed application form. The Processing Fee for access to information can be submitted either in the cash branch of the said department or State Bank of Pakistan or National Bank of Pakistan or in the National Exchequer in the following respective heads:

- a. Major Head 1300000 other receipts
- b. Minor Head 1390000
- c. Detailed Head 1391221 (fee payable for obtaining information & copies of public record)

STEP 5

- a. Make a photocopy of the completed application form for your record
- b. Attach a copy of your National Identity Card (NIC) and the Processing Fee Receipt in original to the completed application.
- c. Registered Post the said documents (Completed Original Application Form, copy of NIC and Original Fee Receipt) to the address of the designated officer.

WHEN WILL THE RESPONSE COME BACK?

1) Subject to sub-section (2), on receiving an application under section 12, the designated official should, within twenty-one days of the receipt of request, supply to the applicant the required information or, as the case may be a copy of any public record.

HOW WILL THE RESPONSE BE MADE?

The Officer Designated to reply is supposed to provide the said record in the form the applicant mentioned in the Application Form, that is a photocopy, or in a C.D, etc

IN CASE OF NO REPLY OR UNSATISFACTORY REPLY:

You must send a written COMPLAINT to the Head of the concerned institution, which will be the SECRETARY of the respective MINISTRY.

STILL IN CASE YOU DID NOT RECEIVE A REPLY WITHIN 30 DAYS OF THE COMPLAINT:

Approach the FEDERAL OMBUDSMAN by a REGISTERED MAIL on any one of the following addresses:

Federal Ombudsman

The Federal Ombudsman Secretariat
Zero Point, Islamabad.
Phone: 051-9201665-9, Fax: 051-9210487,
email: mowasib@paknet.ptc.pk

In case the Complaint is against the Central Board of Revenue, it must be addressed to FEDERAL TAX OMBUDSMAN and sent to the following address:

Federal Tax Mohtasib

State Enterprises Complex,
Constitutional Avenue, Islamabad.
Phone: 051-9212316, Fax: 051-9210487,
email: mowasib@paknet2.ptc.pk

SPECIMEN FOR WRITTEN COMPLAINT TO THE FEDERAL OMBUDSMAN

September 28, 2006

The Federal Ombudsman
The Federal Ombudsman Secretariat
Zero Point, Islamabad.

Subject: The Complaint about non Accessibility of Information desired under FOI Ordinance, 2002.

Respectable Federal Ombudsman,

Assalam-o-Allaikum, I hope the letter finds you in good health. As per the above mentioned subject, I want to bring the following facts in your kind notice:

1. The Freedom of Information Ordinance, FOI, recognises the citizen's right to seek information from any offices of Federal Government. In this context, I had send an application for access to information to the Ministry of (AAAAAAA) Designated Officer (Mr./Ms. XXXXX) on August 01, 2006 (copy of the said application attached herewith). I did not receive a reply within the 21 days as per the promised duration in the FOI, 2002. Therefore I wrote a Complaint with the concerned Secretary of the Ministry of on August 23, 2006 yet I have not received a satisfactory reply from the same till date.
2. A month has passed since submitting the Complaint with the concerned Ministry. Neither have I received the information requested nor any person of the concerned department has contacted me.

In this context, I request you to duly direct the concerned department so that I may get the desired information. Thanking you,

Sincerely yours,

Name: Allah Ditta

Address: 315, Dhok Khabba, Rawalpindi

Signatures:

In case the Ombudsman Secretariat contacts you and asks for further details provide the same at the earliest; in all probability the problem will be resolved.

3. Accessing Information from Local Government Institutions

Citizens can access information from district government institutions under article 137 of Local Government Ordinance 2001. Rules, which would have laid down the procedure to have access to information, have not been framed yet. However, we can seek information from district government departments by taking following steps.

STEP 1

Determine the nature of information you need and who possesses it

First of all, you must find out what information you need to solve your problem. Once you exactly

know the nature of information that you need, you must figure out as to (a) which government department holds the required information, (b) who heads the concerned department, and (c) what is the address of the office of the head of that department. For example, if you are concerned about possible irregularities in the construction of a school being built in your locality, you may need to know:

- a) contract document, as signed by the contractor, and conditions therein;
- b) conditions and specifications, as provided in the technical feasibility; and
- c) inspection reports, which the officials of works department must have prepared.

The above listed information should be available with the Public Works department of the district, which is headed by the Executive District Officer (EDO). However, if you need information about, for example, the transfer of a teacher, you will have to contact the EDO of the education department. In case that you are not sure as to which department holds the required information, or if it relates to various departments of the district, it would be appropriate to contact the District Coordination Officer (DCO).

STEP 2

Submit the information request

- a) Write an information request to the head of the department who possesses the required information. The information request must refer to section 137 of Local Government Ordinance 2001, which recognises citizens Right to Information. Most importantly, the information request must clearly list the information needed, so that it is easier for the government officials to efficiently collect and dispatch it. A sample information request is given as under:
- b) Write your name and address at the end of the information request, as provided in the above sample. Do not forget to write your signature. Keep a copy of the information request for your records.
- c) Send your information request to the concerned officer through registered mail and keep the receipt for your record, along with a copy of the information request. You can also personally go to the office of the concerned officer for submitting the information request. In this case, however, you must not forget to ask the official receiving your information request to register it and give you a diary number with date and his signature affixed on it.
- d) Wait to hear from the concerned department for about 20 days. If you get the required information and you are satisfied with it, it would be appropriate to write back and thank the concerned officer.
- e) If the information provided is not in accordance with what you had requested, you must write to the concerned officer and explain your grievance. Copy of this registered letter, along with the postal receipt, must also be kept in safe custody. In the case that your grievance or complaint is timely addressed, it would be appropriate to thank the concerned officer.

STEP 3

Procedure of Submitting Complaint to the Provincial Ombudsman

- a) Write an application to the provincial ombudsman including your complaint in a precise but comprehensive manner. A copy of all the relevant correspondence that you have had with the department must be attached with the application. In the application, you must request the

SAMPLE INFORMATION REQUEST

September 15, 2006

Mr. /Ms. Amir Ali

District Coordination Officer Rawalpindi.

Subject: Information Request under Section 137 of Local Govt. Ordinance 2001.

Dear Sir/Madam,

As you know that every citizen has the Right to Information under Section 137 of the Local Government Ordinance 2001. In this context, I request you to kindly provide me the following information:

1. An attested copy of the Contract as well of the Technical Feasibility of the construction of a School in Mohallah Dhok Kashmirian awarded by the District Government in the Financial Year 2005-06.
2. Attested photocopies of all inspection reports, which officials of the Works department must have prepared after visiting the said school
3. Detail of payments made to the Contractor till date, and the payments that are still to be made.
4. Any additional document that identifies the expected standard of building as well as the time period in which the school building was/is to be completed so as to know if the said contractor has done or is doing his task befittingly.

We shall be very grateful if the said information is forwarded to the undersigned at the earliest. Thank you.

Sincerely yours,

Name: Umer Farooq

Address: Dhoke Kashmirian, Rawalpindi

Signatures:

ombudsman to pass appropriate instructions for providing you the required information. A sample application to the ombudsman is given as under:

A Sample Complaint to the Provincial Ombudsman October 28, 2006

The Provincial Ombudsman
Ombudsman's Office
2- Bank Road, Lahore

Subject: Complaint Regarding Denial of Information Requested under Section 137 of the LGO 2001.

Dear Sir,

With reference to the above subject, I want to bring the following facts to your kind attention:

1. Section 137 of the Local Government Ordinance (LGO) 2001 recognises the citizen's right to seek information from any office of local governments. In this context, I had sent an information request to the District Coordination Officer (DCO), Rawalpindi, on Sept., 15, 2006. (A copy of the said request is attached herewith).
2. About a month has passed since submitting the information request. But neither I have received the required information nor has any person from the concerned department contacted me on the subject matter.

I, therefore, request you to kindly issue appropriate instructions to the concerned department so that I may get the desired information. Thank you.

Sincerely yours,

Name: Umer Farooq

Address: Dhoke Kashmirian, Rawalpindi

Signatures:

- b) You must attach with your complaint to the Ombudsman an Affidavit, as proposed by the office of the Ombudsman. A sample Affidavit is given below for your quick reference:

AFFIDAVIT	
I Mr Umer Farooq N.I.C. No: XXXXX-XXXXXXX-X Resident of: Dhoke Kashmirian	
Solemnly declare that:	
<ol style="list-style-type: none">1. Regarding this Complaint, no suit or judicial proceedings are currently underway in any of the tribunals or courts in Pakistan. Nor has any court given any decision on this complaint before.2. All the facts mentioned in the said Complaint are correct to the best of my knowledge and nothing has been kept secret.3. I have not submitted any Application regarding the Complaint to your offices.	
Signatures and Stamp of the Complainant Name:	Witness's Signature & Stamp Name:

*to be duly attested by Oath Commissioner or any Officer BPS17 or above or Councilor /Nazim of the Local Government. Name and Designation clearly mentioned.

- c) Send the application to the Ombudsman through a registered mail. In Punjab, the address of Provincial Ombudsman is as follows:

Provincial Ombudsman
2, Bank Road
Lahore

Wait to hear from the Provincial Ombudsman. If the office of Ombudsman requires more information, send the same at your earliest.

4. True or False?

- Right to Information is an absolute right.
- The information held by the government belongs to the people and the government and its functionaries are custodians of this information for the time being.
- It belongs to the people because it is primarily "The sum total of a collection of facts about the people and the country."
- There are certain cases in which the government may not share the information with the citizens.
- Freedom of information legislation should not be guided by the principle of maximum disclosure.
- There is corresponding link between the ability to exercise the Right to Information and the

level of the quality of life enjoyed by the citizens.

- Exceptions should not be clearly and narrowly drawn.
- Right to Information does not, in itself, guarantee other basic rights.
- The forth estate model dictates the press to make government accountable by publishing information about matters of public interest even if such information reveals abuses or crimes perpetrated by those in authority.
- Public bodies should be under an obligation to publish key information.

With the help of RTI tool, journalist can dig deep and address deeper structural issues impacting the lives of common people.

Using RTI as an Investigative Tool

Journalists are using Right to Information (RTI) as a tool to investigate stories in different parts of the world. This chapter includes some of the case studies wherein journalists have employed the Right to Information tool for their investigative stories. After going through these stories, the trainee journalists are expected identify issues in their area of interest. After the identification process, the journalists will employ the tools that they have learnt to use to investigate the issues. Some of the selected case studies are shown below:

1. Case Study 1 (Pakistan)

CPDI submitted an information request to the Ministry of Law, Justice and Human Rights on June 05, 2008, asking them the following questions.

1. Certified copy of the list containing the names and addresses of lawyers hired by Ministry of Law, Justice and Human Rights to represent Federal Government/ Federation in Supreme Court of Pakistan from October 01, 2002 to March 20, 2008.
2. Certified information about the total amount paid by Ministry of Law, Justice and Human Rights as fee or in other heads to the lawyers who represented Federal Government/ Federation in Supreme Court of Pakistan during the same tenure.
3. Certified information about the fee paid by Ministry of Law, Justice and Human Rights to each lawyer from October 01, 2002 to March 20, 2008, to represent the Federal Government/ Federation in Supreme Court of Pakistan.

Ministry denied the information request, saying it would open a 'Pandora box'. CPDI remained undeterred and persisted to open this 'Pandora box'. CPDI shared all the details with Ansar Abbasi, reporter 'The News International' and there was a front page story in 'Jang' and 'The News' on Monday, July 14, 2008 titled 'Law ministry protecting Musharraf's legal extravagance. CPDI's endeavours in terms of taking initiative of submitting information request and launching media campaign on this issue paid off as MNA Begum Nuzhat Siddiqi asked the minister for law, justice and human rights the same question CPDI-Pakistan has been raising:" to show the names of lawyers, who pleased the cases on behalf of the government cases in the Supreme Court during the last five years and the total amounts of fees paid to them in each case". The Minister provided the partial information CPDI had been asking and details of scandalous amounts paid to the lawyers were divulged, injudicious use of public funds was exposed. The news item pertaining to these revelations was a major story carried by print and electronic on Tuesday, August 12, 2008. Instead of providing information to CPDI, as directed by Federal Ombudsman in its findings and conveyed to the Ministry of Law and Justice on May 04, 2009, the ministry chose to file representation to the President of Pakistan. This issue is still pending with the President despite the lapse of considerable time and no decision has been taken by the office of the President.

2. Case Study 2 (India)

In India, the Jharkhand Assembly has a well-furnished Guest House with 30 air- conditioned rooms at the assembly campus. Its rooms are being booked for VIPs and eminent persons as well as for politicians, social workers, journalists, etc. Rent for EX-MLAs, MPs etc is Rs. 100.00 per day and for others, it is Rs. 300.00. The whole amount received from the guesthouse has to be deposited in the government treasury according to the rule. But information collected through RTI reveals that only

a very small amount has been deposited in the treasury during last five years. Nobody knows where the rest has gone. A young journalist, Shakti Pandey, working with Prabhat Khabar Institute of Media Studies applied for the details of the amount deposited in the assembly. People were surprised to know that only Rs. 30000 were deposited in the year 2004 and only Rs 32800 in the year 2005 (up to 7th December). On the basis of common calculation, this amount may be 20 Lacs or more.

3. Case Study 3 (Thailand)

A mother in Thailand objected to the selection procedure of the State Funded Primary School to which her daughter applied. Each applicant was required to sit for an entry examination, but the test scores and ranks were never made public. When her daughter's application was rejected, the mother wrote to the school asking to see her examination results. Her request was refused. She then filed a petition under the 1997 Act to see the results. In 1998, the Official Information Commission rules that the marks of the 120 students who had been admitted to the schools should be made public. It was revealed that 38 of those students had failed the test, but gained entry to the school because their parents had made extra payments.

The mother went to file a request with the Council of State, a government legal advisory body with the power to issue legal rulings, arguing that the school's admission practices were discriminatory and violated the equality clause of the constitution. In January 2000, the Council ruled in her favour and ordered the school and all other state funded schools to abolish such practices¹⁹.

4. Case Study 4 (Australia)

In June 2006 the Construction, Forestry, Mining and Energy Union put out a press release saying that three foreign workers on temporary 457 work visas had died in the last four weeks. Matthew Moore, a journalist with the Sydney Herald thought that this was a very high figure, and he suspected that foreign workers were being exposed to dangerous and unlawful work practices. He asked the Union for more information and it was refused on the grounds that it was a private matter between the individual and the company. Moore submitted an FOI request to the Dept. of Immigration, asking for details of all the deaths of foreign workers on 457 visas. Information released showed that of the three workers killed, a slab of granite had crushed one, one had fallen from a work vehicle and one had died as a result of a logging accident. In addition, a further 17 foreign workers had died over the past five years. No further details were given. A second request was submitted asking for details of the deceased, including ethnicity and details of all the deaths. The Department of Immigration stated that it was "snowed under" with FOI requests and would take some months to respond. It has not yet responded. Matthew Moore continues to write issues connected to migrant workers.

5. Case Study 5 (Northern Ireland - UK) "Single families trapped in Poverty"

Following complaints from single parents that they were not receiving agreed payments from the Child Support Agency, investigative journalist Clare Savage of the BBC submitted a FOI request to the Northern Ireland Child Support Agency asking for payment details. Information released under FOI showed that although 20,537 absent parents were supposed to make child support payments, 7,448 (36%) failed to do so during 2006. Consequently, over a third of beneficiaries did not receive payment.

The Director of the Agency publicly apologised for the poor performance. The NI Child Support Agency is now being reviewed by the Northern Ireland Assembly to see if it should be replaced by an alternative system.

¹⁹ Courtesy: Article 19, the Global Campaign for Free Expression

1. Improve existing RTI legislation

The existing Right to Information regime in Pakistan, consisting of Freedom of Information (FOI) Ordinance 2002, Section 137 of the Local Government Ordinance (LGO) 2001, Balochistan Freedom of Information Act 2005 and the Sindh Freedom of Information Act 2006, is weak and inadequate; and needs to be urgently improved in line with international best practices. Transparent functioning of the government and accountability of the public representatives will remain a pipe dream until we have effective freedom of information regime, which enables and empowers citizens to ask questions and obtain information and official records with minimal exceptions.

However, it was heartening to note that President Zardari, in his speech to the joint session of the Parliament, had committed that the government will soon be introducing a Freedom of Information Bill in the Parliament. In fact, this Bill has already been drafted by the Ministry of Information and Broadcasting, which seeks to repeal Freedom of Information Ordinance 2002. The proposed FOI Bill 2008 is better than the existing FOI Ordinance 2002 but fails to incorporate some good provisions of Ms Sherry Rehman's own Private Member Bill of 2004. It is highly important that the government must hold effective, serious and meaningful consultations with stakeholders on the draft FOI 2008 Bill. The Ministry of Information has already made some efforts in this regard but these have been less focused and inadequate in terms of obtaining useful feedback on specific issues.

The proposed Freedom of Information Bill 2008, while bringing into its scope the provinces, does not repeal the Balochistan Freedom of Information Act 2005 and the Sindh Freedom of Information Act 2006. Furthermore, the definition of public records conflicts with Section 7 that describes records created by the federal and provincial governments as public records. This is going to create confusion when citizens submit requests to access information. It is pertinent to mention that the definition of "public record" needs to be looked into carefully and spelled out clearly and in line with international best practices. As it stands at present, the Bill will create legal confusion as the federal ombudsman, the proposed complaint handling body, has jurisdiction only over federal ministries and attached departments according to the existing legal arrangements. Furthermore there is no provision for speedy disposal of information requests pertaining to urgent matters. Though the Bill overrides all other laws; however, it does not specifically mention the Official Secrets Act and other such laws that restrict the Right to Information.

Surprisingly, the whistle-blower protection clause, which was a part of Ms. Rehman's Private Member Bill of 2004, fails to find place in the draft FOI Bill 2008.

Taking decisions on complaints and contentious matters pertaining to the Right to Information is a specialised job which has again been entrusted to the federal ombudsman. If we are serious about creating a culture in which information flows freely, we will have to establish an independent information commission, vesting it with powers to monitor implementation of freedom of information laws, producing annual reports, guiding government departments in improving their systems to deal with information requests, creating public awareness and ensuring that government departments disclose information proactively.

2. Implementation of RTI Legislation

Despite the weaknesses of existing RTI legislation, many organisations have sought information through use of its provisions since its promulgation. On many occasions the efforts were not fruitful, however, many of these organisations did in fact manage to access information using the rights given under the law. It has been observed that there is, still, a lack of awareness among stakeholders about the legislation. Yet lack of understanding and training among the government officials relating to the implementation of the law is another issue. Political will of the authorities is a necessary tool for the effective implementation of any legislation, nevertheless, such political will seems to be absent at various levels within the authorities.

Existing FOI legislation, although very limited in scope and application, provides various avenues to access information. FOI Ordinance (section 3) requires that "no requester shall be denied access to any official record..." and the "Ordinance shall be interpreted so as ... to facilitate and encourage, promptly and at the lowest reasonable cost, the disclosure of information. The Ordinance also requires public bodies to ensure the proper maintenance, publication and availability, and computerization of the records. Declaration of public record and appointment of designated officials is also an important aspect of the legislation. Similarly, the local government system contains the provisions for a proactive dissemination of information for the public. Nonetheless, duties of the governments under the legislation, if fulfilled properly, can make a huge difference in the campaign for freedom of information in the country. Furthermore, an aggressive awareness and capacity building initiative, both, for the citizens, journalists and officials can also be a positive move to further transparency and openness in the country. There is no doubt that political will can play a decisive role in this regard.

3. Annual Reports

Annual reports are another tool through which the government can proactively share the performance of different ministries and the attached departments. However, more often than not the ministries fail to publish annual reports on regular basis. Even when they do, most of the time they aim at projecting the positive images of the ministers and the officials rather than giving the actual picture of the goals set and the targets achieved.

CONCLUSION

Weak may be the Right to Information laws of the Land, but they do have the potential to provide access to the pertinent information involving the utilisation of public resources. So far, journalists in Pakistan have not used Right to Information instruments to unearth corruption cases and thereby holding the public officials accountable through evidence based investigative reporting. Neither have they demanded enactment of effective Right to Information laws, giving them right to access to public files. Elsewhere, journalists are digging deep by using Right to Information laws as tools and are coming up with potentially embarrassing stories for the ruling elite. Journalists in Pakistan are largely unaware of the existence of the country's freedom of information laws. It does not mean that investigative reporting is not being done in Pakistan. However, the fact remains that when Right to Information laws are not used as a tool to access information, journalists have access to only that information which officials deem fit to share, or that information which is divulged to them, not as a right but as a favour, and that too when someone wants to settle scores with somebody. This reference manual will serve as stepping stone and with its help journalists will be able to demand certified copies of documents containing key information pertaining to the way the nation's resources are supposedly committed and actually spent, which they can have access to under the Freedom of Information Ordinance, 2002, the Sindh Freedom of Information Act and the Balochistan Freedom of Information Act, and under Article 137 of the Local Government Ordinance, 2001.

Information, when seen in the context of the media, has two distinct features. One, it has to be retrieved, and, two, it has to be shared. Media organisations must continue guarding jealously the space they have and, at the same time, will have to mount pressure for the repeal of those draconian laws that hamper media freedom.

The former necessitates self-analysis on the part of the media organisations. With the introduction of the electronic-media factor, how long will newspapers be able to survive by publishing the stories that become public knowledge long before the newspapers hit the newsstands? It is quality information retrieved through investigative reporting which will enable the print media to compete with the electronic media. Similarly, TV channels will have to realise that their viewers will soon be fed up with them if they continue feeding them political talk shows and horrific pictures. They will have to realise that investigative reporting, using formal and informal sources of information, can also give an edge to a channel over its competitors. Only through investigative reporting will the media be able to perform its role of the fourth estate. The correlation between the survival of the press and the empowerment of the masses augurs well for the country. Media organisations will not only have to equip their reporters with freedom of information tools but they will also have to launch a concerted campaign to reform the information laws to enable journalists to dig deep for stories that will help ensure the judicious use of public funds and proper functioning of public institutions.

Annexure

Freedom of Information Ordinance 2002

The Freedom of Information Ordinance, 2002
Government of Pakistan
Ministry of Law, Justice, Human Rights and Parliamentary Affairs
(Law, Justice and Human Rights Division)

F. No. 2(1)12002-Pub.

Islamabad. the 26th October, 2002

The following Ordinance promulgated by the President is hereby published for general information: -

ORDINANCE NO. XCVI OF 2002.
AN ORDINANCE

to provide for transparency and freedom of information

WHEREAS it is expedient to provide for transparency and freedom of information to ensure that the citizens of Pakistan have improved access to public records and for the purpose to make the Federal Government more accountable to its citizens, and for matters connected therewith or incidental thereto;

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action.

NOW, THEREFORE, in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999, and the provisional Constitution Order No. 1 of 1999, read with the Provisional Constitution (Amendment) Order No. 9 of 1999, and in exercise of all powers enabling him in that behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance:

1. Short title, extent and commencement.

- (a) This Ordinance may be called the Freedom of Information Ordinance, 2002.
- (b) It extends to the whole of Pakistan.
- (c) It shall come into force at once.

2. Definition

In this Ordinance, unless there is anything repugnant in the subject or context, -

- (a) "complainant" means
 - (i) a requester, or
 - (ii) any person acting for and on behalf of requester;

- (b) "complaint" means any allegation in writing made by a complainant, REPORTING
 - (i) where he is a requester, that access to record has been wrongfully denied to him by a public body;
 - (ii) where he is a requester, that access to and/or correction of his personal information has been wrongfully denied to him by a public body having the custody or control of the record;
 - (iii) where he is a requester that the information requested by him has been unduly delayed by a public body;
- (c) "designated official" means an official of a public body designated under section 10;
- (d) "employee" , in relation to a public body, means person employed in a public body whether permanently or temporary;
- (e) "Federal Tax Ombudsman" means Federal Tax Ombudsman appointed under section 3 of the Establishment of the Office of Federal Tax Ombudsman Ordinance, 2000 (XXXV of 2000);
- (f) "Mohtasib" means the Wafaqi Mohtasib (Ombudsman) appointed under Article 3 of the Establishment of the office of the Wafaqi Mohtasib (Ombudsman) Order, 1983 (P.O. No. 1 of 1983);
- (g) "prescribed" means prescribed by rules made under this Ordinance;
- (h) "public body" means,-
 - (i) any Ministry, Division or attached department of the Federal Government;
 - (ii) Secretariat of Majlis-e-Shoora (Parliament);
 - (iii) any office of any Board, Commission, Council, or other body established by, or under, a Federal law;
 - (iv) courts and tribunals;
 - (v) "record" means record in any form, whether printed or in writing and includes- any map, diagram, photography, film, microfilm, which is used for official purpose by the public body which holds the record;

3. Access to information not to be denied.

- (a) Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Ordinance, no requester shall be denied access to any official record other than exemptions as provided in section 15.
- (b) This Ordinance shall be interpreted so as
 - (i) to advance the purposes of this Ordinance, and
 - (ii) to facilitate and encourage, promptly and at the lowest reasonable cost, the disclosure of information.

4. Maintenance and indexing of records

Subject to provisions of this Ordinance and in accordance with the rules that may be prescribed, each public body shall ensure that all records covered under clause (i) of section 2 of this Ordinance are properly maintained.

5. Publication and availability of records

The acts and subordinate legislation such as rules and regulations, notifications, by-laws, manuals, orders having the force of law in Pakistan shall be duly published and made available to a reasonable

price at an adequate number of outlets so that access thereof is easier, less time- consuming and less expensive.

6. Computerization of records

Each public body shall endeavour within reasonable time and subject to availability of resources that all records covered by the provisions of this Ordinance are computerized and connected through a network all over the country on different systems so that authorised access to such records is facilitated.

7. Declaration of public records

Subject to the provisions of section 8, the following record of all public bodies are hereby declared to be the public record, namely:

- (a) policies and guidelines
- (b) transactions involving acquisition and disposal of property and expenditure undertaken by a public body in the performance of its duties;
- (c) Information regarding grant of licenses, allotments and other benefits and privileges and contracts and agreements made by a public body;
- (d) final orders and decisions, including decisions relating to members of public; and
- (e) any other record, which may be notified by the Federal Government as public record for the purposes of this Ordinance.

8. Exclusion of certain records

Subject to the provisions of section 8, the following record of all public bodies

- (a) noting on the files;
- (b) minutes of meetings;
- (c) any intermediary opinion or recommendation;
- (d) record of the banking companies and financial institutions relating to the accounts of their customers;
- (e) record relating to defence forces, defence installations or connected therewith or ancillary to defence and national security;
- (f) record declared as classified by the Federal Government;
- (g) record relating to the personal privacy of any individual;
- (h) record of private documents furnished to a public body either on an express or implied condition that information contained in any such documents shall not be disclosed to a third person; and
- (i) any other record which the Federal Government may, in public interest exclude from the purview of this Ordinance.

9. Duty to assist requesters

A public body shall take necessary steps as may be prescribed to assist any requester under this Ordinance.

10. Designation of official

- (1) A public body shall designate and notify an officer or employee to whom requests under this Ordinance are to be made. These officials will be designated to ensure

easy public access to information.

- (2) In case no such official has been designated or in the event of the absence or non-availability of the designated official, the person incharge of the public body shall be the designated official.

11. Functions of designated official

Subject to the provisions of this Ordinance and the rules made thereunder and the instructions if any, of the Federal Government, the designated official shall provide the information contained in any public record or, as the case may be, a copy of any such record.

12. Applications for obtaining information, etc.

- (1) Subject to sub-section (2), any citizen of Pakistan may make an application to the designated official in the form as may be prescribed and shall with his application, furnish necessary particulars, pay such fee and at such time as may be prescribed.
- (2) Nothing contained in sub-section (1) shall apply to such public record as has been published in the Official Gazette or in the form of a book offered for sale.

13. Procedure tor disposal of applications

Subject to sub-section (2), on receiving an application under section 12, the designated official shall, within twenty-one days of the receipt of request, supply to the applicant the required information or, as the case may be a copy of any public record. In case the designated official is of the opinion that -

- (a) the application is not in the form as has been prescribed;
- (b) the applicant has not furnished necessary particulars or has not paid such fee as has been prescribed;
- (c) the applicant is not entitled to receive such information;
- (d) the required information or, as the case may be, the required record does not constitute a public record under section 7;
- (e) the required information or, as the case may be, the required record constitutes a record which is excluded under section 8,

he shall record his decision in writing and the applicant shall be informed about such decision within twenty-one days of the receipt of the application.

The information from, or the copy of, any public record supplied to the applicant under sub-section (1), shall contain a certificate at the foot thereof 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 official.

14. Exempt information from disclosure

Subject to the provisions of this Ordinance, a public body shall not be required to disclose exempt information.

15. International relations

Information may be exempt if its disclosure would be likely to cause grave and significant damage to the interests of Pakistan in the conduct of international relation.

In this Section, "international relations" means relation between Pakistan and

- (a) the government of any other foreign State; or

- (b) an organization of which only States are members.

16. Disclosure harmful to law enforcement

Information may be exempt if its disclosure is likely to

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

17. Privacy and personal information

Information is exempt if its disclosure under this Ordinance would involve the invasion of the privacy of an identifiable individual (including a deceased individual) other than the requester.

18. Economic and commercial affairs

Information is exempt if and so long as its disclosure

- (a) would be likely to 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;
- (b) would be likely to cause significant damage to the financial interests of the public body by giving an unreasonable advantage to any person in relation to a contract which that person is seeking to enter into with the public body for the acquisition or disposal of property or the supply of goods or services, or
- (c) by revealing information to a competitor of the public body, would be likely to cause significant damage to the lawful commercial activities of the public body.

19. Recourse to the Mohtasib and Federal Tax Ombudsman.

- (1) If the applicant is not provided the information or copy of the record declared public record under section 7 within the prescribed time or the designated official refuses to give such information or as the case may be, copy of such record, on the ground that the applicant is not entitled to receive such information or copy of such record, the applicant may, within thirty days of the last date of the prescribed time for giving such information or, as the case may be, of such record, or the communication of the order of the designated official declining to give such information or copy of such record, file a complaint with the head of the public body and on failing to get the requested information from him within the prescribed time may file a complaint with the Mohtasib and in cases relating to Revenue Division, its subordinate departments, offices and agencies with the Federal Tax Ombudsman.
- (2) The Mohtasib or the Federal Tax Ombudsman, as the case may be, may, after hearing the applicant and the designated official, direct the designated official to give the information or, as the case may be, the copy of the record, or may reject the complaint.

20. Dismissal of frivolous, vexatious and malicious complaint.

Where a complaint instituted is found to be malicious, frivolous or vexatious, the complaint may be dismissed by Mohtasib, and fine may be imposed on the complainant up to an amount not exceeding

ten thousands rupees.

21. Offence

Any person who destroys a record which at the time it was destroyed was the subject of a request, or of a complaint with the intention of preventing its disclosure under this Ordinance, commits an offence punishable with imprisonment for a term not exceeding two years, or with fine, or with both.

22. Indemnity

No suit, prosecution or other legal proceedings shall lie against any person for anything which is done in good faith or intended to be done in pursuance of this Ordinance or any rules made there under.

23. Ordinance not to derogate other laws

The provision of this Ordinance shall be in addition to, and not in derogation of, anything contained in any other law for the time being in force.

24. Power to remove difficulties

If any difficulty arises in giving effect to the provisions of this Ordinance, the Federal Government may, by order in the official Gazette, make such provision not inconsistent with the provisions of this Ordinance as appear to it to be necessary or expedient for removing the difficulty.

25. Power to make rules

- (1) The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Ordinance.
- (2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for -
 - (a) the fee payable for obtaining information from, and copies of the public record;
 - (b) the form of application for obtaining information from, and copies of, the public record; and
 - (c) the form in which information from public record shall be furnished.

1.1. President

.....
GENERAL PERVIZ MUSHARRAF

1.2. SECRETARY

.....
Mr. Justice (MANSOOR AHMAD)

2 Freedom of Information Ordinance Rules 2004

**CABINET SECRETARIAT
(Cabinet Division)
Notification
(Islamabad, the 18th June, 2004)**

THE FREEDOM OF INFORMATION RULES, 2004

1. Short title, application and commencement,
 - (1) These rules may be called the Freedom of Information Rules, 2004.
 - (2) They shall apply on public bodies.
 - (3) They shall come into force at once.

2. Definitions

In these Rules, unless there is anything repugnant in the subject or context.

- (a). "Ordinance" means the Freedom of Information Ordinance, 2002 (XCVI of 2002), and
- (b). All other words and expression used, but not defined herein, shall have the same meanings as are assigned to them in the Ordinance.

3. Designated official

- (1) The head of every public body shall designate an official for a public body under his administrative control for the purpose of providing duly attested photocopy of the public record to the applicant, in accordance with the provisions of sections 7, 11, 12 and 13 of the Ordinance.
- (2) The designated official shall be a senior officer of the public body not below BPS-19. In case no such official has been designated or in the event of the absence or non-availability of the designated official, the person incharge of the public body shall be the designated official, for the purposes of these rules.

4. Application for obtaining information

- (1) Subject to sub-section (2) of section of the Ordinance, any citizen of Pakistan may apply on the Application Form as set out in Annexure-1 for obtaining photocopy of the public record available with the respective public body alongwith an initial fee of fifty rupees for ten or less than ten pages to be deposited with the Cash Branch of the respective department under proper receipt or in the State Bank of Pakistan or National Bank of Pakistan or Treasury under the following heads of account, namely:
 - (a) major head 1300000 other receipts
 - (b) minor head 1390000 other; and
 - (c) detailed head 1391221 fee payable for obtaining information and copies of public record

- (2). An amount of five rupees per page of photocopy shall be deposited in the heads of account specified in sub-rule (1) of rule 4 for every additional page (standard size) if the number of the pages of the record requested exceeds ten pages per requisition.
- (3) In case of any Board, Commission, Council or other body established by, or under, a Federal law, charges shall be deposited in their respective heads of account.
- (4) Subject to the availability of the facility each public body shall make available the Application Form (Annexure-1) on its website.

5. Procedure for disposal of application

The designated official of every public body shall give an intimation to the applicant in the form as set out in Annexure-II and duly attested photocopy of public record subject to the provisions of rules 6 and 7 except such information as is exempted under sections 7, 14, 15, 16, 17 and 18 of the Ordinance, as well as, any other instructions of the Government for restricting the disclosure of information by the public body concerned.

6. Procedure for filing of complaint with the head of public body

In case the requisite information is not provided by the designated official of a public body within twenty-one days, the applicant may, file a complaint with the head of that public body and the head of such public body shall dispose of the complaint under intimation to the complainant within thirty days of its receipt. In case the application is sent through mail it shall be disposed of within prescribed time limit beginning from the date of the receipt in the office concerned.

3 APPLICATION FORM

FOR OBTAINING RECORD UNDER FREEDOM OF INFORMATION ORDINANCE, 2002 (XCVI OF 2002)

Name of Applicant.....
NIC No..... (attach a photocopy of the NIC)
Father's Name
Address.....
Phone No.....
Name of Public Body from which information is to be obtained
Subject matter of record requested.
Nature of record requested

DECLARATION

- (a) Application Fee of Rs.50/- (Non-refundable) has been deposited with the cash branch of the department or in State Bank of Pakistan or National Bank of Pakistan or Treasury -----vide challan or receipt No.----- dated-----, and original copy of which is attached.
- (b) The information obtained would not be used for any purpose other than specified above.

Signature of Applicant

4

Performa for Intimation to the Application

Subject

Reference your application dated for supply of photocopies of the record regarding.....

Your request has been considered and accepted/rejected by the competent authority.

You are requested to deposit an additional amount of Rs.....(Rupees.....)

for additional pages of photocopies (@ Rs. 5/ per page), with the Cash Branch of the department or in the State Bank of Pakistan or National Bank of Pakistan or Treasury under the heads of account mentioned below.

Major Head 1300000

Other Receipts

Minor Head 1390000

Others

Detailed Head 1391221

Fee payable for obtaining information from
and copies of Public Record

Your request is regretted as the same is not permissible under the provisions of the Freedom of Information Ordinance 2002 for the reasons that.....

.....

5

The Balochistan Freedom of Information Act, 2005

BALUCHISTAN PROVINCIAL ASSEMBLY SECRETARIAT NOTIFICATION

Dated Quetta, the 6th December, 2005

No. PAB/ Legis: V(27) 2005 freedom of information Bill, 2005 No 4 of 2005, having been passed by the provincial Assembly Balochistan on 27th November, 2005 and assented to by the Governor of Balochistan, is hereby published as an Act of Province Assembly.

Freedom of Information Act 2005 (Balochistan Act No. VI of 2005)

(First Published after having received the assent of the Governor of Balochistan in the Balochistan Gazette (Extra-ordinary) dated 3rd December 2005)

AN ACT

to provide for transparency and freedom of information

WHEREAS it is expedient to provide for transparency and freedom of information to ensure that the citizens of Balochistan have improved access to public record and for the purpose to make the Government more accountable to its citizens,

It is hereby enacted as follows:

1. Short title, extend and commencement

- (1) This Act may be called the Freedom of Information Act, 2005
- (2) It extends to the whole of Balochistan
- (3) It shall come into force at once

2. Defination

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

- (a) "complainant" means
 - (i) a requester, or
 - (ii) a person acting for and on behalf of requester,
- (b) "complainant" means any allegation a writing made by a complaint wrongfully
 - (i) where he is request, that access to record has been wrongfully denied to him by a public body.
 - (ii) where he is a request that access to and or correction of his personal information has been wrongfully denied to him by a public body having the custody or control of the record.
 - (iii) where he is a requester that the information requested by him has been

unduly delayed by a public body.

- (c) "designated official" means an official of a public body designated under section 10
- (d) "employee" in relation to a public body, means a person employed in a public body where permanently or temporary,
- (e) "Government" means the Government of Balochistan.
- (f) "Mohtasib" means the Ombudsman appointed under section 3 of Ordinance VI of 2001
- (g) "prescribed" means prescribed by rules made under this Act
- (h) "public body: means
 - (i) Any ministry department or attached department of this Provincial Government
 - (ii) Secretariat of Provincial Assembly
 - (iii) any office of any Board, council or other body established by, or under a provincial law,
 - (iv) court and Tribunals
 - (v) 'record' means record in any form whether printing or in writing and includes any map diagram photography, film, micro film which is used for official purpose by the public body which holds the record.

Provided that the prohibited maps, diagram, photography, film, micro film and secret or confidential record does not come within the meaning of record.

3. Access to information not to be denied

- (1) Notwithstanding anything contained in any other law for the time being in force and subject the than provisions of this Act requester shall no be denied access to any official record other than exemptions as provided in section 15.
- (2) This Act shall be interpreted so as
 - (i) to advance the purpose of this Act, and
 - (ii) to facilitate and encourage, promptly and at the lowest reasonable cost the disclosure of information.

4. Maintenance and indexing of records

Subject to provisions of the Act and in accordance with the rules that any be prescribed are public body shall ensure that all record covered under clause (1) of section 2 of this act are properly maintained.

5. Publication and availability of records

The acts and subordinate legislation such as rules and regulations, notifications, by laws manual orders having the force of the law in Balochistan shall be duly published and made available at a reasonable price at an adequate number of outlets so that access thereof is easier, less time consuming and less expensive.

6. Computerization of records

The public body endeavour within reasonable time and subject to availability of resource that all records covered by the provisions of the act are computerized and connected through network all over the province on different systems so that authorized access to such record is facilitated.

7. Declaration of public record

Subject to the provisions of section 8, the following records of all public bodies are hereby declared to be public records namely:

- (a) policies and guidelines;
- (b) Transactions involving acquisition and disposal of property and expenditure undertaken by a public body in the performance of its duties;
- (c) information regarding grant of licences, allotments and other benefits and privileges and contracts and agreements made by a public body;
- (d) final orders and decisions, including decisions relating to members of the public; and
- (e) any other record which may be notified by the provincial Government as public record for the purposes of this Act.

8. Exclusion of certain records

Nothing contained in section 7 shall apply to the following of all public bodies namely-

- (a) nothing on the file;
- (b) minutes of meeting;
- (c) any intermediary opinion or recommendations;
- (d) records declared as classified by the federal and Provincial Government;
- (e) records relating to the personal privacy of any individual;
- (f) records of private documents furnished to a public body on an express or implied condition that information contained in such documents shall not be disclosed to a third person; and
- (g) any other record which the Government may in public interest exclude from the purview of this Act.

9. Duty of assist requester

A public body shall take necessary steps as may be prescribed to assist any requester under this Act.

10. Designation of official

- (1) A public body shall designate and notify an officer or employee to whom requests under this Act are to be made. These officials will be designated to ensure easy public access to information.
- (2) In case no such official has been designated or in the event of the absence or non-availability of the designated official the person in charge of the public body shall be the designated official.

11. **Functions of designated official** subject to the provision of this Act and the rules made thereunder and the instruction if any, of the Government, the designated official shall provide the information contained in any public record or as the case may be a copy of any such record.

12. Applications for obtaining information etc:

- (1) Subject to sub-section (2) any citizen of Pakistan who has an interest has been affected may make an application to the designated official in the form as may be prescribed and shall with his application, furnish necessary particulars pay such fee and at such time as may be prescribed.

- (2) Nothing contained in sub-section (10) shall apply to such public record has been published in the official Gazette or in the form of a book offered for sale.

13. Procedure for disposal of applications

- (1) Subject to subsection 12, on receiving an application under section 12, the designated official shall, within twenty one days of the receiving of request supply to the applicant the required information or, as the case may be, a copy of any public record.
- (2) in case the designated official is of the opinion that:-
 - (a) The application is not in the form as has been prescribed;
 - (b) The applicant has not furnished necessary particulars or has not paid such fee as has been prescribed;
 - (c) The applicant is not entitled to receive such information;
 - (d) The required information or, as the case may be, the required record does not constitute public record under section 7;
 - (e) The required information or, as the case may be, the required record which is excluded under section 8;
he shall record his decision in writing and the application shall be informed about such decision within twenty one days of the receipt of the application.
- (3) The information form or the copy of, any public record supplied to the applicant under sub-section (1), shall contain a certificate at the foot thereof that the information is correct or as the case may be, the copy of is true copy of such public record, and such certificate shall be dated and signed by the designated official.

14. Exempt information from disclosure

Subject to the provisions of this Bill, a public body shall not be required to disclose exempt information.

15. Disclosure harmful to law enforcement

Information may be exempt if its disclosure is likely to

- (a) result in the commission of an offence
- (b) harm the detection, prevention, investigation or inquiry in particular case;
- (c) reveal the identity of a confidential source of information;
- (d) Facilitate an escape from legal custody;
- (e) Harm the security of any property or system, including a building a vehicle, a computer system or a communications system.

16. Privacy and personal information

Information is exempt if its disclosure under this Act would involve the invasion of the privacy of an identifiable individual including a deceased individual) other than the requester.

17. Economic and commercial affairs

Information is exempt if and so long as its disclosure.

- (a) would be likely to cause grave and significant damage to the economy as a result of the premature disclosure of the proposed introduction, abolition of variation of any tax, duty, interest rate, exchange rate or any instrument of economic management
- (b) would be likely to cause significant damage to the financial interests of the public body by

giving an unreasonable advantage to any person in relation to a contract which that person is seeking to enter into which the public body for the acquisition or disposal of property or the supply of goods or services, or

- (c) by revealing information to a compaction of the body would be likely to cause significant damage to the lawful commercial activities of the public body.

18. Recourse to the Mohtasib

- (1) if the applicant is not provided the information or copy of the record declared public record under section 7 within the prescribed time or the designated official refuses to give such information or, as the case may be, copy of such record, on the ground that the applicant is not entitled to receive such information or copy of such record, the applicant may, within thirty days of the last date of the prescribed time for giving such information or, as the case may be, of such record, or the communication of the order of the designated official declining to give such information or copy of such record, file a complaint with the head of the public body and on failing to get the requested information from him within the prescribed time may file a complaint with the Mohtasib.
- (2) That Mohtasib may after hearing the applicant and the designated official direct the designated official to give the information or, as the case may be, the copy of record or may reject the complaint.

19. Dismissal of frivolous, vexations and malicious complaint

Where a complaint instituted is found to be malicious, frivolous or vexatious, the complaint may be dismissed by the Mohtasib, and fine may be imposed on the complainant up to an amount exceeding ten thousand rupees.

20. Offence

Any person who destroys a record which at the time it was destroyed was the subject of a request, or of a complaint with the intention of preventing is disclosure under this Act, commits an offence punishable with imprisonment for a term not exceeding two years or with fine, or with both.

21. Indemnity

No suit, prosecution or other legal proceedings shall lie against any person for anything which is done in good faith or intended to be done in pursuance of this Act or any rules made there under.

22. Act not to derogate order laws

The provisions of this Act shall be in addition to and in derogation of, anything contained in any other law for the time being in force.

23. Power to remove difficulties

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

24. Power to make rules

- (1) The Government may, by notification in the official Gazette make rules for carrying out the purpose of this Act
- (2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for:

- (a) the fee payable for obtaining information from, and copies of the public record;
- (b) the form of application for obtaining information from, and copies of the public record; and
- (c) the form in which information from public record shall be furnished.

MIR MUHAMMAD ANWAR LEHRI
SECRETARY

6 The Sindh Freedom of Information Act, 2006

**The Sindh Government Gazette
Published by Authority
KARACHI FRIDAY SEPTEMBER 29, 2006
PROVINCIAL ASSEMBLY OF SINDH
NOTIFICATION
KARACHI, THE 13TH SEPTEMBER, 2006**

NO.PAS/Legis-B-1612006-. The following Bill is hereby published for general information as required by Rule 83 of the Rules of Procedure of the Provincial Assembly of Sindh.

BILL NO.16 OF 2006

THE SINDH FREEDOM OF INFORMATION BILL, 2006

A Bill

To provide for transparency and freedom of information

WHEREAS it is expedient to provide for transparency and freedom of information to ensure that the citizens of Province Sindh have improved access to public records and for the purpose to make the Provincial Government more accountable to its citizens, and for matters connected therewith or incidental thereto;

It is hereby enacted as follows:

1. This Act may be called the Sindh Freedom of Information Act, 2006.

It shall come into force at once

2. In this Act, unless there is any thing repugnant in the subject or context.
 - (a) "complainant" means
 - (i) a request; or
 - (ii) any person acting for and on behalf of requester;
 - (b) "complainant" means any allegation in writing made by a complainant
 - (i) where he is a requester, that access to record has been wrongfully denied to him by a public body;
 - (ii) where he is a requester, that access to and or correction of his person information has been wrongfully denied to him by a public body having the custody or control of the record;
 - (iii) where he is a requester that the information requested by him has been unduly delayed by a public body;
 - (c) "designated official" means an official of a public body designated under section 10;
 - (d) "employees" in relation to a public body, means a person employed in a public body whether permanently or temporary;

- (e) "Government" means the Government of Sindh;
 - (f) "Ombudsman" means the Ombudsman appointed under section 3 of the Establishment of Officer for the Province of Sindh Act, 1991;
 - (g) "prescribed" means prescribed by rules made under this Act
 - (h) "public body" means
 - (i) any department or attached department of Government;
 - (ii) Secretariat of Provincial Assembly
 - (iii) Any office of any Board, Commission, Council, or other body established by, or under, a Provincial Law; and
 - (iv) Courts and tribunals; and
 - (v) "record" means record in any form, whether printed or in writing and includes any map, diagram, photography, film, microfilm, which is used for official purpose by the public body which hold the record.
3. (1) Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act no requester shall be denied access to any official record other than exemptions as provided in section 15.
- (2) This Act shall be interpreted so as
- (i) to advance the purposes of this Act and
 - (ii) to facilitate and encourage, promptly and at the lowest reasonable cost, the disclosure of information.
4. Subject to provisions of this Act and the rules, each public body shall ensure that all records are properly maintained.
5. The acts and sub ordinance legislation such as rules and regulations, notifications, bylaws, manuals, orders having the force of law in the Sindh province shall be duly published and made available at a reasonable price at an adequate number of outlets so that access thereof is easier, less time-consuming and less expensive.
6. Each public body shall endeavor within reasonable time and subject availability of resources that all records covered by the provisions of this Act are computerized and connected through a network all over the country on different systems so that authorized access to such records is facilitated.
7. Subject to the provisions of section 8, the following records of all public bodies are hereby declared to be the public record namely
- a) Policies and guidelines
 - b) Transactions involving acquisition and disposal of property and expenditure undertaken by a public body in the performance of its duties;
 - c) Information regarding grant of licenses, allotments and other benefits and privileges and contracts and agreements made by a public body;
 - d) Final orders and decisions, including decisions relating to members of public, and
 - e) Any other record which may be notified by Government as public record for the purposes of this Act.
8. Nothing contained in section 7 shall apply to the following record of all public bodies, namely;
- (a) Noting on the files

- (b) Minutes of meetings
- (c) Any intermediary opinion or recommendation
- (d) Record of the banking companies and financial institutions relating to the accounts of their customers;
- (e) Record relating to defence forces, defence installation or connected therewith or ancillary to defence and nation security.
- (f) Record declared as classified by Government
- (g) Record relating to the personal privacy of any individual;
- (h) Record of private documents furnished to a public body either on an express or implied condition that information contained in any such documents shall not be disclosed to a third person, and
- (i) Any other record which Government may, in public interest, exclude from the purview of this Act.

9. A public body shall take necessary steps as may be prescribed to assist any requester under this Act

10. (1) A public body shall designate and notify an officer or employee to whom requests under this Act are to be made. These officials will be designated to ensure easy public access to information.
- (2) In case no such official has been designated or in the event of the absence or non-availability of the designated official, the person incharge of the public body shall be the designated official.

11. Subject to the provisions of this Act and the rules made there under and the instructions if any, of Government, the designated official shall provide the information contained in any public record or, as the case may be a copy of any such record.

12. (1) Subject to sub-section (2), any citizen of Pakistan may make an application to the designated official in the form as may be prescribed and shall with his application, furnish necessary particulars, pay such fee and at such time as may be prescribed.
- (2) Nothing contained in sub-section (1) shall apply to sub public record as has been published in the official gazette or in the form of a book offered for sale.

13. (1) Subject to sub-section (2), on receiving an application under section 12, the designated official shall, within twenty-one days of the receipt, supply to the applicant the required information or, as the case may be, a copy of any public record.
Information or, as the case may be, a copy of any public record.
- (2) In case the designated official is of the opinion that;
- a. the application is not in the form as has been prescribed;
 - b. the applicant has not furnished necessary particulars or has not paid such fee as has been prescribed
 - c. the applicant is not entitled to received such information
 - d. the required information or, as the case may be, the required record does not constitute a public record under section 7;
 - e. the required information or, as the case may be, the required record constitutes a record which is excluded under section 8, he shall record his decision in writing and the applicant shall be informed about such decision

within twenty-one days of the receipt of the applicant.

- (3) The information form, or the copy of, any public record supplied to the applicant under the sub-section (1), shall contain a certificate at the foot thereof 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 official.
14. Subject to the provisions of this Act, a public body shall not be required to disclose exempt information.
15.
 - (1) Information may be exempt if its disclosure would be likely to cause grave and significant damage to the interests of Pakistan in the conduct of international relation.
 - (2) In this section, "international relations" means relations between Pakistan and
 - (a) the government of any other foreign State; or
 - (b) an organization of which only States are members
16. Information may be exempt if its disclosure is like to-
 - (a) result in the commission of an offence;
 - (b) harm the detection, prevention, investigation or inquiry in a particular case;
 - (c) reveal the identify of a confidential source of information
 - (d) facilitate an escape from legal custody; and
 - (e) harm the security of any property or system, including a building a vehicle, a computer system or a communications system
17. Information is exempt if its disclosure under this Act would involve the invasion of the privacy of an identifiable individual (including a deceased individual) other than the requester.
18. Information is exempt if and so long as its disclosure
 - (a) would be likely to cause grave and significant damage to the economy as a result of the premature disclosure of the proposed introduction, abolition of variation of any tax, duty, interest rate, exchange rate or any other instrument of economic management;
 - (b) would be likely to cause significant damage to the financial interest of the public body by giving an unreasonable advantage to any person in relation to a contract which that person is seeking to enter into with the public body for the acquisition or disposal of property or the supply of goods or services, or
 - (c) by revealing information to a competitor of the public body, would be likely to cause significant damage to the lawful commercial activities of the public body.
19.
 - (1) If the applicant is not provided the information or copy of the record declared public record under Section 7 within the prescribed time or the designated official refuses to give such information or, as the case may be, copy of such record, on the ground that the applicant is not entitled to receive such information or copy of such record, the applicant may, within thirty days of the last date of the prescribed time for giving such information or, as the case may be, of such record, or the communication of the order of the designated official declining to give such information or copy of such record, file a complaint with the head of the public body and on failing to get the requested information from him within the prescribed time may file a complaint with the Ombudsman.
 - (2) The Ombudsman may, after hearing the applicant and designated official, direct the designated official to give the information or, as the case may be, the copy of the

record or may reject the complaint.

20. Where a complaint instituted is found to be malicious, frivolous or vexatious, the complaint may be dismissed by the Ombudsman, and fine may be imposed on the complainant up to an amount not exceeding ten thousand rupees.

21. A person who destroys a record which at the time it was destroyed was the subject of a request, or of a complaint with the intention of preventing its disclosure under this Act, commits an offence punishable with imprisonment for a term not exceeding two years, or with fine, or with both.

22. No suit, prosecution or other legal proceedings shall lie against any person for anything which is done in good faith or intended to be done in pursuance of this Act or any rules made there under.

23. The provisions of this Act shall be in addition to, and not in derogation of, anything contained in any other law for the time being in force.

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

25. (1) Government may, by notification in the Official Gazette, make rules for carrying out the purposes of the Act
- (2) In particular and without prejudice to the generality of the foregoing powers, such rules may provide for:-
- (a) the fee payable for obtaining information from, and copies of the public record
 - (b) the form of application for obtaining information from, and copies of the public record, and
 - (c) the form in which information from public record shall be furnished

DR.ISHRAT-UL-EBAD KHAN

GOVERNOR OF SINDH

Karachi

Dated the 10th August, 2006

7

Relevant provisions in Local Government Law

LOCAL GOVERNMENT ORDINANCE (LGO) 2001

The relevant sections of the above Ordinance that provide for access to information are as under:

Section 42 (7)

The District Council would meet in front of the citizens till the Council does not pass a resolution to do the same in closed doors.

Section 54 (1)

The authority of Tehsil and Municipal Administrations would be as under:

- i. Seeking the approval of an intended plan of action from the Tehsil Council after taking the public opinion as well as reasonable publicity.
- ii. Tehsil and Municipal Administrations must establish a Comprehensive database and information system in collaboration with The District Council, Union and Village Councils, so as to provide the masses with reasonable access to information on a cheap fee.
- iii. Record keeping of Municipal documents and government reminders, etc. Section 52 (2)

Tehsil Municipal Administration

- i. In case of receiving public complaints regarding its working, it can designate its responsibilities to any private or public government organization.

Section 57

Tehsil Nazim's responsibilities include:

- i. Submission of a report of his government's performance to Tehsil Council after every six months.

Section 76

The responsibilities of the Union Administration include:

- i. To collect and keep the data for social and economic surveys.
- ii. To publish and publicise any information pertinent to the affairs of public interest.

Section 114 (4)

The District Government would paste the details of its monthly and annual expenditures as well as other important reports at prominent places.

Section 137

- i. Every citizen would have the right to access information regarding any office of the District Council, Tehsil Municipal Administrations and Union Administrations.

- ii. All Offices of the District Council would provide the said information on receiving the relevant form along with required fees unless the asked information has been declared secret by law at that time.
- iii. Information regarding the last month's performance of all offices of the District government and their Staff would be displayed at a place so that the Citizens may have access to the same.

Section 147

The Citizens of the area would have the right to commence legal action against any local government, its official or staff in a case they are misusing their authority.

8

Archives act

ACT VI OF 1993 NATIONAL ARCHIVES ACT, 1993

An Act to provide for the custody and preservation of public records of Pakistan and archival materials of historical and national significance to Pakistan

(Gazette of Pakistan, Extraordinary, Part I, 3rd April, 1993)

The following Act of Majlis-e-Shoora (Parliament) received the assent of the President on the 29th March, 1993 and is hereby published for general information:

Whereas it is expedient to provide for the custody and preservation of public records of Pakistan and archival materials of historical and national significance to Pakistan and for matters incidental thereto;

It is hereby enacted as follows:

1. **Short title, extent and commencement:**
 - (1) This Act may be called the National Archives Act, 1993.
 - (2) It extends to the whole of Pakistan.
 - (3) It shall come into force at once.
2. **Definitions:** In this Act, unless there is anything repugnant in the subject or context,
 - (a) "Board" means the Advisory Board for National Archives;
 - (b) "Director-General" means the Director-General of National Archives;
 - (c) "National Archives" means the Department of the Government of Pakistan designated as the National Archives of Pakistan;
 - (d) "public office" means any ministry, division, department, federal parliament, commission, board, corporation, agency, local authority, or any other office of the Government of the Federation and includes such office or corporation or other body as the Federal Government may, by notification in the official Gazette, declare to be public office;
 - (e) "public record" means:
 - (i) papers, documents, records, registers, printed material, books, maps, plans, drawings; computer records (machine readable records), photographs, microfilms, cinematograph films, and audio and video recordings of any kind whatsoever officially received or produced by any public office for the conduct of its affairs or by any officer or employees, of a public office in the course of his official duties, including records relating to Commissions and Committees appointed by the Federal Government;

- (ii) any document, book, pamphlet brochure, letter, handout, gazette, newspaper, journal, file, manuscript, whether written, printed or typed and other archival materials of historical and national significance to Pakistan acquired for the National Archives by the Director-General.

3. Management of National Archives.

The National Archives shall be responsible for the storage and preservation of public records and other archival materials of historical and national significance to Pakistan:

- (1) Provided that such documents as the Federal Government may from time to time specify can be kept at a place other than the National Archives.
- (2) The National Archives shall be managed and controlled by the Director-General who shall be appointed by the Federal Government and for the purpose of such management and control it shall be the duty of the Director-General
 - (a) to ensure the conservation and, where necessary, the restoration, of all public records and other archival material entrusted to his care;
 - (b) to make use of all types of Re-pregraphic techniques for reproduction of them where necessary;
 - (c) to describe and arrange all public records and other archival material acquired by the National Archives;
 - (d) to provide facilities for research and reference;
 - (e) subject to the terms and conditions on which they are acquired, to reproduce or publish any public records and other archival material;
 - (f) to examine any records in the custody of a public office and to advise such office as to the care and custody of such records;
 - (g) to accept and preserve records which are transferred to the National Archives;
 - (h) at the request of any administrative head of a public office, to return to that office for such period as may be agreed upon between the Director-General and the administrative head concerned, the public records transferred from that office to the National Archives;
 - (i) to acquire by purchase in accordance with the delegated financial authority, donation, request or otherwise any document, book or other material which is, or is likely to be, of enduring national or historical value; and to perform such other functions as are necessary for the purpose of the said management and control and as may be assigned to him by the Federal Government or the Board.

4. Advisory Board

- (1) There shall be established an Advisory Board consisting of a Chairman, the Director-General and not more than fifteen other members, of whom two shall be members of Parliament, as may be appointed by the Federal Government.
- (2) The function of the Board shall be:
 - (a) to lay down the policies and guidelines for the effective management of National Archives;
 - (b) to review the working of the National Archives;
 - (c) to evolve the framework for co-ordination among Archival Institutions;
 - (d) to frame rules for conduct of the official business of the National Archives; and

- (e) any other function assigned to it by the Federal Government.

5. Transfer of public records to National Archives

Any non-current public records which are more than five years old including records of defunct agencies, shall be transferred to the National Archives for management and preservation:

Provided that the Secretary of the Administrative Division in consultation with the Director-General may withhold the transfer of any such records to the National Archives for such period or periods as may be prescribed.

6. Public records to be surrendered on demand

Any person in possession of public records, whether such possession is authorised or unauthorised, shall on the demand of the Director-General in writing deposit them with the National Archives;

Provided that any public records exempted under section 5 from being transferred to the National Archives shall not be required to be so deposited;

Provided further that nothing contained in this section shall be deemed to apply to any public records which may be legally in the possession of any person otherwise than in his capacity of an officer or employee of a public office.

7. Public records not to be destroyed or disposed of without the authority of the Director-General.

- (1) No person or officer shall, without the consent of the Director-General, destroy or otherwise dispose of, or authorise the destruction or disposal of, any public records which are in his possession or under his control.
- (2) The Director-General may, with the approval of a Committee consisting of the Director-General, one departmental representative and two academicians nominated by the Federal Government authorise the destruction of any specified classes of public records.

8. Access to public records

- (1) Public records referred to in sub-clause (i) of clause (e) of section 2 shall be made available to the public for the purpose of reference or research after twenty years of their creation:

Provided that public records having a bearing on national 'security, including the records of the intelligence agencies, shall be made available within twenty years of their creation unless on a reference from the Secretary of the Administrative Division a Committee headed by Cabinet Secretary and including such members as may be appointed by the Federal Government may decide to exempt any record on grounds of national security from the provisions of this subsection.
- (2) Access to other public records specified in sub-clause (ii) of clause (c) of section 2 shall be allowed in accordance with 'the conditions and deposit of fee prescribed in rules made under this Act.

9. Penalty

Whoever contravenes the provisions of section 6 or section 7 shall be punishable with imprisonment for a term which may extend to three months, or with fine, or with both.

THE OFFICIAL SECRETS ACT, 1923

Act No. XIX of 1923

[2nd April, 1923]

An Act to consolidate and amend the law in Pakistan relating to official secrets

Preamble

Whereas it is expedient that the law relating to official secrets in Pakistan should be consolidated and amended;

It is hereby enacted as follows:

1. Short title, extent and application.

- (1) This Act may be called the Official Secrets Act, 1923.
- (2) It extends to the whole of Pakistan, and applies also to all citizens of Pakistan and persons in the service of Government wherever they may be.

2. Definitions

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

- (1) any reference to a place belonging to Government includes a place occupied by any department of the government, whether the place is or is not actually vested in Government;
- (2) expressions referring to communicating or receiving include any communicating or receiving, whether in whole or in part, and whether the sketch, plan, model, article, note, document, or information itself or the substance, effect or description thereof only be communicated or received; expressions referring to obtaining or retaining any sketch, plan, model, article, note or documents, include the copying or causing to be copied of the whole or any part of any sketch, plan, model, article, note, or document; and expressions referring to the communication of any sketch, plan, model, article, note or document; include the transfer or transmission of the sketch, plan, model, article, note or document;
- (2A) 'appropriate Government' means, in relation to matters enumerated in the Federal Legislative List in the Fourth Schedule to the Constitution, the Federal Government and, in relation to any other matter, the Provincial Government;
- (3) "document" includes part of a document;
- (4) "model" includes design, pattern and specimen;
- (5) "munitions of war" includes the whole or any part of any ship, submarine, aircraft, tank, or similar engine, arms and ammunition, torpedo, or mine intended or adopted for use in war, and any other article, material, or device, whether actual or proposed, intended for such use;

- (6) "Officer under Government" includes any office or employment in or under any department of the Government
- (7) "photograph" includes an undeveloped film or plate;
- (8) "prohibited place" means
 - (a) any work of defence, arsenal, naval, military or air force establishment or station, mine, minefield, camp, ship or aircraft belonging to, or occupied by or on behalf of, 'Government, any military telegraph or telephone so belonging or occupied, any wireless or signal station or office so belonging or occupied and any factory, dockyard or other place so belonging or occupied and used for the purpose of building, repairing, making or storing any munitions of war, or any sketches, plans, models or documents relating thereto, or for the purpose of getting any metals, oil or minerals of use in time of war;
 - (b) any place not belonging to Government where any munitions of war or any sketches, models, plans or documents relating thereto are being made, repaired, gotten or stored under contract with, or with any person on behalf of, Government, or otherwise on behalf of Government;
 - (c) any place belonging to or used for the purpose of Government which is for the time being declared by the appropriate government, by notification in the official Gazette, to be a prohibited place for the purposes of this Act on the ground that information with respect thereto, or damage thereto, would be useful to an enemy, and to which a copy of the notification in respect thereof has been affixed in English and in the vernacular of the locality;
 - (d) any railway, road, way or channel, or other means of communication by land or water (including any works or structures being part thereof or connected therewith, or any place used for gas, water or electricity, works or other works for purposes of a public character, or any place where any munitions of war or any sketches, models, plans or documents relating thereto, are being made, repaired or stored otherwise than on behalf of Government which is for the time being declared by the appropriate Government by notification in the official Gazette, to be a prohibited place for the purpose of this Act on the ground that information with respect thereto, or the destruction or obstruction thereof, or interference therewith, would be useful to an enemy, and to which a copy of the notification in respect thereof has been affixed in English and in the vernacular of the locality

Provided that where for declaring a prohibited place under sub-clause (c) or sub-clause (d) a notification in the official Gazette is not considered desirable in the interest of the security of the State, such declaration may be made by an order a copy or notice of which shall be prominently displayed at the point of entry to, or at a conspicuous place near, the prohibited place.
- (9) "sketch" includes any photograph or other mode of representing any place or thing; and
- (10) "Superintendent of Police" includes any police officer of a like or superior rank, and any person upon whom the powers of a Superintendent of Police are for the purposes of this Act conferred by the appropriate Government,

3. Penalties for spying

- (1) If any person for any purpose prejudicial to the safety or interests of the State
 - (a) approaches, inspects, passes over or is in the vicinity of, or enters, any prohibited place; or

- (b) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be, directly or indirectly, useful to any enemy; or
 - (c) obtains, collects, records or publishes or communicates to any other person any secret official code or pass word, or any sketch, plan, model, article or note or other document or information which is calculated to be or might be or is intended to be, directly or indirectly, useful to an enemy; he shall be guilty of an offence under this section.
- (2) On a prosecution for an offence punishable under this section with imprisonment for a term which may extend to fourteen years, it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State and notwithstanding that no such act is proved against him, he may be convicted, if from the circumstances of the case or his conduct or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interest of the State; and if any sketch, plan, model, article, note, document, or information relating to or used in any prohibited place, or relating to any thing in such a place, or any secret official code or password is made, obtained, collected, recorded, published or communicated by any person other than a person acting under lawful authority, and from the circumstances of the case or his conduct or his known character as proved it appears that his purpose was a purpose prejudicial to the safety or interests of the State, such sketch, plan, model, article, note, document or information shall be presumed to have been made, obtained, collected, recorded, published or communicated for a purpose prejudicial to the safety or interest of the State.
- (3) A person guilty of an offence under this section shall be punishable, -
- (a) where the offence committed is intended or calculated to be, directly or indirectly, in the interest or for the benefit of a foreign power, or is in relation to any work of defence, arsenal, naval, military or air force establishment or station, mine-field, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of Pakistan or in relation to any secret official code, with death or with imprisonment for a term which may extend to fourteen years; and
 - (b) in any other case, with imprisonment for a term which may extend to three years.
- 3A, Restriction against photographs, sketches, etc. of prohibited and notified area
- (1) No person shall, except under the authority of a written permit granted by or on behalf of the appropriate Government, make any photograph, sketch, plan, model, note or representation of any kind of any prohibited place or of any other place or area, notified by the appropriate Government as a place or area with regard to which such restriction appears to that Government to be expedient in the interests of the security of Pakistan, or of any part of or object in any such place or area.
 - (2) The appropriate Government may, by general or special order make provision for securing that no photograph, sketch, plan, model, note or representation of any kind made under the authority of a permit granted in pursuance of subsection (1) shall be published unless and until the same has been submitted to and approved by such authority or persons may be specified in the order, and may retain or destroy or otherwise dispose of anything so submitted.
 - (3) If any person contravenes any of the provisions of this section, he

shall be punished with imprisonment for a term which may extend to three years or with fine or with both.

- (4) The Federal Government may by notification in the official Gazette empower any Provincial Government to exercise all or any of the powers exercisable by the Federal Government under this section, or under sub-clause (c) or sub-clause (d) of clause (8) of section 2, or under clause (10) of that section.

4. Communications with foreign agents to be evidence of commission of certain offences

- (1) In any proceedings against a person for an offence under section 3, the fact that he has been in communication with, or attempted to communicate with, a foreign agent, whether within or without Pakistan, shall be relevant for the purpose of proving that he has, for a purpose prejudicial to the safety or interests of the State, obtained or attempted to obtain information which is calculated to be or might be, or is intended to be, directly or indirectly, useful to an enemy.
- (2) For the purpose of this section, but without prejudice to the generality of the foregoing provisions.-
 - (a) a person may be presumed to have been in communication with a foreign agent if -
 - (i) he has, either within or without Pakistan, visited the address of a foreign agent or consorted or associated with a foreign agent, or
 - (ii) either within or without Pakistan, the name or address of, or any other information regarding, a foreign agent has been found in his possession, or has been obtained by him from any other person;
 - (b) the expression "foreign agent" includes any person who is or has been or in respect of whom it appears that there are reasonable grounds for suspecting him of being or having been employed by a foreign power, either directly or indirectly, for the purpose of committing an act, either within or without Pakistan, prejudicial to the safety or interests of the State, or who has or is reasonably suspected of having, either within or without Pakistan, committed, or attempted to commit, such an act in the interests of a foreign power;
 - (c) any address whether within or without Pakistan, in respect of which it appears that there are reasonable grounds for suspecting it of being an address used for the receipt of communications intended for a foreign agent, or any address at which a foreign agent resides or to which he resorts for the purpose of giving or receiving communications, or at which he carries on any business, may be presumed to be the address of a foreign agent, and communications addressed to such an address to be communication with a foreign agent.

5. Wrongful communication, etc., of information

- (1) If any person having in his possession or control any secret official code or pass word or any sketch, plan, model, article, note, document or information which relates to or is used in a prohibited place or relates to anything in such a place, or which has been made or obtained in contravention of this Act, or which has been entrusted in confidence to him by any person holding office under Government, or which he has obtained or to which he has had access owing to his position as a person who holds

or has held office under Government or as a person who holds or has held a contract made on behalf of Government or as a person who is or has been employed under a person who holds or has held such an office or contract:

- (a) willfully communicates the code or pass word, sketch, plan, model, article, note, document or information to any person other than a person to whom he is authorized to communicate it, or a Court of Justice or a person to whom it is in the interest of the State, his duty to communicate it; or
 - (b) uses the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety of the State; and
 - (c) retains the sketch, plan, model, article, note or document in his possession or control when he has no right to retain it or when it is contrary to his duty to retain it, or willfully fails to comply with any directions issued by lawful authority with regard to the return or disposal thereof; or
 - (d) fails to take reasonable care of, or so conducts himself as to endanger the safety of, the sketch, plan, model, article, note, document, secret official code or pass word or information;
- (2) If any person voluntarily receives any secret official code or pass word or any sketch, plan, model, article, note, document or information knowing or having reasonable ground to believe, at the time when he receives it, that the code, pass word, sketch, plan, model, article, note, document or information is communicated in contravention of this Act, he shall be guilty of an offence under this section.
- (3) A person guilty of an offence under this section shall be punishable,-
- (a) where the offence committed is a contravention of clause (a) of sub-section (1) and intended or calculated to be, directly or indirectly, in the interest or for the benefit of a foreign power, or is in relation to any work of defence, arsenal, naval, military or air force establishment or station, mine, minefield, factory, dockyard, camp, ship or aircraft or otherwise in relation to the naval, military or air force affairs of Pakistan or in relation to any secret code, with death, or with imprisonment for a term which may extend to fourteen years; and
 - (b) in any other case, with imprisonment for a term which may extend to two years, or with fine, or with both.

6. Unauthorised use of uniforms; falsification of reports, forgery, personation, and false documents

- (1) If any person for the purpose of gaining admission or of assisting any other person to gain admission to a prohibited place or for any other purpose prejudicial to the safety of the State:
- (a) uses or wears, without lawful authority, any naval, military, air force, police or other official uniform, or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform; or
 - (b) orally, or in writing in any declaration or application, or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission; or
 - (c) forges, alters, or tampers with any passport or any naval, military, air force, police, or official pass, permit, certificate, licence, or other document of a similar character (hereinafter in this section referred to as an official

- document} or knowingly uses or has in his possession any such forged, altered, or irregular official document; or
- (d) personates, or falsely represents himself to be, a person holding, or in the employment of a person holding, office under Government, or to be or not to be a person to whom an official document or secret official code or pass word has been duly issued or communicated, or with intent to obtain an official document, secret official code or pass word, whether for himself or any other person, knowingly makes any false statement; or
 - (e) uses, or has in his possession or under his control, without the authority of the department of the Government or the authority concerned, any die, seal, or stamp of or belonging to, or used, made or provided by, any department of the Government, or by any diplomatic, naval, military or air force authority appointed by or acting under the authority of Government, or any die, seal or stamp so nearly resembling any such die, seal or stamp as to be calculated to deceive, or counterfeits any such die, seal or stamp, or knowingly uses, or has in his possession or under his control, any such counterfeited die, seal or stamp, he shall be guilty of an offence under this section.
- (2) If any person for any purpose prejudicial to the safety of the State-
 - (a) retains any official document, whether or not completed or issued for use, when he has no right to retain it, or when it is contrary to his duty to retain it, or "willfully fails to comply with any directions issued by any department of the Government or any person authorised by such department with regard to the return or disposal thereof; or
 - (b) allows any other person to have possession of any official document issued for his use alone, or communicates any secret official code or pass word so issued, or, without lawful authority or excuse, has in his possession any official document or secret official code or pass word issued for the use of some person other than himself, or, on obtaining possession of any official document by finding or otherwise, willfully fails to restore it to the person or authority by whom or for whose use it was issued, or to police officer; or
 - (c) without lawful authority or excuse, manufactures or sells, or has in his possession for sale, any such die, seal or stamp as aforesaid; he shall be guilty of an offence under this section.
 - (3) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to two years or with fine, or with both.
 - (4) The provisions of sub-section (2) of section 3 shall apply, for the purpose of proving a purpose prejudicial to the safety of the State, to any prosecution for an offence under this section relating to the naval, military or air force affairs of Government, or to any secret official code in like manner as they apply, for the purpose of proving a purpose prejudicial to the safety or interests of the State, to prosecutions for offences punishable under that section with imprisonment for a term which may extend to fourteen years.

7. Interfering with officers of the police or members of the armed forces of Pakistan

- (1) No person in the vicinity of any prohibited place shall obstruct; knowingly mislead or otherwise interfere with or impede, any police officer, or any member of the armed forces of Pakistan engaged on guard, sentry, patrol, or other similar duty in relation to the prohibited place.

- (2) If any person acts in contravention of the provisions of this section, he shall be punishable with imprisonment which may extend to two years, or with fine, or with both.

8. Duty of giving information as to commission of offences

- (1) It shall be the duty of every person to give on demand to a Superintendent of Police, or other police officer not below the rank of Inspector, empowered by an Inspector-General in this behalf, or to any member of the armed forces of Pakistan engaged on guard, sentry, patrol or other similar duty, any information in his power relating to an offence or suspected offence under section 3 or under section 3 read with section 9 and, if so required, and upon tender of his reasonable expenses, to attend at such reasonable time and place as may be specified for the purpose of furnishing such information.
- (2) If any person fails to give any such information or to attend as aforesaid, he shall be punishable with imprisonment which may extend to two years, or with fine, or with both.

9. Attempts, incitements, etc.

Any person who attempts to commit or abets the commission of an offence under this Act shall be punishable with the same punishment, and be liable to be proceeded against in the same manner as if he had committed such offence.

10. Penalty for harbouring spies

- (1) If any person knowingly harbours any person whom he knows or has reasonable grounds for supposing to be a person who is about to commit or who has committed an offence under section 3 or under section 3 read with section 9 or knowingly permits to meet or assemble in any premises in his occupation or under his control any such persons, he shall be guilty of an offence under this section,
- (2) It shall be the duty of every person having harboured any such person as aforesaid or permitted to meet or assemble in any premises in his occupation or under his control any such person as aforesaid, to give on demand to a Superintendent of Police or other police officer not below the rank of Inspector empowered by an Inspector-General in this behalf, any information in his power relating to any such person or persons, and if any person fails to give any such information, he shall be guilty of an offence under this section.
- (3) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

11. Search warrants

- (1) If a Magistrate of the first class or Sub-divisional Magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Act has been or is about to be committed, he may grant a search-warrant authorising any police officer named therein, not being below the rank of an officer in charge of a police station, to enter at any time any premises or place named in the warrant, if necessary, by force, and to search the premises or place and every person found therein, and to seize and sketch, plan, model, article, note or document or anything of a like nature, or anything which is evidence of an offence under this Act having been or being about to be committed which he may find on the premises or place or any such person, and with regard to or in connection with which he has reasonable ground for suspecting that an offence under this Act has been or is about to be

committed.

- (2) Where it appears to a police officer, not being below the rank of Superintendent, that the case is one of great emergency, and that in the interests of the State immediate action is necessary, he may by a written order his hand given to any police officer the like authority as may be given by the warrant of a Magistrate under this section.
- (3) Where action has been taken by a police officer under sub-section (2) he shall, as soon as may be, report such action, to the District or Sub-Divisional Magistrate.

12. Power to arrest

- (1) Notwithstanding anything in the Code of Criminal Procedure, 1898,-
- (2) an offence under this Act, other than an offence punishable with imprisonment for a term which may extend to fourteen years, shall be a cognizable and bailable offence; and.
- (3) any member of the armed forces of Pakistan may, without an order from a Magistrate and without a warrant, arrest, in or in the vicinity of a prohibited place, any person who has been concerned in an offence under section 3, under section 3 read with section 9, or under clause (a) or clause (b) or subsection (1) of section 5, or under clause (a) of sub-section (1) of section 6, or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned, and shall without unnecessary delay take or send the person arrested before a Magistrate having jurisdiction in the case or before an officer in charge of a police-station, and thereupon the provisions of the said Code applicable in respect of a person who, having been arrested without warrant, has been taken or sent before a Magistrate or before an officer in charge of a police-station shall apply to him.

13. Restriction on trial of offences

- (1) No Court other than that of a Magistrate of the first class specially empowered in this behalf by the appropriate Government Magistrate shall try any offence under this Act.
- (2) If any person under trial before a Magistrate for an offence under this Act at any time before a charge is framed claims to be tried by the Court of Session, the Magistrate shall, if he does not discharge the accused, commit the case for trial by that Court, notwithstanding (but it is not a case exclusively triable by the Court.
- (3) No Court shall take cognizance of any offence under this Act unless upon complaint made by order or under authority from, the appropriate Government or some officer empowered by the appropriate Government in this behalf:

Provided that a person charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that such complaint has not been made, but no further or other proceedings shall be taken until such complaint has been made.

- (4) For the purposes of the trial of a person for an offence under this Act, the offence may be deemed to have been committed either at the place in which, the same actually was committed or at any place in Pakistan in which the offender may be found.
- (5) The appropriate Government may, if it thinks fit, by general or special order direct that the procedure for the trial of an offence under section 3, or under section 3 read with section 9, or under clause (a) or clause (b) of sub-section (1) of section 5 or under clause (a) of sub-section (1) of section 6 shall be that prescribed for offences under the Enemy Agents Ordinance, 1943, or under the Pakistan Criminal

14. Exclusion of public from proceedings

In addition and without prejudice to any powers which a Court may possess to order the exclusion of the public from any proceedings if, in the course of proceedings before a Court against any person for an offence under this Act or the proceedings on appeal, or in the course of the trial of a person under this Act, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the safety of the State, that all or any portion of the public shall be excluded during any part of the hearing, the Court may make in order to that effect, but the passing of sentence shall in any case take place in public.

15. Offences by companies, etc.

Where the person guilty of an offence under the Act is a company or corporation, every director and officer of the company or corporation with whose knowledge and consent the offence was committed shall be guilty of the like offence.

16. [Repeals.] Re)), by the Repealing Act, 1927 (XII of 1927), s. 2 and Schedule