



MODEL KHYBER PAKHTUNKHWA RIGHT TO INFORMATION ACT, 2013



Centre for Governance and Public Accountability (CGPA) is not for profit, non-governmental, civil society organization. CGPA strives for inclusive development and promotion of peace through right based and governance focused approaches. CGPA is registered under Society Registration Act XXI of 1860'.

Centre for Governance and Public Accountability (CGPA)
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Preamble:	1
1. Short title and commencement:	1
2. Definitions:	1
3. Access to information not to be denied:	4
4. Maintenance, preservation and indexing of records:	4
5. Publication and availability of records:	4
6. Computerization of records:	5
7. Public Records:	5
8. Exempt information:	5
9. Application for obtaining information:.....	6
10. Designated Public Information Officer	7
11. Procedure of application:	7
12. Khyber Pakhtunkhwa Information Commission:.....	8
13. Appointment and tenure of Chief Information Commissioner and other commissioner:.....	9
14. Establishment of Khyber Pakhtunkhwa Information Commission Secretariat:	9
15. Powers and functions of the Information Commission:.....	9
16. Fines:	11
17. Offence:.....	12
18. Protection of Whistle Blower:	12
19. Power to remove difficulties:	13
20. Immunity:	14
21. Cognizance for offence under this Act.	14
22. Act shall take precedence:	14

Preamble:

Whereas right to information is recognized in the Constitution of the Islamic Republic of Pakistan through Article 19- A and

Whereas, if the right to information of the people is ensured, transparency and accountability in all public, autonomous and statutory organizations and in other private institutions run on government or foreign funding, corruption of the same shall decrease and good governance of the same shall be established; and

Whereas it is expedient and necessary to make provisions for ensuring transparency and accountability in all public, autonomous and statutory organizations and in other private institutions run on government or foreign funding;

1. Short title and commencement:

- 1) This Act shall be called the Khyber Pakhtunkhwa Right to Information Act ,2013.
- 2) It extends to the whole of Khyber Pakhtunkhwa.
- 3) It shall come into force at once.

2. Definitions:

In this Act, unless the context otherwise requires,

1) “Complainant” means, -

- a. A requester, or
- b. Any person acting for and on behalf of a requester;
- c. Any organization registered under any law, for the time being in force, of Islamic Republic of Pakistan

2) “Complaint” means any grievance registered in writing by a complainant to the effect that,-

- (i) access to record has been wrongfully denied to him/her by a public body;
- (ii) access to and/or correction of his personal information has been wrongfully denied to him/her by a public body having the custody or control of the record;
- (iii) where he/she is a third party, that personal information or commercial information about himself or about the business has been or will be wrongfully disclosed to a Requester

by a public body having custody or control of such information;
 (iv) information requested by him has been unduly delayed by a public body; or
 (v) public body has charged unreasonable fees for giving the information or has not waived the fees in accordance with the provisions of this Act.

3) "Information Commissioner" mean the Chief Information Commissioner and Information Commissioner appointed under section 12;

4) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;

5) "prescribed" means prescribed by rules made under this Act

6) "principal officer" means:

- a. In the case of provincial departments, the Secretary of the department , Division
- b. In all other cases, the head or chief executive of the public body by whatever designation he/she is identified;

7) Public Body" means:

- a. any Department or attached department of the Khyber Pakhtunkhwa government;
- b. a District Government constituted under KP Local Government Act 2012;
- c. Secretariats of Chief Minister and Governor of the Khyber Pakhtunkhwa;
- d. any office of any Board , Commission, Council, or other body established by or under law;
- e. courts and tribunals;
- f. any includes anybody owned or non-government organization controlled, substantially financed or subsidies directly or indirectly by funds provided by Provincial or District Governments
- g. Any private organization or institution runs on government funding or with help from the government exchequer;
- h. Any private organization or institution runs on foreign funding;

i. Any ministry, division or attached department of the provincial government khyber Pakhtunkhwa Information Commission. Any organization or institution that undertakes public functions in accordance with any contract made on behalf of the Government or made with any public organization or institution; or

j. Any organization or institution as may be notified in the official gazette from time to time by the Government ;

8) "record" 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;

9) " Public Information Officer" means an official of a public body designated under section 10 of the Act to provide information sought by a requester;

10) "right to information" means the right to access information as enshrined under Article 19A of the constitution of Pakistan, and accessible this Act which is held by or under the control of any public authority and includes the right to—

- a. inspection of work, documents, records;
- b. taking notes, extracts or certified copies of documents or records;
- c. taking certified samples of material;
- d. 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;

11) "Third party" means a person other than the citizen making a request for information and includes a public authority.

3. Access to information not to be denied:

- 1) Notwithstanding anything contained in any other law for the time being in force, and subject to this Act, no requester shall be denied access to any public record other than exemptions mentioned in this Act.
- 2) This Act shall be interpreted so as to,
 - a. Promote the right to information as a constitutional right;
 - b. Facilitate and encourage, promptly and at the lowest reasonable cost, the disclosure of information; and
 - c. All public bodies falling within the ambit of this Act shall publish, in simple terms, a yearly report on documents and activities of relevance to the public including information on organizational structure, norm and functioning, budget and finance, content of decisions and activities affecting the public and efforts to include public consultation in decision making.

4. Maintenance, preservation and indexing of records:

- 1) Subject to the provisions of this Act and in accordance with the rule that may be prescribed, public information officer of each public body shall ensure that all records covered under clause (g) of section 2 of this Act are properly maintained.

5. Publication and availability of records:

- 1) The Acts and subordinate legislation such as rules and regulations, notifications, bylaws, manuals, orders having the force of law in Pakistan as well as reports of legislative and municipal proceedings and boards and commissions 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.
- 2) The public information officer of each public body shall within one hundred twenty day of the commencement of this Act cause to be published on its official website and special publications and shall immediately make available for inspection and copying, during office hours at each of its offices and branches, the information falls under the purview of section 7 of this act.

6. Computerization of records:

- 1) Each public body shall endeavor within reasonable time and subject to 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.
- 2) The web sites developed under sub section (1) shall be designed incorporating web accessibility standards so that these web sites are accessible to persons with disabilities, including the blind with their special software.
- 3) The provincial Government shall maintain an RTI website listing updated rules, application forms as well as the names and addresses of the designated officials.

7. Public Records:

- 1) Subject to the provisions of section 8, all information of public bodies mentioned in this Act are hereby declared to be the public records.
- 2) De-classification: Notwithstanding anything contained in any law for the time being in force, all documents will become public record after 20 years of their initiation.

8. Exempt information:

The information will be exempted from disclosure if it would thereby:

- 1) Expose to risk the life, health, safety or another vital interest of a person;
- 2) Imperil, obstruct or impede the prevention or detection of criminal offence, indictment for criminal offence, pretrial proceedings, trial, execution of a sentence or enforcement of punishment, any other legal proceeding, or unbiased treatment and a fair trial;
- 3) Seriously imperil national defense, national and public safety, or international relations;
- 4) Substantially undermine the government's ability to manage the economic processes or significantly impede the fulfillment of justified economic interests;

5) Make available information or a document qualified by regulations or an official document based on the law, to be kept as a state, official, business or other secret, i.e. if such a document is accessible only to a specific group of persons and its disclosure could seriously legally or otherwise prejudice the interests that are protected by the law and outweigh the access to information interest.

6) No information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or, which cause unwarranted invasion of the privacy of the individual unless the Public Information Officer or appellate body is satisfied that the larger public interest justifies the disclosure of such information.

Provided that the information which cannot be denied to the Provincial Assembly of Khyber Pakhtunkhwa shall not be denied to any person

9. Application for obtaining information:

1) A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Urdu accompanying such fee as may

a. Provided that where such request cannot be made in writing, the Public Information Officer shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

b. Where access to the record or a part thereof is required to be provided to a disabled person, the Public Information Officer shall provide assistance to him to enable him to access such information, including such assistance as may be appropriate for any inspection.

c. The government may, in consultation with the Information Commission, fix the fees for having any information by notification in the official gazette, and, if necessary, and may fix the price of information, or as the case may be, may exempt an individual or a class of individuals or any other class from paying such price.

2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.

3) Provided that if the form is not printed or is not easily available or if the format has not yet been prescribed, request may be made for information on a plain paper, or in electronic media or through email.

10. Designated Public Information Officer

1) Every public body shall, within one hundred and twenty days of the enactment of this Act, designate as many officers as the Public Information Officers, in all administrative units or offices under it as may be necessary to provide information to persons requesting for the information under this Act.

2) In case no such Public Information Officer has been designated or in the event of the absence or non availability of the Public Information Officer, the Principal Officer (head of public body) shall be the public Information Officer. In such case, if information is not provided or the requester is not satisfied with response, he/she may directly lodge complaint with Khyber Pakhtunkhwa Information Commission.

11. Procedure of application:

1) The Public Information Officer shall, within 21 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 unless the exceptions in Section 8 apply in case of which disclosure of information may be refused.

2) If a request is relating to the life and death, arrest and release from jail of any person, the officer-in-charge shall provide preliminary information thereof within 24 (twenty four) hours.

3) If the Public Information Officer fails to provide the information sought for due to any reason, he shall inform the applicant the reasons thereof in writing within 21 days.

4) No request for information may be totally rejected on the ground that part of it is associated with information exempted from disclosure under section 8 and the portion of the information that is not prohibited and is reasonably separable from the portion that is not exempted from disclosure shall be provided to the applicant.

5) In the case of non-availability of complete information within the organization, the application must be forwarded to another suitable public organization by the Public

Information Officer which may duly release the requisite information and the applicant be informed about this.

6) Where a Public Information Officer thinks that the request made for information is appropriate, and such information is supplied by a third party or a third party's interest is involved in it and the third party is considering it as secret information; the Public

Information Officer shall cause a notice to be served upon the third party within 5(five) working days for written or oral opinion, and if the third party gives any opinion in response to such notice, the Public Information Officer shall take into consideration such opinion and make a decision in respect of providing information to the applicant.

12. Khyber Pakhtunkhwa Information Commission:

1) The provincial Government shall, by notification in the Official Gazette, constitute a body to be known as the Khyber Pakhtunkhwa Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

2) The Khyber Pakhtunkhwa Information Commission shall consist of—

- a. The Chief Information Commissioner; and
- b. Such number of Information Commissioners, not exceeding five, as may be deemed necessary.

3) The Chief Information Commissioner and Information Commissioners shall be appointed by the Governor on the recommendation of a committee consisting of,

- a. The Chief Minister, who shall be the Chairperson of the committee;
- b. The Leader of Opposition in the provincial Assembly.

4) The Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

13. Appointment and tenure of Chief Information Commissioner and other commissioner:

1) The Chief Information Commissioner shall hold office for a term of four years from the date on which he enters upon his office and shall not be eligible for reappointment:

a. Provided that no Chief Information Commissioner shall hold office as such after he/she has attained the age of sixty-five years.

2) Every Information Commissioner shall hold office for a term of four years from the date on which he enters upon his office or till he/she attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such Information Commissioner:

14. Establishment of Khyber Pakhtunkhwa Information Commission Secretariat:

1) The Khyber Pakhtunkhwa Government shall be responsible for establishing the Commission's secretariat and allocating requisite staff and, for this purpose, shall make adequate budgetary outlays.

15. Powers and functions of the Information Commission:

1) If any person files a complaint and of the reasons of the following, the Information Commission shall, subject to the provisions of this Act, receive, inquire into and dispose of such complaint, namely

- a. Non-appointment of Public Information Officer by any public body, or its refusal to accept a request for information;
- b. Refusal upon request for information;

- a. A request for information has been left unattended or no information received within the time limit specified under this Act;
- b. If the applicant is supplied with incomplete information or such information that appears to be misleading or false; and
- c. Any other matter relating to requesting or obtaining information under this law.

2) The Khyber Pakhtunkhwa Information Commission may, on its own accord or upon a complaint, conduct an inquiry under this Act.

3) The Khyber Pakhtunkhwa Information Commission, or as the case may be, the Chief Information Commissioner or Information Commissioners, may exercise such powers as a civil court may exercise under Code of Civil Procedure, 1908 (Act V of 1908) in respect of the following matters, namely:—

- a. Summon and enforce the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;
- b. Examine and inspect information;
- c. Receive evidence on affidavit;
- d. Produce any information from any office;
- e. Issue summons for witnesses or documents; and
- f. Any other matter which may be prescribed to carry out the purposes of this law.

4) Notwithstanding anything contained contrary in other laws, while inquiring a complaint under this Act, the Information Commission, or as the case may be, the Chief Information Commissioner or Information Commissioners, may examine on spot any information relating to the complaint kept in the custody of any authority.

5) The Provincial Information Commission shall have the following functions, namely:-

- a. issue directives for the preservation, management, publication, publicity of and access to information by the public body;

- b. prescribe the procedure for applying for information from the public body and as the case may be, fix appropriate price of information; a. formulate guidelines and directives as to the preservation and implementation of the right to information of the citizens;
- b. in order to preserve the right to information, consider the provisions recognized under the Constitution of the Islamic Republic of Pakistan or any other law for the time being in force and recommend to the provincial Government for their effective implementation by indicating the impediments;
- c. identify the impediments against the preservation and implementation of right to information of the citizens and recommend to the provincial Government the appropriate solution;
- d. conduct research on the agreements related to the right to information and other international instruments and recommend to the Government for their implementation;
- e. work in order to increase awareness about the right to information by publishing, disseminating or any other means the issues related to the preservation and implementation of the right to information among different classes of citizens of the society;
- f. advise and provide assistance to the Government in order to make necessary laws and administrative directives for preservation and implementation of right to information;
- g. advise and provide assistance to the organizations or institutions who are working for the preservation and implementation of the right to information and to citizens in general;
- h. establish a web portal to ensure right to information;
- i. Oversee the actions taken under any other laws relating to preservation and realization of the right to information.

16. Fines:

Where the Khyber Pakhtunkhwa Information Commission at the time of deciding any complaint or appeal is of the opinion that the Public Information Officer has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under section 7 or malafidely denied the request for

- 1) request or obstructed in any manner in furnishing the information, it shall impose a penalty of Rs. 500 each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed Rs. 25, 000: Provided that the Public Information

Officer shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

17. 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 Act, commits an offence punishable with imprisonment for, a term not exceeding two years, or with fine, or with both.

18. Protection of Whistle Blower:

1) All individuals who disclose information will not be subjected to any legal, administrative or employment related sanction as long as they acted in good faith and in the reasonable belief that the information was substantially true and disclosed evidence of wrongdoing or a serious threat to public health, safety or the environment or a specific or substantial danger to public interests.

2) For purposes of sub-section (1)

a. wrongdoing includes the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, a serious maladministration regarding a public body and gross management.

b. For purposes of legitimate scrutiny, any individual mentioned in sub-section (1) shall be given affirmative protection against any legal, administrative or employment related sanction.

c. Power to make rules:

1) The Government in consultation with Khyber Pakhtunkhwa information Commission, by notification in the official Gazette, may make Rules for carrying out the purposes of this Act.

3) The Rules shall, at a minimum, define the following provisions of this Act:

a. Procedure for proper maintenance, indexing and storage of information, including details of information to be published in an electronic form;

b. Procedure for filing of request for information and mechanism of calculation of reasonable price for the information

c. Grounds on which a request may be rejected;

d. Complaint handling mechanism, including any appeals mechanism within public body, and maximum permissible time to dispose of complaints;

e. Procedure for publishing, displaying and obtaining the annual report;

f. Designation of Public Information Officers, and if required, any other official delegates, and their duties and responsibilities;

g. Procedure and reasons for which a Commissioner may be removed, including definition of grave misconduct;

h. Finances, budgeting and staffing related to the Information Commission and its secretariat;

i. Responsibilities of Commissioners, mechanisms for taking decisions, quorum requirements and procedures in case of non-availability of one or more Commissioners;

j. Provisions regarding imposition of penalties or fines and recovery of the same;

k. Any fees that may be imposed by the public body in carrying out the provisions of this Act.

4) Subject to the Rules, the Commission may, by notification, frame Regulations to give effect to the provisions of the Act.

19. Power to remove difficulties:

1) If an ambiguity arises in implementing any provisions in the Act, then the Government through notification in the Gazette and subject to consistency with the provisions in the Act shall remove such ambiguity.

2) 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 in consistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty.

20. Immunity:

1) 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 that may be made there under

21. Cognizance for offence under this Act.

No court shall take cognizance of the offence punishable under this Act except on a report in writing of the facts constituting such offence made with the previous sanction of the Khyber Pakhtunkhwa Information Commission or an officer authorized on behalf of this Commission.

22. Act shall take precedence:

1) The provisions of this Act shall take precedence over anything contained in any other law for the time being in force.
