



NOTE

on

**the draft Pakistani Freedom of Information Rules**

by

**ARTICLE 19  
Global Campaign for Free Expression**

**London  
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## ***I. Introduction***

The draft Freedom of Information Rules (draft Rules) have been prepared by the Pakistani NGO, the Consumer Rights Commission of Pakistan (CRCP), with a view to promoting the effective implementation of the Pakistan Freedom of Information Ordinance, 2002 (the Ordinance). ARTICLE 19 very much welcomes this initiative which represents a progressive attempt to further openness in Pakistan.

This Note provides an analysis of the draft Rules, which were forwarded to ARTICLE 19 by CRCP in September 2003 along with a request by CRCP for our analysis of them. It also provides our comments on the draft forms which are included as appendixes to the draft Rules. The intention is to assist CRCP in the preparation of effective and comprehensive Rules.

The draft Rules are, as noted above, progressive and also very comprehensive. At the same time, ARTICLE 19 believes they could be further improved. In some cases, the approach they propose, while intended to promote the highest standards of openness, may be unrealistic. In other cases, the draft Rules would benefit from greater detail.

## **II. Comments on the Draft Rules**

### **Part II: The Designated Official**

Section 7(d) places an obligation on the designated information official to inform the general public about the Ordinance and about how they can exercise their right to access information. We question whether this is the most appropriate way to undertake what is admittedly an important task. Numerous public bodies will be covered by the Ordinance and Rules, and to require all of them to inform the public may be confusing, may not be an efficient way to do this and may even lead to contradictory messages being promulgated. Instead, we would recommend that one central body, for example line ministry responsible for overseeing this legislation, be given this task.

Section 7(e) states that a task of the designated information official is to ‘deal with’ appeals pursuant to section 19 of the Ordinance. Given that the appeal bodies – the Mohtasib or the Federal Tax Ombudsman – are primarily responsible for dealing with appeals, we question whether this is the appropriate term for this. Rather, the Rules should refer to the officer’s obligation to cooperation with the appeal body, or to be responsible for representing the public body before it.

#### **Recommendations:**

- Consideration should be given to designating one central body to be responsible for informing the public about their rights under the Freedom of Information Ordinance 2002.
- Section 7(e) should be amended to reflect the idea that the role of the designated information official is to cooperate with the appeal, not to oversee it.

### **Part III: Records of the Public Body**

Section 8 of the draft Rules provides that each public body shall, within six months, compile and maintain its records. This is a complex matter which requires ongoing attention and resources. It is also a serious matter in Pakistan, where, in general, records have not been maintained properly for some time.<sup>1</sup> This subject therefore requires far more substantial treatment. This could be provided either in the context of the Rules themselves, or by allocating the task of preparing a Code of Practice on record maintenance to a given body, such as the Ministry of Justice (as is the case in the United Kingdom). The latter approach allows for more flexibility and for the Code to be updated as necessary.

Section 8 goes on to state a number of matters which shall be addressed in a manual, to be updated annually. This is a progressive provision. At the same time, consideration should be given to expanding the scope of this obligation to also include the following matters:

- any direct request or complaints mechanisms available to members of the public regarding acts or a failure to act by that body, along with a summary of

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<sup>1</sup> See ARTICLE 19, Centre for Policy Alternatives, Commonwealth Human Rights Initiative and Human Rights Commission of Pakistan, *Global Trends on the Right to Information: A Survey of South Asia* (London: 2001), under 3.5 Record-Keeping, pp. 103-4.

- any requests, complaints or other direct actions by members of the public and that body's response;
- a simple guide containing adequate information about its record-keeping systems, the types and forms of information it holds, the categories of information it publishes and the procedure to be followed in making a request for information;
  - a description of the powers and duties of its senior officers, and the procedure it follows in making decisions;
  - any regulations, policies, rules, guides or manuals regarding the discharge by that body of its functions;
  - the content of all decisions and/or policies it has adopted which affect the public, along with the reasons for them, any authoritative interpretations of them, and any important background material; and
  - any mechanisms or procedures by which members of the public may make representations or otherwise influence the formulation of policy or the exercise of powers by that body.

Section 9 of the draft Rules requires public bodies to computerise all records and to network all computers within one year of their coming into force. While this is a commendable goal, it is probably unrealistic. Even wealthy countries would have some difficulty carrying out a project of this magnitude. Instead, the Rules should require public bodies to put in place a scheme for computerisation of their records, perhaps to be approved by the Mohtasib, which indicates how they are going to do this and within what timeframe (for example, starting with the most important records). Alternatively, this role could be given to the line ministry responsible for record maintenance, envisaged as part of the system of maintaining good records.

Section 10 requires public bodies to publish their records and the updated manual on their websites and in the media. Again, it is probably overly ambitious to expect them to put all records on their websites and this might actually be confusing for people using the website (which would, as a result, contain an enormous amount of information). Rather, only the key information should be on their website, including all information which they are required to publish proactively. The US freedom of information law, for example, requires public bodies to put on their websites any information which has been the subject of a successful request and which may be of interest to others. As regards the manual, it is probably sufficient if this is published both on the website and in physical form and then the body is required to widely disseminate it. This might include, for example, notice in the media of its availability.

**Recommendations:**

- Consideration should be given to putting in place a system for ensuring ongoing record maintenance, including the computerisation of records, in line with the comments above.
- Consideration should be given to expanding the scope of the duty to publish, as suggested above.
- Only key records should be required to be placed on the website, along with the manual.
- Public bodies should not be required to publish their annual manuals in the mass media but may be required to provide notice of their own publication of

these manuals in the media.

#### **Part IV: Application for Record**

Section 11 of the draft Rules provides for pre-payment for information requests through various bodies, such as the national bank or post offices. Consideration should also be given to providing for direct payment at the time the request is made, to make access to requests as simple as possible. Section 12 provides for payment of Rs.1/- per page of photocopying after 20 pages. The number of pages will, in many cases, only be known at the time the request is satisfied, so this should be payable at that time. Section 12 also provides for public bodies to set the fees for other forms of access. As with photocopying, it would be preferable to set the rates directly in the Rules. At a minimum, these rates should be set centrally, to avoid a patchwork of different fees applying for different public bodies.

##### **Recommendations:**

- Consideration should be given to making provision for payment of fees, both for the application and for access to information, at the place of the request or by mail.
- All fees should either be set in advance in the Rules or by some central body.

#### **Part V: Granting Access to Public Record**

Section 14 provides for processing of applications within three working days. This will be unreasonably short in some cases, and may not allow public bodies sufficient time to search for information and to consider any secrecy implications. It may be noted that the Ordinance provides for 21 days for provision of access. Also, the Rules should make it clear that the information should be provided as soon as possible and that the times set out are maximum periods. Similarly, section 16 provides that the designated official shall inform the requester immediately if the record is not held; it may take some time to discover or verify this.

ARTICLE 19 notes that unreasonably short time periods actually undermine the system of access, as they almost inevitably lead to frequent breach of the law which, in turn, tarnishes its law-like character.

Section 20 provides for fines for officers who deny access to information on frivolous or unsound grounds. This is a quasi-criminal provision and should be applied only where the officer in question has acted with intent to deny access to information. Otherwise, it might be possible to provide for fines on public bodies which either unreasonably deny access in an individual case or which are failing to fully comply with their openness obligations under the Ordinance on a regular basis.

##### **Recommendations:**

- Consideration should be given to replacing the time limits in sections 14 and 16 with a provision that requires the notice to be provided as soon as possible but then sets longer maximum times.
- Fines for individual officers should be applied only in cases where they act with intent to obstruct access to information.
- Consideration should be given to providing for fines to be imposed on public bodies for failure to comply with their information obligations.

## Part VI: Filing of Complaints

Section 21 provides for an appeal where the requested information is not provided within the 21-day limit. Consideration should also be given to providing for appeals against other failures, such as charging excess fees or failing to provide the information in the form requested.

### **Recommendation:**

- Consideration should be given to adding additional grounds for appeals.

## **The Forms: Appendixes I and II**

The Application Form should be as detailed as possible to guide requesters through the process of making a request. The “To” section should, for example, list what information should be provided (name of designated official, name of public body, address, etc). The Form should also include a place for indicating what form of access would be preferred (possibly as a list of check-offs, with a final check off for other forms). Finally, consideration should be given to providing more space for a description of the information requested, for example for more complicated requests (or providing for continuance on another sheet where necessary).

The Application Form should also include a spot for numbering, so as to ensure that it may be tracked. This number should be repeated on a small receipt form, to be given to the requester upon receipt of the request (this could, in fact, be a small tear-off portion at the end of the same form). It should not be necessary for requesters to provide their N.I.C. number and it should be clear that providing a telephone number is optional.

The Notice Form should include a cross-reference to the number on the Application Form (in addition to its own number, already provided for). In paragraph 4, the term ‘regretted’ should be replaced with ‘rejected’, which is a more appropriate description of what is happening. The Form should also include specific entries to ensure that all appropriate information is provided under this section, including what provision in the Ordinance is being relied on (in addition to reasons for the rejection). Finally, consideration should be given to adding to this Form a section on the requesters right to appeal the decision, along with a description of how to exercise that right.

### **Recommendations:**

- The Application Form should be as clear and detailed as possible, for example by listing sub-sections under ‘To’ and including a section where requesters can specify their preferred form of access to the information requested.
- The Application Form should be numbered and should include a receipt to be given to requesters, also numbered.
- It should not be necessary to provide one’s N.I.C. number on a request and the entry providing for a telephone number should be optional.
- The Notice Form should also include a space for the number of the Application Form.
- More detailed information should be required on the Notice Form regarding rejection of a request, including the provision in the Ordinance relied upon.
- Consideration should be given to adding a section to the Notice Form detailing the right of appeal.

