

**COMMENTS BY CRCP
ON
RIGHT TO INFORMATION (RTI) BILL 2010
MOVED IN THE NATIONAL ASSEMBLY OF PAKISTAN IN JULY 2010
AS A PRIVATE MEMBER’S BILL**

Section/ Title	Comments/ Observations	Recommendations
Statement of Objects and Reasons	This part is supposed to set out the context, seriousness and spirit of any law. In this Bill, opening sentences do make a mention of terms like ‘good and transparent governance’ and ‘accountable governance’. However, it does not relate the importance of informed citizenry and transparency with the effective functioning of democracy and to contain the menace of corruption. The seriousness/ importance of the law can also be reflected through an opening sentence like “An Act to provide for establishing an effective and practical regime of Right To Information for citizens of Pakistan.....”	‘Statement of Objects and Reasons’ should be suitably modified to cover these aspects also.
Section 1. Short Title, Extent and Commence ment	<p>a. Subsection 1(1) has been shown in brackets, whereas subsections 2 and 3 are without brackets, which tends to mix up sections with subsections.</p> <p>b. Subsection 1(3) reads “It shall come into force forthwith.” There are certain provisions which can be implemented forthwith. However, most of the remaining provisions can be best implemented through a rationally worked out phased plan.</p>	<p>Subsections 2 and 3 should also be shown in brackets.</p> <p>This subsection should lay down a brief summary of sections/ subsections which will be effective forthwith and the ones, which will be implemented under a phased programme.</p>

<p>Section 2. Definitions.</p>	<p>Subsection 2(a): The term “complainant” has been defined as “a requester or any person acting for and on behalf of a requester.” This definition is restrictive, as it tends to exclude legal entities and voluntary associations to act on behalf of the requester. A designated official is likely to interpret this definition in its narrow sense to apply only to the individuals, and thus create problems in establishing the <i>locus standi</i> of research institutions, associations, non-governmental organizations, etc in access to public records.</p>	<p>. After the word “person”, “a legal entity and voluntary association” should be added.</p>
	<p>Subsection 2 (b):</p> <p>a. 2(b)(v) reads “where there is an exorbitant amount of fees imposed on the request.”</p> <p>b. 2(b)(vi) reads “where there is a restriction on the type of information not falling within the ambit of Article 2(f) and Article 8.” This is a vague and confusing statement . Moreover, a complaint does not relate only to exclusions given under Section 8, it may also relate to exemptions given under Sections 15 to 18. Besides, word ‘Article’ used twice in this subsection is also not in consonance with the common practice. The right word is ‘Section’, which has been repeatedly used even in this RTI Bill.</p> <p>The grounds on which a complaint may be made should also include refusal of the designated official to receive and process information requests and furnishing of false information by the designated official.</p>	<p>The last word ‘request’ should be replaced with ‘requester’.</p> <p>This subsection should be amended to read “where there is a restriction on the type of information falling within the ambit of Sections 2(f), 8, 15, 16, 17 and 18.”</p> <p>Following additional sub-subsections should therefore be added: 2(b)(vii) where the designated official has refused to receive and process the information request. 2(b)(viii) where false information has been allegedly furnished by the designated official.</p>

<p>Subsection 2 (f): The scope of information covered by the law is defined in this subsection. The definition starts out very broadly, as any record held by a public authority, regardless of form. It would be preferable for the definition to refer to ‘information’, as opposed to records, since this could be read as suggesting that the right of access only extends to specific documents, as opposed to the information contained in them.</p> <p>In the last line of this subsection, word ‘date’ has been erroneously written in place of the word ‘data’.</p> <p>Since the list of public information/ records is not conclusive, word ‘etc’ should be added at the end of line 4, to obviate the chances of limiting the scope of this subsection to the specified information only.</p> <p>Sub-sub sections 2(f)(i) to (v) provide a list of types of documents that are covered under this Act (e.g. property transactions, grant of licences and concessions, appointments and promotions, disciplinary actions etc). Such lists generally tend to be used to narrow rather than broaden the scope of the definition (on the basis that items not listed are not intended to be covered).</p>	<p>The word ‘Record’ should be replaced with the word ‘Information’ in the whole document.</p> <p>Word ‘date’ should be replaced by the word ‘data’, in the last line of this subsection.</p> <p>Word ‘etc’ should be added at the end of line 4.</p> <p>Subsection 2(f) should simply read “public record/information” means record/information mentioned in Sec 7, held by public bodies in any form, whether printed or in writing or in any form such as map, diagram, photograph, film, video, microfilm, document memos, emails, opinions, press releases, circulars, orders, logbooks, contract reports, papers, samples, models and data material held in electronic form, etc, except for exclusions/exemptions covered under Sections 8, 15, 16, 17 and 18.</p>
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Sub-sub section 2(f)(vi) It reads “any information of whatsoever nature in possession of a public body in which members of the public may have a *legitimate interest*; but *does not include* the following:”

As stated earlier, the right of access should apply to all information held by public bodies, barring few exceptions. In a good RTI law, there should be no need for the requester to even mention the reasons of information request (e.g. Indian RTI Act 2005). Therefore word ‘legitimate’ is un-necessary and should be deleted.

Long list of exceptions and exemptions given here (under the definition of public record/ information) is quite out of place and un-necessary. All these exclusions/ exemptions have been repeated under Sections 8, 15, 16, 17 and 18 and tend to be quite confusing for a common citizen/ information requester.

Some of these exclusions are discussed here for the sake of clarity;

Sub-subsection 2(f)(vi) (i). It reads “all internal working documents of a public body pertaining to the decision making process, including proposals for Cabinet decisions, proposals relating to management of the national economy, and other

Word ‘legitimate’ should be deleted from Sub-sub section 2(f)(vi).

All exclusions given here [Sub-sub section 2(f)(vi) (i) to (viii)] should be deleted and suitably amalgamated with respective sections, if the need to do so is felt very strongly.

affairs of the Government, till such time that a final decision has been taken and implemented by the public body.” This clause excludes “ all internal working documents of a public body, including proposals for Cabinet decisions, proposals relating to management of the national economy, and other affairs of the Government, till such time that a final decision has been taken and implemented by the public body”

This clause highly restricts the definition of public records. By implication, it means that information related to any matter on which the final decision has not yet been made can be withheld. Thus, access to proposals that might have immediate and vital effects on the public can be denied. For instance, if there is a proposal to increase the power tariff by 20 percent, a government official can easily turn down the request for access to this proposal. As a result, public participation and informed policy debate would be precluded on important matters at the proposal stage.

This clause ties the disclosure of internal working documents to two conditions: (1) final decision has been taken, AND (2) the decision has been implemented. The second reason makes no sense, as it might take years to implement a decision. One must have the right to ask about the progress in implementation of a decision even at the initial stage. If “implementation” is a condition for disclosure, then one cannot access much information about public sector development program (PSDP) under this law.

Sub-subsection 2(f)(vi) (ii)(a). investigative reports undertaken by public agencies for the prevention and detection of crime, *and for the collection and assessment of taxes*, including any information obtained or received in the course of any investigation; The phrase “and for the collection and assessment

This clause should be deleted. Internal working documents and final decisions should be open to public access/ scrutiny without any condition of finalization of decisions/ implementation.

In its present form, The definition of ‘public record’ should also include: (1) the reasons for exclusion and classification of a certain record, (2) the guidelines for government officials to classify a document titled as “Security of Classified Matter in Government Departments”.

The phrase “and for the collection and assessment of taxes” seems out of place/ un-necessary and should be deleted.

	<p>of taxes” is out-of-context and should be deleted.</p> <p>Sub-subsection 2(f)(vi) (v); It reads, “any information the disclosure whereof is <i>recognized</i> to be detrimental to public interest;” Here, it is not clear as to who will <i>recognize/ decide</i> whether the disclosure of a document is detrimental to public interest i.e. designated official, principal officer or concerned ombudsman.</p> <p>Sub-subsection 2(f)(vi) (vi); It reads, “any information regarding defence planning, deployment of forces, defence installations, and matters that can legitimately be related to national security.” This exclusion should not be applicable to allegations of corruption and violations of human rights within the armed forces.</p> <p>Sub-subsection 2(f)(vi) (viii); It reads, “For purposes of sub section (vii), the given exceptions therein do not apply if the benefit of disclosure is weighed against the detriment of admission of information and there is greater public interest in disclosing the information. It needs to be clarified as to who will be the competent authority to declare detriment of admission of information or greater public interest in disclosing the</p>	<p>Necessary clarification should be added.</p> <p>It should be amended to read “any information regarding defence planning, deployment of forces, defence installations, and matters that can legitimately be related to national security. Allegations of corruption and violations of human rights within the armed forces are not covered under this exclusion.”</p> <p>Necessary clarification may be added here. Definition of competent authority (having the power to declare or decide about public interest/ confidentiality in disputed matters) should also be included in Section 2.</p>
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	<p>information.</p> <p>Subsection 2(g)(vi): This subsection, reads, “any private body which carries out <i>work of a public nature</i> which concerns or affects the public rights of individuals or which receives public funds.”</p> <p>Addition of this clause in the latest Bill is a welcome step, as it would broaden the scope of RTI Act 2010 to private entities. However, since ‘the work of public nature’ has not been elaborated adequately, it is likely to create un-necessary confusion/ disputes regarding the applicability of RTI law. It would be appropriate if the public services such as health, education, insurance, banks, telecommunications etc are made part of this clause, without restricting its scope.</p> <p>Subsection 2(g)(vii): First line of this subsection reads, “for purposes of subsection vi), a private body <i>with</i> carries out work of a public nature.....”</p> <p>Terms not Defined: Following terms need to be defined/ included in Section 2:</p> <p>a. Competent Authority (as explained above and also in Indian RTI Act 2005).</p>	<p>This subsection, should be amended to read, “any private body which carries out work of a public nature, including (but not limited to) public services such as health, education, insurance, banks, telecommunications etc which concern/ affect the public rights of individuals or which receive public funds.”</p> <p>The word ‘<i>with</i>’ appearing in the second line should be replaced with the word ‘<i>which</i>’, to remove the existing typographical error.</p>
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	<p>b. Federal, Provincial and District Ombudsmen: The office/ powers of Federal, Provincial and District Ombudsmen have been defined in respective federal, provincial and local laws, in the context of redressing public complaints against maladministration of concerned public bodies. Presently, they have no jurisdiction against private bodies brought in the ambit of RTI Act 2010. Moreover, powers of Ombudsmen in relation to FOI/ RTI law have not been defined in an elaborate manner, and presently they have very limited powers in this regard.</p> <p>c. Right to Information: It is an important definition and must be covered under Section 2, in the light of Article 19A of Constitution of Islamic Republic of Pakistan.</p>	<p>Since the scope of RTI Act 2010 has been considerably enhanced in terms of tiers i.e. federal, provincial and local and in terms of applicability (especially inclusion of private bodies), there is a dire need to redefine the powers of Ombudsmen, so as to enable them to play an effective and decisive role for attainment of objectives of RTI Act, 2010. In this regard, Powers of Information Commissioners given in Chapter V of Indian RTI Act 2005 may also be consulted.</p> <p>Following definition of RTI covered under Section 2(j) of Indian RTI Act 2005 can also be consulted in this regard:</p> <p>“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:</p> <ul style="list-style-type: none"> (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.”
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<p>Section 4</p>	<p>The Bill provides for maintenance and indexing of records in the title of Section 4, but in the description, it does not oblige the public bodies to do indexing. Moreover no time schedule has been given for implementation of this Section.</p>	<p>The Section should mandate the public/ private bodies, to make their index available with designated officials within 90 days and on websites within 1 year of the enforcement of the law (subject to availability of resources).</p>
<p>Section 5</p>	<p>Subsection (1)(ii): It reads, “The principal officer of each public body shall <i>within three months of the commencement of this Act cause to be published in its official website</i> and special publications and shall immediately make available for inspection and copying, during office hours at each of its offices and branches, the following information:”</p> <p>Here, three months have been given for publishing certain information on official website, whereas no time limit has been specified for computerization of records under Section 6 (like FOI Ordinance 2002, it stipulates implementation within reasonable time, which was taken very lightly in the past). It appears that period of three months for this purpose is unrealistic; because many public bodies have not yet computerized their operations/ records and it may take one year or more to computerize the public records.</p> <p>Subsection (1), Last Two Lines: These lines read, “Provided that no information otherwise already published in the public</p>	<p>It should be amended to read, “The principal officer of each public body shall within one year of the commencement of this Act cause to be published in its official website (subject to availability of resources) and within three months publish special publications and shall immediately make available for inspection and copying, during office hours at each of its offices and branches, the following information:”</p>

	<p>body's official website shall be required to be so published under this sub-section.”</p> <p>A vast majority of Pakistani citizens do not have access to internet, are not computer literate and can not understand English. As such this clause goes against the spirit of proactive disclosure and should be deleted.</p>	<p>These two lines should be deleted.</p>
<p>Section 6: Computerization of Records</p>	<p>Subsection 6(1). It reads, “Each public body shall endeavour 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 authorised access to such records is facilitated.”</p> <p>As stated earlier under Section 5, if no deadline is given under the law, the implementation is rather slow/ negligible, as experienced in case of Section 6 of FOI Ordinance 2002. A period of one year (subject to availability of resources) appears to be a realistic and viable option.</p>	<p>This subsection should be amended to read, “Each public body shall endeavour (subject to availability of resources) within a period of one year from the day this law becomes effective 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</p>

	<p>Subsection 6(2). It reads, “The Federal Government shall maintain an RTI website listing updated rules, application forms as well as the names and addresses of the designated officials.”</p> <p>The scope of RTI websites should be extended to provincial and district levels, so as to facilitate information requesters at grass-root level.</p>	<p>authorised access to such records is facilitated.”</p> <p>The subsection should be amended to read, “RTI websites listing updated rules, application forms as well as the names and addresses of the designated officials will be maintained at district, provincial and federal levels by appropriate governments.”</p>
<p>Section 8: Exclusion of Certain Record.</p>	<p>Subsection 8(1): In this subsection, (1) is missing, probably a typographical error.</p> <p>Subsection 8(1)(c): It reads, “record relating to the personal privacy of any individual.” There may be situations where the personal privacy is detrimental to larger public interest. In such cases, competent authority will determine whether the personal privacy should be upheld or compromised for the sake of transparency and larger public interest.</p>	<p>‘(1)’ Should be inserted next to the heading of Section 8.</p> <p>The subsection should be amended to read, “record relating to the personal privacy of any individual, so long as it does not have implications regarding larger public interest, to be determined by the competent authority.”</p> <p>For comments pertaining to ‘Exclusion of certain record’, please see comments made against Sections 14-18.</p>
<p>Section 9: Duty to Assist Requesters.</p>	<p>Subsection 9(1): It reads, “A public body shall take necessary steps as may be prescribed to assist any requester under this Act.” Thus, the government may or may not prescribe any steps; there is no binding force.</p>	<p>a. The words <u>may be</u> should be replaced with <u>shall be</u>. Or, b.. The Bill should create a general duty to take reasonable steps to assist the requesters. A public body should have the obligation to assist whether any steps are prescribed or not.</p>

	<p>Subsection 9(2): It reads, “For the purposes of subsection 1), the <i>information officer</i> of the concerned public body must assist a requestor who is illiterate or indigent in making the request for information and give the requestor a reasonable opportunity to comply with all the requirements of the request.”</p> <p>Since the word ‘Information Officer’ has not been defined, it should not be used, understandably in place of ‘Designated Official’, to avoid un-necessary confusion.</p>	<p>‘Information Officer’ should be replaced, by ‘Designated Official’, a term which has been defined and is in use. If desired, ‘information officer’ may be used to replace ‘designated official’ in the whole document.</p>
<p>Section 12. Applications for obtaining information.</p>	<p>Subsection 12(1): “Subject to sub-section (2), any citizen or resident 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.”</p> <p>The Bill does not propose any improvement in the application procedure. There are two main issues in the Freedom of Information Rules, 2004: (1) The procedure for deposit of prescribed fee is complex and troublesome, (2) Photocopying charges of Rs.5 per page are too high as compared to the market rates. The proposed Bill does not address these issues.</p>	<p>i. The Bill should provide for multiple and convenient options for submission of application forms. The Bill should clearly mention that (1) applications submitted electronically shall be acceptable, and (2) applications submitted through fax shall be acceptable.</p> <p>ii. In the first five years, information should be provided free of cost in order to encourage the people to use the law. After this period, reasonable charges for reproduction of public records may be levied, but in no case, these should exceed the market rates.</p> <p>iii. Compensation should be provided to the applicant if he/she suffers from demonstrable loss or harm as a result of wrongful denial or unnecessary delay in provision of information.</p> <p>iv The Bill does not adequately protect the information belonging to third parties. It should require the designated officials to invite objections from third parties when a request for such information is received.</p>

	<p>Subsection 12(3): “The right of access will not be affected by either a) any reasons the citizen states for seeking access or b) the agency’s or Minister’s belief as to what his or her reasons for seeking access.”</p> <p>It is a welcome improvement over the existing law. Since the right of access is not affected by the quoted reason, it is better if the requester is not asked to give any reason while submitting an information request. This will simplify the procedure, besides conforming to universal best practices.</p> <p>Subsection 12(4) (c): “For purposes of subsection a) and b) the transfer of the application shall be made as soon as it is practicable but no later than <i>fourteen days</i> after the date of receipt of the application.”</p> <p>Period of fourteen day for transfer of a request to another public body is too long. It should be reduced to seven days.</p>	<p>RTI Act and Rules should discontinue the requirement of quoting reasons for making information requests.</p> <p>It should be amended to read, “For purposes of subsection a) and b) the transfer of the application shall be made as soon as it is practicable but not later than seven days after the date of receipt of the application.”</p>
<p>Section 13: Procedure for disposal of applications</p>	<p>Subsection 13(1): In this subsection, (1) is missing.</p> <p>Subsection 13(2) (c) : “the required information or, as the case may be, the required record constitutes a record which is excluded under section 8.” In order to make the subsection conclusive, it should also contain exemptions given under</p>	<p>‘(1)’ Should be inserted next to the heading of Section 13.</p> <p>It should be amended to read, “the required information or, as the case may be, the required record constitutes a record which is excluded/ exempted under sections 2(f), 8 and 14 to 18.”</p>

	<p>Sections 14 to 18 of the Bill.</p> <p>Subsection 13(3) : “Where the exceptions listed in subsection 2) <i>or elsewhere in this Act as Section 2(f) or Section 8</i> apply, partial information may be disclosed therein or in the case of non-availability of complete information within the organization, the application must be forwarded to another suitable public organization by the <i>Public Information Officer</i> which may duly release the requisite information.</p> <p>a. The expression, “<i>or elsewhere in this Act as Section 2(f) or Section 8</i>”, is a weak expression. Sections 14 to 18 are also missing. Moreover, all the relevant sections have now been recommended for inclusion in subsection 13(2) (c), which can be simply quoted here.</p> <p>b. <i>Public Information Officer</i>, mentioned in this subsection has not been defined. It should either be defined or replaced with Designated Official.</p>	<p>The subsection should be amended to read, “Where the exceptions/ exemptions listed in subsection 13(2) apply, partial information may be disclosed therein or in the case of non-availability of complete information within the organization, the application must be forwarded to another suitable public organization by the Designated Official, which may duly release the requisite information.”</p>
<p>Sections 2(f), 8, and 14 to 18: All</p>	<p>The exclusions and exemptions have been described in different places and do not give a clear picture. An ordinary reader finds it difficult to differentiate between exclusions and exemptions.</p>	<p>i. There should be a single list of exclusions and exemptions in the law. An ordinary reader should be able to easily identify:</p>

<p>Exclusions, Exceptions and Exemptions (Common Comments/Recommendations)</p>		<p>a. the records and information that cannot be accessed, as these are already excluded from the definition of public record under this law;</p> <p>b. the records and information that are not excluded from the definition of public record under this law, but it is the prerogative of the public body to judge whether access should be provided or not</p> <p>c. the records and information that cannot be accessed now, but will be accessible after 20 years;</p> <p>d. the records and information that shall not be declared public record even after the passage of 20 years</p> <p>ii. According to the universal principles of RTI, the overall presumption should be in favor of disclosure. Therefore, the Bill should clearly state in Section 5 that “all information shall be open for public access except those listed in Section [number of the Section should be given; all exemptions and exclusions should be put together in one article]</p> <p>iii. The Bill does not contain any public interest test to determine ‘public record’ where its disclosure ‘is recognized to be detrimental to the public interest’ (clause vi (f) of the definition of public record). Similarly, a test to determine the ‘legitimate interest’ (if retained) of the public (vi of the definition of public record) has to be provided in the Bill; otherwise, the discretionary space available to public bodies to classify documents is likely to be misused greatly thus defeating the whole objective of the law. A public interest test is always useful to determine whether the public interest in withholding the information outweighs the public interest in disclosure.</p> <p>iv. Harm test should be included in the case of all</p>
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		exemptions. Information should be exempt only if the harm likely to be caused by disclosure is greater than its benefits for the public. Particularly, harm test is needed for defense related information.
Section 15: International Relations.	<p>Subsection 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 relations, <i>but not without explaining why.</i>”</p> <p>The expression “<i>but not without explaining why.</i>” is slightly different than the normal legal expressions and does not suggest a specific course of action.</p>	<p>It should be amended to read, “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 relations, however, reasons of denial of information request will be furnished in writing to the requester.”</p>
Section 16. Disclosure harmful to law enforcement	<p>Subsection 16(b): “harm the detection, prevention, investigation or inquiry in a particular case;”</p> <p>There may be instances where inquiry/ investigation is ordered as a consequence of an information request, just to evade provision of requested information.</p>	<p>It should therefore be amended to read, “harm the detection, prevention, investigation or inquiry in a particular case; however, an inquiry/ investigation ordered after/ as a consequence of an information</p>

		request, just to evade provision of requested information will not fall under this category.”
Section 17. Privacy and personal information.	<p>“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.”</p> <p>There may be instances where there is a clash between personal privacy and public interest. Therefore, the clause should cater for this kind of situations.</p>	It should therefore be amended to read, “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. However if the personal information directly relates to misuse of public money/ records, it does not fall in the category of exempt information.”
Section 18. Economic and commercial affairs	<p>Subsection 18(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 <i>of</i> variation of any tax, duty, interest rate, exchange rate or any other instrument of economic management;”</p> <p>Word ‘of’ in third row should be replaced with the word ‘or’, being a typographical error.</p>	It would thus read “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;”

<p>Section 19. Recourse to the Mohtasib and Federal Tax Ombudsman and the Judiciary</p>	<p>Subsection 19 (1):</p> <p>a. Reasons for Appeal: The applicant can opt for internal appeal, with the head of a public body, (followed by the concerned Ombudsman), if:</p> <ol style="list-style-type: none"> i. The applicant is not provided the information or copy of the record declared public record under section 7 within the prescribed time or ii. 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, or iii. if a public record is wrongly declared classified or exempted, <p>Following reasons should also be added here:</p> <ol style="list-style-type: none"> i. A failure to provide proper notice upon refusing a request. ii. Charging excessive fees. iii. Failing to provide information in the form requested. <p>b. Appeal With the Ombudsman: Last four lines of this subsection read, “or copy of such record, file a complaint with the head of the public body and on failing</p>	<p>Necessary additions should be made accordingly.</p> <p>Necessary changes should be made accordingly.</p>
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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.”

Since the law is applicable down to local level, word ‘Mohtasib’ should be replaced by ‘concerned Ombudsman i.e. District, Provincial or Federal as the case may be.’

- c. As per Subsection 10 (2), “In case no such official has been designated or in the event of the absence or non-availability of the designated official, the principal officer of the public body shall be the designated official.” The bill is silent about such an eventuality, where the request is directly made to the principal officer/ head of a public body and denied due to above mentioned reasons. In such cases, it would be appropriate if the first appeal is directly lodged with the concerned Ombudsman.
- d. According to the Bill, complaints can be lodged to the Mohtasib (Federal Ombudsman appointed under President’s Order No. 1 of 1983), after failing to get a satisfactory response from head of the public body. The Bill appears to

The anomaly should be removed accordingly.

Powers of Ombudsmen

- i. The Bill should resolve the anomaly of powers of the Ombudsmen to deal with complaints at District, Provincial and Federal levels and private bodies, covered under this Act.

	<p>be ignorant of the jurisdiction of the Federal Ombudsman who can entertain complaints related to the federal public bodies only. As the 2010 RTI Bill covers the federal as well as the provincial and municipal public bodies, recourse to the Federal Ombudsman only is not a legal option. The Federal Ombudsman cannot process the complaints related to maladministration in provincial and local government departments.</p> <p>e. It is not clear in the Bill whether the Mohtasib or judiciary can review the use of exemptions/ exclusions.</p> <p>f. At times the time for processing of information request might take shorter than the stipulated time because the designated officer is authorized to turn down the application for even a minor omission in the particulars.</p>	<p>ii. If recourse is provided to the office of Ombudsman, then Ombudsmen will need to be established at the district level as well, as provided in Section 134 of the Local Government Ordinance, 2001.</p> <p>The Ombudsman can only make recommendations and do not have powers to get his recommendations enforced. The relevant laws should be amended to provide for binding orders of the Ombudsman as far as RTI is concerned.</p> <p>iii. In this regard, powers and functions of the Information Commissions given in Chapter V of Indian RTI Act 2005 may also be consulted.</p> <p>The Bill must clearly state that these legal forums shall have the power to review a public body’s decision to refuse a request on the grounds that the record is not a ‘public record’, or that the particular information is excluded from the definition of ‘public record’.</p> <p>Time should be reduced for response in case the application form is incomplete. A designated official should scrutinize the application on receiving it and intimate the requester within one week if (1) the application is incomplete, and (2) the requested record is already excluded from the definition of public record and no internal deliberations are required to decide whether or not the record is public record. For this purpose, a standard proforma can be used to intimate the requester.</p>
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	<p>g. The Bill does not specify a time limit for the Principal Officer or head of the body to respond to the complaint filed by a requester. Thus, head of the concerned public body may take even months to respond to the complaint.</p>	<p>The Bill should prescribe maximum 10 days for the response to the complaint by head of the concerned public body</p>
<p>Section 20. Dismissal of frivolous, vexatious and malicious complaint.</p>	<p>This Section imposes fine on requesters if the request is found frivolous, vexatious and malicious. It is very easy to treat an information request as such. Therefore, imposition of fine is likely to intimidate the requesters not to file a complaint.</p>	<p>This Section should be deleted from the Bill, as dismissal of the complaint should be a sufficient deterrent.</p>
<p>Section 21. Offences</p>	<p>Subsection 21 (1):</p> <p>a. It stipulates maximum 2 years imprisonment with fine or both for the following offences:</p> <p>(a) 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</p> <p>(b) or obstructs access to a record</p> <p>(c) or interferes with the work of the monitoring body or falsifies information</p> <p>It appears that proposed punishment for (b) and (c) above is too harsh for the stated gravity of offences.</p> <p>b. It is not clear as to who will try these offences and how?</p>	<p>The issue needs to be resolved through necessary improvements in the Bill, and elaborate procedures to be covered in the supporting rules.</p>

<p>Section 23. Whistleblowers</p>	<p>Subsection 23 (1). The first line reads, “All individuals who <i>discloses</i> information.....”</p> <p>Subsection 23 (2). The last 2 lines read, “.... or dishonesty, a serious maladministration regarding a public body and gross <i>management.</i>” In the overall context, it would be appropriate if the word ‘management’ is replaced with ‘mismanagement’.</p>	<p>The grammatical error should be removed, to read, “All individuals who <i>disclose</i> information.....”</p> <p>It would thus read, “.... or dishonesty, a serious maladministration regarding a public body and gross mismanagement.”</p>
<p>Section 24. Act to Override other laws</p>	<p>It reads, “The provisions of this Act shall override, anything contained in any other law for the time being in force.”</p> <p>The way overriding powers have been defined entails serious legal complications, as it will affect many laws as well as rules of business of the government.</p>	<p>This provision should be re-phrased to state that this law will over-ride other laws to the extent of inconsistency of their provisions with this law.</p>
<p>Section 25. Repeal</p> <p>Section 27. Power to make rules</p>	<p>It reads, “The Freedom of Information Ordinance 2002 stands hereby repealed”.</p> <p>The Bill does not refer to the two provincial FOI laws, i.e. Balochistan Freedom of Information Act (2005) and Sindh Freedom of Information Act (2006). These laws are almost replica of the FOI Ordinance, 2002. The RTI Bill 2010 repeals the FOI Ordinance, 2002, but does not even slightly touch upon these two provincial laws. It is silent about what would happen to these laws after enactment of the Bill.</p> <p>Subsection (27)(1): It reads, “The Government <i>may</i>, by notification in the official Gazette, <u><i>within one month</i></u> of the enforcement of the Act, make rules for carrying out the purposes of this Act.”</p>	<p>The RTI Bill should provide for repeal of the provincial FOI laws, in addition to the FOI Ordinance, 2002.</p> <p>It should be amended to read, ““The Government <i>will</i>, by notification in the official Gazette, within one month of the enforcement of the Act, make rules for carrying out the purposes of this Act.”</p>

Subsection (27)(2): It reads, “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
- (d) the rules for this act must be formulated within 90 days of its passage.”

- In sub-subsections (a) and (b) above, word ‘from’ should be replaced by the word ‘form’.
- Subsection (27)(1) stipulates one month for making of rules after enforcement of the Act whereas 90 days have been deputed for the same job under sub-subsection (27)(2)(d). In the presence of Subsection (27)(1),

The subsection should thus be amended to read, “In particular and without prejudice to the generality of the foregoing powers, such rules may provide for -

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

	<p>sub-subsection (27)(2)(d) is un-necessary and should be deleted.</p>	<p>Additional Recommendations for Making RTI Rules: Following additional points should also be covered in RTI Rules:</p> <ol style="list-style-type: none"> a. Procedure/documents required for filing an information request with designated official. b. Procedure/ documents required for lodging complaints/ appeals with Principal Officer and concerned Ombudsman.
	<p>New Sections to be added:</p>	
<p>Awareness Campaign</p>	<p>The draft law has not identified a central body which is tasked with overall promotion of RTI law and also does not make any provision for public awareness on RTI law. Our experience indicates that unless citizens and concerned public/private bodies are informed about the existence of a law and benefits of its use, the law would remain underutilized. Existing FOI laws are a case in point. Besides, there is no provision for training of staff of public/private bodies, to efficiently handle the information requests</p>	<ul style="list-style-type: none"> • The Bill should mandate the Ministry of Information and Broadcasting to run a nation-wide campaign, in coordination with Provincial and District Information departments, for public awareness on FOI. • The Ministry should translate the law and rules into simple and easy-to-understand Urdu and local languages in a period of three months after enforcement of the RTI Act.. In addition, the Ministry should build capacities of the designated officials to deal with information requests. • The Ministry and Provincial information

		<p>Departments should ensure publication of 'Hand Books', containing simplified procedures on submitting/ processing information requests, for respective tiers in English, Urdu and local languages in a period of 3 months after the Act is enforced.</p>
<p>Ownership, Monitoring and Reporting</p>	<p>The Bill has not specified the Ministry/ Division which will ensure effective implementation of RTI laws by concerned public/private bodies. This Section should clearly state/ demand:</p> <ol style="list-style-type: none"> a. The controlling authorities at Federal, Provincial and District levels. b. System of monitoring, feedback and reports by public and private bodies on implementation of RTI Laws, including the number of information requests received/ processed/ outcome and number of staff trained on RTI during the year. c. The Federal, Provincial and District RTI custodian authorities to present annual progress reports to respective assemblies, and be accountable for their performance. 	<p>In this connection, it proposed that:</p> <ol style="list-style-type: none"> a. Federal/ Provincial Ombudsmen should be the custodian of RTI Laws at federal and provincial level and should ensure implementation of the law at respective levels, in close coordination with Ministry of Information and Broadcasting / Information Departments (at provincial level). Zila Mohtasib appointed under LGO 2001 or under this Act should be mandated to ensure implementation of RTI law in the respective districts. b. Each Ministry/Department/ District Government shall collect the following information from public and private bodies within their jurisdiction at the end of each year and submit the same to respective Ombudsmen by 31st January the next year: <ol style="list-style-type: none"> i. Total number of requests made to the public body during the year. ii. Number of requests declined/ denied with brief reasons. iv. Number of appeals/ complaints referred to respective ombudsmen. v. Brief summary of cases disposed

		<p>of by the Ombudsmen.</p> <ul style="list-style-type: none">vi. Any additional steps taken to improve the implementation of RTI laws.vii. Recommendations to improve the RTI laws. <p>c. Based on these inputs, all the Ombudsmen will prepare their Annual Reports on implementation of RTI laws , which will be laid before respective houses of parliament through respective governments.</p>
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