

A baseline study conducted for presentation
in the 2019 edition of the Paris Peace Forum

Measuring Implementation of Right to Information in KP 2019

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RTI EVALUATION IN KHYBER PAKHTUNKHWA, 2019

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Abbreviation

BPS	Basic Pay Scale
CLD	Center for Law and Democracy
CNIC	Computerized National Identity Card
CRCP	Consumer Rights Commission of Pakistan
CPDI	Centre for Peace and Development Initiatives
E&SE	Elementary and Secondary Education
FOI	Freedom of Information
IRADA	Institute of Research Advocacy and Development
KII	Key Informant Interview
KPOGCL	Khyber Pakhtunkhwa Oil and Gas Company Limited
KPRTI Act	Khyber Pakhtunkhwa Right to Information Act
PHED	Public Health Engineering Department
PIO	Public Information Officer
RTI	Right to Information
TMA	Tehsil Municipal Administration
TMO	Tehsil Municipal Officer
UoP	University of Peshawar
WSSP	Water Supply and Sanitation, Peshawar

Introduction:

The Right to Information (RTI) is a fundamental human right that provides individuals with the power to access information held by public authorities. It is widely recognized as an important tool for promoting transparency, accountability, and good governance. The implementation of RTI is crucial for ensuring that citizens are informed and engaged in decision-making processes and that public authorities are held accountable for their actions.

In Pakistan, the Right to Information Act was enacted in Khyber Pakhtunkhwa in 2013, making it mandatory for public authorities to disclose information to citizens upon request. Since its implementation, the RTI Act has been instrumental in promoting transparency and accountability in the region. However, its implementation has been challenged by various factors, including lack of awareness among citizens, inadequate resources, and resistance from public authorities.

This report aims to establish a baseline for RTI implementation in Khyber Pakhtunkhwa, Pakistan, and assess the effectiveness of the RTI Act in the region. Its aim is to identify the challenges and opportunities for improving RTI implementation in the region and provide recommendations for enhancing the implementation of the RTI Act. The report also provides an analysis of the existing policies, procedures, and practices related to RTI implementation.

The KP RTI project was selected as part of the Paris Peace Forum 2019, and this report will be presented at the forum. The information will be valuable for policymakers, civil society organizations, and other stakeholders working to promote transparency and accountability in Khyber Pakhtunkhwa, Pakistan. It will also contribute to the broader discourse on RTI implementation in the country and serve as a resource for researchers and practitioners in the field.

This baseline study on the implementation of Right to Information (RTI) in Khyber Pakhtunkhwa will serve as a valuable resource to guide future efforts and strategies aimed at promoting transparency, accountability, and citizen empowerment. The study provides a comprehensive assessment of the current status of RTI implementation, identifies gaps and challenges, and highlights areas for improvement. The findings of this study will inform the development of evidence-based interventions and policies that can effectively promote the use of RTI in the region.

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Background

In simple words, the term Right to Information means that citizens have the right to access information from public bodies. The basic concept working behind this right is that Citizens have ownership of all this information and can access it whenever they desire. The public authorities are only the custodians of this information. This is a fundamental constitutional right, and all the provinces and federal government have done legislation on it to facilitate the public to access information from public authorities.

In Pakistan, the history of the Right to Information can be traced back to 1994 when a bill on Freedom of Information was moved in the Senate, but no legislation could be passed. The interim government of 1997 implemented the Freedom of Information Ordinance, but that lapsed as the new government in office did not show any interest in taking it to the parliament and making legislation on it. The first noticeable development in this regard came in 2002 when the Freedom of Information Ordinance 2002 (FOI 2002) was implemented at the federal level. Two provinces, Balochistan and Sindh, followed suit and legislated the Freedom of Information Acts in 2005 and 2006, respectively. These laws were the mirror images of the FOI 2002. All three laws were restrictive and opened very few avenues for citizens to get information from the public authorities. Hence, these laws are sometimes referred to as first-generation laws.

Since the implementation of these first-generation laws, there has been a demand from civil society to repeal these laws and legislate more effective, progressive, and robust laws. One giant stride was made in 2010, when Article 19-A was inserted in the Constitution of Pakistan, guaranteeing the Right to Information to the citizens. The second installment of RTI laws was granted to citizens in 2013 when, first, KP and later Punjab in the same year legislated some very good right-to-information laws. Later, in 2017, Sindh and the federal government repealed their old Freedom of Information laws and implemented new laws like Punjab and KP¹. Hence, Second generation laws.

Three fundamental differences distinguish second-generation laws from first-generation laws. a) The second-generation laws have a robust proactive disclosure clause that was missing in the first-generation laws. b) second-generation laws have penalty clauses, which means that public officials can be penalized if citizens are willfully denied the right to information, and c) establish an independent appellate body to which citizens can go for redressal of their grievances in case the information is denied.

As more than six years have passed since the KP RTI Act 2013 was implemented, it is an excellent time to reflect and see how the Right to Information regime has worked in the province. An independent evaluation study will not only give policymakers and legislators a chance to gauge the state of transparency and accountability in the province, but it will also identify the necessary steps to be taken by public authorities to strengthen the RTI regime in the province further. KP is generally considered a leading province in Pakistan regarding RTI implementation. This study will guide the steps required to adopt to boost their ranking further.

¹ The federal law is less progressive than Punjab and KP laws. Although a step forward to FOI 2002, it still adopted many of the restricted clauses of FOI 2002.

Methodology

During the past few years, some organizations in Pakistan have attempted to quantitatively gauge the implementation of RTI at provincial and federal levels. Still, the methodology for such exercises needs to be improved. Most of these attempts revolve around measuring the proactive online disclosure of information against the proactive clause of relevant RTI laws or testing the reactive disclosure, sometimes drawing a convenient sample of public authorities. Similarly, only a few attempts have been made in Pakistan to assess the capacity of the central body (in our case, the Information Commission). As a result, there needed to be a more scientific and comprehensive methodology encompassing all aspects of RTI implementation and filling a global void to test the performance of public authorities both quantitatively and qualitatively.

To fill this gap, an RTI evaluation methodology is developed by the GIZ Pakistan office. The methodology is prepared as part of the Support to Local Governance program being run by GIZ and falls explicitly within the result area State-Citizen Dialogue. This is a pilot study based on this methodology, and it is hoped that the more it is employed to evaluate the RTI regimes in different parts of the world, the more refined it will be.

This methodology is divided into three main sections, one with four secondary headings, as follows:

1. How to Manage the Assessment Process
2. Central Measures
3. Measures by Individual Public Authorities:
 - 3.1 Institutional Measures
 - 3.2 Proactive Disclosure
 - 3.3 Reactive Disclosure
 - 3.4 Final Grading

This evaluation report is prepared based on this methodology and is divided into five main sections:

1. Literature Review
2. Proactive disclosure of Information by Public authorities
3. Reactive Disclosure of the information by Public Authorities
4. Institutional measures by Individual Public Authorities.
5. Central Measures (in which the performance of the information commission is discussed).

The methodology and the grading system for each section are discussed briefly in the relevant section. A full copy of the methodology can be accessed from the following link:

<https://www.law-democracy.org/live/wp-content/uploads/2019/08/Methodology.19-07-222.pdf>

Assessment Tools

Six different assessment tools are used in this methodology.

1. Literature Review

The relevant literature published by different civil society organizations, national/local, and INGOs was reviewed.

2. Desk-based Reviews: Two other desk reviews were conducted in addition to the literature reviews. These include i) a review of the decisions on appeals by the Information Commission and ii) Desk based review of the proactive disclosure made by public authorities online.

3. Key Informant Interviews: Key Informant Interviews (KII) are further divided into different categories: Interviews with Sampled Public Authorities (Interviews with Public Information Officers (PIOs), Interviews with senior officials, and Interviews with IT officials of the Public Authorities, Interview with representatives of civil society organizations working in the field of right to information; Media persons who have been using RTI law to access information held by public authorities, interviews with complainants, and requesters.

Summary of Interviews for the Evaluation of RTI in KP

Official	# of Interviews
Senior Official	6
PIOs	12
IT Officers	5
Information Commissioner	3
Civil Society	5
Media	5
Requester	3
Complainant	3
Total Interviews	42

4. Self Assessment: The self-assessment forms were provided to the Chief Information Commissioner and head of the head/senior officials of public authorities. The response of the public authorities was lukewarm. We got only four self-assessment forms filled out by public authorities (including one from the Information Commission).

5. Office Visits: The primary purpose of the office visits was to assess whether the information was being published proactively in physical form at the offices. e.g., Notice boards, posters, banners, etc.

6. RTI request testing: The purpose of this activity was to test the response of the public authorities against reactive disclosure of information. The sampled public authorities were sent three questions, each ranging from simple to moderate to challenging, and their response was noted down. Unfortunately, due to the shortage of time for this study, we only tested the response of the public authorities against the stipulated time given in the law (in this case, ten working days), and complaints were not lodged to the information commission. More detail is available in the chapter on reactive disclosure.

Literature Review

The movement for the Right to Information in Pakistan could not get much strength compared to other south Asian countries. Consequently, there needs to be more quality literature in Pakistan. It is only in the last few years that some civil society organizations started mainstreaming the right to information in their program areas and produced some reports on the implementation of the right to information in Pakistan.

Consumer Rights Commission of Pakistan was one of the pioneer organizations in Pakistan that took up the agenda of RTI in Pakistan in the early 2000s but needed to continue its work with the same vigor. One can find some scattered RTI-related publications on their website², the latest being from 2014. This issue paper³ discusses the inherent flaws and deficiencies in FOI 2002 divulged through procedural activism. The paper expressed satisfaction with the journey from "Freedom of Information" to "Right to Information."⁴ But at the same time, it pointed out some flaws in new legislation. The paper especially pointed out Section 28 of KP RTI law that declared obtaining information for malafide purposes as a criminal offense that can result in a fine and imprisonment.

In 2013, CRCP reviewed the annual reports of 56 federal ministries and attached departments. The report is a prelude to a recent trend of measuring Online Statues of Proactive Disclosure, in which CPDI has developed some consistency and expertise amongst the national organizations. The report concluded that the non-availability of annual reports and material related to FOI/RTI on websites is against international best practices and a violation of the constitutional rights of the people of Pakistan.

Centre for Peace and Development Initiatives (CPDI) literature on the Right to Information can be divided into four categories: 1) Analysis and comments on (draft of) laws including comparative analysis of laws; 2) Awareness raising materials; 3) Implementation of Legal regime, 4) Capacity building of public officials.

CPDI has produced quality reports on proactive online disclosure of information by federal and provincial departments. The first report was issued in 2014 under the banner of CRTI. The study selected 17 departments from Punjab and 12 departments from KP and gauged the proactive disclosure of information by different provincial departments and attached departments. The most recent study⁵ was published in September 2019 and issued on the eve of International Right to Know day. The study measures the state of proactive disclosure against the proactive disclosure clause of relevant right to information laws, and points against each sub-section are awarded out of ten, with 0-3 for poor, 4-7 for moderate, and 8-10 for the maximum level of compliance. The study awarded 95.5% points to KP Information Commission for its excellent compliance with the proactive disclosure clause of the KP RTI Act, 2013.

On the other hand, the Peshawar high court performed abysmally low at 28%. Still worse are *Ehtasab* (Accountability) Commission at 28% and KP Public Service Commission at 27%. The study is, however, limited in scope as it only considers the websites of the public authorities and does

² <https://www.crcp.org.pk>

³ https://www.crcp.org.pk/images/PDF/Publications/RTI_Paper_CHRI_event.pdf last accessed on August 17, 2019

⁴ The terms "Freedom of Information" and "Right to Information" are interchangeably used in RTI literature. Here it refers to the journey from the first batch of laws legislated from 2002 to 2006. These laws were generally ineffective, and there was a robust civil society demand to replace these laws with more effective laws. The terminology in these laws, often referred to as first-generation laws, is "Freedom of Information". Beginning in 2013, the second-generation laws, which are often appreciated for their effectiveness and progressive nature, used the terminology "Right to Information". Hence KP Right to Information Act, 2013, and The Punjab Transparency and Right to Information Act, 2013, etc. Thus journey from "Freedom of Information" to "Right to Information" is not only a journey of terminology but also a journey towards a more effective and citizens' oriented RTI legal regime in Pakistan.

⁵ State of Online Proactive Disclosure of Information in Provincial Departments of Khyber Pakhtunkhwa September 2018 <http://www.cpd-pakistan.org/wp-content/uploads/2018/09/State-of-Online-Proactive-Disclosure-of-Information-in-Provincial-Departments-of-Khyber-Pakhtunkhwa.pdf> accessed on August 17, 2019

not take into account the other relevant literature produced and issued by the departments. A similar study titled *The Interplay of Right to Information and Freedom of Expression in Digital Spaces: Issues and Challenges* also discussed the state of proactive disclosure.

Another pioneering work of CPDI is the comparative analysis of RTI laws by producing score sheets against different variables/criteria. The comparative analysis was made internationally, comparing it with corresponding laws of regional countries and nationally, whereby provincial and federal laws are measured for their effectiveness and ease of getting information from public bodies. The first such study was made in 2007⁶ which was then used frequently as an advocacy tool for improved legislation at the federal level. The most recent such study was produced in April 2019⁷ in which all existing RTI laws of Pakistan were analyzed against 14 different standards. The score sheets declared Punjab Transparency and Right to Information Act, 2013, as the best RTI law in Pakistan, scoring 148/150 points, and KP RTI law standing second at 132/150 points.

CPDI recent report⁸ The status of RTI in Pakistan presents the status of RTI implementation in two dimensions i.e (a) proactive disclosure and (b) reactive disclosure of information. A sample of ministries and provincial departments (59) was selected from all over Pakistan. On the Scale of online proactive disclosure of information, provincial and federal department's websites were examined against the relevant clauses of proactive disclosure in applicable RTI Laws. Results show that KP departments have disclosed 52% of information online, provincial departments of Punjab have disclosed 38% of information as per section 4 of Punjab RTI law, and federal ministries and departments disclose only 25% of information as per section 5 of Federal RTI Law. The Sindh departments proactively disclose only 12% of the information. *Overall results show that the federal and provincial government departments proactively disclose only 31% of the information under RTI.* Balochistan province was not included in this assessment area because Balochistan law does not have a proactive disclosure section.

In the assessment area of reactive disclosure, the response rate was only 13%, and information disclosure was 3.7%. However, it was a colossal exercise where a total of 527 information requests were sent to public departments in Punjab (100), KP (100), Sindh (100), Federal (127), and Balochistan (100).

The Centre for Governance and Public Accountability (C-GPA) has conducted a series of Score Cards Reports, the latest from 2019. The reports tested the state of reactive disclosure in the Province of Khyber Pakhtunkhwa. The responses to the information requests by public bodies show that RTI law implementation is worse in the province of Sindh, followed by the federal government. The best response that C-GPA gained is from the province of KP, where 80 percent of their requests were responded to positively. CGPA has also published a guidebook for the indexation, maintenance, and digitization of official record⁹. The guidebook is important as it attempts to address the paucity of literature in this field. Most RTI-related work in Pakistan has focused on proactive or reactive disclosure, but more literature is needed on this important aspect.

Pakistan Institute for Legislative Development and Transparency's (PILDAT) background paper on the Right to Information (in Punjab) focuses separately on women, minorities, media, and CSOs¹⁰. It highlights the ways these groups can use RTI for their benefit. It concluded that minorities, through RTI Act, can know what their rights are and where they can exercise their rights. CSOs at

⁶ Comparison of Laws on Freedom of Information: India, Pakistan, Bangladesh, Turkey

[http://www.cpdipakistan.org/wp-content/uploads/2013/04/Comparision-of-Laws-of-Freedom-of-Information\(FOI\).pdf](http://www.cpdipakistan.org/wp-content/uploads/2013/04/Comparision-of-Laws-of-Freedom-of-Information(FOI).pdf) last accessed on August 17, 2019

⁷ CPDI Score Sheet of Right to Information Laws in Pakistan, April 2019; available at <http://www.cpdipakistan.org/wp-content/uploads/2019/04/CPDI-Scoresheet-of-RTI-Laws-in-Pakistan-2019.pdf> last accessed on August 17, 2019

⁸ <http://www.cpdipakistan.org/wp-content/uploads/2019/09/Status-of-RTI-in-Pakistan-2019.pdf> accessed on October 27, 2019

⁹ Manual for Operationalization of Sections 4&5 of KP RTI Law 2013 (Urdu), 2018, available at https://www.c-gpa.org/images/publications/KP_RTILaw_Sec_4_5_Implementation.pdf ; last accessed on August 20, 2019

¹⁰ https://pildat.org/publications/Publication/FOI/RTILawforWomenMinoritiesCSOsandMedia_BackgroundPaper.pdf?Submit=Download last accessed on October 26, 2019

the local level can promote collective action using the RTI Act to improve access to essential services like health, education, welfare, etc. Women can make more effective decisions about health care, land ownership, and education using their right to information. RTI regime enables media personnel for credible, evidence-based, and factual reporting on critical issues of public interest.

Sustainable Social Development Organization's (SSDO) study titled *The Efficiency and Implementation of Right to Information Law in the Province of Punjab, Pakistan* tested the state of reactive disclosure in Punjab¹¹. The study's objective was to identify gaps in implementing the Right to Information in the province of Punjab. The information requested was about the budget of different district offices and copies of First Information Reports from the office of District Police Officers. The study revealed that "out of the total 203 requests made, 69 requests received responses. Twenty responses were received within 14 days after the initial requests. The remaining 49 responses were received after filing the complaint (*sic*) to the PIC."¹² The study concluded that "neither the requests filed under the RTI law nor the instructions by the PIC are taken seriously by the government departments in Punjab."¹³

The Institute of Research Advocacy and Development (IRADA) has also published a report titled *Proactive Disclosure by Federal Ministries, 2018*¹⁴. The study assesses the state of compliance with the Proactive Disclosure clause by selected federal ministries against Section 5 of the Federal Right of Access to Information Act 2017. The study developed a list of 39 indicators based on the proactive disclosure clause of federal law. The study declared the Ministry of Finance as the most proactive disclosure-compliant federal ministry and the Ministry of Parliamentary Affairs, Law, and Justice with the poorest performance, a result not much different from the one concluded by CPDI's Study of State of Online Proactive Disclosure of Information in Federal Ministries and Institutions¹⁵ conducted in the same year. The report concluded by lamenting the government's disinterest in implementing the law, especially regarding three "critical enforcement aspects," including establishing the information commission, appointing Public Information Officers, and proactive disclosure by federal ministries¹⁶.

Another relevant publication of IRADA is *Right to Information Legislation in Pakistan: Challenges and Success stories*¹⁷, published in 2017. The study relied upon the score sheet developed by CPDI and referred to above. The study discusses the salient features of Pakistan's federal and provincial RTI laws. The study also examines the critical challenges for operationalizing erstwhile very good laws in Punjab and Khyber Pakhtunkhwa. The study concluded low political will on the part of the government, non-availability of financial and human resources, non-implementation arising out of the arbitrary interpretation of the law, the inability of commissions to decide appeals

¹¹ The Efficiency and Implementation of Right to Information Law in the Province of Punjab, Pakistan, 2019, available at <https://ssdo.org.pk/wp-content/uploads/2018/08/RTI-Report-Revised-20th-June-2019.pdf> last accessed on August 18, 2019

¹² Ibid, p. 7

¹³ Ibid, p. 50

¹⁴ Inactive Government on Proactive Disclosure, Dereliction of Duties by Federal Government under the Federal Right of Access to Information Act, 2017, available at <https://archive.org/details/IRADAReportOnProactiveDisclosureByFederalMinistries2018/page/n21> ; last accessed on August 18, 2019

¹⁵ Study of State of Online Proactive Disclosure of Information in Federal Ministries and Institutions, 2018 available at: <http://www.cpd-pakistan.org/wp-content/uploads/2018/12/State-of-Online-Proactive-Disclosure-of-Information-in-Federal-Ministries-and-Institutions.pdf> ; last accessed on August 18, 2019

¹⁶ The Pakistan Information Commission, an appellate body under the law, has since been established. Some progress has also been observed in the appointment of Public Information Officers. The state of proactive disclosure is unchanged.

¹⁷ Right to Information Legislation in Pakistan: Challenges and Success stories <https://archive.org/stream/RightToInformationLegislationInPakistan/Right%20to%20Information%20Legislation%20in%20Pakistan#page/n47/mode/2up>

timely, and delay in the appointment of PIOs as the significant challenges in the flourishing RTI culture in Pakistan.

KP Information Commission has been publishing its annual reports regularly since 2014-15; the latest available annual report is for 2017-18. This report also covers the statistics about information requests received from different public authorities of KP and the number of requests converting to complaints. A comparative analysis of these figures shows that the law is getting popular in the province, and its use to get information from public authorities is increasing yearly.

Year	Total Requests received in PA	Information Provided by PA	Number of Requests converted into Complaints	Complaints Disposed of by Commission
2017-18	4078	2428	1408	1184
2016-17	2859	1546	1512	913
2015-16	3512	1311	1761	1409
2014-15	1767	1197	516	434

Table 1: Status of RTI requests in KP; 2014-15 to 2017-18

Source: Annual Reports, Khyber Pakhtunkhwa Information Commission, Various years¹⁸

The KP annual report has also given the gender-disaggregated data of requesters. The data depicts that males are submitting about 99 percent of information requests. Similarly, 97% of the complaints received by the Commission are also from males. The trend suggests focusing on women for awareness-raising activities. The annual report, however, did not present the time analysis of the disposed of claims that could have enabled the reader to comment on the performance of the Commission.

The country report of Article 19 briefly discusses the RTI regime in Pakistan¹⁹. While referring to the civil society actors in Pakistan, the report laments that legislation is “ineffective and toothless.” The report counts the following features of the RTI regime in Pakistan:

1. There needs to be systematic training programs for Public Information Officers. Resultantly, most public officials need to be made aware of the legislation.
2. No public funds were allocated for implementing the Ordinance, and there needs to be more resources and capacity for proper implementation.
3. Most public authorities need proper mechanisms to respond to information requests.
4. Record management is one of the significant impediments to providing information to the public.

Although published in 2015, the ground realities in Pakistan have mostly stayed the same. Pakistan continued to experience a restricted RTI environment despite some critical legislative milestones during the current decade.

Centre for Law and Democracy (CLD) is a Canada-based organization working on human rights issues, including the right to information. For the past few years, the Centre has worked closely with Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH to strengthen the RTI implementation regime in Pakistan, especially in KP. CLD has analyzed the federal Right of Access

¹⁸ Available at <http://www.kprti.gov.pk/page.php?Pageld=77&MenuId=12>; Last accessed on August 17, 2019

¹⁹ <https://www.article19.org/resources/country-report-the-right-to-information-in-pakistan/> last accessed on October 26, 2019

to Information Act, 2017, employing a global rating tool. According to this tool, the Federal Right of Access to Information Act, 2017 scored 105 out of the maximum possible 150 points²⁰, thus standing lowest amongst the South Asian countries with RTI law at the national level. The Centre, in cooperation with GIZ, has also developed a methodology to assess RTI implementation²¹. The methodology is first being applied in the province of Khyber Pakhtunkhwa, and the first report based on this methodology is in your hands. The methodology is based on Key Informant Interviews with a range of stakeholders, grading public authorities for proactive and reactive disclosure of information, self-assessment by members of the Commission, senior officials of public authorities, and desk reviews.

²⁰ <https://www.rti-rating.org/country-detail/?country=Pakistan> last accessed on August 18, 2019

²¹ <https://www.law-democracy.org/live/wp-content/uploads/2019/08/Methodology.19-07-222.pdf> last accessed on October 26, 2019

Proactive Disclosure

In simple words, Proactive Disclosure means the information disclosed by public authorities before it is requested. Section 5 of the KP RTI Act, 2013 talks at length about the information that every public body must proactively disclose.

For gauging the proactive disclosures of public authorities, the checklist consisted of 3 parts.

- A. Section 5 (1) of the KP RTI Act, 2013, under its 12 clauses (a-l)²².
- B. Other Issues: Three issues are dealt with under this heading.
 - a. The extent to which the website is WCAG 2.0 compliant.
 - b. The extent to which the public authority makes information available proactively at its public service points and using other offline tools.
 - c. The extent to which the public authority uses social media and smartphone apps to disseminate information proactively.
- C. Best Practices: The best practice section consists of 4 points. These are as follows:
 - a. Detailed information about the strategies, plans, and activities of the authority
 - b. Detailed information on public procurement processes and criteria, outcomes of tenders, copies of contracts and reports on completion of contracts, and information about the grant of licenses, permits, and other formal authorizations which have been issued
 - c. Information disclosed in response to an RTI request where it seems likely that other people might make an RTI request for it
 - d. Information about the costs/fees for RTI requests, such as the cost of photocopies

The four points mentioned under Best Practices were gauged but were not included in the final grading.

How to Understand this table:

For Substantive issues

The assessment of proactive disclosure involves making a list of what should be disclosed proactively (according to the law) and then seeing if it is, in fact available. For each item on the list, the public authority was given one of the following evaluations: Full, Full to Partial, Partial, Partial to None or None. Then, the following points were given:

Full	Full to Partial	Partial	Partial to None	None
1	0.75	0.5	0.25	0

The point score for this (first) part of the proactive area is the average of these points for all of the items on the list (i.e. add up the points awarded for each separate item and divide by the number of items). Please note that the denominator for calculating the average was different for different Public Authorities. If any clause is not applicable to a public authority, it is not reflected in the denominator. For example, for calculating the average for substantive issues of Education, the denominator is 11, whereas for local government, it is 12, and so on.

Then, three other issues were assessed, namely:

- a. The extent to which the website is WCAG 2.0 compliant.
- b. The extent to which the public authority makes information available proactively at its public service points and using other offline tools.
- c. The extent to which the public authority makes use of social media and smartphone apps to disseminate information proactively.

²² See Annex -- for complete text of the Act

For each of these issues, a STRONGLY, PARTIALLY or WEAKLY is awarded, depending on how well the public authority has done. One point is awarded for STRONGLY, one-half point for PARTIALLY, and zero points for WEAKLY. The point score for this (second) part of the proactive area is the average of these point scores (add them up and divide by three).

The final point score for proactive is calculated by taking 75% of the first point score (i.e. the points for proactive disclosure online) and 25% of the second point score (i.e. the points for the three other issues). [Note: This is done by multiplying the first point score by .75 and the second one by .25.] Finally, a colour grade is assigned based on the final point score as follows:

Red	Yellow	Green
0-0.33	0.34-0.66	0.67-1.00

Following is the result of proactive disclosure exercise:

Table 2 : Proactive Disclosure by Public Authorities

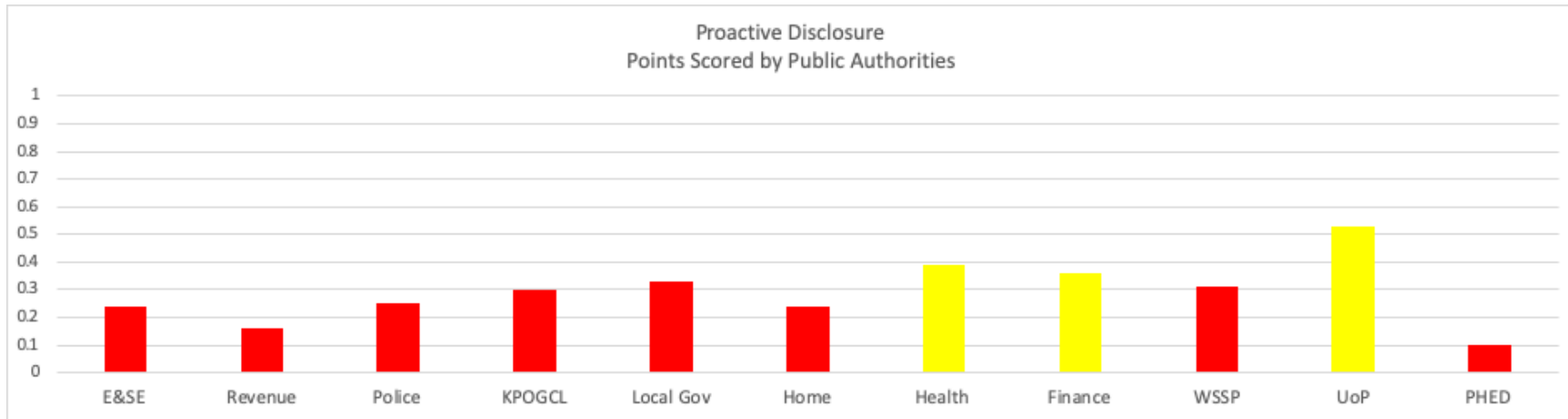
	Substantive Issues	E&SE	Revenue	Police	KPOGCL	Local Gov	Home	Health	Finance	WSSP	UoP	PHED
1	Acts and subordinate legislation	0	1	1	0	1	0	1	0.5	0	1	0
2	Information about the public body, including its organization, functions, duties, powers and any services it provides to the public;	1	0.5	0.75	1	1	1	1	1	0.5	1	0.5
3	Directory of its officers and employees, including a description of their powers and functions and their respective remunerations, perks and privileges	0.25	0.25	0	0.25	0.5	0.25	0.25	0.25	0	0.5	0
4	norms and criteria set by the public body for the discharge of its functions, including any rules, manuals or policies used by its employees to this end;	0	0	0.25	1	1	0	1	1	0.5	1	0
5	a description of its decision making processes and any opportunities for the public to provide input into or be consulted about decisions;	0	0	0	0	0	0	0	0	0.75	0.75	0
6	relevant facts and background information relating to important policies and decisions which are being	0	0	0	0	0	0	0	0	0	0.5	0

	formulated or have been made and which affect the public;											
7	a detailed budget of the public body, including proposed and actual expenditures;	0.5	0	0	0	0	0.5	0.25	0.75	0	0.25	0
8	details about any subsidy or benefit programmes operated by the public body, including details about the amount or benefits provided and the beneficiaries;				0.5	0					0.5	
9	particulars of the recipients of concessions, permits, licences or authorizations granted by the public body;	0.5	0	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0
10	the categories of information held by the public body;	0	0	0	0	0	0	0	0	0	0	0
11	a description of the manner in which requests for information may be made to the public body, including the name, title and contact details of all Public Information Officers; and	0	0	0	0	0	0	0	0	0.75	0.5	0
12	Annual report on what they have done to implement their obligations under this Act,	0	0	0	0	0	0	0.5	0	0	0	0
A	Subtotal Substantive Issues (Proactive)[Sum of Col 1-Col 12]	2.25	1.75	2.5	3.25	4	2.25	4.5	4	3	6.5	0.5
B	Average Substantive Issues (Proactive)	0.20	0.16	0.23	0.30	0.33	0.20	0.41	0.36	0.27	0.54	0.05
C	Accumulative Effect of Substantive Issues	0.15	0.12	0.17	0.22	0.25	0.15	0.31	0.27	0.20	0.41	0.03

	(Proactive)[B*0.75]												
	Other Issues												
13	The extent to which the website is WCAG 2.0 compliant.	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
14	The extent to which the public authority makes information available proactively at its public service points and using other offline tools.	0	0	0	0	0	0	0	0	0.5	0	0	0
15	The extent to which the public authority makes use of social media and smartphone apps to disseminate information proactively. (fb and tw accessed on Sep 21, 2019)	0.5	0	0.5	0.5	0.5	0.5	0.5	0.5	0.25	1	0.25	0.25
D	Subtotal Other Issues[Sum of Col 13-Col 15]	1	0.5	1	1	1	1	1	1	1.25	1.5	0.75	0.75
E	Average Other Issues	0.3	0.2	0.3	0.3	0.3	0.3	0.3	0.3	0.4	0.5	0.3	0.3
F	Accumulated effect of Other Issues [E*0.25]	0.08	0.04	0.08	0.08	0.08	0.08	0.08	0.08	0.10	0.13	0.06	0.06
	Final Score	0.24	0.16	0.25	0.30	0.33	0.24	0.39	0.36	0.31	0.53	0.10	0.10
	Best Practices												
16	Detailed information about the strategies, plans and activities of the authority	1	0		0.75	1	1	1	1	0.75	1	0	0
17	Detailed information on public procurement processes and criteria, outcomes of tenders, copies of contracts and reports	0.5	0	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0

	on completion of contracts, and information about the grant of licenses, permits and other formal authorizations which have been issued											
18	Any registers which the authority is required by law to create and/or maintain											
19	Information disclosed in response to an RTI request where it seems likely that other people might make an RTI request for it	0	0	0	0	0	0	0	0	0	0	0
20	Information about the costs/fees for RTI requests, such as the cost of photocopies	0	0	0	0	0	0	0	0	0	0	0
	Subtotal Best Practices	1.5	0	0.5	1.25	1.5	1.5	1.5	1.5	1.25	1.5	0

Table 2 Showing Grade point and Grade Point average to Public Authorities for Proactive Disclosure against pre-defined 20 criteria.



(This graph is based on the cumulative effect of Substantive issues and Other Issues. It does not reflect the performance of public authorities under best practices.)

Some Reflections on Proactive Disclosure

As the table above shows, the public authorities' performance in proactive disclosure is below par. Only 3 departments got the yellow code, and the rest of the departments achieved red. None of the Public Authorities could achieve green.

Public Officials' understanding of proactive disclosure was found to be average. For most PIOs, Right to Information starts by replying to information requests and ends here. The majority of the 10 PIOs interviewed during this evaluation exercise said they had heard the term for the first time. Almost all the PIOs have not gone through the text of the KPRTI Act, 2013. Most of the PIOs have attended some training sessions on RTI, but they said that only the reactive disclosure aspect of RTI was discussed in training. This adds another point to the commission's to-do list. They need to revise not only the training agenda and training methodology but also the training frequency. The training agenda should be modified to emphasize proactive disclosure of the information. The training methodology needs to be changed to put more importance on interactive sessions. Finally, inculcating the culture of free flow of information in public authorities is not a one-off stand-alone event. It requires a more concentrated and sustained effort. The PIOs should be exposed to such exercises more often to keep learning and applying them when they return to their desk.

Hitherto, the training activities of the commissions have been limited to PIOs alone. The commission and Public Authorities need to think honestly about whether this strategy works. Commissions training efforts should also include senior officials and heads of public bodies. By training and sensitizing them, the commission would be creating another constituency for RTI within public bodies. This study noted that senior officials' understanding of the RTI needs to be enhanced. Some of the senior officials must take the help of PIOs to answer the interview questions.

Most websites have a section on interactive disclosure, and even some have a truck load of information uploaded in this section. That information may be very important, but this remains short of what is required legally. A good practice may be to revisit the section 5 of the Act clause by clause and upload the mandatory information under a separate heading. Finance department tried to do this but again omitted some essential clauses. What is uploaded over and above this mandatory information will always be taken with appreciation.

Institutional Measures

This section looks at the institutional measures that individual public authorities have taken to implement the RTI Law. The key issues to be assessed here are the appointment of PIOs, Annual reports of the public authorities, implementation plans for RTI, and record management.

Each public authority's grade for this assessment area is based on ten objectives (yes-no) evaluations and six more qualitative evaluations. These evaluation criteria and grading against each criterion is given in the table below.

For objective evaluation from S.N 1-10, one point is given for a YES, and Zero is provided for a NO. For qualitative evaluation from S.N. 11 to 16, STRONGLY, PARTIALLY, or WEAKLY is awarded, depending on how well the assessor believes the public authority has done. One point is awarded for STRONGLY, one-half point for PARTIALLY, and Zero for WEAKLY.

In the table below, point 7 has been marked as Not Applicable. This point is designed for the laws that have an option of internal review. In many RTI laws implemented worldwide, the option for internal review exists whereby requesters can send the complaint to the head of the Public Body if they are not satisfied with the response of PIOs. This channel, for example, exists in RTI laws implemented in Punjab²³. As the internal review option does not exist in KP law, this point has not been included in the evaluation. This evaluation is based on 15 points instead of 16. The 15-point scores for each public authority are averaged (added up and divided by 15), and a color grade is awarded based on the final point score as follows:

Red	Yellow	Green
0-0.33	0.34-0.66	0.67-1.0

Source of Information:

The source of information to fill this table is key informant interviews conducted with a range of stakeholders including PIOs, Senior officials, civil society representatives, media persons, complainants and requesters.

²³ Section 12 of Punjab Transparency and Right to Information Act, 2013

Table 3: Institutional Measures by Public Authorities for Implementation of RTI

S.No	Evaluation Criteria	Education	Revenue	Police	KPOGCL	LG	Home	Health	Finance	UoP	PHED
1	Has the PIO been appointed?	1	1	1	1	1	1	1	1	1	1
2	Has the PIO formally been given terms of reference or a job description?	1	1	1	1	1	1	1	1	1	1
3	Has the PIO been provided with training?	1	0	1	1	1	0	1	0	1	0
4	Has an overall implementation plan or set of standard operating procedures (SOPs) been adopted?	0	0	0	0	0	0	0	0	0	0
5	Has a set of guidelines for how to process RTI requests been adopted?	1	1	1	1	1	1	1	1	1	1
6	Is it possible to lodge requests electronically? Is it easy to obtain an RTI request form? Is it easy to find the contact details of the PIO? (YES is given for two or more positive answers, NO for one or less)	1	1	1	1	1	1	1	1	1	1
7	Has a person who is different from the PIO been appointed to	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

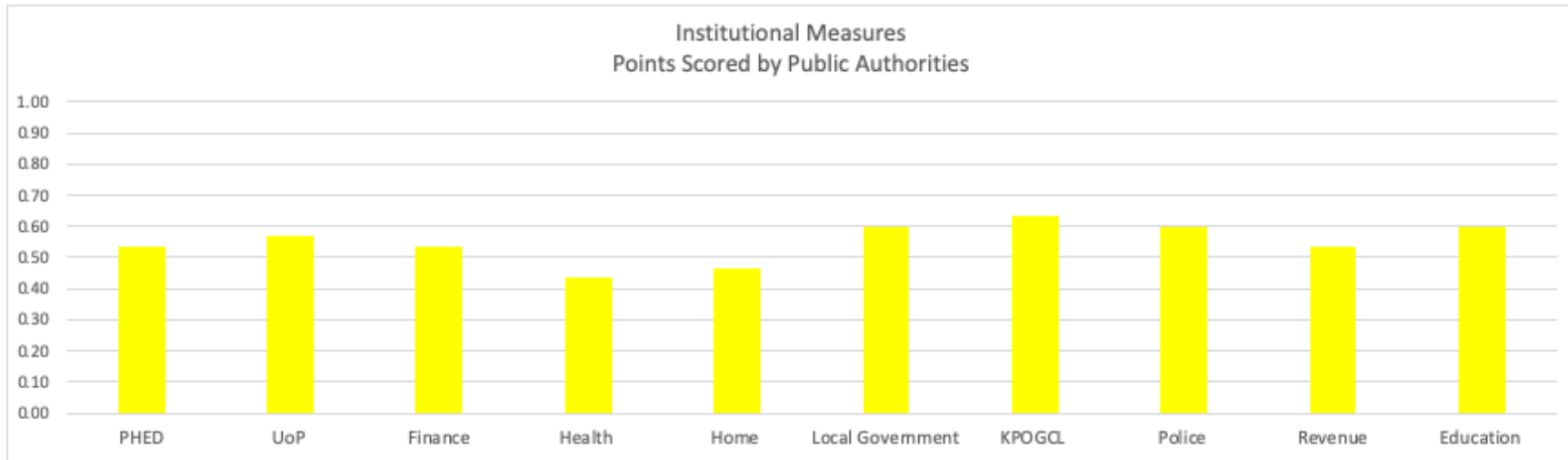
	deal with internal complaints? ²⁴										
8	Did the public authority publish an annual report for the last two years?	0	0	0	0	0	0	0	0	0	0
9	Has the public authority conducted awareness-raising activities over the last year?	0	0	0	0	0	0	0	0	0	0
10	Has the public authority put in place any system or taken any action to improve its record management?	1	1	1	1	1	0	1	1	1	1
11	Does the PIO have appropriate qualifications for the job and has he or she been allocated time to do the job?	P 0.5	P 0.5	P 0.5	P 0.5	P 0.5	P 0.5	P 0.5	P 0.5	P 0.5	1
12	Has the PIO come under political pressures that make it difficult for him or her to do the job properly?	S 1	S 1	S 1	S 1	S 1	S 1	P 0.5	S 1	S 1	S 1
13	How strong is the overall implementation plan or SOP?	P 0.5	P 0.5	P 0.5	P 0.5	P 0.5	P 0.5	P 0.5	P 0.5	P 0.5	P 0.5

14	How strong is the annual report?	W 0	W 0	W 0	W 0	W ²⁵ 0	P 0	W 0	W 0	W 0	W 0
15	How extensive are the awareness-raising activities	W 0	W 0	W 0	W 0	W 0	W 0	W 0	W 0	W 0	W 0
16	How effective are the measures taken to improve records management?	P 0.5	P 0.5	P 0.5	S 1	P 0.5	P 0.5	P 0.5	P 0.5	W 0.5	P 0.5
	Total	9	8	9	9.5	9	7	6.5	8	8.5	8
	Average (Total/15)	0.6	0.53	0.6	0.63	0.6	0.47	0.43	0.53	0.56	0.53

Table 3 Showing Grade point and Grade Point average to Public Authorities against pre-defined 15 (9 objective and 5 subjective) criteria.

²⁵ The PIO said that the department published annual reports but these are not available on the website. He also committed to sending these through email but he could not.

The result of Institutional measures is very homogenous. All the public authorities are labelled yellow which means that they fall into medium range and all have room for improvement. The pattern of grading against each point in the table above is also more or less uniform.



If we see the last six points of qualitative evaluation, we can observe consistent behavior where all but two public authorities have scored 2.5 grade points. Local Government with 3 and Health with 2 grade points are the only exceptions. It is heartening to know that all the public authorities have designated an officer of BPS 17 or above as PIO, although the law does not have any such requirement. Public authorities have also invested some resources in improving record management; much is still to be done to match international best practices. The culture of maintaining the files carefully has, at least, crept in thanks to increasing requests about the recruitment process and seniority lists. Some offices also prefer to maintain a scanned copy as a backup of a hard copy; a hard copy is still the legitimate version.

No attention has been given to producing an annual report. The annual report is an imperative part of the proactive disclosure scheme, and the law has mentioned its purpose and necessity²⁶, but no steps have been taken to address this legal requirement. The annual report will contain the steps taken to implement the RTI. These reports were also supposed to be presented to the Speaker of the Provincial Assembly and to the Information Commission who would "take action on the report as they deem appropriate."

All the public officials and media persons interviewed during the study said that no public authority has ever held any awareness-raising activity about the right to information. PIOs were convinced that awareness-raising was the function of the Commission and Commission should perform this function. Public Authorities happily choose the option of being at the receiving end of awareness-raising campaigns.

While designating them as PIOs, all PIOs said their routine duties at their parent posts were not reduced. This is understandable because the Job Description in the Public Sector is usually a decades-old exercise, and changing it is lengthy and tedious. Some of them also talked about the need for extra allowance to be given to PIOs in lieu of time spent on responding to Information requests. Such allowance is prevalent in the public sector for an additional charge. This study does not have the mandate to comment on such issues. Proactive disclosure is the answer to many of such problems. Public officials should adopt this thumb rule that the number of information requests received by Public Authorities is inversely proportional to Proactive Disclosure. The more a Public Authority opens up to the citizens and discloses information proactively, the lesser the information request it will receive.

²⁶ Section 5(2) and 5(3) of KP RTI Act, 2013 are reproduced below:

5(2) Public bodies shall also publish an annual report on what they have done to implement their obligations under this Act, which shall include detailed information about the requests for information which they have received, and how they have processed these requests.

5(3) The annual report under sub-section (2) shall be formally forwarded to Speaker Provincial Assembly of Khyber Pakhtunkhwa and to the Information Commission, who shall take such action on the report as they may deem appropriate.

Recommendations

1. The commission has a job because the annual report and RTI awareness raising are missing in the public authorities' activity calendar. To prepare public authorities for taking up awareness-raising activities, it is very important that all the staff of public authorities should be sensitized as a first step. As long as the staff does not subscribe to the idea of citizens' right to information, it is meaningless to ask them for any awareness-raising activities. The Commission should form a strategic partnership with civil society organizations working on RTI and arrange routine and frequent sensitization sessions for public authorities involving not only PIOs but all the staff of the public authorities. The idea of PIOs getting the training and then holding similar sessions for their colleagues has not worked, at least not in KP.
2. The Commission should also take steps and make sustained engagement with public authorities for producing annual reports. Writing a mere one-off letter may not be enough. The annual report is also important as public authorities have to report the steps taken by it to implement RTI. This will compel the public authorities to at least consider some awareness-raising steps to be mentioned in the annual report.

Reactive Disclosure

Reactive disclosure pertains to the information disclosed by Public Authorities in response to information requests made by citizens. Section 11 of the KP RTI Act, 2013 set the timeline for responding. A public body is required to respond to a request for information within ten working days of the receipt of request. This time period “may be extended by a maximum of a further ten working days where this is necessary because the request requires a search through a large number of records or records located in different offices, or consultation with third parties or other public bodies.”

Some Reflections on Substantive Issues:

The observations made in this section are based on open-ended interviews with PIOs and senior officials of the sampled public authorities.

1. Is it easy to submit an RTI request?

It is easy to submit RTI requests. The RTI request can be submitted by post or by hand to PIOs. The KP Information Commission has also provided the facility of eRTI on its website, where requesters can send information requests to any department. The commission’s staff then forward this request to the relevant PIO. However, this process does not generate any receipt email for the requester. During this study, a couple of requests were generated through eRTI to test the process. We don't know whether these requests could be submitted successfully, as no confirmation email was received. Some departments also claimed that they receive RTI requests directly from requesters through email and respond to them. The public authorities have not taken any steps to upload the contact details of their PIOs on their website. Of the 10 sampled departments, only 1 department had put the complete contact details of its PIO on the website. None of the departments has displayed the contact details of the PIO on its premises. Only at 2 public authorities, the nameplate of the officer carries the designation “Public Information Officer” or “Right To Information Officer.”

2. Information demanded by Public Authorities while submitting a request?

During KII, it was also revealed that requesters must prove their citizenship. Some of the PIOs said they accept CNIC numbers as proof of citizenship; for more *complex* and *sensitive* information, they would rather insist on a copy of CNIC. PIOs are generally convinced that every citizen can benefit from RTI law, but citizens must prove their citizenship. For them, a copy of the CNIC is the best way to prove citizenship.

The PIOs said they would only require a name, complete mailing address, CNIC number (copy of the CNIC in most cases), and mobile phone number. The mobile number would be helpful for PIOs to get any clarity on the requested information. That will also save some time of writing back to the requester to seek clarity about the required information. PIOs said that they were using this channel frequently to interact with requesters.

3. Languages in Which information requests can be submitted

RTI requests can be made in English (the official language) and Urdu (the National language). Local languages are used for verbal communication but are not very popular for writing. Even reasonably literate persons cannot read and write in local languages. People normally prefer Urdu over Pashto (Local Language) when writing a letter. Another local language is Hindko. Almost all the PIOs said they could read and write local languages, but they have never received information requests in local languages. English and Urdu are the most preferred languages for writing information requests.

4. Assistance to Requester when needed

Very few PIOs confirmed that any assistance was ever sought for writing RTI requests. The subordinate staff of one of the PIOs said that he had once re-drafted the request for a

requester as the original request was ambiguous and difficult to comprehend. One PIO said that it was not his duty to write the request or assist the requester in drafting the request²⁷.

5. Is a receipt provided when an RTI request is lodged?

Under Section 7(6) of the RTI Act, 2013, Public Authorities are required to provide a receipt acknowledging the request, including the date and the name of the official responsible for processing it. There is no practice of providing receipts for requests sent through post/courier. Some PIOs said they prefer to process the request on the same day they receive it, and instead of sending a receipt, they send the requested information. The receipt is normally given in case of by-hand submission of a request. It is normal practice that requesters get the “receiving” on a xerox copy of the original request by taking the signature of the PIO or one of their staff. Of the ten sampled departments to whom information requests were sent during this study, only UoP sent the acknowledgment receipts stating that the information request had been received and it was under process.

6. If Public Authorities do not hold the Information

Almost all the PIOs said they sometimes receive requests for information that are not directly relevant to their department, although such requests were few and far between. In such cases, PIOs appear to be well-versed in the law, and they are told to transfer such requests to relevant departments under the advice of the requester. The time taken to transfer such requests is from one to 7 days, with the figure of 7 days as an outlier. In most cases, such requests are transferred in 1-3 days. No record was shared to support this claim.

7. How long does it take to process the information requests?

On average, PIOs said, 70% of the requests are processed within the stipulated time of 10 days. However, the information requests sent for testing reactive disclosure during this study refute this claim. PIOs are also told that extensions in time are availed only when the volume of the requested information is too large to be compiled in 10 days, or requested information pertains to more than one office or the nature of requested information is complex and sensitive, and PIO must get the approval of the senior authority before releasing the information. In about 10 percent of the cases, PIOs said, they required an extension of more than 20 days. The reasons for this second extension is more or less the same as for the first extension. Informing requesters about extension in time is not in vogue, however.

8. Is the information provided in the format requested by the requester?

In more than 90% of the cases, the information requests are submitted in paper format, and the information is requested in the same format. Very few requesters have requested the information through email provided by PIOs or their staff through their personal email. An official email is not available to most public officials in KP. One PIO told me that he had also provided information through Whatsapp.

9. No fee is charged for providing information.

²⁷ Section 8 of the law reproduced below:

8. Assistance to requesters.

(1) A [Public Information Officer] shall take all reasonable steps to assist any requester who needs such assistance.

(2) In particular, a [Public Information Officer] shall assist any requester who is having problems describing the information sought in sufficient detail to enable the public body to locate that information, or who needs held due to disability.

(3) Where a requester is unable to provide a written request, a [Public Information Officer] shall reduce the request into writing, and provide the requester with a signed, date copy of it.

The law does not require any fee to be charged by the requester for providing information. That is confirmed by PIOs and requesters that were interviewed during the study. The only legal fee is the cost of photocopying if the requested information is more than 20 pages. The departments have collected this fee for providing more than 20 pages of information.

10. If a request is refused

The record shared during the study shows that, in most cases, departments prefer to remain mute if they do not want to share the requested information. They refer to the exemption clause only after the intervention of the Commission.

11. Claims for exceptions

The public authority refused most of the requests on the pretext of privacy or security (law and order). However, public bodies have lost many of these cases when complaints were filed by the requesters at the commission.

12. Guidelines developed by Public Authorities to process Requests for Information

It was observed that no public authority has developed and officially adopted any guidelines or procedures for processing information requests. Almost all the PIOs referred to and relied on the manual provided by the commission during training and said they followed the manual's process. One obvious demerit of not officially adopting any such procedure is the non-uniformity in processing requests at the public authorities. Only 2 of the 10 PIOs said they did not get approval from the senior officials to release the information. Five PIOs said they sought approval for sensitive information, while 3 said they get approval for every information request. The latter shared the fear that they did not want to be blamed at a later stage for releasing information²⁸.

Grading

The primary assessment tool in reactive disclosure tests responses to RTI requests by making several actual RTI requests. Each of the sampled public authorities was sent 3 requests. While sending the information requests, the following points were considered:

1. Information requests were sent so that public authorities did not suspect they were being tested. Requests were sent through different formats; some were sent through courier and others through email.
2. Requests were sent from different districts by different persons. Care was also taken that 3 different persons send 3 requests to one public authority.
3. While testing the reactive disclosure, there were 3 different RTI requests; simple, Moderate, and Challenging. Simple requests are easy to answer, and public authorities do not have any issue disclosing this information. Moderate means the information which is not so simple, and public authorities will not release them easily. Challenging means the information that is sensitive in nature, newsworthy, and difficult to compile.
4. The same set of questions was sent to all public authorities.

Grading Methodology

The total points for a public authority are calculated by averaging its points from each request (i.e. adding up the points for each request and dividing by the number of requests, in this case 3). Then, a color grade is assigned as follows:

²⁸ The question of getting approval before releasing information is not part of the original methodology and was not included in any of the questionnaire designed for KII. This question was however asked during the interview and revealed some interesting facts. This question is recommended to be included in the methodology.

Red	Yellow	Green
0-0.33	0.34-0.66	0.67-1.0

Following questions were asked in the information requests:

Question 1	Question 2	Question 3
A list of sanctioned staff in the head office/secretariat of your department against pay scales i.e. 1 to 22.	Complete list of sanctioned staff in head office of your department with pay scales, monthly salary, allowances, perks and privileges and any other benefits of each position/pay scale.	Date-wise list of entertainment bills and petty cash expenditures of your department from January 1, 2019, to August 31, 2019, in the given format. Please also provide vendor receipts against each expense. You may also provide a certified copy of the petty cash register and entertainment bill register (if any)

Also note that Question 1 and 2 are the subjects of proactive disclosure. Question 2 was asked as all public authorities have avoided it in their proactive disclosures.

Following is the result of proactive disclosure:

Table 4: Reactive Disclosure by Public Authorities

Public Authority	Question 1		Question 2		Question 3		Total	Average
	Response	Grade Point	Response	Grade Point	Response	Grade Point		
Education	Mute	0	Mute	0	Mute	0	0	0
Revenue	Mute	0	Mute	0	Mute	0	0	0
Police	Mute	0	Mute	0	Mute	0	0	0
KPOGCL	Mute	0	Mute	0	Mute	0	0	0
Local Govt	Mute	0	Mute	0	Mute	0	0	0
Home	Full Disclosure	1	Incomplete	0	Incomplete	0	1	0.33
Health	Mute	0	Mute	0	Mute	0	0	0
Finance	Mute	0	Mute	0	Mute	0	0	0
WSSP	Mute	0	Mute	0	Mute	0	0	0
UoP	Acknowledgement	0	Acknowledgement	0	Acknowledgement	0	0	0
PHED	Mute	0	Mute	0	Mute	0	0	0

Table 5 : Showing the results of reactive disclosure by sampled public authorities

[These information requests were sent on Sept 24, 2019. The above table was compiled based on the information received till Oct 10, 2019.]

Only one piece of information was received against 30 information requests sent to public authorities. One public authority sent acknowledgments for all the 3 requests. One public authority sent an email and asked to visit the office to get the information.

The table above shows that almost all the sampled public authorities failed to respond to information requests within the stipulated time. The public authorities normally claim to disclose information against most information requests, but when compiling their data of reactive disclosure, they usually, do not include columns of the date of receiving information requests and the date of responding to the requests and hence fail to appreciate that they are delaying the disclosure and violating the Section 11 of the law. And if these columns are included, they seldom make an agenda point in internal meetings or discussions of public authorities. The requesters, on the other hand, also don't point out this contravention of law and are happy that they get the information, albeit, delayed.

Some of the requested information mentioned in the table above may likely be disclosed in the coming days, but as this study is testing the public authorities' compliance with the rules, it is concluded that they performed poorly in reactive disclosure. It is also true that the information asked in question 3 is lengthy, challenging, and may require an extension of time, but no such intimation was made by public authorities to the requesters. Further, while testing the response of Public Authorities, we normally give them a margin of 10 working days to respond to the request. However, the law dispels that information will be provided "as soon as possible," and the maximum limit for providing the information is 10 days. That implies that any deliberate delay when information could have been provided immediately or before the time limit of 10 days is also tantamount to a violation of law, if not legally, at least morally.

Central Measures

Institutional Steps

Khyber Pakhtunkhwa has an Information Commission set up under Section 24 of the KP RTI Act, 2013. According to the Act, the commission has 3 main tasks. a) It acts as an appellate body in case information is denied to the citizens by Public Authorities; b) It is responsible for awareness raising among the public about RTI; c) Training of PIOs. In addition, the Commission is also responsible for setting record management standards and promoting an overall culture of transparency amongst public authorities. This section will cover the assessment of the Commission on some key issues. The sources of information for this assessment are key informant interviews with different stakeholders, formal and informal discussions with commissioners and commission staff, and a review of the commission's record, particularly the commission's decisions.

Appointment of Commissioners

Unlike some of the other provincial and federal Information Commissions, the KP Information Commission has a continuous functional history where the positions of the commissioners were kept filled since inception. A departure from this practice was observed only recently. The office of the Chief Information Commission fell vacant in early September 2019 but could not be filled after the lapse of 2 months.

Are Appointments according to Law: According to Section 24 of the KP RTI Act 2013, the Information Commission will consist of one Chief Information Commission who shall be a retired Senior Government Servant not below the rank of BPS-20. The commission will also have 2 members, known as commissioners. One of them will be an Advocate of the High Court or Supreme Court, qualified to be a Judge of the High Court. The other will be a person from civil society having experience of not less than fifteen years in the field of mass communication, academics, or the right to information. It was observed that all the appointments of the commissioners were made according to the law.

Independence of the Commission: Commissioners enjoyed the reputation of being independent and working without political or institutional pressure. Even some of the critics of the Commission would admit that Commissioners are working without any political pressure. The commissioners also stated during the interviews that they were working without any pressure and interference from the political government or their nodal body (Information department). The commission's decisions have mostly been pro-citizens, the commission has successfully fetched information from the public authority for the benefit of the citizens, although there have been delays in disclosing the information that will be discussed later in this section.

Removal of the Commissioners: Since the inception of the Commission, no commissioner has been removed from the service on disciplinary or any other grounds. All commissioners completed their legal term of 3 years or retired on reaching 65. All the commissioners and chief Information Commissioners have appropriate qualifications and experience as given in the law.

Effectiveness of the Commissioners: Commissioners' effectiveness can be gauged by 2 criteria. a) Their role in getting the information from the public authority for the aggrieved citizens, b) The swiftness with which public authorities disclose the information. It is observed that the commission has been less successful in the latter than the former. We will see a detailed analysis of the timelines later in this section. Further, although the commission has issued instructions to public authorities for proactive disclosures, most of the public authorities still fall short of the minimum disclosure requirement as given in Section 5 of law²⁹.

Training for Commissioners: There is no precedence of any training or on-board program for the commissioners. The commissioners come from diverse backgrounds. It is a general observation, not limited to KP Commission, that those from government service backgrounds need more sensitization and understanding of RTI from a human rights angle. Similarly, civil society members

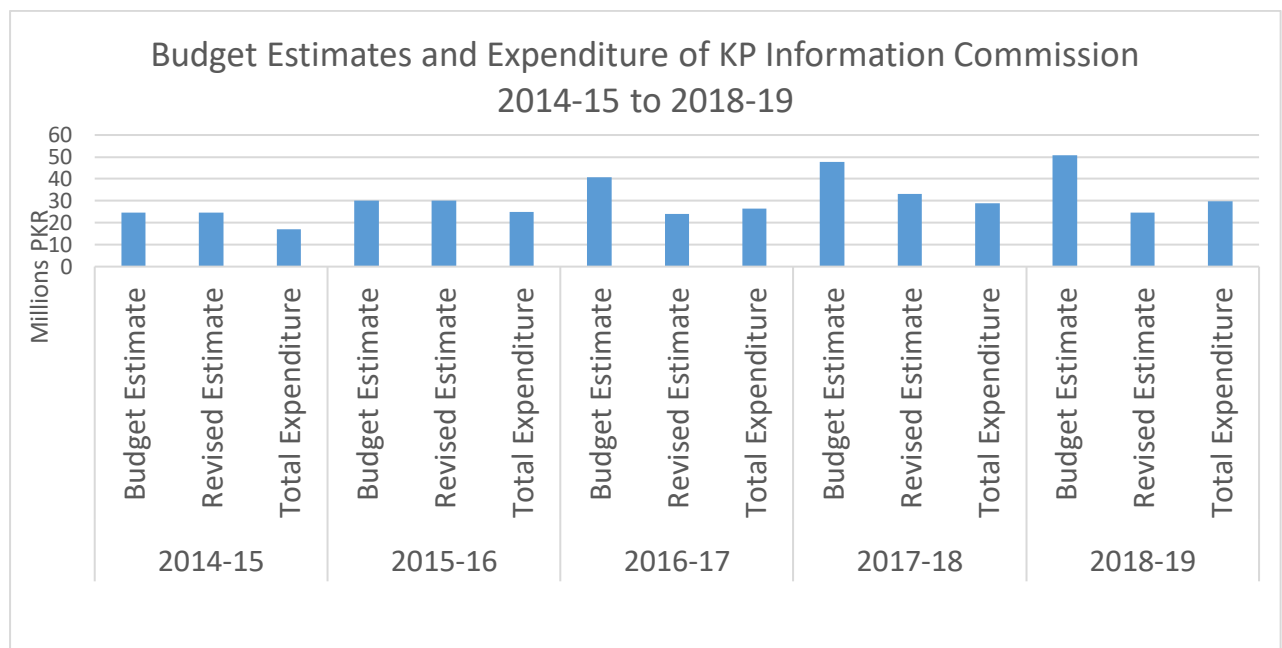
²⁹ This has been discussed in detail in this report in section on Proactive Disclosure.

need some training on office procedures. There should be a comprehensive on-board program for the commissioners to make their stay in the office more productive and effective. Equally important is the training program for Commission staff. If the staff of any public authority needs training on RTI, it is the information commission. This has been unintentionally ignored. There is a need for a comprehensive and repeated training program for the commission staff to know why they are here and whom they are working for.

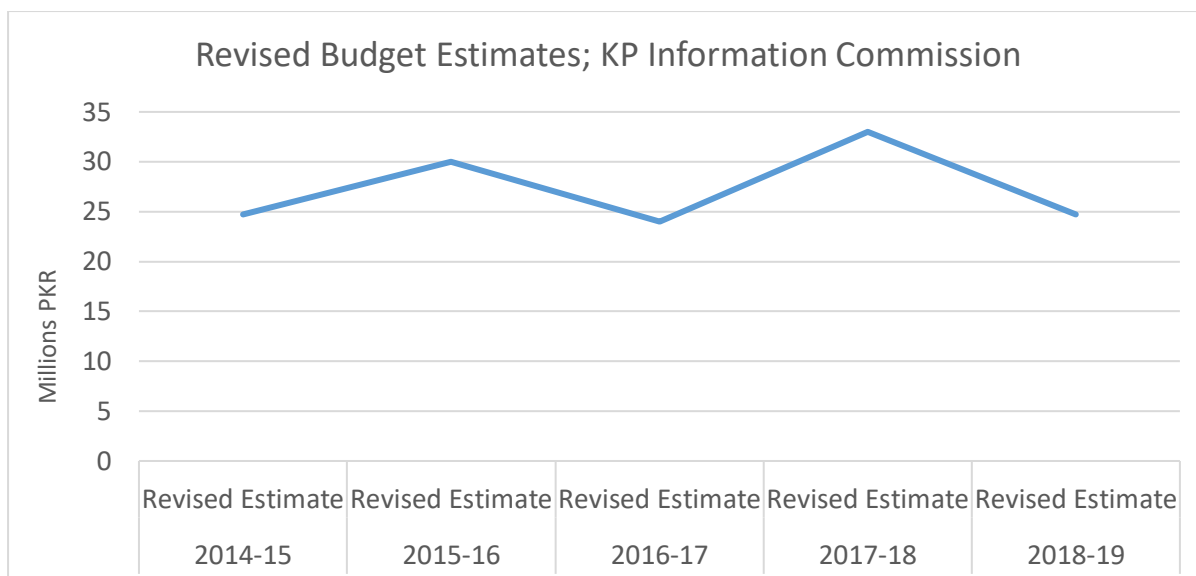
Diversity in Commission: The commission is diverse in terms of its capabilities and strength as it has membership from civil service, law, and civil society. The commission could not have gender diversity during the initial years. It now has a female commissioner in the office who is a former sessions court judge.

Budget

The Commission enjoys sufficient independence on budgetary issues. The budget is transferred to the commission from the government as a one-line item, and all allocations and appropriations are made at the commission.



Generally, Commission is satisfied with the allocations they are getting from the government. The above chart shows a steady increase in budget estimates from PKR 24 million to PKR 50 million over the last five years, but revised estimates have remained within the bracket of PKR 24 to 33 million. The revised budget shows a seesaw trend where budget showed increased and decrease in alternate years. In three of the five years under review, the actual expenditure remained less than the revised estimates.



No budget for the current financial year (2019-20) has been released yet, and the commission is surviving on the previous year's savings. For the budget to be released and utilized, the authorization of the Chief Information Commission is required, and the post of Chief Information Commissioner is unfilled presently³⁰.

Staffing at Commission

The commission recruits its staff. The total sanctioned strength of the Commission is 39. Currently, 38 vacancies are filled. This is unlike other commissions at the provincial and federal levels where an acute staff shortage was observed. The commission has developed its service rules, and most staff is on long-term employment. The most important seat at the Chief Information Commission has been vacant since early Sep 2019, when the previous Chief Information Commission completed his tenure of 3 years. The seat is to be filled by the KP government.

Geographic Outreach

The Commission has tried to extend its geographic outreach by having its presence at the division level. Currently, one Divisional Monitoring Officer (DMO) is appointed at each divisional headquarter. The job description of DMO includes strengthening liaison with Public Authorities for speedy disclosure of information and arranging awareness and capacity-building activities in their divisions. The commission has not yet started hearing of the cases outside their head office in Peshawar. Commissioners said that conducting the hearing of the cases at the divisional and district level is on the agenda, and they were looking for this possibility soon. Hearing of the cases through video may not be possible soon due to the lack of infrastructure and poor quality of internet in some of the remote areas of the province.

Effectiveness of the Commission

Procedure for Processing Appeals: It was observed that the commission was following a standard procedure while processing the complaints. The Commission has developed its Conduct of Business, Procedures and Disposal of Complaints Rules, 2019 and they are generally being followed. As a result, the procedure for disposal of complaints is evident and staff found to be well versed in these processes.

Commissions Decisions and Timelines:

To review the commission's decisions and timelines, a sample was drawn from the complaints received at the commission. In this case, the statistical population is the number of cases dealt with by commission since 2015. The Commission has dealt with more than 5000 complaints since

³⁰ Till the writing of this report on 24 Oct 19.

its inception. It was not possible to review all these appeals in limited time available; hence a sample was drawn using random sampling method with every *n*th case reviewed. The sample size is 269 cases.

Sampling Method:

The value of n in our sampling technique is 20. For each year, every 20th case was reviewed. For the selection of the first case from the first 20 cases, a random number was generated in MS excel sheet from 1 to 20. This generated random number was taken as the first sampling point. From hereafter a sample for the year was drawn taking every 20th case. For example, the random number from 1 to 20 generated through microsoft excel using its RANDOM function is 8. The case No. 8 will be our first sampling unit. The subsequent sampling units will be 28, 48, 68 ...

What is this review about?

This desk based review was done to assess the following points:

1. How much time commission is taking to process the appeals? The Commission has a mandate of deciding appeals within 60 days.
2. *Assessment: This will be determined by calculating the number of days between the date complaint received at Commission office and the date when the case was disposed of.*
3. Do the decisions suggest that the system is geographically accessible?
4. *Assessment: We will see that from which part of the province the complaints are coming, and which districts are dormant. It might suggest that more awareness raising activities are required in dormant districts. It might also suggest having more frequent sensitization sessions with Public Authorities from districts with more frequent complaints.*
5. Are appropriate decisions being made?
6. *Assessment: This is a subjective assessment. Based on the facts of the case we will try to assess the appropriateness of the decisions.*
7. Are appropriate remedies being awarded?
8. *Assessment: Again, a subjective assessment that will assess remedies based on the merit of the case.*
9. Does the decision suggest that appropriate due process protections have been respected (for example because it is clear that both parties have been given a chance to make representations)?

The average time taken by requester between sending an information request and turning to commission for filing complaint is 45 days³¹. The maximum number of days taken by requester to file a complaint is 417 days.

Table 6: Delays on the part of Requesters for not applying to Commission in case of non-disclosure of Information by Public Authorities

No. of Days	10-30	31-60	61-99	>100
Number of cases	126	70	22	22

Table--: Showing number of days it took to requesters to send a complaint to the Commission in case of non-disclosure of information by Public Authorities. (Sample Size 240 cases)

In more than 50% of the cases, requesters took more than 30 days to send requests to the commission. Many conclusions can be drawn from this trend.

³¹ This analysis is based on 240 of the sampled 270 cases. The dropout cases include the cases where date of sending request was not available in the file; complaint was sent to commission before the 10 days deadline as set out in law or where in (3 cases) case files were not available in commission record.

- 1) Some of the requesters said that public authorities contacted them on the phone and requested them not to explore further options for their information requests as officials prepare the reply. Some journalists also confirmed that they were frequent visitors to the public authority and kept verbally asking the PIOs about their requests' outcomes. Sometimes, the wait is productive, while information is not forthcoming in other instances.
- 2) There is also an issue of awareness. When contacted on the phone, some of the requesters said they never knew that another channel in the form of a commission was available to redress grievances. It was only when they followed up on their requests, that they came to know that a complaint could be sent to the commission.

Delays at Commission

The average time taken by the commission to make the first correspondence to the public authority, after it receives a complaint, is 17 days. This is colossal, given that the total time permissible to the commission to decide a case is 60 days. If 17 days are wasted in making the first correspondence, that will delay the disclosure of information by the public authority.

Delay in Information Disclosure

The average time for disclosure of the information to the complainant is 107 days³², almost double the stipulated time in the law. Of the 232 cases, 51% were disposed of in less than 60 days, while 49 % took more than 60 days, with 1077 days taken for the longest case to be disposed of³³.

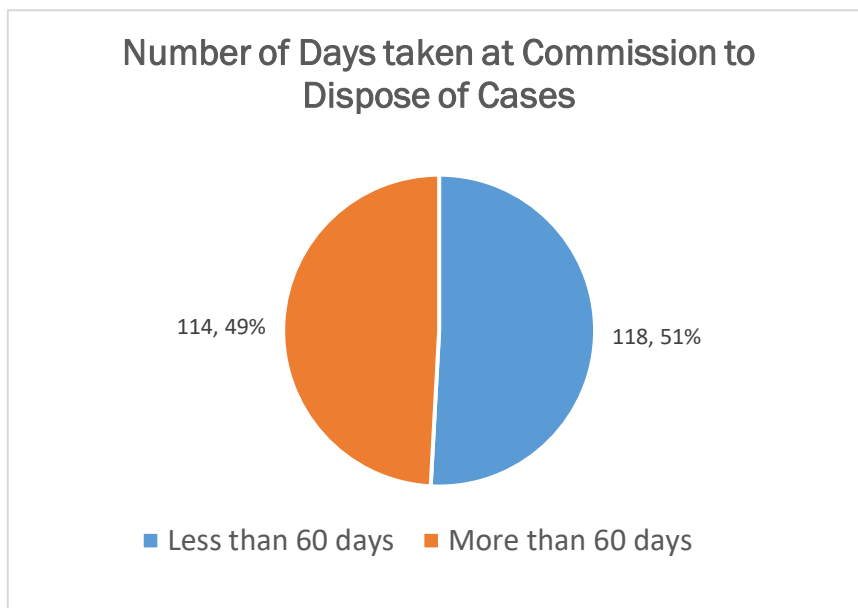


Chart Showing number of days taken at the commission to dispose of the case. The days are calculated from the day the complaint is received at commission to the day information is disclosed to the complainant. The longest 10% of the cases took on average 361 days to resolve.

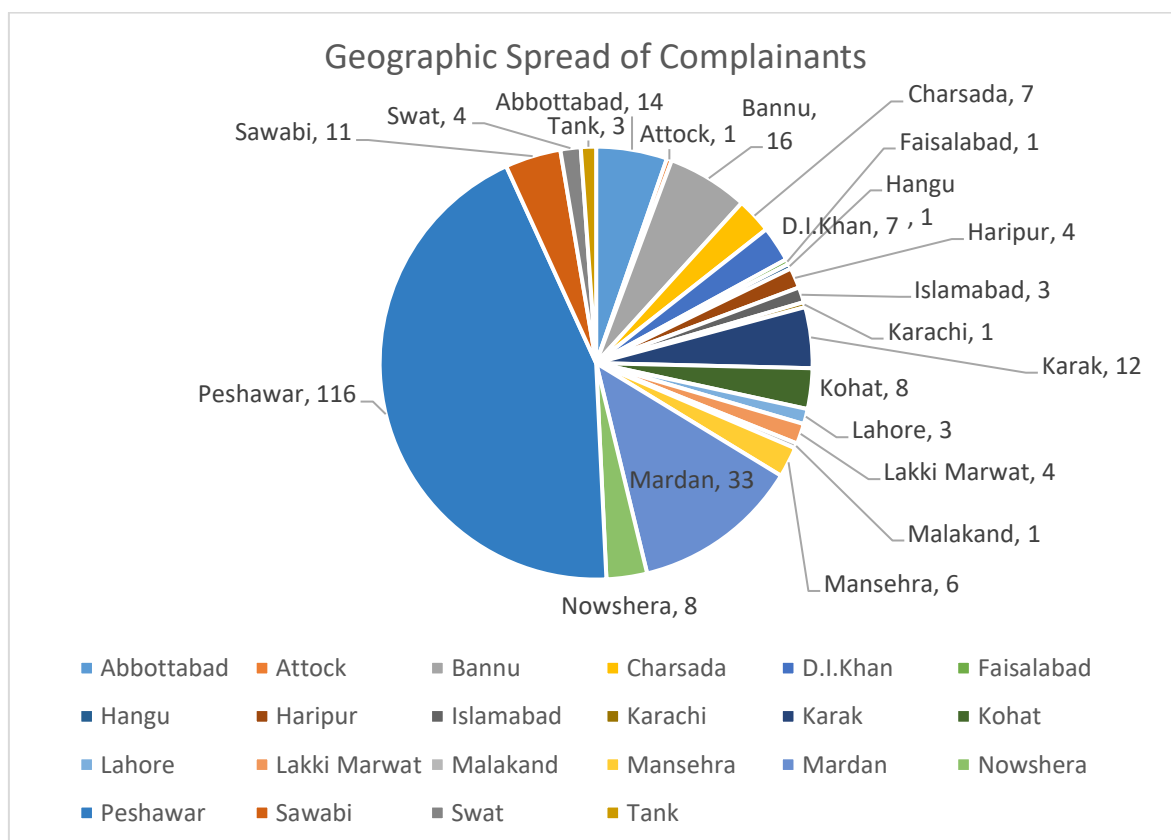
Geographic Spread of the Appeals

The following pie chart shows the geographic spread of the complainants for 264 of 269 sample size. Most of the complaints are coming from provincial headquarter Peshawar (116, 44%) followed by Mardan (33, 13%). Eighteen of the 26 districts of KP have representation here. Three

³² This analysis was generated on 232 cases after cleaning of the data from the sampled 270 cases. The omitted cases include where date record is not available, files are not available, case is beyond jurisdiction of the commission or complainant has not asked for any specific information.

³³ Case # 2502; Muhammad Zubair Vs UST, Bannu. This case is also selected as a case study in this report.

districts from other provinces, Lahore, Faisalabad and Karachi and federal capital Islamabad are also present, although sparingly. Their accumulative effect is 8 cases, 3%.



Some Comments on Commission’s Processes

In most cases, Public Authorities, while disclosing information to complainants, send a copy of the cover letter to the commission without enclosing the certified copy of the information. In a few cases, the Commission has asked complainants whether they were satisfied with the information disclosure. There is no mechanism at the commission to analyze the quality of disclosed information, and they rely on the complainant's reaction. It also deprives the commission of following up with the public authorities to place the disclosed information on their website for the public good. The information disclosed by public authority on the intervention of the Commission is also missing from the Commission's website. As a rule, any information disclosed because of reactive disclosure should then be treated as a part of proactive disclosure and should be available in the public domain so that everyone can benefit from this disclosure and citizens need not write multiple requests for the same information.

The Commission should have a definite mechanism to decide the case within the stipulated time of 60 days. In most cases, the required information has a shelf-life, and such information becomes useless if disclosed after a certain period. The *Syed Mohiuddin Vs. Finance and Planning Department (Case #4104)* is a good example. The requester asked for information about the budget allocation for 2017-18 on 17 Aug 17. Public Authorities did not disclose the information, and on the intervention of the Commission, the information was finally provided to the requester on 2 July 18 when the financial year was already over. Again, in the same case, the last correspondence available is that the Commission directed the Public Authorities to provide information to the complainant. The file is silent on whether the information was provided to the complainant to his satisfaction. The staff at the Commission said that they were assuming the full disclosure of information by the Public Authority as the complainant did not refer the case back to commission.

Similarly, in *Ijaz ur Rehman Vs. DEO-F (Case #3069)*, where requester requested for seniority list on 23 Jan 17. There is no letter from the Public Authority that information has been provided. The

commission only came to know about disclosure when the complainant told the commission that he had the information. As a result, the Commission disposed of the case.

According to Section 26(2) of the KP RTI Act, 2015 Commission has the powers of the Civil Court to “summon and enforce the attendance of witnesses and compelling them to give oral or written evidence under oath.” The practice of summoning a complainant at the commission office for a hearing should not be made mandatory as it is counter-productive to the free flow of information. When a specific request from a complainant is clear, the commission can invite the Public Authority for her written or oral views and decide the case accordingly. Summoning complainants not only waste their time and resources but also delays the process of disclosure.

Further, asking the complainants to attend the Public Authorities like Police Station or Session Court to collect the information may not be a good practice. In Pakistani culture, people feel scared visiting such places. The commission should develop a mechanism where information is delivered to complainants at their doorstep. If any fee is required for producing information, for example, photocopy, complainants should have the facility to submit the fee at their hometown and not be made to travel to Public Authority offices. For example, in Case #4745, where the complainant belongs to District Faisalabad (in Punjab Province) and the complaint is about funds allocation and expenditure of District and Sessions Judge Mardan, the commission disposed of the case while noting that the complainant did not appear at the Sessions Court to submit photocopy charges and get information. The distance between the two cities is more than 400 km, and it will take at least 2 days and some financial resources to make a return trip to Mardan to get information. The two cities do not have a direct rail, road, or air link, and the hassle of changing transport is additional.

The scrutiny of the Commission's record depicts that it has defended the citizens' rights to information against some non-responsive public authorities. Over the years, the commission successfully established a pro-people image. To the non-responsive Public Authority, it has not hesitated to take a legal course. The commission has issued more than 40 show cause notices to different public officials, and about 20 times, penalty clauses of the law have been invoked against public officials for delaying the disclosure of information.

The public authority does not have an automated appeal management system. The diary record is being maintained in excel sheets, and a computerized appeal management system is forthcoming, as told by the commission staff. It is hoped that once this system is commissioned, the complaint processing time will be reduced, and citizens will have speedy access to information.

Are Appropriate Decisions Being made?

The following 6 cases are selected to have an idea of the processes being followed by commissions to dispose of the cases. The commission has indeed been able to impact the disclosure of information. Due to the sustained efforts of the commission, the culture of secrecy is changing in the province. In most cases, the Commission has shown resolve to open public authority to the citizens. The following cases are not representative; these are selected only to alert the commission staff of possible deficiencies in the process so they can be taken care of in the future.

Case # 1155

Ehtisham ul Haq Vs. Agriculture Research Department, Kohat

Aug 27, 15 The requester asked the Agriculture Research Department, Kohat, for a copy of the annual report or some specific information in case no annual report is available. On not getting the information from the Public Authority, he filed a complaint to the commission about the non-disclosure of information by the public authority. There are 2 note sheets in the file. The note sheet of 29 Feb 2016 states that the case has been closed on the direction of the commission. The second note sheet states that the letter was issued to the Public Authority on 26 Oct 16. A copy of this letter is not available in the file, nor is it clear that information was provided to the complainant.

Case #2909**Tehsinullah Vs Registrar Cooperative Authority, KP**

21 Jun 16: The requester Mr. Tehsinullah submitted an information request to the registrar, Cooperative Societies, KP for the provision of information.

2 Jan 17: As Public Authority was mute, Mr. Tehsinullah filed a complaint to the commission about the non-disclosure of data by the Public Authority.

Jan 12, 2017: Commission directed the public body to the disclosure of information within 10 days.

Jan 20, 2017: The registrar Cooperative Society (Public authority) wrote to subordinate offices for the provision of information.

Jan 27, 2017: Public authority wrote to the complainant to visit the office to collect the information. Apparently, it seems that the information was more than 20 pages long and the public body wanted to collect the photocopy charges. But it was never mentioned in the Public Authority's letter. The public body should have adopted a procedure where citizens can submit the required fee and get information without visiting the public office.

Feb 3, 2017: Commission wrote to the complainant to visit the public Authority to get the required information.

Feb 10, 2017: The complainant again wrote to the commission that information he received was incomplete.

Feb 15, 2017: Commission wrote to the public body to provide complete information.

Feb 20, 2017: Public body wrote to the complainant under intimation to the commission to get the required information from one of its subordinate offices.

March 1, 2017: Commission advised the complainant to visit the public authority to get information

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In this case, the commission wrote to the complainant multiple times advising him to visit the Public Authority to get the required information. The Commission did not ask for a copy of the disclosed information from the Public Authority at any stage to ascertain that it was complete. It is also not clear whether the complainant visited the Public Authority, or he finally lost hope and gave up the follow-up. It is also not clear why Section 26 of the KP RTI Act, 2013 was not invoked in this case. By not providing complete information by Public Authority even after the repeated direction of the Commission is a clear violation of Section 26(3) and is a punishable offense under the law. The Commission did not follow up on that and the case could not reach its logical end. The commission record, however, shows that information has been provided and the case is disposed of assuming that the complainant has not written back to the Commission.

Case 3489**Mr. Wasim Ullah Wazir Vs Administration Department Peshawar**

31 May, 17: The request for information was submitted to Public Body (Administration department, Peshawar)

19 Jun 17: Complaint was filed at the commission for non-provision of information.

19 Jun 17: Commission directed Public Authority to provide information within 10 working days

6 Jul 17: Information Provided to the complainant

12 Jul 17: Complainant wrote the commission that information was incomplete

18 Jul 17: Commission wrote to the Public Body that information was incomplete.

23 Aug 17: PIO wrote to the commission that remaining information does not pertain to his department and that information should be sought from the Establishment department.

13 Oct 17: Commission wrote complainant to write fresh complaint to Establishment department to get remaining information.

Here it seems that violation of Section 9 (A) of the Act has occurred. Public body knows where the rest of the information lies but PIO did not forward the request to the relevant public authority under intimation to the complainant. Commission staff too has failed to detect this omission.

#1382

Muhammad Imran Musa Vs Provincial Police Officer

14 Oct 15: Request for Information Submitted for certified copies of official record

21 Dec 15: Complaint submitted to commission for non-provision of information

4 Jan 16: Commission directed the Public Authority for provision of information

22 Jan 16: Public Authority asked complainant to attend the "office for needful"

8 Feb 16: Complainant wrote commission that he was called by the public authority to attend the office and was told that the required information could not be provided

22 Feb 16: Commission again directed the Public Authority for provision of information within 3 days

3 Mar 16: Commission summoned the PPO (Public Authority) to attend the commission's office on 10 Mar 16.

8 Mar 16: two days before the summon date, the Public Authority wrote to the commission that the father of the complainant was called to the office and required information has been provided.

9 Mar 16: A day before the summon date, the Commission cancelled the summon mentioning the reason that the complainant has informed that he had received the information. No analysis of the received information was made at the commission

10 Mar 16: Complainant wrote to the commission that received information is incomplete.

15 Mar 16: Commission again directed the Public Authority to provide complete information within 3 days

22 Jul 16: PIO was summoned on 28 Jul 16

27 Jul 16: Public Authority (PIO) wrote the commission that Mr. Imran was not recruited because he was ½ inch short of the required height. Interestingly this was the first time in the file that one comes to know what the required information was about. Still interesting, the complainant has never asked for the information that why he was not recruited in the Police. He was, from the start of the case, asking for the photocopies of certain documents.

28 Jul 16: In the summon proceeding, PIO brought all the relevant records. The complainant's father was insisting on IGP remarks on the file which he was told were not there. The complainant (father) then left the Commission's office in anguish without record, the record of the proceeding in Commission's file says.

It might be true that the Public Authority does not hold the required information but the complainant might have been told at the start of the process. He has to undergo the agony for about 10 months.

Case # 2015

Syed Faizan Ali Shah Vs TMA Kohat

29 Feb 16: Information request submitted to PIO, TMO, Kohat regarding installation points of tube wells, pressure pumps and hand pumps and their cost

17 Mar 16: Resubmitted the request to Public Authority

18 Apr 16: Complaint submitted to commission

19 Apr 16: Commission wrote to the Public Authority to provide information within 10 days

28 Apr 16: Public Authority provided information to the complainant

3 May 16: Commission wrote to complainant to confirm that information is provided

6 May 16: Complainant replied that the information was incomplete, and he was not satisfied

16 May 16: Commission directed the Public Authority to provide complete information within 5 days

27 May 16: As Public Authority failed to respond, summon issued for 1 Jun 16

1 June 16: Complaint did not appear. The Public Authority submitted to the commission that most of the information has been provided and the remaining information will be provided within 10 days.

3 Jun 16: Complainant again wrote the commission about non provision of information by Public Authority

8 Jun 16: Commission wrote PIO to provide information within 5 days.

20 Jun 16: Complaint wrote commission about non provision of information by Public Authority

23 Jun 16: PIO wrote to complainant under intimation to Commission that exact location was not mentioned in PC-1, and staff at the time of installation has been transferred. The PIO said that the Public Authority is trying hard to ascertain the exact location and to provide the required information.

29 Jun 16: Commission wrote complainant to confirm that information is received

15 Jul 16: Complainant replied that the required information is still not disclosed

21 Jul 16: Commission summoned both the parties for hearing on 26 Jul 16

26 Jul 16: Complainant did not appear. PIO committed to provide information with 7 days

29 Jul 16: Complainant lamented on “non-seriousness” of the commission and declared to withdraw the case

25 Aug 16: Commission issued show cause notice for a fine of PKR. 25000

21 Oct 16: Complainant again wrote to the commission stating that information has not been provided

17 Nov 16: Commission summoned the PIO for hearing on 23 Nov 16

23 Nov 16: Neither complainant nor PIO appeared for hearing. Summon issued for 14 Dec 16

14 Dec 16: PIO gave in writing that he had asked for the information from the engineering branch, but they told that this information was not available. Commission concluded that willful blocking of information hinted towards serious irregularities. The Commission issued an order to send the case to the Secretary Local Government for departmental enquiry.

25 Jan 17: Letter was sent to Secretary Local Government to conduct departmental enquiry.

8 Feb 17: Enquiry ordered issued against Mr. Asmatullah TMO, TMA Kohat

11 Apr 17: The fact-finding enquiry held that Mr. Asmatullah, TMO failed to defend public interest and is liable to be proceeded under the relevant E& D rules.

Prima facie, it was a clear case of irregularities, but it took commission 10 months to reach that conclusion. It is felt that the commission has taken a lenient view during the proceedings of the case and thus some very important time was wasted in the case. It is also not understandable why the complainant was summoned to the hearing again and again when the commission could have

very easily analyzed the gap between required information and disclosed information and could have given the same verdict after the first hearing that it gave after 10 months.

Case #2502

Dr. Zubair Vs University of Banu

5 Aug 16: RTI request was sent to PIO for information regarding amount received on account of University Affiliation fee; Name of the students receiving laptops through PM laptop scheme; Record of students benefiting from PM fee reimbursement scheme; NTS record; Sale of Prospectus

5 Sep 16: complaint was filed with the Commission

15 Sep 16: The commission directed the PIO to provide information within 10 days

25 Oct 16: Commission again wrote to PIO to provide information within 5 days

Nov 7 16: Complainant reported the commission that he was yet to receive information

23 Nov 16: Commission directed PIO third time to provide information within 5 days

7 Dec 16: Complainant sent an email to the commission stating that no information has been received yet

8 Dec 16: PIO asked complainant to deposit PKR 4000 as photocopy fee for required information.

28 Dec 16: Complainant deposited fee for photocopy

10 Jan 17: PIO and Complainant were summoned for a hearing on 18 Jan 17

18 Jan 17: After personal hearing, the commission decided to issue show cause notice to Director of Academics and Additional Registrar (the office who were holding the information and not providing it to the PIO) for not providing the information, but there is no record of show cause notice in the commission file.

31 Jul 17: Commission again issued a summons

16 Aug 17: Director Academics provided partial information to PIO

24 Oct 17: Summons issued for 9 Nov 17

9 Nov 17: Commission noted that partial information has already been provided. Commission directed the PIO to provide the remaining information by 21 Nov 17

5 Jan 18: Summon issued for 24 Jan 18

24 Jan 18: Commission decided to issue show cause notice to Additional Registrar and Registrar/Academics

22 Jan 18: Notice of writ petition challenging commission's decision in High Court was received at Commission

17 Jul 18: Registrar wrote the commission that all available information had been provided to complainant and no further information is held by public authority

31 May 18: Complainant reported that partial information is received. Information regarding the sale of a prospectus in desired tabular form is still pending.

1 Jun 18: One of the University officials noted that the complainant had requested record in the desired format, and the information can not be arranged in the tabular form due to the shortage of staff at the University. This copy of this noting page is available in the Commission file. [complainant was asking for the record of the sale of a prospectus in tabular form. He was asking for separate figures for purchases through the bank and sales through departments. While discussing it with one of the relevant officials at the commission, it was argued that the complainant needed information

in desired format and thus wanted the university to create a new document that needed to be covered by Section 12 of the KP RTI Act, 2013.]

21 Aug 19: The commission tended to dispose of the case on the plea that reimbursement of the fee is a federal subject.

It is not essential here that the Prime Minister Reimbursement scheme is a federal or provincial subject; the fact is that University has this information because these were the University students who were the beneficiaries of the scheme. In a way, this was the subject of Proactive disclosure under Section 5 of the Act. If the Prime Minister Reimbursement Scheme was a federal subject, why the Public Authority did not inform the requester in the beginning, or why did the commission not note it during the initial stages of the case? One also feels that the commission wasted necessary time issuing multiple directives and summons that gave the Public Authority a breathing space and a chance to take refuge under High Court. In the note sheet of the Commission's file, the staff noted on 21 Aug 19 that the prime minister's reimbursement scheme was a federal subject. Hence the case should be disposed of. The case still awaits the proper approval for disposal from the concerned officer at the time of writing this report on 15 Oct 19. The crux of the matter is that the complainant could not get the required information even after the lapse of 3 years.

Suo Moto Steps of the Commission to Implement Law

The commission has taken some crucial steps to implement the law in the province, but these steps have yet to pay dividends. For example, the commission has written to Public Authorities several times to proactively disclose the information as required by Section 5 of the law. However, the Commission has yet to follow up individually with public authority on this issue. Most Public Authorities have created a Proactive Disclosure section on their website, but the disclosure fell short of the minimum legal requirement. A more detailed analysis of proactive disclosure is given in the relevant section. Regarding public authorities' reluctance to provide copies of note sheets and minutes of the meeting, the commission has also issued clear instructions stating that these documents do not fall under the exemptions list.

Instructions have also been passed for proper maintenance and indexation of records under Section 4 of the Act. It was observed during the visits to the Public Authorities that initiatives have been taken toward adequate record maintenance. Some Public Authorities are also maintaining a soft copy of the important correspondence. However, the province still needs to move towards complete computerization of the record ³⁴.

The commission has issued directions for the designation of Public Information Officer by public authorities. No data is available about the province's total possible number of PIOs. However, the commission has so far been successful in the designation of 654 PIOs³⁵.

Regulatory Functions

The law also assigns regulatory duties to the commission. The Commission has taken some crucial steps in this regard. It has decided and notified the charges for the cost of copying the required information. No fee is charged for sending requests to the public body. If the requested information is more than 20 pages, PKR 2 (USD 0.013) is charged per page over and above the first 20 pages. No evidence of setting standards for record maintenance could be found in the commission's record. The Commission has, however, taken steps to set transparency standards. Section 25(2)b of the law empowers the Commission to designate further categories of information which may be subjected to proactive disclosure. Accordingly, the commission has declared pensioners' data under the proactive disclosure category. According to another letter of the commission, dated 9 Feb 16, Commission has requested all the public bodies to disclose specific categories of

³⁴ In a strict sense, the law does not require computerization of record. It only calls for proper maintenance and indexation of the record according to the standards set by the commission. Unfortunately, we have yet to come across any such standards developed by the commission.

³⁵ These figures are taken from Commission's website. Commission staff confirmed that updated figures are more than 800. Number of PIOs undergone training could not be ascertained.

information proactively. The types of information included in this letter are the same as in Section 5 of the law. One conspicuous omission is Subsection 1, clause c of the law, which made it mandatory for public bodies to disclose their officers' and employees' remuneration, perks, and privileges. Understandably, this is the one clause overlooked by all the sampled public authorities while proactively disclosing information. Further detail about this can be found in the proactive disclosure section of this report.

Public Awareness

The Commission has used multiple channels to raise awareness about RTI among citizens. Some of the media used include radio and TV talk shows, awareness-raising seminars in universities, sports events, talks during various public events, publishing posters and brochures, and using social media. It has also publicized the RTI through media advertisements, although sparingly. The Commission has also published an introductory guide for citizens, a trainer manual, brochures in Urdu and English, and an Urdu translation of the law.

Training to PIOs

The Commission has been engaged in training PIOs since its inception. These training are arranged either by the commission itself or with the support of civil society organizations. The commission record could not ascertain the total number of PIOs undergoing the training. However, eight of the 10 PIOs interviewed during this study said they had experienced some training sessions.

Annual Report

The annual report is a mandatory requirement under the law, and the Commission has fully complied with this since 2014-15. Annual reports are available on the commission's website and are easily accessible. The reports contain RTI request data received from different public authorities of the province. It also includes data on the number of complaints received at the commission. The report also provides a blueprint for the future course of action to improve RTI implementation in the province.

Active use of Powers

A critical feature of the KP RTI Act 2013 is the penalty clause. This clause can be invoked for willful negligence or delay in disclosing information to the citizens. The Commission has used this penalty clause about 20 times since its inception. More than 40 show-cause notices have also been issued to different public officials who have failed to respond to citizens' requests timely. While going through the record, one also feels that deterrence has been selectively used, and there are many other cases where it could have been used or used quite early.

Recommendations

Given our public authorities' overall culture of secrecy, the Commission has done an excellent job over the last six years. But, of course, institutional building from scratch is always a gigantic task, and the commission has been able to take root in KP mainly due to the presence of some dedicated commissioners and staff over the last six years. Undoubtedly, some delays have been noticed in some complex cases, but overall, the commission has been able to shape itself as a citizen-friendly entity. Three key points, however, are stressed here for next year's agenda for the commission.

The Commission should speed up its efforts for the proactive disclosure of information by public authorities. Sending notices and letters has not worked partially because there is slight sensitization in public authorities about proactive disclosure. The Commission should interact with public authorities at the individual level and try to achieve the goal of online proactive disclosure. Proactive disclosure should also be part of all future training programs arranged by the commission.

The evidence has proved that there are better solutions than merely one-off training PIOs. We are dealing with a complex problem that demands intense effort. It would not be fair to expect a wholeheartedly subscribing to the idea of accountability by providing three-hour training to the PIOs. They took decades to learn secrecy; they cannot unlearn it in 3 hours. Frequent, continuous,

and personal-level interaction with PIOs is the answer. Further, the commission must broaden the scope of its training to include heads of the public authorities, their senior officials, and even staff.

On the one hand, this will increase the commission's job but simultaneously reduce the volume of complaints being received by the commission. On the other hand, the commission's performance should not be measured by the number of complaints it resolved. Its success is inversely proportional to the number of complaints it received. This indicates that public authorities are reasonably sensitized, and fewer requests turn into complaints.

Similarly, the success of the public authorities is measured inversely to the number of requests it receives. This indicates that public authorities are reasonably open to the citizens and are disclosing information proactively. Although a Utopian concept, we should keep an eye on high ideals.

Concluding Remarks

From 2002 to 2019, Pakistan has made considerable strides in RTI legislation. The implementation, however, needs to be stronger. Many factors can be attributed to this slow pace of implementation. This includes an indifferent, sometimes hostile, external environment, low motivation of public authorities, an old culture of secrecy where asking questions has always been taken as aggression, and low organizational capacity to handle the request for information. When compared to other provinces and federal public authorities, KP is lucky in the sense that it has the most conducive environment for the implementation of RTI. The overall grading in different sections can give you an idea of how acute the situation might be in other parts of the country.

Legislation is indeed significant for realizing citizens' right to information. But the right to information is more than striking some excellent pieces of legislation. It is a change of culture, a change of mindset, and a change in the state's relationship with its "subjects." It is a departure from the centuries-old traditions of the masterly relationship of state institutions towards adopting a new posture of service providers. The journey is long, and the road is difficult to traverse. A policy decision would have to be made that in childhood; we start injecting the lessons of accountability and transparency into our children. The earlier we do it, the easier it will be to create an overall culture of responsibility in the country; otherwise, no legislation, no matter how high it is ranked, is strong enough to let the accountability scheme work.