

Punjab Freedom of Information Bill approved by Cabinet

On Tuesday 12 March 2013 the Punjab Cabinet approved a draft Freedom of Information Bill.

Background

The Punjab FOI bill represents a major step forward in implementing Article 19A of the Constitution (introduced in 2012 as part of the 18th Constitutional Amendment) which gives every citizen the right to access information from public bodies. It should also be seen in the wider context of on-going efforts by the Government of Punjab to promote efficiency and improved service delivery – open and transparent government will help achieve this goal.

The draft Punjab FOI Act is the outcome of a quite extensive process of stakeholder consultation by the Punjab Government, notably with civil society organizations, lawyers and the media. As such, it has much greater credibility (and ownership) than the federal FOI Ordinance 2002, which was promulgated by President Musharraf with negligible stakeholder consultation.

Main Features

The draft FOI bill has the following key features:

- a) It extends to all citizens of Pakistan;
- b) It applies to all public bodies in Punjab (including all departments, autonomous organizations, district and lower governments, courts, the legislature), as well as publicly funded private entities;
- c) It has an extensive proactive disclosure requirement list for public bodies, which includes a directory of officers and employees and their respective remuneration, perks and privileges; the budget (proposed and actual expenditures); description of its decision-making processes; recipients of concessions, permits or authorizations; details of any subsidies;
- d) Public bodies have to ensure that information covered under the Act is properly maintained in easily accessible form, and have to endeavour, within reasonable time, to computerize such information to ensure easy access;
- e) The exceptions regime is limited, based on application of the harm test, e.g. if release of information would harm national security, legitimate privacy interests, relates to privileged information;
- f) There is a 'public interest over-ride' provision for exceptions, i.e. if the public interest in disclosure outweighs the harm caused by this;
- g) The applications procedure specifies that applicants will not have to provide a reason for making a request, no fee will be charged (only expenses incurred, e.g. on photocopying), requests must be responded to within 21 working days;
- h) It sets up an independent 3-member Information Commission to monitor implementation of the FOI Act and hear complaints. One member is to be drawn from civil society, one a

retired judge and one a retired government servant. The Commission's decisions will be binding;

- i) Penalties of a fine and/or imprisonment for up to two years, can be imposed if anyone wilfully destroys information subject to a FOI request or otherwise blocks disclosure;
- j) The Punjab FOI bill over-rides other legislation.

The draft Punjab FOI Act is a huge improvement on the federal FOI Ordinance 2002. The latter scored just 60 points out of a possible 150 in global RTI legislation rankings, placing it in 75th position out of some 90 countries. An indicative ranking of the draft Punjab FOI Act gave it a score of 105 points, placing it in joint 18th position. The strong provisions in the draft bill are reflected in the very positive media coverage it has received.

Next Steps

The bill has been approved by the Punjab Cabinet, but needs to be approved by the Punjab Legislative Assembly in order to become law. Prior to this it has to be vetted by the Law Department to ensure it has the proper legal form. Given the imminent handover of power to an interim government in Punjab, which will oversee the conduct of elections, it is virtually impossible that the FOI bill will become law before dissolution of the provincial assembly.

However, it is widely expected that the same Pakistan Muslim League-Nawaz (PML-N) party will win the elections and form the next Punjab Government. Hence it is reasonable to expect that the FOI bill will be passed soon after the next elected government assumes power. While there is scope for the legislative assembly to amend the provisions in the draft bill, the strong provisions in the cabinet approved draft give a very solid foundation from which to move forward.

It should also be noted that assessments of the situation with regard to FOI in Pakistan, notably challenges and opportunities, consistently identify the bureaucracy – and *not* politicians – as a major obstacle. Analysis to date indicates that there is lack of awareness about FOI, but once the importance of FOI is explained to them, politicians are generally in favour of FOI reforms.