

Freedom of Information Bill, 2008
TI Pakistan Comments and Response to Queries raised by
Consumer Rights Commission of Pakistan

No.	Question	TI Pakistan Comments
1	<p>Is it a good idea to file complaints against denial of information to the existing administrative Ombudsman, or should there be independent Information Commissioners? Some people think that it is not viable option to have independent information commissioners due to limited fiscal space available to Pakistan.</p>	<p style="text-align: center;">Conceptual Position:</p> <p>Complaint mechanism shall be independent of the relevant department, and to be time based.</p> <hr/> <p>Best Practice(s):</p> <p>TI Pakistan concurs with Draft FOI 2008 procedure of complaint mechanism.</p> <hr/> <p>What Do you Suggest for Pakistan:</p> <p>Under Draft Act, Section 6, all Public record shall be computerized.</p> <p>TI Pakistan recommendations are that all Public Record declared under Section 7 shall be available on the website of the public body.</p> <p>Reason: Transparent procedures and decisions as mean little if there is no external monitoring on the decisions taken by public officials. Corrupt public bodies abound in inspectors, commissions of enquiry, and record keeping requirements that create and conceal corruption rather than reveal it.</p> <p>This step of all allowable documents to website, will also reduce the burden of extra cost to public bodies, and public can access the information free of cost.</p>
2	<p>Should the correspondence, noting on files and intermediary opinions be exempted from disclosure? Some people are apprehensive that access to notice on</p>	<p>Conceptual Position:</p> <p style="text-align: center;">TI Definition of Transparency</p> <p>“Transparency” is defined as a principle that allows those affected by administrative decisions, business transactions or charitable work to know not only the basic facts and figures but also the mechanisms and processes. It is the duty of civil servants, managers and trustees to act visibly, predictably and understandably. ”</p>

	<p>files might result in verbal discussions among the government officials and ultimately, the citizens might not be able to get hold of these the notes even after 20 years.</p>	<p>Best Practice(s): UNCAC has been ratified by Pakistan in August 2007.</p> <p>Its Article 10 is termed as the best Practices.</p> <p><i>Article 10</i> <i>Public reporting</i> Taking into account the need to combat corruption, each State Party shall, in accordance with the fundamental principles of its domestic law, <u>take such measures as may be necessary to enhance transparency in its public administration, including with regard to its organization, functioning and decision-making processes, where appropriate.</u> Such measures may include, inter alia:</p> <p>(a) <u>Adopting procedures or regulations allowing members of the general public to obtain, where appropriate, information on the organization, functioning and decision-making processes of its public administration</u> and, with due regard for the protection of privacy and personal data, on decisions and legal acts that concern members of the public;</p> <p>(b) <u>Simplifying administrative procedures, where appropriate, in order to facilitate public access to the competent decision-making authorities;</u> and</p> <p>(c) Publishing information, which may include periodic reports on the risks of corruption in its public administration.</p> <p>What Do you Suggest for Pakistan:</p> <p>UNCAC Article 13</p> <p><i>Article 13</i> <i>Participation of society</i> 1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption.</p> <p>This participation should be strengthened by such measures as:</p> <p>(a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes; (b) Ensuring that the public has effective access to information; (c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula; (d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are</p>
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		<p>provided for by law and are necessary:</p> <p>(i) For respect of the rights or reputations of others; (ii) For the protection of national security or <i>order public</i> or of public health or morals.</p> <p>2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.</p>
<p>3</p>	<p>Should an FOI law be applicable to the entire private sector (such as multi-national companies operating in a country), or to only those companies that deliver public services (e.g. private banks, insurance companies)?</p>	<p>Conceptual Position:</p> <p>FOI Law relates to public sector only.</p> <hr/> <p>Best Practice(s):</p> <p>Article 12 UNCAC sets the best practices for Private Sector</p> <p><i>Article 12 Private sector</i></p> <p>1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.</p> <p>2. Measures to achieve these ends may include, inter alia:</p> <p>(a) Promoting cooperation between law enforcement agencies and relevant private entities;</p> <p>(b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;</p> <p>(c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;</p> <p>(d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licenses granted by public authorities for commercial activities;</p> <p>(e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private</p>

		<p>sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;</p> <p>(f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.</p> <p>3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:</p> <p>(a) The establishment of off-the-books accounts;</p> <p>(b) The making of off-the-books or inadequately identified transactions;</p> <p>(c) The recording of non-existent expenditure;</p> <p>(d) The entry of liabilities with incorrect identification of their objects;</p> <p>(e) The use of false documents; and</p> <p>(f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.</p> <p>4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.</p>
		<p>What Do you Suggest for Pakistan:</p> <p>SECP and State Bank of Pakistan shall look into the FOI requirements, complying UNCAC Article 12</p>
<p>4</p>	<p>Is it a good idea to include whistleblowers' protection in an FOI law?</p>	<p>Conceptual Position:</p> <p>Yes</p> <hr/> <p>Best Practice(s):</p> <p>Whistle blower protection is provided by Acts and related statutes that shield employees from retaliation for reporting illegal acts of employers. An employer can't rightfully retaliate in any way, such as discharging, demoting, suspending or harassing the whistle blower. If an employer retaliates anyway, whistle blower protection might entitle the employee to file a charge with a government agency, sue the employer, or both.</p>

		<p>What Do you Suggest for Pakistan:</p> <p>Whistle blower protection shall be incorporated in FOI Act.</p>
<p>5</p>	<p>What is the best litmus test available to judge whether the disclosure of a certain record is in the public interest or not?</p>	<p>Conceptual Position: Democracy is defined as “ The government of the people, for the people and by the people.”</p> <p>People have a right to scrutinize the actions of their chosen leaders and public servants and to engage in full and open debate about their actions. They must be able to assess the performance of the government for accountability and good governance.</p> <p>This only depends on access to information about the state of the economy, social systems and other matters of public concern.</p> <p>Freedom of information is also a key tool in combating corruption and wrongdoing in government. Investigative journalists and watchdog NGOs can use the right to access information to expose wrongdoing and help root it out.</p> <hr/> <p>Best Practice(s):</p> <p>Except for reason of National Security, intellectual property rights, and matter related to law enforcement till the case is decided by court, all information and documents are to be declared as Public record..</p> <hr/> <p>What Do you Suggest for Pakistan:</p> <p>Except for reason of National Security, intellectual property rights, and matter related to law enforcement till the case is decided by court, all information and documents are Public record</p>