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*RTI Evaluation in Khyber pakhunkwa*

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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

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 the ownership of all these information and they can access these information whenever they desire to do so. The public authorities are only the custodians of this information. This is a constitutional fundamental 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 Right to Information can be traced back to 1994 when a bill on Freedom of Information was moved in Senate but no legislation could be done on that bill. The interim government of 1997 implemented 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 year 2002 when Freedom of Information Ordinance 2002 (FOI 2002) was implemented at federal level. Two provinces, Balochistan and Sindh, followed suit and legislated Freedom of Information Acts in 2005 and 2006 respectively. These laws were the mirror images of the FOI 2002. All three laws were restrictive in nature and opened very few avenues for citizens to get information from the public authorities. These laws are sometimes referred to as first generation laws.

Since the implementation of these first generation laws, there was a demand from civil society to repeal these laws and legislate more effective, progressives and robust laws. One big stride was made in 2010, when Article 19-A was inserted in the Constitution of Pakistan guaranteeing Right to Information to the citizens. The second installment of RTI laws were granted to citizens from 2013 when, first KP and later Punjab in the same year legislated some very good right to information laws. Later, in 2017, Sindh and federal government repealed their old Freedom of Information laws and implemented new laws similar to Punjab and KP[[1]](#footnote-1). Hence, Second generation laws.

There are 3 fundamental differences that distinguish second generation laws from first generation laws. a) The second generation laws have a strong proactive disclosure clause that was missing in the first generation laws. b) second generation laws have penalty clause, that precisely mean that public officials can be penalized if citizens are willfully denied the right to information and c) these laws also 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 a good time to reflect back and see how the Right to Information regime has worked in the province. An independent evaluation study will not only give a chance to policy makers and legislators to gauge the state of transparency and accountability in the province, it will also identify the necessary steps to be taken by public authorities to further strengthen RTI regime in the province. KP is generally considered as a leading province in Pakistan in terms of RTI implementation. This study will guide steps required to adopt to boost their ranking further.

# Methodology

During the past few years, some organizations in Pakistan have attempted to quantitatively gauge the implementation of RTI at provincial and federal level but the methodology for such exercises has been limited in nature. Most of these attempts revolves around gauging the online proactive 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, very few attempts have been made in Pakistan to assess the capacity of central body (in our case the Information Commission). There was dearth of a scientific and comprehensive methodology that encompass all the aspects of RTI implementation and also fill a global void to test the performance of public authorities both quantitatively and qualitatively.

In an attempt to fill this gap, an RTI evaluation methodology is developed by GIZ pakistan office. The Methodology has been prepared as part of the Support to Local Governance programme being run by GIZ and specifically falls within the result area State-Citizen Dialogue. This is a pilot study based on this methodology and it is hoped the more this methodology 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 on the basis of this methodology and is divided into 5 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 of these sections is 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 both national/local and INGOs was reviewed.

1. **Desk based Reviews**: In addition to literature reviews, two other desk reviews were conducted. These include i) a review of the decisions on appeals by Information Commission and ii) Desk based review of the proactive disclosure made by public authorities online.
2. **Key Informant Interviews**: Key Informant Interviews (KII) are further divided into different categories: Interview with Sampled Public Authorities ( Interview with Public Information Officers (PIOs), Interviews senior officials and Interview with IT officials of the Public Authorities; Interview with the 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** | | |
| **S #** | **Official** | **# of Interviews** |
| 1 | Senior Official | 6 |
| 2 | PIOs | 12 |
| 3 | IT Officers | 5 |
| 4 | Information Commissioner | 3 |
| 5 | Civil Society | 5 |
| 6 | Media | 5 |
| 7 | Requester | 3 |
| 8 | Complainant | 3 |
|  | **Total Interviews** | **42** |

1. **Self Assessment:** The self assessment forms were provided to 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 by public authorities (including one from Information Commission).
2. **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.
3. **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 3 questions each ranging from simple to moderate to challenging and their response was noted down. Due to 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 10 working days) and complaints were not lodged to information commission. More detail is available in chapter on reactive disclosure.

# Literature Review

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

Consumer Rights Commission of Pakistan was one of the pioneer organizations in Pakistan who took up the agenda of RTI in Pakistan in early 2000’s but could not continue its work with the same vigour. One can find some scattered RTI related publications on their website[[2]](#footnote-2), the latest being from the year 2014. This issue paper[[3]](#footnote-3) discusses the inherent flaws and deficiencies in FOI 2002 divulged through procedural activism. The paper expressed satisfaction for journey from “Freedom of Information” to “Right to Information”[[4]](#footnote-4) but at the same time pointed out some flaws in new legislation. The paper specially pointed out Section 28 of KP RTI law that declared obtaining information for malafide purpose as 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 prelude to much recent trend of measuring Online Statues of Proactive Disclosure; a trend in which CPDI has developed some sort of consistency and expertise amongst the national organizations. The report concluded that non-availability of annual reports and material related to FOI/RTI on website is against the international best practice and violation of constitutional rights of people of Pakistan.

Centre for Peace and Development Initiatives (CPDI) literature on Right to Information can be divided in 4 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 some quality reports on online proactive 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 department. The most recent study[[5]](#footnote-5) was published in September 2019 and issued on the eve of International Right to Know day. The study measure the state of proactive disclosure against the proactive disclosure clause of relevant right to information laws and point against each sub-section are awarded out of ten; with 0-3 for poor, 4-7 for moderate and 8-10 for maximum level of compliance. The study awarded 95.5% points to KP Information Commission for its excellent compliance to proactive disclosure clause of KP RTI Act, 2013. 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 take into account the website of the public authority and does 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 pioneer work of CPDI is the comparative analysis of RTI laws by producing score sheets against different variables/criteria. The comparative analysis were made both 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. First such study was made in 2007[[6]](#footnote-6) which was then used frequently as an advocacy tool for improved legislation at federal level. The most recent of such study was produced in April 2019[[7]](#footnote-7) 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 report[[8]](#footnote-8) on 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 relevant 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, only 25% of information is disclosed by federal ministries and departments as per section 5 of Federal RTI Law and only 12% of information is proactively disclosed by the Sindh departments. *Overall results show that an average of only 31% of information is proactively disclosed by the federal and provincial government departments under RTI*. Balochistan province was not included in this assessment area because Balochistan law does not have proactive disclosure section.

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

Centre for Governance and Public Accountability (C-GPA) has conducted a series of Score Cards Reports, the latest being form the year 2019. The reports tested the state of reactive disclosure in the Province of Khyber Pakhtunkhwa. The responses to the information requests by public bodies shows that RTI law implementation is worse in the province of Sindh followed by federal government. The best response that C-GPA gained is from the province of KP where 80 percent of their requests were responded positively. CGPA has also published a guide book for indexation, maintenance and digitization of official record[[9]](#footnote-9). The guide book is important as it attempts to address the paucity of literature in this field. Most of the RTI related work in Pakistan has been done focusing on proactive or reactive disclosure but very few literature is available on this important aspect.

Pakistan Institute for Legislative Development and Transparency’s (PILDAT) background paper on Right to Information (in Punjab) focuses separately on women, minorities, media and CSOs[[10]](#footnote-10). It highlights the ways these groups can use RTI for their benefits. It concluded that the minorities through RTI Act can know what are their rights and where they can exercise their rights. CSOs at local level can promote collective action using the RTI Act to improve access to basic services like health, education and welfare etc. Women can make more effective decisions with relation to health care, land ownership and education using their right to information. RTI regime enables media personnel for credible, evidence-based and factual reporting on key 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 the province of the Punjab[[11]](#footnote-11). The objective of the study was to identify gaps in implementation of right to Information in the province of the Punjab. The information requested were about budget of different district offices and copies of First Information Reports form the office of District Police Officers. The study revealed that “out of total 203 requests made, 69 requests received response. 20 responses have been received within 14 days after the initial requests. The remaining 49 responses were received after filing compliant *(sic)* to the PIC.”[[12]](#footnote-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]](#footnote-13)

Institute of Research Advocacy and Development (IRADA) has also published a report titled Proactive Disclosure by Federal Ministries, 2018[[14]](#footnote-14). The study assess the state of compliance to Proactive Disclosure clause by selected federal ministries against Section 5 of 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 Ministry of Finance as the most proactive disclosure compliant federal ministry and Ministry of Parliamentary Affairs, Law and Justice with 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 Institutions[[15]](#footnote-15) conducted in the same year. The report concluded by lamenting the government’s disinterest in implementing of the law especially regarding three “critical enforcement aspect”, including establishment of information commission, appointment of public Information Officers and proactive disclosure by federal ministries[[16]](#footnote-16).

Another relevant publication of IRADA is Right to Information Legislation in Pakistan: Challenges and Success stories[[17]](#footnote-17) published in 2017. The study basically relies upon score sheet developed by CPDI and referred above. The study discusses the salient features of federal and provincial RTI laws in pakistan. The study also discusses the key challenges for operationalization of erstwhile very good laws in Punjab and Khyber Pakhtunkhwa. The study concluded low political will on the part of government, non-availability of financial and human resources, non-implementation arising out of arbitrary interpretation of law, inability of commissions to decide appeals timely and delay in the appointment of PIOs as the major 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 the year 2017-18. A section of this report also covers the statistics about information requests received to different public authorities of KP and number of requests converting to complaints. A comparative analysis of these figures shows that the law is getting popularity in the province and its use to get information from public authority increasing every year.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Year** | **Total Requests received in PA** | **Information Provided by PA** | **Number of Requests converted into Complaints** | **Complaints Disposed off 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 years[[18]](#footnote-18)

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

The country report of Article 19 discusses briefly the RTI regime in pakistan[[19]](#footnote-19). While referring to the civil society actors in Pakistan, the report laments that legislation is “ineffective and toothless.” The report counts following features of RTI regime in Pakistan:

1. There is no systematic training programs for the Public Information Officers. Resultantly, majority of the Public officials are unaware of the legislation.
2. No public funds were allocated for the implementation of the Ordinance and there is a lack of resources and capacity for proper implementation.
3. Most of the public authorities do not have proper mechanism in place to respond to information requests.
4. Poor record management is one of the major impediments in providing information to the public.

Although published in 2015, the ground realities in Pakistan have not changed much since then. Despite some important legislative milestones achieved during the current decade, Pakitans continued to experience restricted RTI environment.

Centre for Law and Democracy (CLD) is a Canada based organization working on issues of human rights including right to information. For the past few years, the Centre has worked closely with Deutsche Gesellshaft für Internationale Zusammenartbeit (GIZ) GmbH to strengthen RTI implementation regime in Pakistan, especially in KP. CLD has analyzed the federal Right of Access to Information Act, 2017 employing global rating tool. According to this tool, the Federal Right of Access to Information Act, 2017 scored 105 points out of maximum possible 150 points[[20]](#footnote-20) thus standing lowest amongst the South Asian countries with RTI law at national level. The Centre, in cooperation with GIZ, has also developed a methodology to assess RTI implementation[[21]](#footnote-21). 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 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 .

# 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 has to disclose proactively.

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

1. Section 5 (1) of the KP RTI Act, 2013 that has 12 clauses (a-l)[[22]](#footnote-22).
2. Other Issues: Three issues are dealt under this heading.
3. The extent to which the website is WCAG 2.0 compliant.
4. The extent to which the public authority makes information available proactively at its public service points and using other offline tools.
5. The extent to which the public authority makes use of social media and smartphone apps to disseminate information proactively.
6. Best Practices: The best practice section consists of 4 points. These are as follow:
7. Detailed information about the strategies, plans and activities of the authority
8. 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 licences, permits and other formal authorisations which have been issued
9. Information disclosed in response to an RTI request where it seems likely that other people might make an RTI request for it
10. 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 average was different for different Public Authorities. If any clause is not applicable for a public authority, it is not reflected in the denominator. For example, for calculating 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:

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

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:

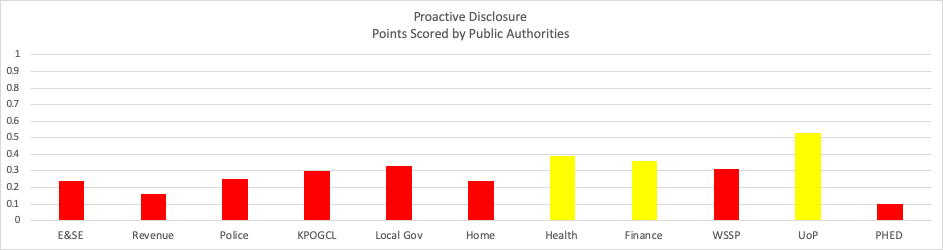
|  |  |  |
| --- | --- | --- |
| Red | Yellow | Green |
| 0-0.33 | 0.34-0.66 | 0.67-1.00 |

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 formulated or have been made and which affect the public; | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0.5 | 0 |
| 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 (Proactive)[B\*0.75] | 0.15 | 0.12 | 0.17 | 0.22 | 0.25 | 0.15 | 0.31 | 0.27 | 0.20 | 0.41 | 0.03 |
|  | **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 |
| 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 |
| 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 |
| 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 |
| 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 |
| 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 |
|  | **Final Score** | 0.24 | 0.16 | 0.25 | 0.30 | 0.33 | 0.24 | 0.39 | 0.36 | 0.31 | 0.53 | 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 |
| 17 | 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 licences, permits and other formal authorisations which have been issued | 0.5 | 0 | 0.5 | 0.5 | 0.5 | 0.5 | 0.5 | 0.5 | 0.5 | 0.5 | 0 |
| 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 is evident from the table above, the public authorities’ performance in proactive disclosure is below par. Only 3 departments got the yellow code, the rest of the departments have achieved red. None of the Public Authorities could achieve green.

Public Officials own understanding about proactive disclosure was found average. For most of the PIOs, Right to Information starts from replying information requests and ends here. Of the 10 PIOs interviewed during this evaluation exercise, the majority said that 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 sort of training session on RTI, but they told that only reactive disclosure aspect of RTI was discussed in the training. This adds another point in commission’s to-do list. They need to revise not only the training agenda and training methodology but also the training frequency. Training agenda should be modified to put greater emphasis on proactive disclosure of the information. 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 so that they keep on learning and applying it when they are back to their desk.

Hitherto, the training activities of the commissions have limited to PIOs alone. Both commission and Public Authorities needs to think honestly that whether this strategy working. Commissions training efforts should also include senior officials and head 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 own understanding of the RTI needs to be enhanced. Some of the senior officials have to take the help of PIOs to answer the interview questions.

Most of the 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 overall this remain 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 separate heading. Finance department tried to do this but again omitted some important 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 have been taken by individual public authorities for implementation of the RTI Law. The key issues to be assessed here are appointment of PIOs, Annual reports of the public authorities, implementation plans for RTI and record management.

Grading for each public authority for this assessment area is based on ten objective (yes-no) evaluations and six more qualitative evaluations. These evaluation criteria and grading against each criteria is given in table --- below.

For objective evaluation from S.N 1-10, one point is given for a YES and Zero are given 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 actually designed for the laws who have an option of internal review. In many RTI laws implemented worldwide the option for internal review exists whereby requester 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 Punjab[[23]](#footnote-23). As 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 colour grade are 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:**

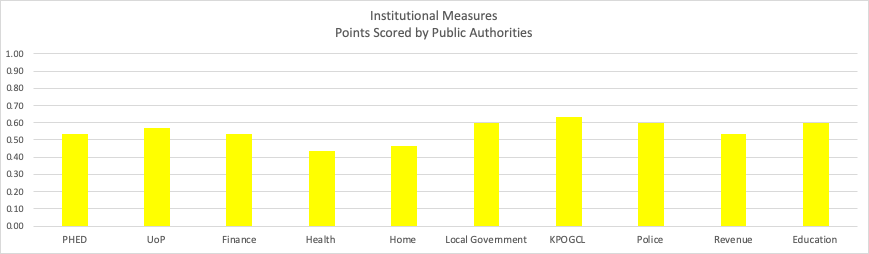
The source of information to fill this table is key informant interviews conducted with a range of stakeholders including PIOs, Senior officials, civil society representatives, media persons, complainants and requesters.

***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 deal with internal complaints?[[24]](#footnote-24) | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A | N/A |
| 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]](#footnote-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.

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 the consistent behaviour where all but two public authorities has 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 law does not have any such requirement. Public authorities have also invested some resources in the improvement of 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 are also preferring to maintain a scanned copy as a backup of hard copy; hard copy is still the legitimate version.

No attention has been given to produce an annual report. Annual report is imperative part of proactive disclosure scheme and law has clearly mentioned it purpose and necessity[[26]](#footnote-26) 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 Information Commission who would "take action on the report as they deem appropriate."

All the public officials and media persons who were interviewed during the study told that no public authority has ever held any awareness raising activity about 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 campaign.

All PIOs told that their routine duties at their parent posts were not reduced while designating them as PIO. This is understandable because the Job Description in Public Sector is usually a decades old exercise and changing it is a lengthy and tedious process. 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. Suffice here to say that proactive disclosure is the answer to many of such problems. Public officials should adopt this thumb rule that the number of information requests received at Public Authorities is inversely proportional to Proactive Disclosure. The more a Public Authority open up to the citizens and discloses information proactively, the lesser the information request it will receive.

# Recommendations

1. As the annual report and RTI awareness raising are totally missing in public authorities’ activity calendar, the commission has a job at hand. 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 the staff does not subscribes to the idea of citizens right to information, it is meaningless to ask them for any awareness raising activities. Commission should form 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 PIO getting the training and then holding similar sessions for their colleagues has not worked, at least not in KP.
2. Commission should also take steps and make sustained engagement with Public authorities for producing annual report. Writing a mere one-off letter may not be enough. 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 think of some awareness raising steps to be mentioned in the annual report.

# Reactive Disclosure

Reactive disclosure pertains 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 the open-ended interviews with PIOs and senior officials of the sampled public authorities.

1. **Is it easy to submit RTI request?**

It is easy to submit RTI request. The RTI request can be submitted by post or by hand to PIOs. The KP Information Commission has also provided the facility of eRTI at their website where requester can send information request 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 have any idea whether these requests could be submitted successfully as no confirmation email was received. Some of the departments also claimed that they receive RTI requests directly from requester through email and respond to them. The public authorities have not taken any step to upload the contact details of their PIOs on their website. Of the 10 sampled department, there was only 1 department who have put the complete contact details of its PIO on website. None of the department has displayed the contact details of the PIO in its premises. Only at 2 public authorities, the nameplate of the officer carries the designation “Public Information Officer” or “Right To Information Officer”

1. **Information demanded by Public Authorities while submitting request?**

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

The PIOs told that they would only require 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 requested information. That will also save some time of writing back to the requester to seek clarity about required information. PIOs told that they were using this channel frequently to interact with requesters.

1. **Languages in Which information requests can be submitted**

RTI requests can be made in English (official language) and Undu (National language). Local language are popularly used for verbal communication but not very popular for writings. Even the reasonably literate persons can not read and write in local languages. When it comes to writing a letter, people normally prefer Urdu over Pashto (local Language). Another local language is Hindko. Almost all the PIOs told that they have the capacity to 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.

1. **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 told that he had once re-drafted the request for a requester as the original request was ambiguous and difficult to comprehend. One PIOs told that it was not his duty to write the request or provide any assistance to the requester for drafting the request[[27]](#footnote-27).

1. **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 receipt for the request sent through post/courier. Some PIOs told that they prefer to process the request on the same day they receive it and instead of sending receipt, they send the requested information. The receipt is normally given in case of by-hand submission of request. It is normal practice that requester get the “receiving” on a xerox copy of the original request by taking signature of PIO or one of their staff. Of the ten sampled departments to whom information requests were sent during this study, only UoP sent the acknowledgement receipts stating that information request has been received and it was under process.

1. **If Public Authorities does not hold the Information**

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

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

On an average, PIOs told, 70% of the requests are processed within the stipulated time of 10 days. The information requests sent to test reactive disclosure during this study, however, refute this claim. PIOs also told that extensions in time are availed only when the volume of requested information is too large to be compiled in 10 days, or requested information pertains to more than one offices or nature of requested information is complex and sensitive and PIO has to get approval of the senior authority before releasing the information. In about 10 percent of the cases, PIOs told, they required 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.

1. **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 that have been provided by PIOs or their staff through their personal email. Official email is not available to majority of public officials in KP. One PIO told that he had also provided information through Whatsapp.

1. **No fee is charged for providing information**

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

1. **If request is refused**

The record that was shared during the study shows that in majority of cases department prefer to remain mute if they do not want to share the requested information and they refer to the exemption clause only after the intervention of the Commission.

1. **Claims for exceptions**

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

1. **Guidelines developed by Public Authorities to process Requests for Information**

It was observed that no public authority has developed and officially adopted any sort of guidelines or procedures for processing the information requests. Almost all the PIOs referred to and were relying on the manual provided by the commission during training and told that they were following the process given in the manual. One obvious demerit of not officially adopting any such procedure is the non-uniformity in the way requests are processed at the public authorities. Only 2 of the 10 PIOs told that they did not get approval from the senior officials for releasing the information. Five PIOs told that they sought approval for sensitive information while 3 told that they get approval for every information requests. The latter shared the fear that they did not want to be blamed at a later stage for release of information[[28]](#footnote-28).

## Grading

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

1. Information requests were sent in a way that public authorities do not suspect that they are being tested. Requests were sent through different format; some requests were sent through courier some through email.
2. Requests were sent from different districts by different persons. Care was also taken that 3 requests to one public authorities are sent by 3 different persons.
3. While testing the reactive disclosure, there were 3 different levels of RTI requests; simple, Moderate, Challenging. Simple requests are those that are easy to answer and public authorities does not have any issue disclosing this information. Moderate means the information which are not so simple and public authorities will not release them easily. Challenging means the information that is sensitive in nature, news-worthy and also difficult to compile.
4. Same set of questions were 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 colour grade is assigned as follows:

|  |  |  |
| --- | --- | --- |
| 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 expenditure of your department from January 1, 2019 to August 31, 2019 in given format. Please also provide vendor receipts against each expense. You may also provide a certified copy of 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.]

Against 30 information requests sent to public authorities, only one information was received. One public authority sent acknowledgement for all the 3 requests. One public authority sent email and asked to visit the office to get the information.

The above table shows that almost all the sampled public authorities completely failed to respond to information requests within the stipulated time. The public authorities normally claim to disclose information against majority of information requests but when compiled their data of reactive disclosure, usually, do not include columns of date of receiving information requests and date of responding to the requests and hence failed to appreciate that they are delaying the disclosure and violating the Section 11 of the law. And if ever these columns are included, these 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 to law and are happy that they get the information, albeit, delayed.

It is highly likely that some of the requested information mentioned in the table above may be disclosed in the coming days but as this study is testing the public authorities’ compliance to the rules, it is concluded here public authorities performed poorly in reactive disclosure. It is also true that information asked in question 3 is lengthy, challenging and may require 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, although the law clearly dispel that information will be provided “as soon as possible” and the maximum limit for providing 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 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 public about RTI; c) Training of PIOs. In addition to that, Commission is also responsible for setting record management standards, 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 review of commissions record particularly the decisions of the commission.

## Appointment of Commissioners

Unlike some of the other provincial and federal Information Commissions, the KP Information Commission has a continuous functional history where 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 High Court or Supreme Court, who is 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, academic or right to information. It was observed that all the appointments of the commissioners were made according to the law.

Independence of the Commission: Commissioner enjoyed the reputation of being independent and working without the political or institutional pressure. Even some of the critics of the Commission would admit that Commissioners are working without any political pressure. The commissioners have 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 decision 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 ground. All commissioners completed their legal term of 3 years or retired on reaching the age of 65. All the commissioners and chief Information Commissioners have appropriate qualification 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 are made to disclose the information. It is observed that 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 requirement of disclosure as given in Section 5 of the law[[29]](#footnote-29).

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 coming from government service background needs more sensitization and understanding of RTI from a human rights angle. Similarly, the civil society members need some sort of 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 staff of any public authority needs training on RTI, it is the information commission. This has been unintentionally ignored. There is a need for comprehensive and repeated training program for the commission staff so that 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 a membership from civil service, law and civil society. The commission could not have gender diversity during initial years. It now has a female commissioner in the office who is a former judge of the sessions court.

## Budget

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

Generally, Commission is satisfied with the amount of 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 decrees in alternate years. In three of the five years under review, the actual expenditure remained less than the revised estimates.

No budget for current financial year (2019-20) is released yet and commission is surviving on the previous year’s saving. For budget to be released and utilized, the authorization of Chief Information Commission is required and the post for Chief Information Commissioner is unfilled presently[[30]](#footnote-30).

## Staffing at Commission

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

## Geographic Outreach

Commission has tried to extend its geographic outreach by having its presence at division level. Currently one Divisional Monitoring Officer (DMO) is appointed at each divisional headquarter. The job description of DMO include 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 located in Peshawar. Commissioners told that conducting the hearing of the cases at divisional and district level is on agenda and they were looking for this possibility in near future. Hearing of the cases through video may not be possible in near future due to 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 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. The procedure for disposal of complaint is clear and staff found to well versed of these processes.

## Commissions Decisions and Timelines:

To review the commissions 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 by commission since 2015. Commission has dealt with more that 5000 complaints since 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 *nth* 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 first case from the first 20 cases, a random number was generated in excel sheet from 1 to 20. This generated random number was taken as first sampling point. From hereafter 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 this review is about?

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

1. How much time commission is taking to process the appeals? 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 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 to have 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. Do 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 days[[31]](#footnote-31). The maximum number of days taken by requester to file 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*

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| --- | --- | --- | --- | --- |
| 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 complaint to Commission in case of non-disclosure of information by Public Authorities. (Sample Size 240 cases)

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

1. Some of the requester told that public authority contacted them on phone and requested them not to explore further options on their information requests as officials are preparing the reply. Some journalists also confirmed that they were frequent visitor to the public authority and kept on asking the PIOs about the outcome of their request verbally. Sometimes, the wait is productive while in other instances, information is not forthcoming.
2. There is also an issue of awareness. Some of the requesters when contacted on phone told that they never knew that another channel in the form of commission is available for redress of grievances. It was only when they followed up on their requests, they came to know that complaint could be send to commission.

## Delays at Commission

The average time taken by the commission to make first correspondence to the public authority, after it receive complaint, is 17 days. This is colossal given the fact that total time at the disposal of commission to decide a case is 60 days and if 17 days are wasted in making first correspondence that will essentially 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 days[[32]](#footnote-32) which is almost double the stipulated time in the law. Of the 232 cases, 51% cases were disposed of in less than 60 days while 49 % cases took more than 60 days with 1077 days taken for the longest case to be disposed of[[33]](#footnote-33).

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

Commission should have a definite mechanism to decide the case within the stipulated time of 60 days. In most of the cases, the required information has a shelf-life and such information become useless if disclosed after a certain period. The Syed Mahiud Din Vs Finance and Planning Department (Case #4104) is a good example. The requester asked for information about budget allocation for the year 2017-18 on 17 Aug 17. The information was not disclosed by Public Authorities and on the intervention of 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 Commission directed the Public Authorities to provide information to the complainant. The file is silent whether information was provided to the complainant to his satisfaction. The staff at the Commission told that they were assuming the full disclosure of information by the Public Authority as 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. Commission only came to know about disclosure when complainant send a letter to the commission that he had got the information. As a result, Commission disposed of the case.

According to Section 26(2)a of the KP RTI Act, 2015 Commission has the powers of the Civil Court to “summoning and enforcing the attendance of witnesses and compelling them to give oral or written evidence under oath”. The practice of summoning complainant at the commission office for hearing should not be made mandatory as it is counter-productive to the free flow of information. When a specific request from complainant is clear, commission can invite Public Authority for her written or oral views and decide the case accordingly. Summoning complainants not only waste their time and resources but also delay 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 sort of fee is required as a cost of producing information, for example photocopy, complainants should have the facility to submit the fee at their hometown and they should not be made to travel to Public Authority office. For example in Case #4745 where complainant belong to District Faisalabad (in Punjab Province) and 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 appeared at the Sessions Court to submit photocopy charges and get information. The distance between the two cities is more than 400 km and 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 hassle of changing transport is additional.

The scrutiny of Commissions record depicts that it has defended the citizens’ rights to information against some of the non-responsive public authorities. Over the year, the commission has been successful in establishing 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 clause of the law has been invoked against public officials for delaying 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, complaint processing time will be reduce and citizens will have speedy access to information.

## Are Appropriate Decisions Being made

Following 6 cases are selected to have an idea of the processes being followed by commissions to dispose of the cases. It is true that commission has been able to create an impact on the disclosure of information. Due to sustained efforts of the commission, the culture of secrecy is changing in the province. In majority of the cases, the Commission has shown resolve to open up public authorities to the citizens. Following cases are not the representative cases; these are selected only to call the attention of the commission staff of possible deficiencies in process so that can be taken care of in future.

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| **Case # 1155**  Ehtisham ul Haq Vs Agriculture Research Department, Kohat  Aug 27, 15 The requester asked the Agriculture Research Department, Kohat for the copy of 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 commission about non-disclosure of information by 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 direction of the commission. The second note sheet states that letter issued to the Public Authority on 26 Oct 16. Copy of this letter is not available in the file, nor it is clear that information was provided to the complainant. |

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| **Case #2909**  **Tehsinullah Vs Registarar Cooperative Authority, KP**  21 Jun 16: The requester Mr. Tehsinullah submitted information request to registrar, Cooperative Societies, KP for provision of information.  2 Jan 17: As Public Authority was mute, Mr. Tehsinullah filed a complaint to the commission about non-disclosure of data by Public Authority.  Jan 12, 2017: Commission directed Public body for disclosure of information within 10 days.  Jan 20, 2017: The registrar Cooperative Society (Public authority) wrote to subordinate offices for provision of information.  Jan 27, 2017: Public authority wrote to complainant to visit office to collect the information. Apparently, it seems that information was of more than 20 pages and public body wanted to collect the photocopy charges. But it was never mentioned in the Public Authority’s letter. 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 public Authority to get the required information.  Feb 10, 2017: The complainant again wrote to commission that information he received was incomplete.  Feb 15, 2017: Commission wrote public body to provide complete information.  Feb 20, 2017: Public body wrote to complainant under intimation to commission to get the required information from one of its sub-ordinate offices.  March 1, 2017: Commission advised complainant to visit public Authority to get information  ---  *In this case commission wrote to complainant multiple times advising him to visit the Public Authority to get the required information. Commission did not ask for the copy of the disclosed information from Public Authority at any stage to ascertain that it was complete. It is also not clear that complainant visited the Public Authority or he finally lost hope and gave up the follow up. It is also not clear that why Section 26 of the KP RTI Act, 2013 was not invoked in this case. By not providing the complete information by Public Authority even after the repeated direction of the Commission is clear violation of Section 26(3)a and is a punishable offence under the law. 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 case is disposed of assuming that complainant has not written back to the Commission.* |

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| **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 Public Body that information was incomplete.  23 Aug 17: PIO wrote to commission that remaining information does not pertain to his department and that information should be sought from 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 that where rest of the information lies but PIO did not forward the request to the relevant public authority under intimation to complainant. Commission staff too has failed to detect this omission.* |

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| #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 commission’s office on 10 Mar 16.  8 Mar 16: two days before the summon date, Public Authority wrote to commission that father of the complainant was called to the office and required information has been provided.  9 Mar 16: A day before the summon date, Commission cancelled the summon mentioning the reason that 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 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. Interesting 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 Police. He was, from the start of the case, asking for the photocopies of certain documents.  28 Jul 16: In summon proceeding, PIO brought all the relevant record. The complainant 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 complainant might have been told at the start of the process. He has to undergo the agony for about 10 months.* |

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| **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: Complainant did not appear. The Public Authority submitted to 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 told that 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 is not available. Commission concluded that willful blocking of information hinted towards serious irregularities. Commission issued order to send the case to 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 on that conclusion. It is felt that 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 that why complainant was summoned to the hearing again and again when commission could have very easily analyzed the gap between required information and disclosed information and could have given the same verdict after first hearing that it gave after 10 months.* |

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| **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 laptop 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: Commission directed the PIO to provide information within 10 days  25 Oct 16: Commission again wrote to PIO to provide information with in 5 days  Nov 7 16: Complainant wrote 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 email to commission stating that no information 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 hearing on 18 Jan 17  18 Jan 17: After personal hearing, commission decided to issue show cause notice to Director 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 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 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 has been provided to complainant and no further information is held by public authority  31 May 18: Complainant wrote that partial information is received. Information regarding sale of prospectus in desired tabular form is still pending.  1 Jun 18: One of the University official noted that complainant has requested record in desired format and the information can not be arranged in the tabular form due t the shortage of staff at University. This copy of this noting page is available in the Commission file. [complainant was asking the record of sale of prospectus in tabular form. He was asking for separate figures for sale through bank and sale through departments. While discussing it with one of the relevant officials at commission, it was argued that that complainant needed information in desired format thus wanted university to create a new document which was not covered by Section 12 of the KP RTI Act, 2013.]  21 Aug 19: Commission tended to dispose of the case on the plea that reimbursement of fee is a federal subject.  *It is not important here that 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 actually the subject of Proactive disclosure under Section 5 of the Act. If Prime Minister Reimbursement Scheme was a federal subject why the Public Authority did not inform the requester in the beginning or why commission did not note it during the initial stages of the case. One also feels that important time was wasted by the commission in 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 prime minister reimbursement scheme was a federal subject, hence case should be disposed of. The case still awaits the proper approval for disposal from the concerned officer at the time of writing of this report on 15 Oct 19. The crux of the matter is that 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 important steps to implement the law in the Province, but these steps have not paid dividends yet. For example, commission has written to Public Authorities number of times to proactively disclose the information as required by Section 5 of the law. It appears that Commission has not followed up individually with public authority on this issue. Most of the Public Authorities have created Proactive Disclosure section at 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 sheet and minutes of the meeting, the commission has also issued clear instructions stating that these documents do not fall under exemptions list.

Instruction 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 a initiatives have been taken towards proper record maintenance. Some of the Public Authorities are also maintaining a soft copy of important correspondence. However, the province has not moved towards complete computerization of the record yet[[34]](#footnote-34).

The commission has issued directions for designation of Public Information Officer by public authorities. No data is available that what could be the total numbers of PIOs in the province. Commission has so far been successful in designation of 654 PIOs[[35]](#footnote-35).

## Regulatory Functions

The law also assigns regulatory duties to commission. Commission has taken some important steps in this regard. It has decided and notified the charges for cost of copying the required information. No fee is charged for sending requests to Public body. If requested information is more than 20 pages, PKR 2 (USD 0.013) are charged per page over and above the first 20 pages. No evidence of setting standard for record maintenance could be found in commission’s record. Commission has, however, taken steps for setting transparency standards. The Section 25(2)b of the law empowers the Commission to designate further categories of information which may be subjected to proactive disclosure. Accordingly, commission has declared the data of pensioners under the category of proactive disclosure. According to another letter of the commission, dated 9 Feb 16, Commission has requested all the public bodies to proactively disclose certain categories of information. The categories of information included in this letter are more or less same as given in the Section 5 of the law. One conspicuous omission is the Subsection 1, clause c of the law that made it mandatory for the public bodies to disclose remuneration, perks and privileges of its officers and employees. understandably, this is the one clause overlooked by all the sampled public authorities while making proactive disclosure of information. Further detail about this can be found in proactive disclosure section of this report.

## Public Awareness

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

## Training to PIOs

Commissions has been engaged in training of PIOs since its inception. These trainings are arranged either by commission itself or with the support of civil society organizations. Total number of PIOs undergone the training could not be ascertained from the commission record. Of the 10 PIOs interviewed during the conduct of this study, 8 told that they had undergone some sort of training session.

## Annual Report

Annual report is a mandatory requirement under the law and Commission has full compliance of this since 2014-15. Annual reports are available at commission’s website and are easily accessible. The reports contain RTI request data received in different public authorities of the province. It also contains the data of number of complaints received at the commission. The report also provides a blueprint of the future course of action to improve RTI implementation in the Province.

## Active use of Powers

One important feature of KP RTI Act, 2013 is the penalty clause. This clause can be invoked for willful negligence or delay in disclosure of information to the citizens. Commission has used this penalty clause for about 20 times since 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 the deterrence has been selectively used and there are many other cases where it could have been used or could have been used quite early.

## Recommendations

Given the overall culture of secrecy in our public authorities, Commission has done a good job over the last six years. Institutional building from scratch is always a gigantic task and commission has been able to take roots in KP mainly due the presence of some dedicated commissioners and staff over the last six years. No doubt, some delays has been noticed in some complex cases, but overall commission has been able to shape itself as a citizen- friendly entity. Three key points, however, are stressed here for the next year agenda for the commission.

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

The evidences have proved that mere one-off training of PIOs is not the solution. We are dealing with a complex problem and it demands an intense effort. It would not be fair to expect a whole heartedly subscribing of the idea of accountability by providing a three-hours 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, commission has to broaden the scope of its training, to include head of the public authorities, their senior officials and even staff. This, on the one hand, will increase the job of the commission but simultaneously would reduce volume of complaints being received by the commission. The performance of the commission should not be measured by the number of the complaints it resolved. Its success is inversely proportional to the number of complaints it received. This is an indicator, that public authorities are reasonably sensitized and fewer requests are turning into complaints. Similarly, the success of the Public authorities is measured inversely to the number of requests it received. This is an indicator that public authorities are reasonably open to the citizens and are disclosing more and more the information proactively. Although a Utopian concept, we should eye on high ideals.

# Concluding Remarks

From 2002 to 2019, Pakistan has made considerable strides in terms of RTI legislation. The implementation, however, has remained week. Many factors can be attributed towards this slow pace of implementation. This include indifferent, sometimes hostile, external environment, low motivation of public authorities, old culture of secrecy where asking question has always taken as an act of 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 got most conducive environment for implementation of RTI. The overall grading in different sections can give you an idea that how acute the situation might be in other parts of the country.

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

1. The federal law is however not as progressive as Punjab and KP laws. Although a step forward to FOI 2002, it still adopted many of the restricted clauses of FOI 2002. [↑](#footnote-ref-1)
2. https://www.crcp.org.pk [↑](#footnote-ref-2)
3. <https://www.crcp.org.pk/images/PDF/Publications/RTI_Paper_CHRI_event.pdf> last accessed on Aug 17, 2019 [↑](#footnote-ref-3)
4. The terms “Freedom of Information” and “Right to Information” are interchangeably used in RTI literature. Here it is referring to the journey from first batch of laws legislated from 2002 to 2006. These laws were generally ineffective and there was a strong civil society demand to replace these laws with more effective laws. The nomenclature in these laws, often referred to as first generation laws, is “Freedom of Information”. Beginning from 2013, the second generation laws, which are often appreciated for their effectiveness and progressive nature, used the nomenclature “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 the journey of nomenclature but also a journey towards more effective and citizens’ oriented RTI legal regime in Pakistan. [↑](#footnote-ref-4)
5. State of Online Proactive Disclosure of Information in Provincial Departments of Khyber Pakhtunkhwa September 2018

   <http://www.cpdi-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 [↑](#footnote-ref-5)
6. Comparison of Laws on Freedom of Information: India, Pakistan, Bangladesh, Turkey

   <http://www.cpdi-pakistan.org/wp-content/uploads/2013/04/Comparsion-of-Laws-of-Freedom-of-Information(FOI).pdf> last accessed on August 17, 2019 [↑](#footnote-ref-6)
7. CPDI Score Sheet of Right to Information Laws in PAkistan, April 2019; available at <http://www.cpdi-pakistan.org/wp-content/uploads/2019/04/CPDI-Scoresheet-of-RTI-Laws-in-Pakistan-2019.pdf> last accesed on August 17, 2019 [↑](#footnote-ref-7)
8. <http://www.cpdi-pakistan.org/wp-content/uploads/2019/09/Status-of-RTI-in-Pakistan-2019.pdf> accessed on Oct 27, 2019 [↑](#footnote-ref-8)
9. Manual for Operationalization of Section 4&5 of KP RTI Law 2013 (Urdu), 2018 available at <https://www.c-gpa.org/images/publications/KP_RTI_Act_Sec_4_5_Implementation.pdf> ; last accessed on August 20, 2019 [↑](#footnote-ref-9)
10. <https://pildat.org/publications/Publication/FOI/RTILawforWomenMinoritiesCSOsandMedia_BackgroundPaper.pdf?Submit=Download> last accessed on Oct 26, 2019 [↑](#footnote-ref-10)
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 [↑](#footnote-ref-11)
12. Ibid, p. 7 [↑](#footnote-ref-12)
13. Ibid, p. 50 [↑](#footnote-ref-13)
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 Aug 18, 2019 [↑](#footnote-ref-14)
15. Study of State of Online Proactive Disclosure of Information in Federal Ministries and Institutions, 2018 available at: <http://www.cpdi-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 [↑](#footnote-ref-15)
16. The Pakistan Information Commission, an appellate body under the law, has since been established. Some progress has also been observed in appointment of Public Information Officers. The state of proactive Disclosure is more or less unchanged. [↑](#footnote-ref-16)
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> [↑](#footnote-ref-17)
18. Available at <http://www.kprti.gov.pk/page.php?PageId=77&MenuId=12>; Last accessed on Aug 17, 2019 [↑](#footnote-ref-18)
19. <https://www.article19.org/resources/country-report-the-right-to-information-in-pakistan/> last accessed on Oct 26, 2019 [↑](#footnote-ref-19)
20. <https://www.rti-rating.org/country-detail/?country=Pakistan> last accessed on August 18, 2019 [↑](#footnote-ref-20)
21. <https://www.law-democracy.org/live/wp-content/uploads/2019/08/Methodology.19-07-222.pdf> last accessed on Oct 26, 2019 [↑](#footnote-ref-21)
22. See Annex --- for complete text of the Act [↑](#footnote-ref-22)
23. Section 12 of Punjab Transparency and Right to Information Act, 2013 [↑](#footnote-ref-23)
24. [↑](#footnote-ref-24)
25. The PIO told that the department published annual report but these are not available on website. He also committed to send these through email but he could not. [↑](#footnote-ref-25)
26. Section 5(2) and 5(3) of KP RTI Act, 2013 are reproduced below:

    5(2) Public body 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. [↑](#footnote-ref-26)
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.

    [↑](#footnote-ref-27)
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. [↑](#footnote-ref-28)
29. This has been discussed in detail in this report in section on Proactive Disclosure. [↑](#footnote-ref-29)
30. Till writing of this report on 24 Oct 19. [↑](#footnote-ref-30)
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. [↑](#footnote-ref-31)
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. [↑](#footnote-ref-32)
33. Case # 2502; Muhammad Zubair Vs UST, Bannu. This case is also selected as a case study in this report. [↑](#footnote-ref-33)
34. In strict sense, computerization of record is not required under the law. It only calls for proper maintenance and indexation of the record according to the standards set by the commission. We have not come across any such standards developed by the commission. [↑](#footnote-ref-34)
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. [↑](#footnote-ref-35)