

PRESIDENT'S SECRETARIAT (PUBLIC)
AIWAN-E-SADR, ISLAMABAD

MR. AHMED BILAL MEHBOOB

VERSUS

NATIONAL ASSEMBLY SECRETARIAT

**REPRESENTATION AGAINST DECISION/ ORDER/ FINDINGS/
RECOMMENDATION OF THE Wafaqi Mohtasib DATED 30.09.2013
IN COMPLAINT NO. HQR/0001942/2013**

I am directed to refer to your representation dated 25.10.2013 on the above subject and to say that the President has been pleased to pass the following orders:

2. Being aggrieved of and dissatisfied with the Decision of the learned Wafaqi Mohtasib, the Secretary National Assembly Secretariat/Agency as Representationist has preferred the subject Representation. Operating part of the impugned Decision in the form of Findings/Recommendations is mentioned herein under_

"Findings/Recommendations

4. *Having examined the complaint, the response of the Agency (National Assembly Secretariat) and the rebuttal of the complainant, it is apparent that the denial of the requested information i.e. the record of attendance of the Honourable Members of the Parliament who are elected representative of the people, is not in sync with democratic spirit which must prevail in a democratic dispensation. In fact, the record of attendance of the Honourable Member enables those who have elected them to evaluate their performance as public representatives. Clearly, it is the right of the people in a democratic dispensation to know if their representatives are present in the Parliament to represent their cause. This information is not private or personal in nature and is clearly in public domain. It will, therefore, not be democratic to deny this information to the people.*
5. *In view of the above facts, the National Assembly Secretariat is advised to provide the complainant with the record of attendance as requested.*
6. *Compliance should be reported within 15 days of the receipt of a copy of these Findings or reasons for not doing so intimated in terms of Article 11(2) of P.O No.1 of 1983".*

3. The present proceeding relates to the Freedom of Information Ordinance, 2002 (**the Information Law**), under which the Complainant—Mr. Ahmad Bilal Mehboob, President of Pakistan Institute of Legislative Development And Transparency (PILDAT) filed a Complaint under Section 19 of the Relevant Law, impugning the refusal of the Agency as public body (National Assembly Secretariat) to provide the Complainant the information requested, that is, the Complainant as

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Requester in terms of Information Law had requested the Agency as public body to provide the information regarding the attendance of the Members of the National Assembly (**the requested information**) and in his application form which is available at Page 54/Corr. of case file, the complainant has mentioned the purpose of such acquisition of the information/record; for research purpose. The said Complainant has also filed in the investigation proceeding before the Wafaqi Mohtasib details of the attendance record of Parliamentarians of Indian Parliament [Page 48/Corr. of present case file], which is also available on the Indian Parliament website. As per the Complainant the requested information is neither falls within the ambit of confidential information nor such information is exempted from disclosure under the relevant Law.

4. The stance of the Agency in the investigation proceeding before the Wafaqi Mohtasib was, *inter alia*, that the information requested is barred by Article 67 of the Constitution of the Islamic Republic of Pakistan read with Rules 28 and 283 of the Rules of Procedure and Conduct of Business in the National Assembly, 2007 [hereinafter for the sake of reference be referred to as **Assembly Rules**]. The Agency further invoked Section 7, 8 and 17 of the above mentioned Relevant Law in its defence. According to the Agency once the Decision is taken by the Speaker, National Assembly the same cannot be questioned in any other proceeding.

5. After hearing the parties and consideration of their respective pleadings the impugned Decision has been passed. Consequently, the arguments of the Complainant weighed with the Wafaqi Mohtasib, who in Para-4 of the impugned Order has also observed ".....the denial of the requested information i.e. the record of attendance of the Hon'ble Members of the Parliament, who were elected representatives of the people is not in sync with democratic spirit which must prevail in a democratic dispensation".

6. In the subject Representation, the Agency/Public Body viz. National Assembly Secretariat has primarily reiterated its earlier stance which it has taken in the investigation proceeding before the Wafaqi Mohtasib. Additionally, in the subject Representation it has been further contended that National Assembly being supreme constitutional body cannot be subject to investigation proceeding of the nature before the Wafaqi Mohtasib under Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order [P.O.I of 1983] (**the Ombudsman Law**), which can only be invoked against a Government functionary when its action or decision is perverse. The Agency has also (in the present Representation) invoked Article 66 of the Constitution of Pakistan to argue that the information requested relates to the immunity and privileges of the Members of the National Assembly and cannot be made available to the Complainant/Requester. According to the present Representation, the Wafaqi Mohtasib has wrongly exercised his jurisdiction under Section 2 of the Ombudsmen Law as there is no material on record which constitutes mal-administration on the part of the Agency (National Assembly Secretariat). On the other hand, the Complainant has filed his Comments and has disputed the claim and pleadings of the Agency while reiterating his earlier stance that the information sought under the Information Law does not fall within the ambit of any of the prohibitions as mentioned in the Information Law itself, including, Sections 8, 15, 16, 17 and 18. The Complainant also relied upon the recently incorporated Article 19-A of the Constitution of Pakistan, which relates to the right to freedom of information.

7. The case record has been examined and rival pleadings (of the parties) are taken into account; the Complaint before the Wafaqi Mohtasib has been preferred under Section 19 of the above mentioned Information Law and not under P.O No.1 of 1983 (Ombudsman Law) and, therefore, the contention of the Agency in this regard is misconceived in nature.

8. The definition Clause of the Information Law-Section 2 Sub Section (h) defines the public body, which includes Secretariat of (Majlis-e-Shoora) (Parliament). The Majlis-e-Shoora (Parliament) is mentioned in Article 50 of the Constitution of Pakistan and it includes both the Houses; National Assembly and Senate. It means that every record of the National Assembly Secretariat *ipso facto* is not excluded from the purview of the Information Law but only that information and record will be excluded which is either expressly hit by its (Information Law) relevant provisions; Section 8 read with Sections 14, 15, 16, 17 and 18 or, the relevant Assembly Rules 2007 explicitly bars such information to be made public. Section 8 deals with that category of information which is not a public record in terms of its preceding Section 7, whereas Section 14 relates to that information which is exempted from disclosure. In following Sections 15, 16, 17 and 18 all such information is mentioned which is expressly exempted from disclosure, for instance, that can sabotage international relations, or, the disclosure can adversely affect Security measures. Similarly, Section 17 relates to non-disclosure of personal and private information and Section 18 pertains to that exempted information which would be likely to cause grave and significant damage to the economic interest of Pakistan. With regard to the grounds taken by the Agency/Public Body (**the present Representationist**) about the ruling of the Speaker on the requested information, the case record shows that the refusal letter dated 25th February, 2013, which was challenged before the Wafaqi Mohtasib was signed by Deputy Secretary (Legis) of the Agency and the said impugned Decision of 25th February, 2013 of the present Representationist is neither a Decision of the Speaker, National Assembly nor it is signed by the said Deputy Secretary by stating that the Decision is conveyed on behalf of the Speaker National Assembly. Moreso, Articles 66 and 67 of the Constitution do not apply to the facts of the instant case, for the reasons that the Article 66 primarily gives the immunity and privileges to a Parliamentarian for speeches on the floor of the House and Article 67 pertains to framing of Rule of Procedure with regard to the proceedings in the House. Similarly, Rules 28 and 283 of the aforementioned Assembly Rules do not apply at all, *inter alia*, in view of the above mentioned Article 19-A of the Constitution of Pakistan, which significantly supplements the above mentioned Information Law - an enactment by the Legislature/Parliament itself. If the requested information is to be taken out from the purview of the Information Law then in terms of Section 8 Sub Section (i) Federal Government would have done so.

9. That other reason for not accepting the stance of the Agency is that it is also a matter of record that on electronic media proceedings of the National Assembly is televised. In the Assembly Rules itself specific Clauses are mentioned for maintaining confidentiality and secrecy and the relevant Rules are 22, 26 and 27, *inter alia*, about holding secret sittings of the National Assembly and reporting of the proceedings. Even under Rule 282 of the Assembly Rules 2007, Secretary of the National Assembly Secretariat/the Agency is required to prepare a full report of the proceedings at each of the sittings and to publish the same. (Emphasis added), meaning thereby, that all the information available with and documents and record maintained at the Agency is not confidential and secret.

10. The upshot of the above discussion is that information requested does not fall either in the exclusion Clause or the exempted Clause of the relevant Law as mentioned herein above and the impugned Decision of the Wafaqi Mohtasib is unexceptionable in the circumstances and calls for no interference.

11. Accordingly, the President has been pleased to reject the subject Representation of the Agency/Public Body–National Assembly Secretariat. Compliance to be reported by the Agency to Wafaqi Mohtasib's Secretariat within fortnight of the receipt of copy of this Order.

(Zulfiqar H.Awan)
Director (Legal)

The Secretary
National Assembly Secretariat
Islamabad

No. 441/WM/2013 dated 6th July 2015

Copy for information to:-

1. The Secretary, Wafaqi Mohtasib (Ombudsman)'s Secretariat, Islamabad.
- ✓ 2. Mr. Ahmed Bilal Mehboob, President M/s Pakistan Institute of Legislative Development and Transparency (PILDAT), C/o Office No.07, 9th Avenue (Service Road West), F-8/1, Islamabad.

(Zulfiqar H.Awan)
Director (Legal)