

# The Freedom of Information Ordinance 2002:

5 years on: window yet to be opened



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Civic Education  
Pakistan



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5-Years on: window yet to be opened

Five years have passed since the Freedom of Information Ordinance (FIO) was promulgated on October 26<sup>th</sup> 2002. It was expected that the enactment of the FIO-2002 would usher in a new era of open access to information, enhanced participation of the citizens in governmental processes, the elimination of corruption, and a strengthening of transparency and good governance. Through this report, the Centre for Civic Education Pakistan attempts to determine what practical steps have been taken by the government since the enforcement of the Ordinance to promote a culture of access to information in Pakistan.

The independent evaluation finds that the law lacks political will and a parliamentary ownership since the past five years; the FIO-2002 has not been pursued as a pro-active priority. The CCE Pakistan found it challenging to even gather information on the progress on the FIO- 2002. With the exception of the Cabinet Division (the coordinating Division of the government responsible for the translation of the law into a living “access to information” culture) 15 of the federal ministries, appellate institutions and autonomous federal departments requested to provide information about the status of the implementation of the FIO-2002 opted to remain silent. According to the statistics provided by the Cabinet Division, till December 2006 only fifty nine requests (11 FIO-2002 requests per annum) were made. Out of these, only forty were lucky to receive the requested information.

The Centre for Civic Education Pakistan has campaigned for improvements in the FIO-2002 and its effective implementation since 2002. After five years, instead of presenting success stories, the Center is purporting a new set of recommendations to aid and urge the government to realize the FIO culture, an indispensable step towards good governance.

### **1. Introduction**

In Pakistan legislative efforts for Freedom of Information began in the 1990s. On the 29<sup>th</sup> January 1997, the government promulgated the Freedom of Information Ordinance for the very first time. However, the Ordinance was short lived as it was allowed to lapse after the legal life of an Ordinance.

The existing Freedom of Information Ordinance was promulgated on the 26<sup>th</sup> of October 2002, making Pakistan the first South Asian country to have the ‘sunshine law’ for transparency in the realm of governance. The acknowledgement of the citizen’s “right to know” came during the period between the general Elections which took place on the 10<sup>th</sup> October in 2002, before the meeting of the National Assembly on the 15<sup>th</sup> of November 2002 and the formation of a new government so it lacked parliamentary ownership. A year and a half later on the 18<sup>th</sup> of June 2004, the Cabinet Division framed the Freedom of Information Rules under section 25 of the Freedom of Information Ordinance to operationalize the latter. The Government also amended Rule 55 of the Rules of Business-1973 which stipulated that information acquired from official documents was to be communicated by the Designated Officers to the press and non-official and officials belonging to other government offices in accordance with the procedures laid down in the section 3 of the FIO 2002.

Members of the civil society, media and parliament have vehemently criticized the Ordinance’s deficiencies since its promulgation, arguing that an unreasonable amount of information is exempt from accessibility under the

FIO-2002. Another disability of FIO-2002 that is often pointed out is its' applicability to federal public bodies only, which keeps a large range of public bodies at the local and provincial levels out of the Ordinance's reach. However, the Local Government Ordinance-2001 recognizes the rights of citizens to access records held at the local level in district offices but most local governments have not taken any practical steps in this regard as will be illustrated in the report. Similarly, the provincial governments have also failed to formulate Freedom of Information laws for themselves.

The aim of this report is to independently assess the extent of practical steps that have been undertaken by the federal government to promote an 'access to information' culture. It is important to mention that the CCE-Pakistan recognizes that a freedom of information culture is comprised of several facets which includes the promotion of an open mindset of the governmental staff, the application of trained human and extensive financial resources for the realization of FIO-2002, modifications in the system of record keeping, classification and indexing practices of the concerned departments and the availability of the information in the language of the people.

## **2. Methodology**

To determine to what extent the FIO-2002 has been implemented since its promulgation, the CCE sent out a total of 16 letters to the secretaries of various ministries, two appellate bodies envisaged in the FIO-2002 (Federal Tax Ombudsman, the Federal Ombudsman) and two autonomous public bodies (Election Commission of Pakistan, National Reconstruction Bureau). A separate letter was sent to the coordinating ministry for the FIO-2002 (the Cabinet Division) to gauge the inter-ministerial efforts and level of coordination among various ministries in the context of an access to information culture.

The CCE-Pakistan deliberately privileged soft social sector ministries, so that state secrets would not become a pretext to deny information. The ministries approached include: Ministry of Youth Affairs, Ministry of Women Development, Ministry of Food, Agriculture and Livestock, Ministry of Information Technology, Ministry of Parliamentary Affairs, Ministry of Communication, Ministry of Environment, Ministry of Law, Justice and Human Rights, Ministry of Information, Ministry of Health, Ministry of Commerce, Ministry of Education. In sum, the sample size is large enough to allow for the inference of credible deductions.

To aid its research, CCE –Pakistan also consulted the Annual Year Books of various ministries.

## **3. Findings:**

### **3.1 Resources Allocated to FIO-2002 Operationalization**

The available information reveals that no separate funds were allocated during 2002-2007 to facilitate the implementation of the FIO-2002. The federal budget documents and individual ministerial allocations do not mention any separate resources allocated to realize the FIO-2002.

Examples from countries with successful implementation of access to information laws illustrate that extensive financial resources are required to transform traditionally close systems of governance into open systems. Hence, close attention must be accorded to this aspect of FIO-2002 operationalization.

### **3.2 Information about the FIO-2002 in the Year Books of Various Governmental Divisions**

In order to observe the frequency of FIO-2002 related information in the Annual Year Books of various

governmental divisions that are published regularly under rule 25 of the Rules of Business, 1973 the CCE-Pakistan formally requested the publications from the concerned public bodies. The Cabinet Division was the only Ministry that graciously responded to the CCE's request to provide its Year Books from 2002-2007. However, the CCE consulted Year Books of seven public bodies by visiting their libraries and other means. The following table displays the frequency with which FIO-2002 related information is mentioned in these Year Books. It is safe to conclude that either no practical steps were undertaken to realize the FIO-2002 or FIO-2002 related information was not deemed mentionable in these publications.

Ministry/Public Body	Title of the publication	Years Covered	Frequency of FIO -2002 - Related Information
<b>Ministry of Food, Agriculture &amp; Livestock</b>	Year Book	2005-2006	0
<b>Ministry of Information and Broadcasting</b>	Year Book	2005-2006	0
<b>Ministry of Parliamentary Affairs</b>	Year Book	2005-2006	0
<b>Cabinet Division<sup>1</sup></b>	Year Book	2005-2006	1
	Year Book	2005-2004	1
	Year Book	2003-2004	3
	Year Book	2005-2006	0
<b>Ministry of Law, Justice and Human Rights</b>	Year Book	2005-2006	0
<b>Directorate General of Films and Publications</b>	Pakistan- An Official Handbook	2003-2004	0
<b>Federal Tax Ombudsman</b>	Annual Report	2006	0
<b>Federal Ombudsman</b>	Annual Report	2004	1
	Annual Report	2005	5
	Annual Report	2006	0

*Table 1: Frequency of FIO-2002 Related Information in Various Year Books.*

An analysis of available information on the FIO-2002 reveals that Year Book 2003-04 of the Cabinet Division mentions the public's right to know in one line in its introduction. In Year Book 2004-05, in the section on the National Documentation Center's achievements, the promulgation of the FIO-2002 and the framing of the Freedom of Information Rules are described briefly.

The Year Book 2004 of the Federal Ombudsman has an entire chapter for the description of the institution and disposal of cases under the FIO-2002. The dedicated chapter identifies which records can be requested under the FIO-2002, which records are exempt under the FIO-2002, the procedure for the disposal of applications, specifications of cases when a complaint can be filed with the Federal Ombudsman and the Federal Tax Ombudsman, details of how information could be requested between 2002 and 2004 (before the formulation of the Freedom of Information Rules 2004) and a detailed description of other features of the original enactment. The Year Book 2005 of the Federal Ombudsman mentions trainings imparted to officers on following topics:

- Procedure for processing of complaints under FIO-2002
- Inclusion of the FIO-2002 implementation in Handbook for Investigating Officers

The FIO-2002 was also mentioned as a sub theme of the Conference of Asian Ombudsman Association in 2005.

<sup>1</sup> In the Year Book 2005-2006, the Cabinet Division claims to have indexed all records between 2000 and 2004. The 60,300 summaries and Cabinet decisions maintained in the Record Room are also mentioned. However, this is the regular work of the National Documentation Center, and it has no specific connection to the FOI 2002 requirements of indexing and maintenance of records.

### **3.3 Trainings for Officials to Facilitate the Implementation of the FIO-2002**

Trainings of the Designated Officers and relevant governmental staff are an indispensable necessity to foster the growth of an open mindset and a freedom of information culture within the public bodies. Presented below are records of trainings conducted for the aforementioned purpose:

- **Government initiated trainings:**

The Appraisal and Orientation Wing at the office of the Federal Ombudsman orients every new inductee for a fortnight about the essentials of the charter of the office (including the FIO-2002 and the basic features of the existing manuals) to ensure effective functioning of its officers

- **NGOs facilitated trainings:**

The remaining efforts to train the Designated Officers and other relevant staff in the spirit and methodology of implementing the FIO-2002 came from non-governmental organizations working in the field of access to information and the citizen's "right to know". In March 2006, an NGO joined hands with the Cabinet Division to arrange a training workshop for the Designated Officers from 26 federal ministries to discuss the duties of the Designated Officers and to disseminate information to the public regarding the procedure of filing an information request and contacting the Designated Officers.

Similarly, in May 2006 the civil society organizations working to promote freedom of information held a meeting with the then Cabinet Secretary to liaise with the government and to discuss ways and means to further the cause of access to information.

### **3.4 Availability of the FIO-2002 and Related Facilitation Materials in Urdu and Other Regional Languages on the World Wide Web.**

- The officially translated text of the FIO-2002 in Urdu or any other regional languages is not available. Although the Access to Justice Program (AJP [www.ajp.gov.pk](http://www.ajp.gov.pk)) promised the translation of all important laws for convenient understanding among the larger segments of population.
- Again the Urdu version of the law came as a result of an initiative taken by a civil society organization.
- Nevertheless the Law and Justice Commission of Pakistan has undertaken a public awareness campaign on the FIO-2002 on its website ([www.ljcp.gov.pk](http://www.ljcp.gov.pk)). It offers in Urdu information about the procedure for filing a request, types of information available under the FIO-2002, that which is exempt and how to file a complaint on denial of information. It also provides the contact information of an officer within the Law and Justice Commission that maybe contacted for further information regarding the FIO-2002.
- The official website of the Cabinet Division ([www.cabinet.gov.pk](http://www.cabinet.gov.pk)) contains the text of the FIO-2002, the FIO-2002 rules and information request forms in English along with the names and contact numbers of the Designated Officers of fourteen (out of thirty two) ministries.
- Not even a single ministry advertised in public interest to inform the public about the FIO-2002, possibilities and procedures to seek information and about the Designated Officer of the ministry under FIO-2002.

### **3.5 Instructions Issued by the Cabinet Division for the Uniform Implementation of the FIO-2002**

- The Cabinet Division has not issued any formal instructions to Ministries/Divisions for the uniform implementation of the FIO-2002.
- Only the office of the Federal Ombudsman has issued specific instructions for the uniform handling of complaints regarding denial of information under the FIO- 2002. This information is part of its Handbook for Investigating Officers and contains the text of the FIO-2002 along with instructions for handling cases that fall

under it, in respect to the role assigned to the Office of the Federal Ombudsman. Similarly, through a Circular the office issued the procedures for processing complaints under Section 19(1) of the FIO-2002 was communicated to the staff.

### **3.6 Existence of Coordination, Monitoring and Reporting System for the Implementation of the FIO-2002**

- There appears to be a lack of a meaningful coordination mechanism as well as any serious attempt to monitor progress and to establish a functional reporting system.
- However, the Cabinet Division was able to provide statistics regarding information requests the Ministries received between October 2002 and December 2006 for this report.
- Since September 2006, Ministries/Divisions are obliged to provide information regarding the progress of the FIO-2002 implementation (total number of requests received, rejected and entertained) to the Cabinet Division.

### **3.7 Statistics Pertaining to Information Requests made to the Ministries under the FIO 2002**

- The Cabinet Division did not receive a single information request between October 2002 and September 27, 2007. However, the Cabinet Division collected the following statistics from all Ministries on information requests made under the FIO-2002 between 2002 and December 2006.

Requests Received	Requests Rejected	Requests Processed
59	19	40

*Table 2: Information Requests Received, Rejected and Processed by Various Ministries (2002- 2006)*

These statistics and any additional details pertaining to information requests made under the FIO-2002 are not shared in the Annual Year Books of various ministries reviewed by the CCE. Therefore, no qualitative assessment can be made about the nature of these information requests and explanations for the rejection of 19 requests. Secondly, these modest figures reflect that a very few citizens (are using the FIO-2002 as an average of 11 information requests were made annually since 2002).

### **3.8 The FIO-2002 and the Parliamentary Ownership**

- The FIO-2002 was never debated in the Parliament as it was promulgated on the 26<sup>th</sup> of October 2002, a few weeks before the meeting of the National Assembly in November 2002. Hence, there appears to be a lack of Parliamentary ownership of the FIO-2002.
- Two years later, on the 14<sup>th</sup> of May 2004, a Private Members Bill titled the Freedom of Information Bill was moved by 16 legislators to improve the Freedom of Information Ordinance 2002. Later, this Bill was not allowed its introduction in the House for further consideration.

### **3.9 Efforts for the FIO-2002 Legislation at the Provincial Level.**

- Only the Sindh Government promulgated an Ordinance which was a replica of the FIO-2002 on the 10<sup>th</sup> of August 2006. The Ordinance was never taken up by the Sindh Assembly and no rules were framed to operationalize it.
- In NWFP, a draft of the Freedom of Information Bill was formulated but was not promulgated as an ordinance or enacted as a law.
- In Punjab and Baluchistan, no efforts were made to enact any Freedom of Information law.

### **3.10 FIO-2002 and the Access to Justice Program (AJP)**

Many observers regard the promulgation of the FIO-2002 as part of the conditions embedded in the Access to Justice Program (AJP) loan from the Asian Development Bank. Therefore the AJP treats the right to information as a means to empower citizens. Presented below is the status of compliance with AJP Policy Actions:

	<b>FIO-2002 Enactment</b>	<b>Operationalization of FIO-Ordinance 2002 – Status</b>	<b>Compliance Status</b>
<b>Federal</b>	Freedom of Information 2002 – Full Compliance	Designated Officers appointed in October 2004	Partial
<b>Provincial</b>	No Freedom of information law but Punjab Ombudsman law review may provide for Freedom of Information Ordinance	No Freedom of Information Ordinance	None
<b>District</b>	Provincial Local Government Ordinance 2001, section 137	No rules provided yet	-

*Table 3: Status of Compliance with the AJP Policy Actions at the Federal, Provincial and District Levels.*

### **3.11 Local Government Ordinance Implementation by the Union Council**

In collaboration with a local English daily, the CCE-Pakistan visited offices of nine Union Councils of Rawalpindi to determine to what extent these institutions had operationalized the access to information related clauses of the Local Government Ordinance-2001. With the exception of two Union Councils, there was no notice board in any of the Union Council offices which contained details on the development projects undertaken by the Council, details of the duties and responsibilities of the Union Council administration or the administration of the District Government or Tehsil Municipal Administration. Though all Union Councils shared details of their accounts, none of the Councils had records of complaints made to the Tehsil Municipal Administration for failure to deliver civic amenities but claimed to have resolved any such matters ‘verbally’. No libraries have been established in any locality covered by these Union Councils and with one exception, no information pamphlets or leaflets had been distributed to keep the population informed about social and health issues. Rather, they all relied on local mosques to disseminate such information through loud speakers. Socio-economic surveys had only been conducted by one Union Council, no Public Safety Commissions had been established and Citizen Community Boards were non-existent or in case they were established, they did not operate in cooperation with the Union Council (with a few exceptions). Hence, the potential of the Ordinance is not being harnessed to a large extent.

Union Council number	UC 11	UC 16	UC 17	UC 18	UC 19	UC 20	UC 24	UC 25	UC 34
Steps taken in accordance with Local Governmental Ordinance:									
Notice board to inform public of development projects and administration of UC, district government and TMA	No	No	No	No	Washed away in rains	Yes. Website also launched.	No	Yes	-
Sharing of Budget Details	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	-
Records of complaints to Tehsil Municipal Administration to resolve failures in delivery of civic amenities	No	-	No	No	No	-	-	-	-
Distribution of Pamphlets and leaflets on various social issues	No	No- but leaflets that contain disease related info is given out.	--	No	No	No	No	No. Face to face meetings between UC officials and people to discuss problems	-
Administration of Social Economic Surveys	No	Yes, on the state of electric polls and sewerage lines.	-	No	No	Questionnaire prepared but not administered	No	No	
Establishment of Library	No	No	-		No	-	No	No	No
Existence of Citizen Community Board	One (but does not work in cooperation with UC)	Not	One	None	Two (not liaising with UC)	Two	No	One	No
Existence of Public Safety Commission	-	-	-	-	No	-	-	-	-

**Table: 4 Analysis of information collected from nine Union Councils in Rawalpindi**

## 4. Conclusion

By employing various methods like approaching the concerned institutions and reviewing available governmental publications, the Centre for Civic Education Pakistan tried to assess the state of the FIO-2002 implementation. In light of our findings, it is safe to conclude that though the FIO-2002 was promulgated to give Pakistani citizens the opportunity to monitor government activities and provide for good governance, a lot is still needed to allow for its effective implementation. The non-existence of resources allocated for FIO-2002 implementation is as disappointing as the citizens' interest in seeking information over the past years. Publicity campaigns and quantity of trainings of Designated Officers in the FIO mindset has been poor. Transfers are common within ministries so it can not be ascertained that each Designated Officer holds the required knowledge to effectively carry out his/her duties. All these factors undoubtedly impact the effective implementation of the FIO-2002 negatively.

It is distressing to observe that even after five years there is no mechanism of coordination, facilitation and monitoring of the implementation of FIO-2002.

## Recommendations

The Centre for Civic Education Pakistan urges for a proactive approach to allow for the effective implementation of the FIO-2002 along with continuing parliamentary efforts to improve the law.

In this regard, the following steps might help improve the situation:

- (1) A concerted effort to develop a mechanism within the governmental apparatus to monitor and evaluate the conduction of the following tasks by each Ministry/Division:
  - Criteria for selection of Designated Officer
  - Availability of contact information of Designated Officer in publicly accessible locations
  - Production and indexing of records covered by the FIO-2002 by each public body.
  - Record keeping mechanisms must be modernized and be made compatible with the freedom of information spirit
  - Computerization of records must be encouraged to allow for user friendly and swift access to information
  - Reporting of information complaints filed, processed, denied in a given time period by Ministries/ Divisions maybe computerized to assist accessibility of information to the relevant parties
- (2) Creation of the Office of a Federal Information Ombudsman to coordinate information requests and monitor their processing.
- (3) A uniform system of training the Designated Officers and other relevant staff in the freedom of information mindset must be established and held regularly to ensure each staff member is well equipped to handle his/her duties.
  - Modules pertaining to the Freedom of Information laws must be introduced in the Civil Services Academy and other academies and courses senior civil service bureaucrats participate in during the course of their careers
- (4) The system for requesting information must be rationalized in a citizen friendly manner:
  - High fees (i.e. PKR 50) for obtaining information of upto 10 pages and photocopies of each additional page must be eliminated or at least brought in line with the market rate for the marginalized segments of the population, students, researchers and civil society organizations to encourage access to information
  - The forms for accessing information must be simplified (i.e. questions asking for reason for requesting information must be removed) to save processing time and bring the Freedom of Information Ordinance 2002 in line with international standards
  - Designated Officers must be flexible with the given time period to furnish information requests in cases where immediate access to information is required.
- (5) The partnership between the government and civil society organizations must be strengthened to provide an enabling environment for the citizens to access information.
- (6) A sustainable, long term awareness campaign must be designed and undertaken by the concerned public institutions in coordination with a larger variety of civil society organizations and media to inform and remind all segments of the public and stakeholders of the existence of the FIO-2002 and the procedure of availing the opportunity to access information. More specifically, civil society organizations may:
  - Train citizens in requesting information and using information under the FIO-2002.
  - Inform the masses of the possibilities of the FIO-2002 and their right demand information.
  - Train officials in data management under the requirements of FIO-2002.
  - Create a legal help cell off “Pro bono publico” advocates.
  - Consult a panel of prominent and high caliber advocates of access to information for promoting the Freedom of Information in the country.

- (7) Efforts must be made to translate the FIO-2002 into the local languages of the target population to ensure understanding
- (8) Either the scope of the present law must be extended to include local and provincial public bodies or effective laws must be enacted at these levels.
- (9) Access to Information must be strengthened through the following mechanisms:
- Formulate divisional/departmental/public institutional freedom of access policies and strategies for implementation
  - Provide training in freedom of information and related issues for Designated Officers and other public servants
  - A right of appeal must be granted to the public to argue against the classification of a documents
  - Laws restricting access to information must be reviewed and amended to ensure timely acquisition of information.
- (10) Parliamentarians must:
- Form a Committee to monitor FIO-2002 implementation
  - Review existing legislation on Freedom of Information and draft a National Policy on the Freedom of Information.

## Appendix A

### **Addressed public bodies:**

- Federal Ombudsman
- Federal Tax Ombudsman
- National Reconstruction Bureau
- The Election Commission of Pakistan
- Ministry of Youth Affairs
- Ministry of Women Development
- Ministry of Food, Agriculture and Livestock
- Ministry of Information Technology
- Ministry of Parliamentary Affairs
- Ministry of Communication
- Ministry of Environment
- Ministry of Law, Justice and Human Rights
- Ministry of Information,
- Ministry of Health
- Ministry of Commerce
- Ministry of Education

### **Information requested from all recipients:**

- Information requests filed, processed and/or denied between 2002 and August 31<sup>st</sup> 2007

### **Except for the Federal Tax Ombudsman and Federal Ombudsman, the Ministries/ Divisions were further requested to share information regarding:**

- Any activities undertaken to publicize the FIO-2002 to the general public
- Trainings offered to the Ministry's/Division's Designated Officers in the FIO mindset
- The contact information of the Designated Officer
- Any mention of the FIO-2002 in the Year Book of the addressed Ministry
- Whether there were any appeals /representations pending with the Federal Ombudsman and the Federal Tax Ombudsman.

### **The Cabinet Division was further requested to share:**

- Copies of instructions issued to different Ministries and Divisions for the compliance of provisions of the Ordinance
- Whether there was any monitoring system for evaluating the performance and of Ministries/Divisions and cooperation between them
- Whether any reporting system was established for Ministries/ Divisions to report complaints and disposal of complaints over a given time period.