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Lack of Transparency and Freedom of Information in Pakistan: An Analysis of State Practice and Realistic Policy Options for Reform

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Abstract

There is growing recognition among top policy makers in Pakistan that transparency and the citizens' right to information are critical for effectively combating corruption and providing good governance. Political parties and parliamentary institutes, however, remain weak after years of rule by a civil-military bureaucracy. The cause and result of this is an exclusive, non-participatory and non-transparent government system where a culture of secrecy and rampant corruption prevails. The underlying factors are a large number of restrictive laws, rules and government instructions. A weak legal and institutional framework for freedom of information exacerbates the problem. Despite many new laws being enacted, many are flawed, restrictive and ineffective. There is still no coherent policy via which to ensure transparency. At present the government appears content to maintain the current status quo, but even if this brings improvements they will be largely down to external pressure rather than a commitment to transparency and good governance. A gradual and decentralized policy may be the easiest type of reform to implement, but the risks outweigh the benefits. A radical shift from secrecy to freedom of information is necessary. It would be the hardest policy to implement, but would hold the greatest promise of promoting good governance, improving public service delivery and building up public confidence in the government.

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The views contained inside remain solely those of the author who may be contacted at mukhtar@policy.hu. For a fuller account of this policy research project, please visit <http://www.policy.hu/mukhtar>.

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Contents

1	Introduction	4
1.1	<i>The Context</i>	4
1.2	<i>The Policy Problem</i>	5
1.3	<i>Methodology</i>	7
1.4	<i>Policy paper structure</i>	8
2	The Importance of, and the Principles of Freedom of Information....	8
3	State of Transparency and Access to Information	11
3.1	<i>Annual Reports and Other Official Publications</i>	12
3.2	<i>Gazette Notifications</i>	12
3.3	<i>Spokesperson of the Ministry</i>	12
3.4	<i>Parliamentary Questions</i>	13
3.5	<i>The Proceedings of Parliamentary Committees</i>	14
3.6	<i>Court Proceedings</i>	14
3.7	<i>Websites</i>	14
3.8	<i>Print and Electronic Media</i>	15
4	Factors Obstructing Transparency and Access to Information	15
4.1	<i>Laws, Rules and Regulations Requiring Secrecy</i>	15
4.2	<i>Inefficient Maintenance/Non-indexation of Public Records</i>	17
4.3	<i>State of Equipment, Computerization and Infrastructure</i>	18
4.4	<i>Obstructive Attitudes</i>	18
4.5	<i>A Weak Legal and Institutional Framework for Freedom of Information..</i>	19
4.5.1	<i>Laws Governing Newly-Established Regulatory Bodies</i>	19
4.5.2	<i>Local Government Ordinance 2001</i>	20
4.5.3	<i>Freedom of Information Ordinance 2002</i>	21
4.5.4	<i>Rules (2004) for the Freedom of Information Ordinance 2002</i>	22
5	Policy Options regarding Reform.....	23
5.1	<i>Maintenance of the Status Quo</i>	23
5.2	<i>Gradual and Decentralized Policy Reform</i>	25
5.3	<i>A Uniform National Policy – A Radical Shift from Secrecy to Freedom of Information</i>	26
6	Conclusions and Recommendations	28
	Appendix.....	29

Anyone who hides it [the evidence] has a sinful heart. God is aware of what you do. (Al-Quran, 2: 283)

1 Introduction¹

1.1 *The Context*

Pakistan is one of the top ten most populous countries in the world. It came into existence in August 1947, as a result of the political struggle of Muslims for an independent homeland. Since independence, however, a civil-military bureaucracy has governed Pakistan for most of the time, while political parties and parliamentary institutions remained weak. This is something largely attributed to public apathy, which is both a cause and a result of an exclusive, non-participatory and non-transparent system of governance.

During the last 58 years of independence, Pakistan has also experienced serious problems in terms of building up a relationship of trust between the state and society, thereby ensuring efficient utilization of public funds, providing effective public services, and eradicating inefficiencies and corruption in government activities. In fact, these problems have worsened over the years. For instance, out of a total of 158 countries surveyed by Transparency International (TI) in 2005, Pakistan came in at 144, having a Corruption Perception Index (CPI) score of 2.1 on a scale of 10. The CPI Score was 2.25 in 1995, and it went up to 2.7 in 1998, though again declined to 2.1 in 2004 (and 2005).² This shows that the anti-corruption strategy, which is largely based on administrative measures and prosecution and the bringing to trial of corrupt officers, has failed to produce any noteworthy results.

It is widely recognized that the poor state of governance and endemic corruption in government activities is largely owing to a lack of transparency and access to information when it comes to public affairs, which restricts the ability of citizens, civil society groups and public representatives to effectively monitor the performances of public institutions. This lack of transparency leads to arbitrary and non-participatory decision-making, inefficient project execution and rampant financial corruption in public bodies. The lack of transparency and access to information also contributes to the sustaining of excessive bureaucratic controls and non-functioning democratic institutions. Over the years, this non-

1 See the website of Transparency International: www.transparency.org

2 The National Anti-Corruption Strategy

transparent, non-participatory and special system of governance has become a subject of increasing criticism in view of its failure to deliver public goods.

Given growing criticism of the culture of secrecy and of rampant corruption, the government of Pakistan has recently enacted certain laws with the professed aim of promoting transparency and access to information in public institutions. For instance, the Local Government (LG) Ordinance 2001 has made significant moves in the direction of greater transparency and public participation in the functioning of union, tehsil and district authorities. In addition, in October 2002, the President of Pakistan also introduced the Freedom of Information Ordinance, which recognized citizens' rights to information and records held by federal public bodies (although subject to a large number of exclusions and exemptions). Even though this became the first freedom of information law enacted at a national level in South Asia, it is extremely restrictive and weak in terms of making a citizen's right to information a reality.

Yet the aforementioned initiatives have not proven very effective in terms of promoting transparency and access to information. It seems that there are, in the main, two reasons for this. First of all, the policy initiatives have not been based on any 'scientific' research into the functioning of public departments. In fact, they were hurriedly planned and executed, without allowing much time for consideration and consultations – allegedly to achieve some political 'mileage' for the creators rather than to truly promote transparency and empower citizens by ensuring their access to information and records held by public bodies. Secondly, these policy initiatives excluded civil society groups from the design process, and hence do not provide an effective framework wherein persons could engage with public departments and make use of the enabling provisions in the new laws.

This policy paper will thus make an analysis of causes and mechanisms of the prevailing culture of secrecy at various tiers of governance in Pakistan - and, on this basis, make realistic policy recommendations with as regards reform.

1.2 The Policy Problem

Existing government policy and practice is heavily tilted towards secrecy. Secrecy is a norm - and is practiced as matter of policy across the board; while information disclosure is an exception. There exist a large number of laws, which include very broad provisions, to put restrictions on freedom of information.

Among others, these laws include the Official Secrets Act of 1923, the Security of Pakistan Act - 1952, the Maintenance of Public Order - 1960, the Quanoon-e-Shahadat (Law of Evidence) Order - 1984, Defence of Pakistan Rules (Part VI), and the Pakistan Penal Code. Further restrictions on information disclosure come via the Government Servants (Conduct) Rules, of 1964, and, in addition, Establishment Instructions (which are issued from time to time). Even the rules of procedures and pertaining to the conduct of business in both national and provincial legislatures see a vast range of information as being restricted and confidential.

In recent years, government has enacted certain laws that include provisions for transparency and access to information. These laws mostly relate to autonomous regulatory bodies, which have been established within the context of a government policy aiming at deregulation and privatisation. Their primary purpose is not to empower people or make it easy for them to effectively participate in governance by exercising their citizenship rights in an informed manner; instead, they appeared in order to boost investors' confidence. And anyway, even these laws have not generally had much of an effect when set against other laws promoting *secrecy*.

There is, however, growing recognition among top policy makers that transparency and the citizens' right to information are critical for effectively combating corruption and providing good governance. Senior government officials, including the President and Prime Minister, have repeatedly spoken about the importance of transparency in governmental activity. The National Anti-Corruption Strategy, something developed by the National Accountability Bureau (NAB), also recognizes its importance as a very effective anti-corruption tool.³

Claims and public statements aside, by looking at government priorities and practices it becomes clear that the government lacks any sincere commitment to enacting comprehensive laws and implementing steps whereby transparency and the citizens' right to information and records held by public offices could be effectively ensured. At present, the government lacks any coherent or well-thought out policy via which to ensure transparency in government activity across the board - so the steps implemented so far have been inadequate, flawed, ineffective, and with a limited focus. In almost all cases, these steps were taken not because of any serious 'in-house stocktaking' leading to corrective actions, but because of certain external pressures. For instance, FOIO 2002 was reluctantly promulgated in response to 'policy actions' agreed with

3 See PLD 1993 SC 473 and 746.

the Asian Development Bank (ADB). The lack of government commitment to transparency is evident from FOIO 2002, which makes sure that no important information would be accessible to citizens.

1.3 Methodology

In the process of writing this policy, all stakeholders were consulted via a number of informal and formal interactions. These stakeholders included representatives of non-governmental organizations, journalists, government officials and law-makers. So as to get to understand bureaucratic functioning in relation to transparency or information disclosure, information was gathered from several ministries, including the ministries of health and education. The primary purpose of this exercise was to bring out the legal lacunae that cut across departments, as well as the issues, and which may be specific to certain departments. Since the officers consulted in these ministries had also served in *other* departments and ministries as well, they were able to provide comparative perspectives.

This policy paper's findings were informed, especially, by an in-depth analysis of relevant developments and initiatives taking place since 1947, including instances of secret bureaucratic 'functioning', and non-beneficial results. This provided insights into the attitudes as well as trends prevalent in such departments, and helped in identifying initiatives that could produce tangible results in terms of greater access to information and transparency.

Research into bureaucratic functioning (i.e. supply-side) was complemented by insights gained from legislators and from the civil society sector (i.e. demand-side). This was primarily achieved through informal and formal interviews, analysis of parliamentary data, research work and project evaluations produced by civil society groups. This helped considerably in bringing on board both parliamentary and civil society perspectives - and it is understood that this has improved the quality and relevance of policy recommendations.

Furthermore, the policy paper has also benefited from an in-depth study and analysis of international 'best practices', especially ones from developing countries like India. In addition, the legislative framework and its implementation in the UK were carefully looked at to be able to inform the findings of this policy paper.

1.4 Policy paper structure

After our introduction, the paper's second section discusses the importance - and the widely recognized principles - of freedom of information; the third section of the paper provides a brief overview of the current situation as regards transparency and access to information in Pakistan; the fourth section analyses the factors responsible for restricting and obstructing transparency and the citizens' right to information; the fifth presents some policy options, ones that are viable and realistic within existing circumstances; and the last section draws everything together - and makes some broad recommendations for the relevant stakeholders.

2 The Importance of, and the Principles of Freedom of Information

Right to information is widely recognized as a fundamental human right. In a democracy, it is imperative for citizens to be able to make informed electoral choices. It has been rightly characterized as being 'the oxygen for democracy'. A right to information is also crucial for exposing inefficiencies and corrupt practices, and ensuring effective public accountability and good governance. No one can deny the need and significance of the right to information, except for those who have a vested interest in protecting inefficiencies and corrupt practices and would like to restrict the scope and effectiveness of freedom of information laws.

During its very first session, in 1946, the UN General Assembly adopted a Resolution - 59(1) - which reads: 'Freedom of information is a fundamental human right... the touchstone of all the freedoms to which the UN is consecrated.'

Article 19 of the Universal Declaration on Human Rights 1948 reads that:

Everyone has the right to freedom of opinion and expression; this right includes the freedom to hold opinions without interference, and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Similarly, Article 19(2) of the International Covenant on Civil and Political Rights 1966 states:

Everyone shall have the right to freedom of expression; this right shall

include the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his (her) choice.

The Constitution of Pakistan makes *no direct mention* of freedom of information, though it does include Article 19, on freedom of speech and expression. It reads as follows:

Every citizen shall have the right to freedom of speech and expression, and there will be freedom of the press, subject to any reasonable restrictions imposed by law in the interests of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, or commission of or incitement to an offence.

In several instances, the Supreme Court of Pakistan has held that the right to information is integral to the freedom of speech and expression as guaranteed under Article 19 of the Constitution. A similar view is taken by the Indian Supreme Court, which has held that a right to information flows not only from the fundamental right to free speech and expression but also from the right to life and liberty.

The UN adopted certain basic Principles on Freedom of Information in 2000. Derived from international and regional law standards, and developing state 'practice' and general principles pertaining to law, such principles need to be kept in mind while legislating on citizens' rights to access government records and information. They are:

Maximum Disclosure

- A body seeking to deny access to information has the onus of proving that the information may be validly withheld.
- Everyone, not just citizens, should benefit from this right - and an individual requesting access should not have to demonstrate any particular related interest in the information.
- Information or records should be broadly defined.
- No public body should be excluded from the ambit of the law.

Obligation to Publish

- Public bodies are *required* to actively publish and disseminate key categories of information, irrespective of the form of request.

Promotion of Open Government

- Public servants should be trained to promote openness in government.

- Obstruction of access to information will be dealt with severely.
- Public awareness of freedom of information should be raised.
- There should be improved maintenance of records.

A Limited Range of Exceptions

- Exceptions need to be clearly and narrowly defined, and subject to strict 'harm' and 'public interest' tests.
- Exceptions should be subject to a content-specific, case-by-case review - and non-disclosure will only allowed where it is in the public interest, and where release would do serious damage.

Processes via which to Facilitate Access

- Requests for information processes should be rapid and fair.
- There should be an independent review of any situation of refusal to provide information.
- Refusal to provide information must be supported by reason/s.
- Law, and via the decision of the independent review body, should provide a right of appeal to the courts.

Costs

- Individuals should not be deterred from making requests for information by there being excessive costs.

Open Meetings

- Meetings of public bodies should be open to the public.

Disclosure Takes Precedence

- Laws that are inconsistent with the principle of maximum disclosure should be amended or repealed.
- Wherever possible, laws need to be interpreted in a way that is consistent with freedom of information legislation.
- A regular reviewing of all laws that restrict disclosure of information should occur to thus bring them in line with the freedom of information law.

Protection for 'Whistleblowers'

- Individuals who make available information related to wrongdoing – whistleblowers – need to be protected.

3 State of Transparency and Access to Information

Most departments and ministries currently operate within a culture of secrecy, wherein officers are extremely reluctant to share information with members of the public. The culture of secrecy dates back to British times, when the chief objective of the government was to protect the interests of the colonial power. Government neither represented the people - nor was it responsible, nor accountable to them. As the government had no trust in the people, it ensured - via laws like the Official Secrets Act 1923 - that most government records were inaccessible to members of the public. This culture has not changed much since 1947, as representative institutions have remained weak and bureaucracy continues to operate largely within the framework of the exclusive and secretive procedures established by the British.

The persistence of culture of secrecy is largely based on a large number of laws, rules and government instructions, which can be invoked at any time to deal with officers who have violated them. These laws, rules and instructions are often so broad in application that even the disclosure of *any* information can be treated as unlawful. This makes government officials feel extremely insecure, and compels them to (usually) decide in favour of secrecy – even in cases where the information requested is of very ordinary nature. It is also because of this that, even when the government does disclose information, they mostly do it *informally*. Such persons are, in the main, reluctant to put a ‘covering note’ under their signatures; neither will they certify that the information disclosed is authentic, except when it is specifically and clearly required under existing laws or rules.

The reluctance of government officials is partly because of the fact that they do not have clear or updated guidelines about their conduct relating to requests for access to official information and records. While the Estacode is supposed to provide guidance relating to the terms and conditions existing for Federal Civil Servants, its latest edition is often not available. Thus, government officials are *themselves* not fully aware of all the changes that have been introduced since the last edition of Estacode. This also compels them to err, if at all, on the side of secrecy – i.e. which remains the dominant framework for all government activity.

However, although secrecy is a norm, existing laws and rules do provide certain mechanisms whereby some information can be shared with members of the public - although, in most cases, these mechanisms are not fully operational, for a variety of reasons. These include the following:

3.1 Annual Reports and Other Official Publications

All government departments and ministries are required under the rules to publish annual reports and make them accessible to, among others, members of the public. These reports, however, are published only in small numbers, so are not easy to obtain. Furthermore, the quality of these reports is generally very poor and, hence, useful information is often not really disclosed. Also, the annual reports of most departments and ministries are full of statistics, which do not make any sense in the absence of appropriate analytical tools or explanations.

Ministries and departments can also publish additional reports on specific issues or concerns, though such a practice is quite rare. Even when such reports *are* published, public access to them is restricted by the fact that the reports are in English and only a small percentage understand the English language.

3.2 Gazette Notifications

All laws, rules, regulations and notifications are published in the official gazettes – and, in theory, *any* member of the public can obtain copies of these gazettes. In practice, however, this is very difficult, because gazettes are published in a very small number and are available only in at few designated places in big cities. Furthermore, gazettes are also published in English only, so are beyond the comprehension of most people.

3.3 Spokesperson of the Ministry

In almost all ministries, a senior officer (i.e. Joint Secretary or Additional Secretary) acts as the ministry spokesperson. The role of the spokesman, though, is very limited – and it often has a ‘traditional’ nature. The role includes briefings on official visits, important agreements signed, or explanations on various news reports related to the ministry. Rarely does his/her office seek to, pro-actively, give out information in the public interest, especially with the aim of ensuring transparency or building public confidence in the ministry. It can also be noted

that such officers are not exclusively appointed as spokespersons, but perform these duties *in addition to* various other responsibilities assigned to them. This partly explains why spokesman is hardly ever seen to disclose information or engage the media on important issues or concerns related to ministries.

3.4 Parliamentary Questions

Members of the Senate and national and provincial assemblies have a constitutional right to ask questions and demand explanations from any government department or ministry. In the exercising of this right, members of the National Assembly submitted a total number of 10476 questions in 2004-05. The government, however, answered only 2101 questions! The number of questions answered in 2004-05 was significantly less than in previous years i.e. 3980 in 2002-03, and 2462 in 2003-04. This huge gap between questions asked and answers received, for whatever reasons indicated the weakness of parliamentary institutions in terms of asserting themselves and maintaining an effective check on the executive.

Over time, there also appears to have been a gradual reduction in the number of questions being asked in the National Assembly. In 2004-05, 10476 questions were asked, as compared to 12008 in 2003-04, and 14737 in 2002-03. The reason for this decline may be that members of the National Assembly no longer believe that question-hour is an effective tool with which to make the government responsible and accountable. It can be noted, too, that a large number of questions are 'killed' by the secretariat while, regarding others, complaints about long delays in providing answers or about sketchy/wrong answers abound.

Almost all questions relating to the security establishment of the country are killed without even getting sufficient consideration. As a result, it appears that the security establishment is completely outside parliamentary scrutiny.

Furthermore, only some of the information disclosed by the government to parliamentary bodies is accessible to the general public through print and electronic media. Other information, although officially disclosed and accessible to members of parliamentary bodies, is hard to access by members of the general public. This is because such information is not made available in book-shops or on official websites of concerned ministries or of parliamentary bodies.

3.5 The Proceedings of Parliamentary Committees

One of the responsibilities of parliamentary committees is to oversee the performance of various government departments and ministries. In performing this role, such committees can gather information and ask for the records of concerned government departments, and can scrutinize them to assess their performance and expose any inefficiencies or wrong-doings. Hence, parliamentary committees can also be a source of information disclosure, especially if the committees decide to share the information gathered with the general public. Information is widely shared when parliamentary committees hold most of their meetings in the open, and if they allow journalists to freely report on their proceedings. However, barring a few notable exceptions (e.g. Senate Committee on Human rights), most committees hold their meetings 'in camera' and treat the minutes of committee meetings as confidential, which does not help in the protecting or promoting of citizens' rights to information.

3.6 Court Proceedings

Court proceedings and records are generally treated as public records and are accessible to all members of the public directly or through print and electronic media. Operating under constitutional authority, courts can summon any government records and make them a part of a court case. If and when this happens, relevant government records get into the public domain and thus become accessible.

3.7 Websites

A large number of government departments and ministries have set up official websites to 'post' information. Although most of these websites are ineffective and do not provide any significant information, there are, however, some that are very good. It is difficult to be specific here but, in general, ministries and departments have a mandate to make it easy for foreign investors via having good websites. It is, therefore, not a coincidence that the ministries responsible for finance, trade and investment can be credited with having good websites - while most others do not bother to give any attention to information-sharing via a website. Even the websites of the National Assembly and the Senate do not provide much useful information.

3.8 Print and Electronic Media

For decades, the print and electronic media was under severe restrictions, ones imposed by a range of media- and information-related laws and with strict, arbitrary regulations coming from successive governments. Yet this has changed recently. While restrictive media-related laws remain on the statute books, they are no longer implemented that frequently so as to curtail freedom of the media. In fact, it seems that the battle for media independence vis-a-vis government has been largely won. In the meantime, the reach of the media has also increased tremendously. A large number of new television stations, radio stations and publishing houses have opened up, which is a condition conducive to the realization of the citizen's right to information.

There are, however, serious issues that can be raised about whether media, in the prevailing circumstances, can provide timely and credible information for people, especially in the areas that citizens need it most so as to keep an effective watch on public services and keep them accountable. It is argued that it is difficult for the media to play such a role in a situation where most government records are treated as confidential and are not accessible to them. The media thus remains unable to report on a large number of concerns simply because the required records are inaccessible; and even when the media *is* able to dig out information, it may be partial/incomplete or it may have merely been made available at a specific time which suited certain interests in the government vis-*vis* others. While such information-related manipulations are hard to completely eliminate, though, an effective right-to-information law might be helpful in avoiding such occurrences.

4 Factors Obstructing Transparency and Access to Information

4.1 Laws, Rules and Regulations Requiring Secrecy

The reason why most government officials are often reluctant to disclose information and records to citizens can be explained by the large number of laws, rules and regulation requiring secrecy for official information. These include:

The Official Secrets Act, 1923:

This Act does not even provide a *definition* of an official secret – hence, it leaves it to government officials to decide upon issues, at their own discretion! Under Article 5 of the Act, even an individual who is found in possession of official information can be prosecuted, which leaves a lot of room for abuse, as an ‘official secret’ has not been clearly defined at all. Under the Act, such accused persons are required to prove their innocence, while the grounds for presuming guilt are worded in very broad terms. While given the overall culture of secrecy and non-participatory attitudes prevalent in the bureaucracy since colonial times, such discretion is often used in favour of denying citizens’ access to public records. The culture of secrecy is protected and ‘promoted’ to thereby hide inefficiencies or corrupt practices, i.e. which would otherwise be exposed if strong freedom-of-information legislation was implemented.

The Qanoon-e-Shahadat Order (Law of Evidence), 1984:

Certain provisions of the Qanoon-e-Shahadat Order (Law of Evidence), 1984 also restrict citizens’ rights to information. Article 6 of the Order says that ‘no one is permitted to disclose any official record relating to the affairs of the state unless authorized by the head of the department concerned, who shall give or withhold such information as s/he thinks fit’. On the other hand, Article 7 of the Order explains that no government official should be compelled to disclose information ‘when he thinks that the public interest would suffer by its disclosure’. It may, however, be noted that in the case of Ms. Benazir Bhutto vs. the Federation of Pakistan, the Supreme Court of Pakistan held that the privilege claimed under Article 6 & 7 of the Order does not give absolute power to government officials to withhold or disclose records. Hence, as a principle, the ‘public interest’ needs to be finally determined and interpreted by the courts.

Government Servants’ (Conduct) Rules, 1964:

A number of restrictions have been placed on government officials in terms of disclosure of official information. For instance, Rule 18 of the Government Servants (Conduct) Rules states as follows:

No Government Servant shall, except in accordance with any special or general order of the Government, communicate directly or indirectly any official document or information to a Government Servant unauthorized to receive it, or to a non-official person, or to the press.

4.2 Inefficient Maintenance/Non-indexation of Public Records

The Secretariat Instructions (i.e. Instruction No. 70) provide detailed guidelines as regards the proper preservation of records. Instruction no. 53 provides details about the Inspection of the Secretariat, whereby strict compliance with instructions needs to be monitored and guaranteed. This is in line with the Secretariat Instructions that different ministries and departments should establish a Receipt and Issue (R & I) Unit, which is open, round the clock, to receive and issue all correspondence to and from the Ministry. There also exist Dak Registers, File Registers and Movement Registers, from where all records and information can be tracked down. Most of these instructions are strictly complied with, without much difficulty; and the system has been in place for decades, so is fully institutionalised.

Nevertheless, the record preservation aspect has been neglected over the years. There are very few record rooms, so the official records here cannot be accommodated. Records are, therefore, just 'dumped' around whatever space is available in the ministries and departments - so they are extremely difficult to get hold of when required. Even where record rooms *are* available, ministries and departments do not regularly send their records to the record rooms (in accordance with Secretariat Instruction nos. 77 to 80).

There also exist Secretariat Instructions with regard to indexing records (Instruction no. 73), and about a quarterly and annual 'weeding out' system (Instructions nos. 75 & 76). These Instructions, though, are not strictly implemented – and the result is that indexing that could have made the information retrieval system very efficient does not exist, while offices are full of records that should have been weeded out as per Secretariat Instructions. If effectively implemented, the weeding out system would give offices a leaner look, providing space for such necessary records and improving efficiency.

Poor record keeping sometimes creates very difficult situations for officials in government departments and ministries. In the course of interviews for this study, an official in the Ministry of Health narrated an interesting case: one of the public bodies under the Ministry of Health wanted to increase the inspection fee from some Paisas to 1000 Rs. per inspection, because the fee had been fixed in the 1980s and had become very low for existing circumstances. The case was examined thoroughly by the Ministry, and rates for similar inspections in other countries of the world were looked at. In the end, the case was presented to the Finance Division, for concurrence – and the Ministry of Finance

wanted to see the 1980s letter whereby the earlier approval had been granted. In spite of all efforts, however, Health Ministry officials were unable (and are still unable) to trace that letter, or file. As a result, the case of the fee increase remains pending. The loss to the Public Exchequer because of this (i.e. that there has still been no fee increase) can be estimated in the millions. And many more examples of a like nature can be referred to - sometimes bringing with them extremely serious concerns when it comes to public health and resource utilization efficiencies.

4.3 State of Equipment, Computerization and Infrastructure

A lack of resources and of equipment is also an issue that needs consideration as regards the process of analysing the will and capacity of government departments to disclose information and records. In this context, it should be realized that computers are not yet available to a large number of offices in different ministries and departments - therefore, government officials still depend on more conventional methods of correspondence, filing and record management. Even where computers *are* available, few records have been computerized. Most officials do not have email addresses; nor do they use emails to interact with each other, or with members of the public. A lack of networking for computer systems within and across government departments also leads to inefficient data management - and prompt retrieval when required. In such a situation, most offices are just not able to cope with their job requirements or to ensure compliance with various Secretariat Instructions.

Similarly, limited photocopying facilities exist in departments and ministries. For instance, the entire Ministry of Health has got only *two* photocopying machines, which also break down frequently, thereby causing delays for official work. Any additional workload involving the photocopying of official records will not, therefore, be easy to deal with via the existing infrastructure.

4.4 Obstructive Attitudes

In existing circumstances, information requests filed by citizens are not generally taken seriously - and responses of concerned government officials vary from person to person. In most cases, requesters never receive a reply, as their requests are simply 'filed' by concerned officials without informing the information seekers about the fact. In other cases, requesters *do get* a reply, though it is only in rare cases that the sought after information is *also* provided

- it is provided just if it is of very ordinary nature and/or it is already in the public domain. All other information will be withheld, and is never provided in response to such formal requests.

A typical response to information requests is that the asked for information pertains to official business or government functions and, therefore, it is classified, so cannot be disclosed. And in cases where the concerned officials suspect that the requested information may be able to expose some wrongdoing, they will take active steps to *obstruct* citizens access to it by all means at their disposal! This is particularly so in relation to official records relating to, among other things, procurements, public works' contracts, usage of official facilities, records about the allotting of government houses and inquiry reports. In addition, records about decision-making processes are kept secret - and it is ensured that minutes of meetings, intermediary opinions and notes in files are not accessible to members of the public.

Obstructive attitudes, for a variety of reasons - including (a) the overall culture of secrecy, (b) a lack of clarity regarding rules, procedures and government policy, (c) vested interests as regards the covering up of inefficiencies and wrong-doings, and (d) official arrogance – lead to members of the public, especially the disadvantaged, being discouraged from asking questions. To a lesser extent, this is because officials are concerned about increasing their workload if they have to respond to questions and information requests from members of the public.

4.5 A Weak Legal and Institutional Framework for Freedom of Information

At present, the legal and institutional framework for freedom of information is extremely weak, and cannot ensure either prompt, efficient or cost-effective realization of citizens' rights to information. This is in spite of the fact that the right to information is a *constitutional* right, as per the Supreme Court's interpretation of Article 19, whereby it held that a right to information is a pre-requisite of the effective exercising of freedom of speech and expression. A brief overview of laws and rules recognizing the citizen's right to information is given below:

4.5.1 Laws Governing Newly-Established Regulatory Bodies

Various recently-enacted laws dealing with the establishment of regulatory bodies in Pakistan include provisions about transparency and citizens' rights to information. For instance, Section 31(3)(b) of the National Electric Power

Regulatory Authority (NEPRA) Act 1997 reads: 'When determining tariffs, the Authority shall provide an opportunity for customers and interested persons to participate *meaningfully* (my italics) in the tariff approval process'. It can be argued that meaningful participation for customers would be possible only if such customers were ensured access to *all relevant information*.

Similarly, Section 6(b) of the Pakistan Telecommunications Authority (PTA) Act 1996 obligates the Authority to ensure that 'all of its decisions and determinations are made promptly, in an open, equitable, non-discriminatory, consistent and transparent manner'. Arguably (again), such objectives can be achieved only if citizens have a right to information and they participate in the relevant 'decisions and determinations' in an effective and well-informed manner.

However, as is evident from the wording of these provisions, a citizen's right to information is neither clearly nor firmly acknowledged; nor do the relevant laws lay down a detailed procedure about *how* citizens' can access necessary information held by regulatory bodies i.e. so persons can *effectively* participate in decision-making. While it is encouraging to see that regulatory bodies, in general, have been relatively progressive in information disclosure by putting such information on websites or giving it out to individual requestors, there have been instances when information was denied in an arbitrary way. There is thus an urgent need to include clear and effective provisions about someone's right to information – pending comprehensive freedom-of-information legislation that is applicable across the board, and with regard to *all* government departments, also including partially- or fully-funded autonomous agencies and private bodies.

4.5.2 Local Government Ordinance 2001

The Local Government Ordinance (LGO) 2001 also includes a number of provisions about transparency and access to information in government activity. Among other issues, these include the following:

- Meetings of the Zila Council will be open to the public [Section 42(7)];
- Public objections will be asked for before the Tehsil Municipal Administration assigns or contracts out any local government function to any public-private, public or private organization [Section 54(2)];
- The functions of Union Administration include (a) collecting and maintaining statistical information for socio-economic surveys; and (b) disseminating information on matters of public interest [Section 76];
- A statement of monthly and annual accounts and any other necessary statements shall be placed in a noticeable place by the local government concerned, for public information [Section 114(4)];
- Every citizen will have the right to information about any office of the

- district Government, Tehsil Municipal Administration and Union Administration [Section 137];
- Every office will provide requisite information, if not restricted under any law for the time being in force, on the prescribed forms and on payment of such fee as may be prescribed [Section 137];
- Information about the staffing and performance of a local government office for the preceding month shall be displayed in a prominent place, for access by citizens [Section 137].

While the above provisions in the LGO 2001 are encouraging, until now, these have *not* been fully implemented by local governments in the country. Provincial governments have not been notified of the rules for the implementation of these provisions, especially with regard to Article 137, which recognizes a citizen's right to information. The LGO 2001 does not provide an easy or effective grievance redress mechanism. So, for instance, it is not clear what citizens should do if local government departments fail to efficiently provide the requested information (under Article 137). There is a provision in the LGO 2001 referring to the appointment of a district ombudsmen, who might be approached about grievance redress, yet hardly any ombudsman has so far been appointed in the districts. Most importantly, the government has not had any initiatives as a means of creating awareness of such provisions, which, otherwise, would provide a good basis from which to put into operation public accountability mechanisms. As a result, not many people know about these provisions - and even fewer have submitted an information request.

4.5.3 *Freedom of Information Ordinance 2002*

The President of Pakistan announced the Freedom of Information Ordinance in October 2002. It states that its objective is to 'provide for transparency and freedom of information to ensure that the citizens of Pakistan have improved access to public records, for the purpose of making the Federal Government more accountable to its citizens...' The Ordinance, however, is an extremely weak one, as many of its provisions violate widely-recognized principles of good freedom-of-information legislation. The main problems with the Ordinance include the following:

- It does not state that the right to information is a *constitutional* right, and that it has been promulgated to ensure effective realization of citizens' rights to information;
- It provides a very narrow definition of information or records;
- It is applicable only to the public bodies of the Federal Government, and not to provincial or district authorities. It is not applicable even when it comes to private bodies that are partially or to a major degree funded by the Federal Government;

- It provides 2 long lists of excluded records (Section 8) and information exempted from disclosure (Sections 14-18). These exclusions and exemptions are unjustified, arbitrary and/or unfair, and have been included in the Ordinance with malafide intent. The motive is obvious: to defeat the very purpose of the Ordinance;
- It makes no clear provisions about the format in which access to information might be requested, and how such information will be given to a person. In particular, it does not say that citizens have a *right* to inspect records, make notes on them and/or identify pages that should be photocopied;
- The complaint and appeal procedure provided in the Ordinance is not very effective. For example, a complaint can be filed with the Federal Ombudsman (or Federal Tax Ombudsman), though the Ombudsman's final orders are not binding – they are solely recommendations;
- It does not penalize officials who might wilfully delay or deny information with malafide intention; and
- It does not override or abrogate laws or their provisions which may be inconsistent with its purpose or provisions.

4.5.4 Rules (2004) for the Freedom of Information Ordinance 2002

For the exercising of powers conferred via Section 25 of the Freedom of Information Ordinance 2002, the Cabinet Division came up with Rules (June 2004). The purpose of these Rules was to give explanations of various provisions of the Ordinance and give a clear procedure via which one might submit and handle information requests. However, the Rules have been made in such a manner that they put further *restrictions* on a citizen's right to information under the Ordinance. These restrictions include:

- Under the Rules, citizens requesting information have to pay a fee of RS. 50/- for each request with an entitlement as regards getting information of up to 10 pages only. If the requested information exceeds 10 pages, the requester has to pay an additional fee of @ RS. 5/- per page. Thus, a substantial downwards revision of the fee - and of photocopying charges - is required to thereby encourage people to make easy and cost-effective usage of the FOI Ordinance 2002. Existing fee/photocopying charges are prohibitive - and fail the very purpose of the Ordinance. The photocopying charge @ RS. 5/- per page is particularly unfair, as the market rate for a page is only as much as RS 1. Higher fee/photocopying charges serve in part to explain why designated officers have received very few information requests since Rules notification; and it should be noted that high fee and photocopy charges are in violation of Article 3 of the Ordinance, which explicitly says that it will be interpreted so as to "facilitate and encourage, promptly and at the lowest reasonable cost, the disclosure of information".
- The format given in the Rules for information requests requires citizens to describe the purpose of their information request. In addition, the declaration part of the format requires requesters to declare that the "information obtained will not be used for any purpose other than that specified above." This is totally unnecessary, however, especially when the excluded (Article 8) or exempted (Article 16-18) information is not

going to be disclosed anyway. Experience from other countries shows that government officials often abuse such unnecessary provisions to unlawfully delay or deny information to requestors.

- Under the Rules, designated officers should have been authorized to waive fee and photocopying charges in special circumstances, involving requests from (a) the poor; (b) journalists; and (c) civil society groups. This would have encouraged poorer persons to use FOI Ordinance 2002 to protect their rights; whereas journalists and civil society groups would have been able to take initiatives towards the creation of an information society and transparent governance without needing to worry about the financial implications. Furthermore, the Rules should have stated that fees will be refunded and that no photocopying costs will be charged if the concerned officer fails to provide the requested information within a time limit of 21 days. This could have then encouraged such officers to respond *efficiently* to information requests.
- Designated officials should have had an obligation to provide any information as soon as possible, i.e. without waiting for the 21-day limit as outlined in FOI Ordinance 2002. Special circumstances might be determined on a case-to-case basis, though situations where delayed information provision could well result in irretrievable losses for, or injury to the requesting party or other individuals/groups in society might occur.
- The Rules must have explained Article 9 of the Ordinance, which reads as follows: "Duty to assist requesters - A public body shall take the necessary steps as may be prescribed to assist any requester under this Ordinance". Under the Rules, the duty to assist should be interpreted to include giving help to the illiterate or others with special needs when putting information requests in writing, as well as proper guidance about what kinds of questions they need to ask to expose the causes of their grievances and inefficient and corrupt practices; and it needs to include clear guidelines on ways of implementation, whereby all visitors to a government office will know their rights as regards gaining information as well as procedures when it comes to filing in information requests. Pertinent and specified steps could include a posting of relevant information on noticeboards or in other noticeable places in offices.

5 Policy Options regarding Reform

5.1 *Maintenance of the Status Quo*

One policy option, if it may be called so, is maintaining the status quo, which would take on board the following:

- A dominant culture of secrecy based on laws and rules that require nearly total secrecy. Such laws and rules include, among others, the Official Secrets Act 1923 and Rule 18 of the Government Servants (Conduct) Rules 1964;
- Official attitudes, which are insensitive to citizens' needs and demands for transparency and access to information, and which discourage citizens' participation in planning and implementation of government initia-

- tives;
- Poor maintenance of official records, which makes preservation of data as well as its efficient retrieval difficult, if and when required;
 - Little focus on computerization of records, indexation, networking of computer systems and other concerns about relevant infrastructure to ensure efficient data management and the handling of citizens' requests as regards gaining access to information;
 - A weak, rather non-existent, legislative and institutional framework dealing with freedom of information; as characterized by (a) Article 137 of LGO 2001, which is yet to be implemented, (b) FOI Ordinance 2001, which is too weak to yield any significant results, and (c) no freedom of information legislation that is applicable in/to any of the provinces;
 - Very limited engagement of civil society in terms of demanding transparency and access to information, or of overseeing government activities so as to ensure the efficient utilization of public resources and good quality public service delivery.

It is this policy option which the government seems to be currently exercising – but which it may change. Implementation of this policy option would indicate that the political constituency for the eradication of corruption and seeking effective public accountability is very weak in the country; which is why the government has no real commitment to good governance and much that it entails i.e. transparency, openness, public participation and accountability. It would also mean that all the claims of government with regard to transparency are just 'eye-wash' and that government vested interests are so strong that government has little interest, if any, in providing good governance and reforming public service delivery systems.

This policy option, however, does *not* imply that the situation will remain static. In fact, information disclosure may improve itself on the margins or in certain specific sectors (i.e. where it is important to facilitate foreign investors' activities or increase exports). Yet such improvements would be likely take place only under external pressure - and not as a result of the government's *own* commitment to transparency and good governance. Such would also indicate that the government's major focus is on demonstrating its 'performance' against specific economic indicators, and not, primarily and necessarily, on improving the quality of life of its own citizens. This points to both cause and effect when it comes to a weak democratic culture and limited public accountability - whereas the government's focus remains upon a mobilization of resources from *externals*, through borrowing, foreign aid, workers' remittances or foreign direct investment.

5.2 *Gradual and Decentralized Policy Reform*

Salient features for implementation of this policy option would including the following:

- Existing secrecy laws are selectively amended to restrict and precisely define the scope of classified or secret information – with a corresponding widening of the scope of publicly accessible records;
- Federal Government legislation on freedom of information is not applicable to provincial and district governments [as it is with the Freedom of Information (FOI) Ordinance 2002]. Rather, provincial governments' are expected to make their own laws, as required by their own circumstances;
- Laws enacted at the Federal or provincial levels declare selected categories of records as excluded/exempt from disclosure. However, the laws include an in-built clause whereby the range of excluded or restricted records can be reduced over time via executive order;
- Government ministries or departments are encouraged to implement proactive information disclosure policies. Implementation of such policies does not require amendments to existing laws; while some ministries or departments may feel more comfortable than others in implementing such policies and setting a good example to others;
- Government puts greater attention on computerization, e-governance and infrastructural development in order to ensure that ministries and departments can efficiently handle their records and provide access to information, when required.

This policy option may be best suited in the circumstances - as characterized by the following:

- The top political leadership in the country is indifferent or only marginally interested in providing access to information, transparency and good governance;
- Certain progressive elements at different levels or sectors in the government *are* committed to implementing effective reforms;
- Progressive and reform-minded officials in the government face formidable resistance from powerful vested interests; and
- Demand from civil society for access to information and transparency is weak.

Implementation of this policy option may be easier to implement, and may, in time remove the apprehensions of some officials who honestly believe that access to information laws can create a lot of 'unnecessary' burden on government departments without giving any tangible, corresponding benefits. This also provides an opportunity wherein at least one government (i.e. the federal one, or a provincial one) may be persuaded to enact a very effective and comprehensive freedom of information law and, hence, establish its leadership in terms of its commitment to transparency and good governance. If this happens,

and it succeeds in delivering the benefits that such a law promises, it would become easier to convince other governments of its usefulness. Similarly, if one ministry is able to show major benefits from brought about an effective information-disclosure policy, it could become a good example for others to follow.

However, the risks for this policy option seem to be a lot higher than the benefits. One main risk is that of reversal or relapse. For example, proactive information disclosure policies adopted by ministries or departments could be easily reversed if certain members of the Cabinet or other vested interests were able to persuade the government that they are risky undertakings. Reversal is easier, because it only requires an administrative order (without any recourse to parliament). Such a situation was experienced in India in the 1990s, where a proactive information disclosure policy by one ministry was reversed on the intervention of the then prime minister.

There is also little likelihood that one of the provinces only would enact a strong freedom of information law and would thereby demonstrate its leadership in good governance. In fact, provinces have a very weak tradition of proactive or progressive law-making, which is largely because of limited provincial autonomy and excessive Federal influence (if not control) over provincial governments. Past experience shows that, if progressive laws *were* ever enacted, these were largely made by the Federal Government, to be then taken on board by the provinces. So it is less likely that provincial governments would be able to show leadership in this context - though such a possibility cannot be totally precluded.

5.3 A Uniform National Policy – A Radical Shift from Secrecy to Freedom of Information

This policy option may be difficult to implement, though it holds the greatest amount of promise when it comes to promoting good governance, improving public service delivery and building up public confidence in the government. Such a policy option would require the Federal Government to implement the following steps:

- Repeal or substantially amend existing laws and rules, which restrict citizens' rights to information. Any provisions made about secrecy or restrictions on information disclosure must be minimal, and precisely defined;
- Enact a strong and a comprehensive law, which is in full compliance with the principles of freedom of information (as outlined in Section 2 of this policy paper);

- The freedom of information law must be applicable to all ministries, departments and institutions (including legislatures and courts) of Federal and provincial governments, including private entities that are funded (fully or partially) by any type of government in Pakistan;
- Extra high priority should be given to computerization, networking, e-governance, and the indexing and maintenance of records at all levels of government, so that access to information is feasible in an efficient, timely and cost-effective manner;
- High priority should be given to actual implementation by allocating the required resources, doing training, 'sensitizing' government officials, and by providing detailed guidelines and also making the required changes in existing rules, procedures and establishment instructions.

This policy option presumes that suitable socio-political conditions exist, i.e. so that it can be efficiently implemented, which conditions would include the following:

- The top political leadership in the country is fully committed to providing access to information, transparency and good governance;
- Progressive elements in the bureaucracy are numerous and powerful enough to adopt and support the policy shift and also ensure its efficient implementation;
- Pro-reform groups in the government and civil society succeed in sidelining vested interests (who have a stake in the existing system of governance, as characterized by excessive secrecy, a lack of transparency and limited public participation); and
- Strong and proactive demands arise from civil society seeking access to information and transparency with regard to government activity.

This policy option would cause a major adjustment as regards the prevalent culture of secrecy, pushing it towards transparency and openness in government activity - which is critical for good governance and reducing incidences of corruption in Pakistan. This would also mean a major boost was given to public confidence in the government (and its commitment to ensuring public participation and accountability). This, however, also presumes a complete and unflinching commitment coming from the top political leadership in the direction of good governance; and it additionally assumes that a strong support constituency exists for such a policy shift in the bureaucracy as well as in civil society.

As this policy option would require repeals of or amendments to existing secrecy laws, as well as comprehensive freedom of information, it would be hard for future governments to de-rail or reverse its tenets - for any reversal would require *legal* changes and, therefore, recourse to the parliament, which could make any such attempt difficult in view of its political costs vis-a-vis resistance being shown by opposition parties.

Choice of this policy option would radically improve the image of the country - as well as that of the government that implemented it. Yet it will be difficult to choose this one, in view of resistance by vested interests - though the effort would be worthwhile. It may also involve certain financial expenditure (required for computerization and other implementation measures), though it is reasonable to expect that the resultant benefits would be far higher than the costs. Transparency would help reduce incidences of corruption, too – the costs of which run into several hundred billion rupees every year.

6 Conclusions and Recommendations

It is obvious from the points made here that freedom of information is necessary not just because it would help in good governance but also because it is an inalienable human right. Given this - as well as for pragmatic reasons - the status quo is, effectively, no option. Sooner or later, the government will have to match its verbal commitments with concrete steps, or it would risk its credibility.

Out of the policy options presented in this policy paper, the last one (i.e. Uniform National Policy – A Radical Shift from Secrecy to Freedom of Information) seems to be the best one in terms of producing positive results over a short time span. However, it does require sincere and strong commitment, at the highest levels of government, to transparency and good governance. And it is such commitment that seems to be missing at this stage.

It may be emphasized, though, that the second policy option (i.e. A Gradual and Decentralized Policy Reform) and the last one (i.e. A Uniform National Policy – A Radical Shift from Secrecy to Freedom of Information) are not necessarily mutually exclusive. In fact, implementation of the second option may start up a momentum, which could eventually lead to the creation of the right conditions for implementing the last - and the most promising - option.

Where secrecy and mystery begins, vice or roguery is not far off.
(Dr. Samuel Johnson)

Appendix

Table 1 Transparency International Corruption Perception Index

Year	Score (Max. 10)	Ranking out of countries surveyed	Countries having more corrupt than Pakistan
2005	2.1	144 out of 154	Angola, Cote d'Ivoire, Guinea, Nigeria, Haiti, Myanmar, Turkmenistan, Bangladesh, Chad
2004	2.1	129 out of 145	Angola, Congo, Cote d'Ivoire, Georgia, Indonesia, Tajikistan, Turkmenistan, Azerbaijan, Paraguay, Chad, Myanmar, Nigeria, Bangladesh, Haiti
2003	2.5	92 out of 133	Guatemala, Kazakhstan, Moldova, Uzbekistan, Venezuela, Vietnam, Bolivia, Honduras, Macedonia, Serbia & Montenegro, Sudan, Ukraine, Zimbabwe, Congo, Ecuador, Iraq, Sierra Leone, Uganda, Cote d'Ivoire, Kyrgyzstan, Libya, Papua New Guinea, Indonesia, Kenya, Angola, Azerbaijan, Cameroon, Georgia, Tajikistan, Myanmar, Paraguay, Haiti, Nigeria, Bangladesh
2002	2.6	77 out of 102	Albania, Guatemala, Nicaragua, Venezuela, Georgia, Ukraine, Vietnam, Kazakhstan, Bolivia, Cameroon, Ecuador, Haiti, Moldova, Uganda, Azerbaijan, Indonesia, Kenya, Angola, Madagascar, Paraguay, Nigeria, Bangladesh
2001	2.3	79 out of 91	Tanzania, Ukraine, Azerbaijan, Bolivia, Cameroon, Kenya, Indonesia, Uganda, Nigeria, Bangladesh
2000	NA	NA	NA
1999	2.2	87 out of 99	Kenya, Paraguay, Yugoslavia, Tanzania, Honduras, Uzbekistan, Azerbaijan, Indonesia, Nigeria, Cameroon
1998	2.7	71 out of 85	Uganda, Kenya, Vietnam, Russia, Ecuador, Venezuela, Columbia, Indonesia, Nigeria, Tanzania, Honduras, Paraguay, Cameroon
1997	2.53	48 out of 52	Russia, Columbia, Bolivia, Nigeria
1996	1.00	53 out of 54	Nigeria
1995	2.25	39 out of 41	China and Indonesia