

Media Guide to Right to Information Act 2005

Both Houses of Parliament passed the national Right to Information Act 2005 in May after which it got the Presidential assent on June 15. This Act comes into force within 120 days (around 15 October) by which time all departments have to identify Public Information Officers; establish a Central Information Commission, set up State Information Commissions and also have rules in place for the implementation of the Act..

Access to government held information is the only way to make our leaders and bureaucrats accountable. The new law if used extensively would fundamentally alter the power relationship between the citizens and the government and would pave the way for changing the attitude of people from being mere “subjects” to “citizens”. With RTI on their side, the media need no longer depend on questionable sources of information, and can use RTI Act to access credible and authentic information. RTI heralds a new age of investigative and authentic journalism.

Contrary to the belief of many public officials, governments do not own information. Information is a public good in much the same way as clean air, electricity and water. Every citizen should know that the vast and valuable stockpile of information is created as part of the legitimate and routine discharge of government’s duties and is gathered and stored for the benefit of the public. Governments hold all information solely as trustees on behalf of the people and cannot hoard it or unnecessarily keep it from the public. Journalists by their very nature of profession can unravel this myth by using this law in planned and methodical manner by obtaining government records through this act and analysing them.

The Right to Information Act 2005 covers all government bodies from those at the Centre to those at local government level. The Act defines information as any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.

"Right to information" means the right to access information held by government bodies and includes the right to inspect works, documents, records; take notes, extracts, or certified copies of documents or records; take certified samples of material and obtain information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

Proactive Disclosure

The Act provides for proactive disclosure of information. It requires government bodies to actively publish and disseminate key categories of information of general interest of the public. Some of these are given below:

- The rules, regulations, instructions, manuals and records, held by government bodies or under its control or used by its employees for discharging its functions;
- A statement of the categories of documents that are held by government or under its control;
- The particulars of any arrangement that exists for consultation with or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;
- A statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advise, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes 'of such meetings are accessible for public;
- A directory of officers and employees of government institutions;
- The monthly remuneration received by government officers and employees, including the system of compensation as provided in its regulations;
- The budget allocated to government agencies, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
- The manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;
- Particulars of recipients of concessions, permits or authorisations granted by it;
- The names, designations and other particulars of the Public Information Officers;
- The particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
- The government must publish all relevant facts while formulating important policies or announcing the decisions which affect public;
- Provide reasons for its administrative or quasi judicial decisions to affected persons;

This section is important because journalists can access relevant information based on the provisions of proactive disclosure. For example they can find out whether budget allocations have been used properly and fully. And where it has been spent and how? They can access information to expose corruption in the implementation of government schemes and programmes. Journalists can find out the different subsidy programmes and monitor them through information requests. Through this section they can also find out who gets permits and whether the procedures followed have been appropriate or not. Proactive disclosure of the names, designations and other particulars of the Public Information Officers is an important clause as it will help and guide the citizens in filing information requests. If not done, journalists can monitor it and report whether the Act is implemented in reality. This proactive disclosure should be carried out with immediate effect and in any case completed within 120 days of the enactment of this law. Thereafter it must be updated every year. Proactive disclosure of manuals used by government bodies in the discharge of functions is particularly useful because bureaucrats function under a set of rules and accessing them helps to understand and monitor their style of functioning.

Exempted Categories

The Act specifies certain types of information that need not be given to the public. For example

- Information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
- Information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
- Information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
- Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
- Information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
- Information received in confidence from foreign government;
- Information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
- Information which would impede the process of investigation or apprehension or prosecution of offenders;
- Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers; provided that the decisions of the Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken.
- Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Overriding Clause

However, an overriding clause provides that if public interest outweighs harm to the public authority by disclosure, information must be disclosed. It is up to the Competent Authority to decide whether the information is for larger public interest, but if so only that part that of the information sought will be disclosed which is seen to be in larger public interest. Whether any personal or private information is subject to larger public interest is to be decided by the Public Information Officer.

All the categories falling under the list of exemptions are not watertight compartments. Upon completion of 20 years, information about occurrence, event or matter will be given irrespective of exemptions. But information relating to sovereignty, integrity, security, strategic, scientific and economic interests, information which would lead to incitement to commit an offence and cabinet papers, including records of deliberations of Council of Ministers, Secretaries and other officers (Exemption 1, 2 and 10) need not be given even after 20 years. Decision of the Central government or the state Government (as the case may be) is final for computing the time period.

The exemption covers Central intelligence and security agencies including the Intelligence Bureau, Research and Analysis Wing, Directorate of Revenue Intelligence, Central Economic intelligence Bureau, Enforcement Directorate, Narcotics Control Bureau, Aviation Research Centre, Special Frontier Force, BSF, CRPF, ITBP, CISF, NSG, Assam Rifles, Special Service Bureau and other agencies. Similar agencies established by state governments are included.

However this exemption does not extend to information relating to corruption and human rights violations. This may be given with the approval of the Central or State Information Commissions, as the case may be. This allows journalists to ask for information pertaining to complaints of human rights violations against security organizations.

Process for Requesting Information

Detailed provisions have been made for receiving and dealing with requests for information. The Act provides for the appointment of Public Information Officers (PIOs) in all offices and Assistant PIOs at each sub-divisional or sub-district level. The Assistant PIOs are tasked with receiving applications and passing them on to the relevant PIO. The PIOs are responsible for providing information to the citizens as requested by them on the prescribed format. They either provide the information within thirty days of the receipt of the request on payment of fees or reject the request specifying the reasons for doing so. In cases where information sought “concerns the life and liberty of a person”, then the time limit within which information has to be given by the PIO is 48 hours. The appropriate government will prescribe the application fees and no fees will be charged from applicants who belong to “Below Poverty Line” (BPL) families.

Appeals Mechanism

In case the information asked for is not provided the person who has asked for the required information can Appeal to the authorities concerned. The first appeal can be made to the officer immediately senior to the PIO in the concerned public authority. This can be done within 30 days from the date of the refusal. If the decision of the first appellate authority is upheld then the requestor can appeal to the Central and State Information Commissions.

The Act establishes Information Commissions at the Centre and in all the States. The Commissions are given broad powers to hear appeals and are also tasked with regular monitoring of the law (including production of annual reports). The Commissions can make any order required to bring about compliance with the law, including ordering release of documents, appointment of PIOs and publication of specified information. The Central Information Commission and each State Information Commission will be made up of a Chief Information Commissioner and up to 10 Information Commissioners.

The detailed provisions to provide information and ensure compliance in the Right to Information Act create opportunities for journalists to secure reliable information about many urgent issues: custodial deaths; salaries of local officials and representatives, how MP's and MLA's funds are utilized; how subsidies are spent, who is getting permits; decisions of cabinet meetings; how safe are our mines, human rights violations committed by the armed forces and security agencies. It is only when we begin to question and monitor the way governments are functioning and highlight it through mass media, can we expect to rid our society of corruption, poverty, fear and hunger.

Aditi Datta and Sobini Paul research for the Commonwealth Human Rights Initiative