

Second Administrative Reforms Commission

First Report

Right to Information: Master Key to Good Governance

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Summary of Recommendations

1. The Official Secrets Act (Para 2.1.12):

- a. The Official Secrets Act, 1923 should be repealed, and substituted by a chapter in the National Security Act, containing provisions relating to official secrets.
- b. The equivalent of the existing Section 5, in the new law may be on the lines recommended by the Shourie Committee as quoted below:

"5(1) If any person, having in his possession or control any official secret which has come into his possession or control by virtue of:-

b1. his holding or having held an office with or under government,

or

b2. a contract with the government, or

b3. it being entrusted to him in confidence by another person holding or having held an office under or with the government, or in any other manner,

- i. communicates, without due authority such official secret to another person or uses it for a purpose other than a purpose for which he is permitted to use it under any law for the time being in force; or
 - ii. fails to take reasonable care of, or so conducts himself as to endanger the safety of the official secret; or
 - iii. willfully fails to return the official secret when it is his duty to return it,
- shall be guilty of an offence under this section.

5(2) Any person voluntarily receiving any official secret knowing or having reasonable ground to believe, at the time he receives it, that the official secret is communicated in contravention of this Act, he shall be guilty of an offence under this section.

5(3) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

Explanation: For the purpose of this section, 'Official Secret' means any information the disclosure of which is likely to prejudicially affect the sovereignty or integrity of India, the security of State, friendly relations with foreign states, economic, commercial, scientific and technological matters relating to national security and includes: any secret code, password, sketch plan, model, article, note or document in relation to a prohibited place."

2. Governmental Privilege in Evidence (Para 2.3.8):

a. Section 123 of the Indian Evidence Act, 1872 should be amended to read as follows :

"123.(1) Subject to the provisions of this section, no one shall be permitted to give any evidence derived from official records which are exempt from public disclosure under the RTI Act, 2005.

(2) Where he withholds such permission he shall make an affidavit containing a statement to that effect and setting forth his reasons therefore.

(3) Where such officer has withheld permission for the giving of such evidence, the Court after considering the affidavit or further affidavit, and if it so thinks fit, after examining such officer or, in appropriate cases, the Minister, orally:

a) shall issue a summons for the production of the unpublished official records concerned, if such summons has not already been issued;

b) shall inspect the records in chambers; and

c) shall determine the question whether the giving of such evidence would or would not be injurious to public interest, recording its reasons therefore.

(4) Where under sub-section (3), the Court decides that the giving of such evidence would not be injurious to public interest, the provisions of sub-section (1) shall not apply to such evidence.

Provided that in respect of information classified as Top Secret for reasons of national security, only the High Court shall have the power to order production of the records."

Section 124 of the Indian Evidence Act will become redundant on account of the above and will have to be repealed.ⁱ

Accordingly, the following will have to be inserted at the appropriate place in the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973:

"Any person aggrieved by the decision of any Court subordinate to the High Court rejecting a claim privilege made under Section 123 of the Indian Evidence Act, 1872 shall have a right to appeal to the High Court against such decision, and such appeal may be filed notwithstanding the fact that the proceeding in which the decision was pronounced by the Court is still pending."

3. The Oath of Secrecy (Para 2.4.4):

a. As an affirmation of the importance of transparency in public affairs, Ministers on assumption of office may take an oath of transparency along with the oath of office and the requirement of administering the oath of secrecy should be dispensed with. Articles 75(4) and 164(3) and the Third Scheduleⁱⁱ should be suitably amended.

b. Safeguard against disclosure of information against the national interest may be provided through written undertaking by incorporation of a clause in the national security law dealing with official secrets.

4. Exempted Organizations (Para 2.5.6):

a. The Armed Forces should be included in the Second Schedule of the Act.

b. The Second Schedule of the Act may be reviewed periodically.

c. All organizations listed in the Second Schedule have to appoint PIOs. Appeals against orders of PIOs should lie with CIC/SICs. (This provision can be made by way of removal of difficulties under Section 30)

5. The Central Civil Service (Conduct) Rules (Para 3.1.4):

a. Civil Service Rules of all States may be reworded on the following lines:

"Communication of Official Information:

Every Government servant shall, in performance of his duties in good faith, communicate to a member of public or any organisation full and accurate information, which can be disclosed under the Right to Information Act, 2005.

Explanation – Nothing in this rule shall be construed as permitting communication of classified information in an unauthorized manner or for improper gain to Government servant or others."

6. The Manual of Office Procedure (Para 3.2.3):

a. Para 116 of the Manual of Office Procedure needs to be reworded as follows”

"Communication of Official Information: Every Government servant shall, in performance of his duties in good faith, communicate to a member of public or any organisation full and accurate information, which can be disclosed under the Right to Information Act, 2005. (Nothing stated above rule shall be construed as permitting communication of classified information in an unauthorized manner or for improper gain to Government servant or others.)

b. Para 118(1) should be deleted.ⁱⁱⁱ

c. The State Governments may be advised to carry out similar amendments in their Manuals, if such provisions exist therein.

7. Classification of Information (Para 4.1.8):

a. The GOI should amend the Manual of Departmental Security Instructions in the following manner:

i. Information Deserving Classification (Para 3)

It would be advisable for each Ministry/Department to identify the information which deserves to be given a security classification. Ordinarily, only such information should be given a security classification which would qualify for exemption from disclosure under the Right to Information Act, 2005. The classification of documents should be done as per the following guidelines:

Sl. No.	Section of the RTI Act to which information pertains	Classification
1.	8(1)(a)	Top Secret
2.	8(1)(b)	Confidential
3.	8(1)(c)	Confidential
4.	8(1)(d)	Secret
5.	8(1)(e)	Confidential
6.	8(1)(f)	Secret
7.	8(1)(g)	Top Secret/Secret
8.	8(1)(h)	Secret/Confidential

9.	8(1)(i)	Confidential
10.	8(1)(j)	Confidential/Restricted
11.	9	Confidential/Restricted

Explanation: The above mentioned classification should be generally. It is quite possible that information may be covered by more than one exemption; in that case the information should be given the classification of the higher category. Also if it is felt by the competent authority that circumstances of a case demand a higher classification than what is indicated above, then the same may be done by an authority, which is empowered to give such classification.

Provision should be made to include annual confidential reports of officers and examination question papers and related matters in the exemption under the RTI Act. This may be done by way of removal of difficulties under Section 30.

ii. Upgrading and Downgrading (Para 2.3):

Documents once classified as "Top Secret" or "Secret" should remain so classified as long as required but not exceeding 30 years. Documents classified as confidential and restricted should remain so for a period not exceeding 10 years. However, the competent classifying officer may, for reasons to be recorded in writing, authorize continued classification beyond the period prescribed above if information, the disclosure of which would cause damage to national security or national interest. A recipient officer of appropriate rank in a Ministry or Department may upgrade the security classification of a document received from outside, but this raised classification will be limited only to the Ministry or Department. (S)He will, however have no authority to downgrade the security classification of a document received, without the concurrence of the originator. Within the same Department an officer superior to the originator would have the authority to downgrade or upgrade the classification.

iv. Officer authorized to accord the grading:

<i>Top Secret</i>	<i>Not below Joint Secretary</i>
<i>Secret</i>	<i>Not below Deputy Secretary</i>
<i>Confidential</i>	<i>Not below Under Secretary</i>

The State Governments may authorize officers of equivalent rank to accord the grading.

8. Building Institutions (Para 5.2.5):

- a.** Section 12 of the Act may be amended to constitute the Selection Committee of CIC with the Prime Minister, Leader of the Opposition and the Chief Justice of India. Section 15 may be similarly amended to constitute the Selection Committee at the State level with the Chief Minister, Leader of the Opposition and the Chief Justice of the High Court.
- b.** The GOI should ensure the constitution of SICs in all States within 3 months.
- c.** The CIC should establish 4 regional offices of CIC with a Commissioner heading each. Similarly regional offices of SICs should be established in larger States.
- d.** At least half of the members of the Information Commissions should be drawn from non civil services background. Such a provision may be made in the Rules under the Act, by the Union Government, applicable to both CIC and SICs.

9. Designating Information Officers and Appellate Authorities (Para 5.3.4):

- (i)** All Ministries/ Departments/Agencies/Offices with more than one PIO have to designate a nodal Assistant Public Information Officer with the authority to receive requests for information on behalf of all PIOs. Such a provision should be incorporated in the Rules by appropriate governments.
- (ii)** PIOs in Central Secretariats should be of the level of at least Deputy Secretary/Director. In State Secretariats, officers of similar rank should be notified as PIOs. In all subordinate agencies and departments officers sufficiently senior in rank and yet accessible to public may be designated as PIOs.
- (iii)** All public authorities may be advised by the Government of India that along with Public Information Officers they should also designate the appellate authority and publish both together.
- (iv)** The designation and notification of appellate authorities for each public authority may be made either under Rules or by invoking Section 30 of the Act.

10. Organising Information and Recordkeeping (Para 5.4.11):

- a.** Suo motu disclosures should also be available in the form printed, priced publication in the official language, revised periodically (at least once a year). Such a publication should be available for reference, free of charge. In respect of electronic disclosures, NIC should provide a single portal through

which disclosures of all public authorities under appropriate governments could be accessed, to facilitate easy availability of information.

b. Public Records Offices should be established as an independent authority in GOI and all States within 6 months by integrating and restructuring the multiple agencies currently involved in record keeping. This Office will be a repository of technical and professional expertise in management of public records. It will be responsible for supervision, monitoring, control and inspection of record keeping in all public offices.

c. Public Records would function under the overall supervision and guidance of CIC/SIC.

d. As a one time measure GOI should earmark 1% of the funds of all Flagship Programmes for a period of five years for updating records, improving infrastructure, creating manuals and establishing the Public Records Offices. (An amount not exceeding 25% of this should be utilized for awareness generation)

e. As a one time measure, GOI may create a Land Records Modernization Fund for survey and updation of all land records. The quantum of assistance for each State would be based on an assessment of the field situation.

f. All organizations, which have jurisdiction over an area equal to or exceeding a district, should be funded and required to complete the process of digitization by the end of 2009. All sub-district level organizations should complete this task by the end of 2011. The controlling Ministries/Departments at Union and State level should lay down a detailed road map for this purpose with well-defined milestones within 6 months, so that this could be implemented as a priority item in the Eleventh Five Year Plan.

11. Capacity Building and Awareness Generation (Para 5.5.5):

a. Training programmes should not be confined to merely PIOs and APIOs. All government functionaries should be imparted at least one day training on Right to Information within a year. These training programmes have to be organized in a decentralized manner in every block. A cascading model should be adopted with a batch of master trainers in each district.

b. In all general or specialized training programmes, of more than 3 days duration, a half-day module on Right to Information should be compulsory.

c. Awareness campaigns should be entrusted to credible non-profit organizations at the State level. They should design a multi-media campaign best suited to the needs, in the local language. The funds earmarked (as mentioned in para 5.4.11.d)^{iv} could be utilized for this purpose.

d. Appropriate government should bring out guides and comprehensible information material within the prescribed time.

e. The CIC and SICs may issue guidelines for the benefit of public authorities and public officials in particular and public in general about key concepts in the Act and approach to be taken in response to information requests on the lines of Awareness Guidance Series referred to above (para 5.5.1)^v

12. Monitoring Mechanism (Para 5.6.4):

a. The CIC and the SICs may be entrusted with the task of monitoring effective implementation of Right to Information Act in all public authorities. (An appropriate provision could be made under Section 30 by way of removal of difficulties).

b. As a large number of Public Authorities exist at regional, state, district and sub-district level, a nodal officer should be identified wherever necessary by the appropriate monitoring authority (CIC/SIC) to monitor implementation of the Act.

c. Each public authority should be responsible for compliance of provisions of the Act in its own office as well as that of the subordinate public authorities.

d. A National Coordination Committee (NCC) may be set up under the chairpersonship of the Chief Information Commissioner with the nodal Union Ministry, the SICs and representatives of States as members. A provision to this effect may be made under Section 30 of the Act by way of removing difficulties. The National Coordination Committee would:

i. serve as a national platform for effective implementation of the Act,

ii. document and disseminate best practices in India and elsewhere,

iii. monitor the creation and functioning of the national portal for Right to Information,

iv. review the Rules and Executive Orders issued by the appropriate governments under the Act,

v. carry out impact evaluation of the implementation of the Act and

vi. perform such other relevant functions as may be deemed necessary.

13. Facilitating Access (Para 6.2.7):

a. In addition to the existing modes of payment, appropriate governments should amend the Rules to include payment through postal orders.

b. States may be required to frame Rules regarding application fee which are in harmony with the Central Rules. It needs to be ensured that the fee itself does not become a disincentive.

c. Appropriate governments may restructure the fees (including additional fees) in multiples of Rs. 5 {e.g. instead of prescribing a fee of Rs. 2 per additional page it may be desirable to have a fee of Rs. 5 for every 3 pages or part thereof}.

d. State Governments may issue appropriate stamps in suitable denominations as a mode of payment of fees. Such stamps would be used for making applications before public authorities coming within the purview of State Governments.

e. As all the post offices in the country have already been authorized to function as APIOs on behalf of Union Ministries/Departments, they may also be authorized to collect the fees in cash and forward a receipt along with the application.

14. Inventory of Public Authorities (Para 6.3.2):

a. At the Government of India level the Department of Personnel and Training has been identified as the nodal department for implementation of the RTI Act. This nodal department should have a complete list of all Union Ministries/Departments which function as public authorities.

b. Each Union Ministry/Department should also have an exhaustive list of all public authorities, which come within its purview. The public authorities coming under each ministry/department should be classified into **(i)** constitutional bodies, **(ii)** line agencies, **(iii)** statutory bodies, **(iv)** public sector undertakings, **(v)** bodies created under executive orders, **(vi)** bodies owned, controlled or substantially financed, and **(vii)** NGOs substantially financed by government. Within each category an up-to-date list of all public authorities has to be maintained.

c. Each public authority should have the details of all public authorities subordinate to it at the immediately next level. This should continue till the last level is reached. All these details should be made available on the websites of the respective public authorities in a hierarchical form.

d. A similar system should also be adopted by the States.

15. Single Window Agency at District Level (Para 6.4.2):

a. A Single Window Agency should be set up in each district. This could be achieved by creating a cell in a district-level office, and designating an officer as the Assistant Public Information Officer for all public authorities served by the Single Window Agency. The office of the District Collector/ Deputy

Commissioner, or the Zilla Parishad is well suited for location of the cell. This should be completed by all States within 6 months.

16. Subordinate Field Offices and Public Authorities (Para 6.5.4):

a. The lowest office in any organisation which has decision-making power or is a custodian of records should be recognised as a public authority.

17. Application to Non Governmental Bodies (Para 6.6.6):

a. Organizations which perform functions of a public nature that are ordinarily performed by government or its agencies, and those which enjoy natural monopoly may be brought within the purview of the Act.

b. Norms should be laid down that any institution or body that has received 50% of its annual operating costs, or a sum equal to or greater than Rs. 1 crore during any of the preceding 3 years should be understood to have obtained 'substantial funding' from the government for the period and purpose of such funding.

c. Any information which, if it were held by the government, would be subject to disclosure under the law, must remain subject to such disclosure even when it is transferred to a non-government body or institution.

d. This could be achieved by way of removal of difficulties under Section 30 of the Act.

18. Time Limit for Information beyond 20 Years (Para 6.7.6):

a. The stipulation of making available 20-year old records on request should be applicable only to those public records which need to be preserved for such a period. In respect of all other records, the period of availability will be limited to the period for which they should be preserved under the record keeping procedures.

b. If any public authority intends to reduce the period up to which any category of record is to be kept, it shall do so after taking concurrence of the Public Records Office as suggested in para 5.4.11.

c. These recommendations could be implemented by way of removal of difficulties under Section 30 of the Act.

19. Mechanism for Redressal of Public Grievances (Para 6.8.3):

a. States may be advised to set up independent public grievance redressal authorities to deal with complaints of delay, harassment or corruption. These authorities should work in close coordination with the SICs/District Single

Window Agencies, and help citizens use information as a tool to fight against corruption and misgovernance, or for better services.

20. Frivolous and Vexatious Requests (Para 6.9.5):

a. Section 7 may be amended to insert sub-section (10) as follows:

"The PIO may refuse a request for information if the request is manifestly frivolous or vexatious.

Provided that such a refusal shall be communicated within 15 days of receipt of application, with the prior approval of the appellate authority.

Provided further that all such refusals shall stand transferred to CIS/SIC as the case may be and the CIC/SIC shall dispose of the case as if it is an appeal under section 19(3) of the RTI Act."

b. It may be provided that information can be denied if the work involved in processing the request would substantially and unreasonably divert the resources of the public body.

Provided that such a refusal shall be communicated within 15 days of receipt of application, with the prior approval of the appellate authority.

Provided further that all such refusals shall stand transferred to CIC/SIC, as the case may be and the CIC/SIS shall dispose of the case as if it is under section 19(3) of the RTI Act.

This may be accomplished by way of removal of difficulties or framing of appropriate Rules.

21. Application of the Act to the Legislature and the Judiciary (Para 7.11):

a. A system of indexing and cataloguing of records of legislatures, which facilitates easy access should be put in place. This could be best achieved by digitizing all the records and providing access to citizens with facilities for retrieving records based on intelligible searches.

b. A tracking mechanism needs to be developed so that the action taken by the executive branch on various reports like CAG, Commissions of Enquiry and House Committees is available to legislators and public, online.

c. The working of the legislative committees should be thrown open to the public. The presiding officer of the committee, if required in the interest of State or privacy, may hold proceedings in camera.

d. The records at the district court and the subordinate court should be stored in a scientific way, by adopting uniform norms for indexing and cataloguing.

e. The administrative processes in the district and the subordinate courts should be computerized in a time bound manner. These processes should be totally in the public domain.

Notes

ⁱ **Section 124** – “No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure.” (Quoted from the *Indian Evidence Act, 1872*)

ⁱⁱ **Article 75(4)** – “Before a Minister enters upon his office, the President shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.” (Quoted from *The Constitution of India*)

Article 164(3) – “Before a Minister enters upon his office, the Governor shall administer to him the oaths of office and of secrecy according to the forms set out for the purpose in the Third Schedule.” (Quoted from *The Constitution of India*)

ⁱⁱⁱ **Para 118(1)** – “The notes portion of a file referred by a department to another will be treated as confidential and will not be referred to any authority outside the secretariat and attached offices without the general or specific consent of the department to which the file belongs. If the information is in the electronic form it will be handled by the authorized official only.” (Quoted from the *Manual of Office Procedure*, published by the Central Secretariat, May 2003 edition)

^{iv} **Para 5.4.11.d** – “As a one time measure GOI should earmark 1% of the funds of all Flagship Programmes for a period of five years for updating records, improving infrastructure, creating manuals and establishing the Public Records Offices. (An amount not exceeding 25% of this should be utilized for awareness generation) Eight flagship programmes are: **Sarva Shiksha Abhiyan, Mid-day Meal Scheme, Rajiv Gandhi Drinking Water Mission, Total Sanitation Campaign, National Rural Health Mission, Integrated Child Services, National Rural Employment Scheme and Jawaharlal Nehru National Urban Renewal Mission.**” (emphasis added)

^v **Para 5.5.1** “*Training programmes:* The enactment of the Right to Information Act is only the first step in promoting transparency in governance. The real challenge lies in ensuring that the information sought is provided expeditiously, and in an intelligible form. The mindset of the government functionaries, wherein secrecy is the norm and disclosure the exception, would require a revolutionary change. Such a change would also be required in the mindset of citizens who traditionally have been reluctant to seek information, Bringing about this radical change would require sustained training and awareness generation programmes. The Commission’s own experience in seeking information from select public authorities reveals that even some PIOs are not conversant with the key provisions of the Act. The Information Commissioner’s Office in the United Kingdom has published an ‘Awareness Guidance’ series to assist public authorities and, in particular, staff who may not have access to specialist advice about some of the issues, especially exemption provisions. This practice may also be adopted in India.”
