

**Mr Wajahat Habibullah**  
Central Chief Information Commissioner  
Central Information Commission  
Block IV, 5 Floor  
JNU Old Campus  
New Delhi - 110067

7 November 2005

Dear Mr Habibullah

**Re: Clarifying the inclusion of 'file notings' under the RTI Act 2005**

Thank you again for taking the time to meet with me, as well as the Coordinators of CHRI's Right to Information Programme, on 31 October. I am now taking the liberty of writing to you more formally about some of the issues we discussed at our meeting in the hope that this might assist the Information Commission as it develops strategies and materials around implementing and promoting the Act.

In particular, I am most concerned to note the current debate within official circles regarding the status of file notings within the information access regime as defined by the current provisions of the Right to Information Act. As discussed in our meeting, as the Act is currently drafted, the clear legal position is that file notings are indeed covered by the Act.

In mid-October 2005, CHRI wrote to the Law Ministry as well as Mrs Gandhi in her capacity as head of the National Advisory Council setting out the legal position regarding file notings under the Act (see Attachment 1). More recently, CHRI also wrote to the Prime Minister encouraging him to resist pressure from the bureaucracy to attempt to amend the Act to remove file notings from the purview of the law (see Attachment 2).

May I urge the Information Commission to add its voice to the current discussions on this key issue. It is deeply troubling that the Act could be amended before it has barely come into force to narrow its provisions. File notings are an essential part of the decision-making process and as such it is absolutely crucial that they are open to public scrutiny in order to promote more accountable decision-making by public officials. The exclusion of file notings would gut the Act.

A strong statement in support of this view from your office at this juncture could be crucial to ensuring that the Act will be implemented in full and in the spirit of open government in which it was originally passed.

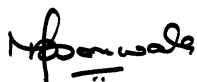
I also once again draw your attention by way of formal complaint to the fact that the Department of Personnel & Training's Right to Information website (see <http://www.persmin.nic.in/RTI/WelcomeRTI.htm> and click on "What does RTI mean?" and then click on "What does information mean") currently advises that:

*"Information means 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 **but does not include "file notings" [S.2(f)]."***

This advice is clearly not in accordance with the terms of the Act in its current form (see Attachment 1 for more). I would reiterate in this regard that, at various training programmes we have undertaken with State Government officials, this DOPT advice has caused confusion, especially where officials were themselves willing to release file notings. This advice should be immediately removed from the DOPT's website. In this context, I would urge your office to contact DOPT to encourage the amendment of the website as a priority.

I would be happy to discuss this issue further with you, your fellow Commissioners and/or your staff at your convenience. If we can be of assistance in any other way, for example, by assisting with international research or by sharing international contacts or best practice standards, please do not hesitate to get in contact with me or my office on 9810 199 745 or (011) 2685 0523 or email me at [majadhun@vsnl.com](mailto:majadhun@vsnl.com) or [maja@humanrightsinitiative.org](mailto:maja@humanrightsinitiative.org). Alternatively please contact my colleagues – Mr. Venkatesh Nayak ([venkatesh@humanrightsinitiative.org](mailto:venkatesh@humanrightsinitiative.org)) or Ms Charmaine Rodrigues ([charmaine@humanrightsintiiative.org](mailto:charmaine@humanrightsintiiative.org)) – for any further information or assistance in this matter.

Respectfully yours



Maja Daruwala  
Director

Encl: Letter to Law Ministry dated 13 October 2005  
Letter to Prime Minister dated 2 November 2005

Cc: Professor M M Ansari, Central Information Commissioner, Central Information Commission, Block IV, 5 Floor, JNU Old Campus, New Delhi – 110067  
- Mr A N Tiwari, Central Information Commissioner, Central Information Commission, Block IV, 5 Floor, JNU Old Campus, New Delhi – 110067

- Mr C P Kejriwal, Central Information Commissioner, Central Information Commission, Block IV, 5 Floor, JNU Old Campus, New Delhi – 110067
- Ms Padma Balasubhramanian, Central Information Commissioner, Central Information Commission, Block IV, 5 Floor, JNU Old Campus, New Delhi – 110067
- Mr B V R Subramaniam, Private Secretary to the Prime Minister, Prime Minister's Office, Room # 152, South Block, New Delhi - 110001
- Mr Arun Bhatnagar, Secretary, National Advisory Council (for distribution to all NAC members) 2 Motilal Nehru Place, New Delhi - 110001
- Mr T Jacob, Joint Secretary, Department of Personnel and Training, Government of India, Room # 111, North Block, New Delhi - 110001