

**Shri Suresh Pachouri**

Minister of State for Personnel,  
Public Grievances, Pensions & Parliamentary Affairs  
Ministry of Personnel, Public Grievances and Pensions  
Room #102 North Block  
New Delhi –110001

29 September 2005

Dear Minister Pachouri

**Re: CHRI Letter to the Prime Minister with regard to exclusion of 'file notings' from the purview of the Right to Information Act 2005.**

We are deeply disturbed and concerned by reports that there are moves within Government to exclude 'file notings' from the purview of the Right to Information Act (RTI Act). In this regard we have written to the Hon'ble Prime Minister, Shri Manmohan Singh voicing our concerns. A copy of the referenced letter is being enclosed for your consideration.

In this regard I draw your attention to the official website of the Ministry of Personnel, Public Grievances and Pensions which defines 'information' as:

- 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 view has no legal foundation and is in our opinion misleading officers in their duty. 'File notings' come firmly within the purview of the RTI Act. These notings, - unless they satisfy the criteria for exemptions under Sec. 8, must be made public on request. Even where these fall within the exemptions under Sec.8, file notings can be made public where the greater interest is served in disclosing the information. Moreover, the nature of file notings is inevitably that of advice, opinions, recommendations or suggestions etc and these are specifically covered by the definition of 'information'.

Exempting file notings would not only truncate the definition of the term 'file' mentioned in the Act but also irreparably damage the other important facets of the term 'information' such as 'opinions' and 'advice' contained in Sec. 2(f). Similarly exclusion of notings would completely nullify the operation and the import of Sec. 4(1)(c) and (d) which requires every public authority to proactively "publish all relevant facts while formulating policies or announcing the decisions to affected persons" and "provide reasons for its administrative or

quasi-judicial decisions to affected persons.” In short such an amendment would rend asunder the very core and spirit of the RTI Act.

Sec. 30 of the Act gives the Government the power to remove any difficulties that may arise in giving effect to the Act’s provisions. This power is to be used to further the objectives of openness and transparency and remove hindrances and obstacles. It must be exercised consistently with the provisions of the Act and not in a manner that will defeat the very purpose of the law. Under Sec. 25(3)(g) of the Act, Ministries in the Government have the power to recommend amendments for enforcing the right to access information. Far from operationalising the right, any amendment to exclude file notings would only curtail this fundamental right. Such retrograde measures intended to curtail the citizen’s right to access information are also against the mandate provided within the Act for amendment, clarification and reform.

Any support for a move to exclude file notings would go back on the promise contained in the UPA Government’s Common Minimum Programme, that “the Right to Information Act would be made more progressive, participatory and meaningful.” It will take us so far back that the legislative effort of the present Government will have been meaningless. Sir, we trust that the Department of Personnel and Training which has piloted this Act into being will not permit any attempts at diluting the Act when it gives its opinion on the matter.

We are happy to provide any clarification on this issue or discuss this further with your office. We would be deeply appreciative of an opportunity to do so

Yours Sincerely,

Maja Daruwala  
Director

Encl: As above.

