

DRAFT

Jammu & Kashmir Right to Information Rules 2004

In exercise of the powers conferred under section 15 of the Jammu and Kashmir Right to Information Act 2004 (Jammu and Kashmir Act No. 1 of 2004), the Government of Jammu and Kashmir hereby makes the following rules for carrying out the purposes of the said Act, namely:-

1. Title and Commencement

- (1) These rules may be called the Jammu and Kashmir Right to Information Rules, 2004.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions

In these rules unless the context otherwise requires:

- (a) “Act” means the Jammu and Kashmir Right to Information Act 2004 (Jammu and Kashmir Act No. 1 of 2004);
- (b) “appeal body” is used to refer to either or both of the Controlling Officer under section 9(1) and the Government under section 9(2), as appropriate to the context.
- (c) *insert any other definitions as necessary*

3. Manner and Interval of Suo Moto Disclosure

- (1) Subject to sub-rule (2) below, every Department and public body shall publish the information required under section 3(b) of the Act within 3 months from the Act coming into force and such information will then, at a minimum, be updated and republished every 12 months.
- (2) For the purpose of section 3(b)(v) and (vi) of the Act, within 1 month of the Act coming into force:
 - (i) The InCharge shall display or cause to be displayed at prominent places in the premises of every office or unit under him/her the required information, including information regarding how to make an application for information under the Act, the form of applications, any fees to be paid, time limits and appeal rights.
 - (ii) The Head of the Department or public body shall publish a list of the names and contact details of all InCharges who are responsible for receiving and managing applications under the Act. This information shall be updated every month.

- (3) Information required to be published under sections 3(b)-(e) of the Act should be disseminated widely and in a form and manner which is easily accessible and comprehensible to the public.
- (4) For the purposes of the Act and in particular sections 3(b), (c) and (e) of the Act, "publish" shall mean making the information available on a government website, appropriately communicating the information to the public through notice boards, newspapers, public announcements, media broadcasts, or other such means and shall include inspection at all of the Department's or public body's offices. All materials shall be disseminated keeping in mind cost effectiveness, the local language and the most effective method of communication in that local area. Such information should be easily accessible, with the Incharge, where possible in electronic format, and shall be available free.
- (5) The Head of the Department or public body shall be personally responsible for ensuring that all Incharges under his/her authority have complied with the publication provisions of the Act.

4. Form of application

- (1) Applications for information do not need to be made on a particular form.
- (2) An application can be submitted in person, by post or electronically.
- (3) An application shall include the following:
 - (i) Name and address of the applicant;
 - (ii) Date the application is submitted;
 - (iii) Subject matter of the information requested, including if relevant, the period and/or geographic area to which the information relates,
 - (iv) Form of access preferred.

5. Acknowledging applications

- (1) The InCharge shall acknowledge the receipt of every application in writing. This receipt must include, at a minimum, the application reference number, the Incharge's name, position, department/public body, the date the application was received and the date by which a response must be provided.
- (2) Where an application is received by post, the date of receipt is taken to be the date the application is logged into the mail register of the Department or public body, whether or not that date is the same date the application is received by the Incharge.
- (3) Where an application is received electronically, the date of receipt is taken to be the date the application is sent to the Department or public body, whether or not that date is the same date the application is received by the Incharge.

6. Transfer of applications

- (1) Where an application is made to a Department or public body, but the information requested is not held by the Department or public body, the InCharge shall within ten (10) days from the date of receipt of application, transfer the application to the Department or public body which holds the information and inform the applicant accordingly in writing. Thereafter the officer to whom the application is transferred shall furnish the information within the original thirty (30) day period which applied to the application.
- (2) A notice of transfer to an applicant, in accordance with sub-section (1) above, will include the InCharge's name, position, the application reference number, the date of transfer, the name of the Department or public body to which the application is being transferred, the name of the InCharge to which the application is being transferred and the date by which the information must be provided.
- (3) Where an application is so transferred, the InCharge to which the application is transferred shall be deemed the InCharge for the purposes of the Act.

7. Extensions of time

- (1) For the purposes of section 5(a) of the Act, the inclusion of the phrase "as far as may be practical" shall be relied upon only to permit delays in providing information where information must be collected from more than 2 offices or bodies which are geographically far from the InCharge.
- (2) The maximum extension of time permissible under section 5(a) of the Act is 15 days, and in such cases, the applicant must be notified of the delay in writing with an explanation provided for the delay.

8. Partial disclosure

- (1) If a request for access to information is rejected on the ground that it is in relation to information which is exempted from disclosure, then notwithstanding anything contained in this Act, access may be given to that part of the record which does not obtain any information that is exempted from disclosure under this Act and which can reasonably be severed from any part that contains exempted information.
- (2) Where access is granted to a part of the record in accordance with sub-section (1), the person making the request shall be informed, -
 - (a) that only part of the record requested, after severance of the record containing information which is exempted from disclosure is being furnished: and
 - (b) of the provisions of the Act under which the severed part is exempted from disclosure.

9. Information due to be published

For the purposes of section 6(2)(e)(ii), information can only be withheld on the grounds that it is due to be published, if either:

- (a) it is due to be published by law and premature disclosure would undermine the purposes of the law;
- (b) it is due to be published within 60 days, such publication timetable was already determined prior to receipt of the application and premature disclosure would undermine the purpose of the publication.

10. Third party consultation

- (1) In accordance with section 7, where information is to be disclosed in accordance with the Act which relates to, or has been supplied by, a third party and has been treated as confidential by that third party, the body intending to disclose the information, whether the InCharge or an appeal body, shall, within ten (10) days from the receipt of the request/appeal, give written notice to such third party of the request/appeal and of the fact that the body intends to disclose the information or record, or part thereof.
- (2) Where a notice is given in accordance with sub-section (1) to a third party, the third party shall, within 15 days from the date of issuance of notice, be given the opportunity to make representation against the proposed disclosure.
- (3) The body intending to disclose the information shall, within 30 days after receipt of the request, taking account of any representation made by a third party, make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his/her decision to the third party and the applicant.
- (4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal against the decision under section 12.

11. Granting applications

- (1) After the InCharge has compiled the requisite information and determine whether access shall be granted, he/she shall send an intimation to the applicant in the format given in Annexure 'A' within a period of thirty days from the date of receipt of the application informing him/her in writing of the decision to grant the application. The notice shall include the amount of fees payable by him/her as per Section XX of these Rules, the method of payment and the proposed process for accessing the information.
- (2) The applicant shall pay the requisite fees either by way of money order or DD or by making cash payment in the office of the concerned InCharge or make payment in the Treasury.

- (3) The amount of fees received from the applicants by InCharges shall be deposited in the budget head No. "XXXXXXXXXX"
- (4) On receiving the payment or on receiving a copy of *chalan* showing payment of fee in treasury, the InCharge shall immediately and no later than within 2 days, supply the information to the applicant in the form requested by the applicant.

12. Rejection notice

- (1) In accordance with sections 5(b) and (c) of the Act, where an Incharge rejects a request for information, the Incharge must send the applicant a rejection notice in writing.
- (2) The notice must include the following information:
 - (a) The name and position of the decision-maker;
 - (b) The date of the decision;
 - (c) Reference to the clause(s) in the Act that you have relied upon to reject the application, including an explanation of why the clause applies;
 - (d) Details of the appeals process, including:
 - (i) the name and contact details of the relevant Controlling Officer,
 - (ii) the time limits within which an appeal must be lodged,
 - (iii) a copy of an appeal form, if one has been prescribed; and
 - (iv) details of any fees payable.

13. Appeals

- (1) For the purposes of section 9(1), "sufficient cause" should be interpreted broadly, with a presumption in favour of permitting appeals.
- (2) For the purposes of section 9(2), the "Government" shall mean (We would request the Jammu and Kashmir Government to notify some independent body as the second appellate body).
- (3) In his/her capacity as an appeal body under the Act, the _____ will have the power to:
 - (a) review all decisions of the InCharge and the Controlling Officer;
 - (b) make decisions in the first instances, where the InCharge and/or the Controlling Officer has not made a decision;
 - (c) review all necessary documents to make a decision under the Act
 - (d) impose penalty under
 - (e) issue any order deemed necessary to promote the objectives of the Act, including compelling disclosure and imposing penalties.

- (4) Every appeal under section 9 shall be accompanied by a copy of the order, if any, being appealed against and shall specify:
- (a) the name and address of the applicant
 - (b) the particulars of the InCharge or the Controlling Officer, whichever is being appealed against.
 - (c) the basic grounds of appeal; and
 - (d) the relief which the applicant claims.
- (5) In proceedings before an appeal body, the applicant shall be given an opportunity of making representations.
- (6) Where an appeal is allowed, the information shall be supplied to the applicant by the InCharge within such period as ordered by the appeal body. This period shall not exceed thirty (30) days from the date the order is made.
- (7) Where an appeal is rejected, the order should include details of any further appeal process which is available to the applicant.
- (8) Every order passed by an appeal body shall be communicated to the applicant concerned and also to the InCharge and/or Controlling Officer against whose order the appeal was made.
- (9) A copy of every order passed by an appeal body should also be sent to the body responsible for monitoring implementation of the Act, which shall act as a repository of all appeals orders and publish any orders which are of interest to the public, for example, because of the type of information provided or the interpretation given to the law by the appeal body.

14. Fees

- (1) In accordance with section 10(1) of the Act, the following fees may be imposed for supplying information to an applicant:

S.No	Description of Information	Price / Fees in Rupees
1.	<i>Where the information is available in the form of a priced publication.</i>	<i>Price so fixed</i>
2.	<i>Where information is provided in the form of a copy of a paper document.</i>	<i>50 paise per page</i>
	<i>Where information is provided in the form of a computer disk/video/tape/etc.</i>	<ul style="list-style-type: none"> • <i>Nil if the applicant provides his/her own disk/video/tape/etc.</i> • <i>No more than the cost price of the disk/video/tape/etc.</i>

- (2) In accordance with section 10(3) of the Act, the fee for making an appeal is **Rs 5**.
- (3) Notwithstanding anything in this section, where the Incharge of a Department or public body fails to comply with the time limits specified in the Act for responding to applications, any access to information to which the applicant is entitled pursuant to his/her request shall be provided free of charge.
- (4) An applicant who is the holder of a Below Poverty Line Card and/or Antyodhaya Scheme Card, may request the InCharge or the appeal bodies under section 9 to reduce and/or waive any fee imposed for access to information.
- (5) Where an applicant has requested that the fee be reduced or waived, the InCharge or the appeal bodies under section 9 may decide that the charge is to be reduced or not to be imposed. When determining whether to waive fees, the InCharge or the appeal bodies must take into account:
 - (a) whether the payment of the charge, or part of it, would cause financial hardship to the applicant, or to a person on whose behalf the application was made; and
 - (b) whether the giving of access to the document in question is in the general public interest or in the interest of a substantial section of the public.

15. Penalties

- (1) The appeals bodies referred to in section 9(1) and (2) of the Act shall decide the quantum of penalty to be imposed after giving the officer an opportunity of being heard.
- (2) Either of the appeals bodies referred to in section 9(1) and (2) shall impose penalties under section 12, where an Incharge:
 - (a) Fails without reasonable cause to furnish complete information sought by any citizen under the provisions of this Act within the time specified, at a rate of Rs 250 for every day of delay;
 - (b) Furnishes any information which is false with regard to any material particulars and which he/she knows and has reasonable cause to believe it to be false or does not believe it to be true, set at an amount no less than Rs1000 and taking into account the seriousness of the no-compliance.
- (3) Section 12 of the Act and sub-section (2) above applies to any officer who has been requested by an Incharge to assist under section 5(d) and (e) of the Act.

16. Register of Applications

- (1) A register of applications received shall be maintained by each by each InCharge. At a minimum, the register will note the following information:
 - (i) Application reference number;

- (j) Name of applicant;
 - (ii) Date of application;
 - (iii) Summary of applicant's request;
 - (iv) Date response provided to applicant;
 - (v) Where information was provided, summary of information provided
 - (vi) Where application was rejected, specific clause relied upon and brief explanation of reasons;
 - (vii) Whether appeal filed and outcome;
 - (viii) Any additional remarks
- (2) At the end of every month, the InCharge will provide a monthly report containing the information collected under sub-section (1) above to the Head of the Department or public body or his/her delegate.
- (3) A register of appeals received shall be maintained by each Controlling Officer and the appeal body referred to under section 9(2) of the Act. At a minimum, the register will note the following information:
- (i) Application reference number;
 - (ii) Name of applicant;
 - (iii) Date of appeal;
 - (iv) Date response provided to applicant;
 - (v) Outcome of the appeal, including the provision(s) of the law being disputed, the interpretation of the provision(s) relied upon and a summary of the order passed;
 - (vi) Any additional remarks
- (4) At the end of every month, the Controlling Officer will provide a monthly report containing the information collected under sub-section (3) above to the Head of the Department or public body or his/her delegate.
- (5) Within 30 days from the end of each month, the Head of the Department or public body or his/her delegate will collate all of the information received in accordance with sub-section (2) and (4) above and publish this information on the internet.
- (6) Within 30 days from the end of each month, the appeal body referred to under section 9(2) of the Act will publish the information collected under sub-section (3) above on the internet.

17. Annual Report

- (1) Within one month from the end of each year, the body responsible for monitoring implementation of the Act must publish a report, which shall be tabled in Parliament.
- (2) At a minimum, an annual Report shall include information about:
- (a) the number of requests made to each public authority;

- (b) the number of requests for information granted in full or in part;
- (c) the number of requests for information which were refused, and which specific exemptions were relied upon;
- (d) the number of appeals from refusals to communicate information and whether they were successful;
- (e) fees collected for requests for information;
- (f) particulars of any disciplinary action taken against any officer in respect of the Act;
- (g) whether and how information has been published proactively;
- (h) whether and how training for officials and the public has been undertaken;
- (i) any other facts which indicate an effort by public authorities to administer and implement the spirit and intention of this Act;
- (j) any recommendations for improving implementation of the right to information.

Annex A
[See rule XX]

From. (Name of Department),

Designation of the Public Information Officer.

To

(Name of the applicant)
(Address of the applicant)

Dear Sir/Madam,

Please refer to your application dated.. addressed to the undersigned requesting information on.. The above information is ready to be supplied to you.

The additional fee for supplying this information to you is Rs
[including breakdown of calculation of fee]

You are requested to pay the fee at this Office or send a money order or make payment in a Government Treasury and send a copy of the *chalan* to this office and you can then [inspect/collect copies of] the information.

The amount of fees shall be deposited in the budget head No. "XXXXXXXXXX".

(Name of sender)
InCharge under RTI Act