

Shri Thiru N Narayanan
Chief Secretary
Government of Tamil Nadu
Secretariat, St. George 4th
Chennai – 600009

8 November 2005

Dear Shri Narayanan

Re: Tamil Nadu Government's Exclusion of Certain Intelligence and Security Organisations under the *Right to Information Act 2005*.

I am writing from the Commonwealth Human Rights Initiative (CHRI) an independent, non-partisan, non-government organisation headquartered in New Delhi. I refer to my previous correspondence with you regarding effective implementation of the *Right to Information Act 2005* (RTI Act).

CHRI's Right to Information Programme is dedicated to advocating for the right to information. In India, we have closely been involved in the legislative processes leading up to the enactment of the Right to Information Act 2005 (RTI Act) and have been assisting State Governments in their implementation efforts. Mr Venkatesh Nayak, Co-coordinator, Right to Information Programme, was recently in Chennai as a resource person at a workshop on Right to Information Act 2005 organised by the Anna Institute of Management, Chennai for Secretaries and Heads of Departments of the Tamil Nadu Government.

I understand that the Tamil Nadu Government in its Official Gazette dated 14 October 2005 has issued four Orders (Nos.225, 226, 227, 228) specifying a list of intelligence and security organisations which are exempt from coverage under the RTI Act. In total, the Orders exempt 32 organisations from coverage.

Sir, I would urge that the Government urgently reconsider exempting such a vast number of intelligence and security organisations from the purview of the RTI Act. While s.24(4) of the Act provides State Governments with the power to exempt, by notification in the Official Gazette, a list of intelligence and security agencies from coverage under the law, such exemptions should be kept to an absolute minimum. The indiscriminate exemption of intelligence and security agencies undermines the principle of maximum disclosure and minimum exemption which is the guiding principle of the RTI Act.

Notably, security agencies can have an incredibly significant impact on the public's rights such that they require *extra public oversight* rather than less. How can the public in practice ensure that the exempted agencies are undertaking their activities in a professional manner if they cannot access basic information about their activities? It is not suggested that tactical information is released during times of unrest, violence or emergency but at

the same time, if an allegation of misconduct, misappropriation or criminal behaviour is made against an intelligence of security agency or its staff, the public should have a right to access information in that regard.

Of course, in accordance with s.24(4) of the Act, even security and intelligence agencies kept outside the purview of the RTI Act are still duty bound to disclose information concerning allegations of corruption or violation of human rights committed in the course of their actions. However, what of more common problems of corruption during procurement of favoritism in postings and promotion? These malpractices also deserve to be open to public scrutiny and censure in a properly-functioning democracy.

In practice, it is unnecessary to fully exempt any intelligence or security bodies because any genuinely sensitive information they hold will in a case be protected by the exemptions in s.8(1)(a) (which protects against disclosures which may prejudicially affect the sovereignty and integrity of India or security), s.8(1)(g) (which protects against disclosure which would endanger a person's safety or identify an informant) and s.8(1)(h) (which protects against disclosures which would impede an investigation or apprehension or prosecution of offenders). Additionally, s.10 allows for exempt information to be severed from a document which provides further protection for sensitive information.

CHRI strongly urges the Tamil Nadu Government to amend - as a matter of priority - the broad list of agencies currently exempt from coverage under the RTI Act. Ideally, the list of agencies covered should not go beyond those identified by the Central Government in the Second Schedule of the Act. At the very least, the Government should clarify the criteria used to select these agencies for exemption from coverage and further set down for future reference what these criteria are.

If you would like to discuss these issues in further detail, please do not hesitate to contact me on (0) 9810 199 745 or (011) 2685 0523 or via email at majadhun@vsnl.com and Mr. Venkatesh Nayak, Co-Coordinator, Right to Information Programme at venkatesh@humanrightsinitiative.org.

Kind regards



Maja Daruwala
Director

- Cc: Shri G Ramakrishnan, Secretary to Government, Public Department, Government of Tamil Nadu, Secretariat, Chennai – 9.
- Thiru L Jayasankaran, Secretary to Government, Law Department, Government of Tamil Nadu, Secretariat, Chennai – 9.
 - Dr M B Pranesh, Director General Training, and Director Anna Institute of Management Chennai, 161, P S Kumarasamy Raja Salai, Chennai-600028.

- Shri T Jacob, Joint Secretary, Department of Personnel and Training, Government of India, Room No 111, North Block, New Delhi – 110001.
- Shri T K Vishwanathan, Secretary for Legislation, Legislative Department, Government of India, Room #405, A Wing, Shastri Bhawan, Dr Rajendra Prasad Road, New Delhi – 110001.