

Your Guide to

Using the

Jammu & Kashmir

Right to Information

Act 2009



CHRI

Commonwealth Human Rights Initiative

working for the **practical realisation** of human rights in the countries of the Commonwealth

Commonwealth Human Rights Initiative

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the *practical* realisation of human rights in the countries of the Commonwealth. In 1987, several Commonwealth professional associations founded CHRI. They believed that while the Commonwealth provided member countries a shared set of values and legal principles from which to work and provided a forum within which to promote human rights, there was little focus on the issues of human rights within the Commonwealth.

The objectives of CHRI are to promote awareness of and adherence to the Commonwealth Harare Principles, the Universal Declaration of Human Rights and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in Commonwealth member states.

Through its reports and periodic investigations, CHRI continually draws attention to progress and setbacks to human rights in Commonwealth countries. In advocating for approaches and measures to prevent human rights abuses, CHRI addresses the Commonwealth Secretariat, member governments and civil society associations. Through its public education programmes, policy dialogues, comparative research, advocacy and networking, CHRI's approach throughout is to act as a catalyst around its priority issues.

The nature of CHRI's sponsoring organisations* allows for a national presence and an international network. These professionals can also steer public policy by incorporating human rights norms into their own work and act as a conduit to disseminate human rights information, standards and practices. These groups also bring local knowledge, can access policy makers, highlight issues, and act in concert to promote human rights.

CHRI is based in New Delhi, India, and has offices in London, UK, and Accra, Ghana.

International Advisory Commission: Yashpal Ghai — Chairperson; Members: B. G. Verghese, Neville Linton, Yashpal Ghai, Alison Duxbury, Vivek Maru, Edward Mortimer, Sam Okudzeto and Maja Daruwala

Executive Committee (India): B. G. Verghese — Chairperson Members: Harivansh, Sanjoy Hazarika, B. K. Chandrashekar, Poonam Muttreja, Nitin Desai, Ruma Pal, Kamal Kumar, Wajahat Habibullah A. P. Shah and Maja Daruwala — Director

Executive Committee (Ghana): Sam Okudzeto — Chairperson Members: B. G. Verghese, Neville Linton, Akoto Ampaw and Maja Daruwala — Director

Executive Committee (UK): Neville Linton — Chairperson Members: Claire Martin, Derek Ingram, Meenakshi Dhar, Richard Bourne, Michael Stone, Syed Sharfuddin, Sally-Ann Wilson and Joe Silva

* Commonwealth Journalists Association, Commonwealth Lawyers Association, Commonwealth Legal Education Association, Commonwealth Parliamentary Association, Commonwealth Press Union and Commonwealth Broadcasting Association.

Design & Layout : Anwar Khan, Printed by : Print World : New Delhi

ISBN : 978-93-81241-09-7

© Commonwealth Human Rights Initiative, 2012 Material from this report may be used, acknowledging the source.



Commonwealth Human Rights Initiative

CHRI New Delhi Office

B-117, 1st Floor
Sarvodaya Enclave
New Delhi – 110017
INDIA
T +91 (0)11 4318 0200
F +91 (0)11 2686 4688
info@humanrightsinitiative.org

CHRI London Office

Institute of Commonwealth Studies
School of Advanced Study,
University of London, 2nd Floor,
South Block, Senate House,
Malet Street, London WC1E 7HU
T +44 (0)207 862 8857
F +44 (0)207 862 8820
chri@sas.ac.uk

CHRI Accra Office

House No. 9,
Samora Machel Street
Asylum Down
Opposite Beverly Hills Hotel,
Near Trust Towers, Accra, Ghana
T +233 (0)302 971170
F +233 (0)302 244819
chriafrica@humanrightsinitiative.org

Website: www.humanrightsinitiative.org

Your Guide to Using The Jammu & Kashmir Right to Information Act 2009

Authors

Venkatesh Nayak & Nandita Sinha

Commonwealth Human Rights Initiative

2012

This User's Guide is being published with the support of the Friedrich Naumann Stiftung für die Freiheit. We also thank the Open Society Foundations for supporting our Access to Information Programme.

Table of Contents

Introduction.....	1
Part 1: What is the “Right to Information”?.....	5
Part 2: How can the Right to Information Act help me?.....	6
Part 3: Who can I get information from?.....	8
What bodies are covered?.....	8
Who do I approach within the body holding the information?.....	9
Part 4: What information can I get?.....	11
What information is accessible?.....	11
Is there any information which is not accessible?.....	12
Part 5: What information must be proactively published?.....	16
Information that promotes participation and oversight.....	16
Information that promotes accountable decision-making.....	18
Part 6: How do I request information?.....	19
Step 1: Identify the public authority which holds the information.....	19
Step 2: Identify to whom to submit your application within the public authority ?.....	20
Step 3: Draft a clearly focused application.....	20
Step 4: Submit your application.....	21
Step 5: Wait for a decision.....	24
Flow Chart 1: Application Process.....	25
Part 7: How is a decision made on my application?.....	26
What if the PIO approves my application?	27
What if the PIO rejects my application?.....	29
Part 8: What if I do not get the information I requested?.....	31
Option 1 – Make an appeal.....	32
First appeal to the Appellate Authority.....	32
Second appeal to the Information Commission.....	35
Option 2 – Make a complaint.....	39
Option 3 – Appeal to the courts.....	41
Flow Chart 2: Appeal & Complaint Process.....	42
Part 9: How can I help promote the Right to Information?.....	43
Annexures	
Annex 1: J&K Right to Information Act 2009.....	50
Annex 2: J&K Right to Information Rules, 2012.....	82
Annex 3: Important Notifications.....	88
Annex 4: J&K State Information Commission Contact Details.....	94
Annex 5: Resources and Links.....	95

The Right to Information - Giving power back to the people!

Checking absenteeism of doctors in government hospitals in Kashmir¹

Branwar village in Budgam district of Kashmir has a Government-run centre dispensing Indian system of medicines (ISM). However people visiting the dispensary could never meet the doctor because he was absent from duty most of the time. Instead the Government-appointed Compounder (Dawasaaz) prescribed medicines for illnesses despite not having a basic degree in medicine. The doctor's absenteeism went unchecked for several years. In 2011 Ghulam Ahmad Lone, a semi-literate resident of Branwar, attended an RTI training workshop organized by the J&K RTI Movement in Budgam. Armed with the knowledge and skill of drafting information requests, Lone sought from the Health Department information about the name of the doctor posted at the ISM dispensary, copies of the duty roster and details of medicines that ought to be available at the dispensary. Even as he waited for a reply, Lone felt relieved to see the doctor visiting the dispensary to attend to patients every day.

Ensuring free education for children in Gujarat²

Students attending a school run by a private trust in Kalol taluka, Panchamahals district in Gujarat were being forced by their teachers to pay fees, even though the school received financial support from the Gujarat Government and was not supposed to collect any fees from students. Aslambhai, a resident of Kalol taluka used the RTI Act to ask the Principal of the school for copies of the circulars or Government Orders which permitted the school to collect fees. Following the RTI application, the Principal admitted in writing that the school did not have any authority to collect any fees except for computer classes which the trust had begun at its own expense. Today, the students of this school are happy because their teachers are no longer demanding any fees from them.

Exposing massive expenditure of State funds by MPs in West Bengal³

Mr Tathagata Roy, State President of the Bharatiya Janta Party, made an RTI application requesting information from the West Bengal Government on the amount of money spent on foreign trips of MPs. Responding to his request, the State Government revealed that large amounts of money from State funds were being used to finance the trips. For example, between 1987 - 2000, the State Government spent Rs 18,25,600 on the foreign trips of the then Chief Minister and between 2001 - 05, the State Government spent Rs 4,60,722 on the foreign trips of the Chief Minister. The RTI Act is a powerful tool to hold elected representatives accountable for the manner in which they spend public funds.

¹<http://www.greaterkashmir.com/news/2012/Mar/20/3-years-of-rti-in-j-k-34.asp>

² Venkatesh Nayak (2006) "Freeing Up Education for Children", CHRI unpublished.

³ Staff reporter (2006) "Jyoti Basu's 14 Foreign Trips Cost State Rs 18 lakh Only", *The Statesman*, 27 January.

Introduction

Participation in governance is at the heart of any successful democracy. As citizens, we need to participate not only at the time of elections but on a day-to-day basis - when decisions on policy, laws and schemes are being made and projects and activities are being implemented. Public involvement not only enhances the quality of governance but also promotes transparency and accountability in government functioning. But in reality how can citizens take part in governance? How can the public understand how decisions are being made? How can ordinary people find out how tax money is being spent, if public schemes are being properly run or whether the government is acting honestly and fairly when it makes decisions? How can government servants be made answerable to the public they are supposed to serve?

One way of participating is by exercising the right to access information from bodies which spend public money or perform public functions. Parliament enacted the Right to Information Act in May 2005. All citizens including residents of Jammu and Kashmir (J&K) can seek and obtain information under this law from public authorities under the Central and various State Governments. However this law is not applicable to the State Government in J&K or other public authorities under its control. The J&K Government enacted the Jammu and Kashmir Right to Information Act (J&K RTI Act) in March 2009 along the lines of the Central RTI Act but with a few progressive modifications. Residents of J&K can now use the J&K RTI Act to obtain information from the public authorities functioning in that State. Residents of J&K can also use the Central RTI Act to collect information from public authorities under the control of the Central Government which are based in J&K.⁴ The J&K RTI Act recognizes that under a democratic government all information held by the public authorities ultimately belongs to the people. Making information available to people is simply a part of normal government functioning because the people of J&K have the right to know what public officials do with their money and in their name.

The J&K RTI Act recognizes that the sharing of information by Government with the people of the State is healthy and beneficial to the functioning of democracy. Secrecy should become a thing of the past; under the J&K RTI Act no resident of J&K can be denied information that elected representatives such as MLAs and MPs can get from the government. The J&K RTI Act covers not only public authorities under the State Government

⁴ However citizens residing in other parts of India do not have any right of access to information held by the J&K Government under both RTI laws.

but also all local self-governing bodies such as halqa panchayats and municipal corporations. This means that residents in every village, district, town or city across J&K can demand access to information held by public bodies under the control of the State Government.

To date secrecy has characterised the functioning of all government bodies across J&K, but under the J&K RTI Act the tide has started to turn. Where the State Official Secrets Act, 1977 made unauthorized disclosure of information a punishable offence, the J&K RTI Act now requires openness in Government. Giving out government-held information to the public used to be a rare exception, usually at the whim of officers within a public authority, but now the J&K RTI Act gives all residents of J&K the right to ask questions – and demand answers – about governance and development issues that affect their lives. The J&K RTI Act makes it much more difficult for officials to cover up their corrupt practices. Access to information will help expose poor policy-making which will contribute to reviving the political, economic and social development of J&K.

The campaign for the Central RTI Act

Grassroots organisations and civil society groups have campaigned for an effective national right to information law since the 1990's. However, it was only in 2002 that the Central Government finally took a step forward, passing the Freedom of Information Act 2002 (FOI Act). Unfortunately, the Act was never brought into force and people were never able to exercise their rights under the new law. In 2004, however, the newly elected United Progressive Alliance (UPA) Government promised to make the right to information more "progressive, participatory and meaningful". The National Advisory Council (NAC) was set up to oversee the UPA Government's promise and included key figures in the National Campaign for People's Right to Information (NCPRI).

In August 2004, based on submissions made by the NCPRI, CHRI and other civil society groups, the NAC submitted a set of recommendations to the Government for amending the FOI Act. Drawing heavily on the NAC's recommendations, in December 2004, the Right to Information Bill 2004 was tabled by the Government in Parliament. The Bill was finally passed by the Lok Sabha on 11 May 2005 and moved successfully through the Rajya Sabha on 12 May 2005. The Right To Information Act 2005 received Presidential assent on 15 June 2005. Some provisions requiring the setting up of a country-wide system to give citizens access to information came into force immediately. The RTI Act became fully operational on 12 October 2005.

The Movement for an RTI law in J&K

Under the Constitution of India the State of Jammu and Kashmir has been provided with a special status vis-à-vis the power of Parliament to make laws. Parliament can make laws applicable to J&K only in relation to four subjects, namely, defence, external affairs, communications and matters relating to the representation of J&K in the Dominion Legislature (the predecessor of Parliament). Under the Constitution of J&K only the State Legislature is competent to make laws on almost all other subjects. In some cases such as the Mahatma Gandhi National Rural Employment Guarantee Act Parliament extends its applicability to J&K through a separate enactment known as The National Employment Guarantee (Extension to Jammu and Kashmir) Act, 2007. However Parliament did not extend the Central RTI Act to J&K as J&K had already enacted the its own RTI Act in 2004. This law was modeled on the Freedom of Information Act (FOI Act) passed by Parliament in 2002.

Civil society actors in J&K had been pressing for the replacement of the weak J&K RTI Act 2004 with a law similar to the Central RTI Act since 2005. They presented the State Government with a model RTI law to replace the existing law. However the State Government did not act until 2008 when it decided to amend the law to include provisions for setting up a State Information Commission. Despite civil society opposition, highlighted widely by the mass media, to a mere tinkering of the RTI Act, the then Government pushed the amendments through the J&K Legislature. However the Commission never came into existence. Elections were announced in J&K subsequently. The J&K RTI Movement- a group of committed supporters of transparency - successfully lobbied the National Conference party to include in its election manifesto a promise to make the J&K RTI Act stronger and more effective.

Within less than two months of assuming power, the National Conference led coalition Government issued a public notice inviting suggestions for remodeling the J&K RTI Act, 2004. Despite civil society suggestions for reform based on the experience of the implementation of the Central RTI Act, the State Government adapted the same law with only four major modifications. The size of the J&K State Information Commission was limited to three members; the Commission was given a deadline to decide appeals cases within a maximum of 120 days; the first appellate authority was empowered to make a reference against the Public Information Officer (PIO) to the State Information Commission about his/her contravention of the law so that suitable penalty may be imposed and the number of exemptions was reduced from ten to nine (the exemption relating to information received in confidence from foreign governments was dropped).

The State Information Commission has been hearing appeal and complaint cases since mid-2011. The State Government notified comprehensive J&K RTI Rules in April 2010 but replaced them with a minimal set of Rules modelled on the Central RTI Rules two years later.

Ever since its enactment, CHRI has partnered with the J&K RTI Movement and the Sangarsh RTI Movement to spread awareness and usage of the J&K RTI Act by conducting sensitization and capacity building workshops all over the State including remote areas like Kargil and Poonch.

One of the surest ways of ensuring that the J&K RTI Act is properly implemented and serves its purpose of making the government more responsive, is for all of us to use it frequently responsibly and effectively. It is with this aim in mind that CHRI has developed this User's Guide. The User's Guide aims to explain:

- (a) who is covered by the Act;
- (b) what information is accessible under the Act;
- (c) how information can be accessed in practice;
- (d) what options people have if they are not given the information they want; and
- (e) how people can get involved and ensure the Act is implemented effectively to make the government more accountable, efficient and responsive.

Part 1: What is the “Right To Information”?

The right to information is a fundamental human right which is made up of different rights and responsibilities, namely:

- Every person’s RIGHT to request information from the government - and even private bodies in some cases;
- The DUTY on the government to provide the requested information, unless defined exemptions apply; and
- The DUTY on the government to proactively disclose information that is of general public interest without the need for requests from citizens.

The Constitution of India does not specifically mention the right to information, but it has long been recognised by the Supreme Court of India as a fundamental right necessary for democratic functioning. Specifically, the Supreme Court has recognised the right to information as an integral part of the right to freedom of speech and expression guaranteed by the Constitution (Article 19) and a necessary part of the right to life (Article 21).⁵

The right to access information reflects the fact that government information belongs to the people, not the public body that holds it. Information is not ‘owned’ by any department or by the government of the day. Rather, information is generated with public money by public servants, paid out of public funds and is held in trust for the people. This means you have the right to access information about governments’ actions, decisions, policies, decision-making processes and even information held by private bodies or individuals in some cases.

The right to information is not absolute. Some information may be held back where giving out the information would harm key interests which need to be protected. For example, information about troop deployment during a war or advice regarding national economic policies prior to their publication, are instances where it may be valid for officials to not disclose information, at least until a certain sensitive period has passed. Nonetheless, the key question will always remain: is it in the public interest to disclose information rather than withhold it?

⁵ *Bennett Coleman & Co. v Union of India*, AIR 1973 SC 783, dissenting judgment of Justice KK Matthew; *State of UP v Raj Narain*, AIR 1975 SC 865; *SP Gupta v Union of India*, AIR 1982 SC 149; *Indian Express Newspapers (Bombay) Pvt Ltd v India* (1985) 1 SCC 641; *Reliance Petrochemicals Ltd v Proprietors of Indian Express Newspapers Bombay Pvt Ltd*, AIR 1989 SC 190. *Essar Oil Ltd. v Halar Utkarsh Samiti and Ors.*, AIR 2004 SC 1834.

Part 2: How can the J&K Right to Information Act help me?

You can use the J&K RTI Act to take the initiative in making sure that the government provides you with the services you are entitled to and the rights and benefits that are your due as a resident of J&K. However, the J&K RTI Act is not a solution in itself; it is a first step. For example, using the J&K RTI Act may not get you a new electricity or water metre connection, but it can help you find out who is responsible for taking action on your application, what progress has been made, how soon you should have received the connection under the service norms of the department concerned and why action has been delayed in your case.

Jan sunwai on public works brings transparency⁶

In 2002, Parivartan, a Delhi based NGO, used the Delhi *Right to Information Act 2001* to get copies of contracts for public works in two resettlement colonies in East Delhi, which they then used to conduct a social audit of 68 public works with alarming results. The social audit revealed massive corruption. Most of the public works existed on paper but not in reality. For example, under 10 contracts, 29 handpumps with electric motors were supposed to be installed, but residents of the area reported that only 14 handpumps were installed. Out of a total of 253 iron gratings scheduled to be installed on street drains for which payments were made, only 30 iron gratings were actually installed? Parivartan's investigations into the 68 public works, worth Rs 1.3 crores, found that items worth Rs 70 lakhs were missing.

With this information in hand, Parivartan met the Chief Minister, Chief Secretary, Secretary (Administrative Reforms) of Delhi and the Commissioner of the Municipal Corporation of Delhi demanding that the guilty be punished. In May 2004, responding to a petition filed by Parivartan, the Delhi High Court directed the Delhi Police to investigate the corruption allegations. In response, the Municipal Councillor of the Seemapuri area approached Parivartan offering total transparency in the execution of all civil works carried out in the area. The Executive Engineer was directed to provide copies of estimates and sketches before beginning any work and to allow inspection after completion. The Councillor offered to let the public and Parivartan find faults with the works and said that payments would not be made for any work till the objections made by the people were settled.

⁶ Parivartan (2002) "Parivartan Conducts First Urban Jan Sunwai": <http://www.parivartan.com/jansunwais.asp#Parivartan%20conducts%20first%20Urban%20Jansunwai> as on 20 March 2006.

In many instances the use of the right to information has worked magic: connections delayed for months on end have been provided within less than a week; badly constructed roads have been paved within ten days; garbage not cleared for months is removed every morning and much more. The very thought of having to answer citizens' queries has begun to put the fear of law in the minds of many government officers. Many problems are being sorted out through the intelligent use of the right to information. For example:

- People holding ration cards can check the stocks and sales registers held by ration card dealers and the food department to make sure that they are getting their proper amount of rations and that rations are not being siphoned off in their name;
- Parents can ask for details of grants made to government-aided schools to ensure that funds are being spent properly, or can check that admissions are not being bought through bribes or that funds meant for education are not being diverted for other purposes;
- Owners of small businesses can find out the basis on which licences and/or tax concessions and subsidies are granted by government and who the beneficiaries are. They can also check that the government is granting licences/concessions/subsidies on the basis of properly applied criteria;
- Unemployed people can ask about the criteria for giving government jobs or the status of their application and position in the waitlist;
- People can check on the progress of their applications for government services, e.g. by checking the status of an application for an electricity or water connection, including which officers have handled the file, over what period of time and what action was taken.

As a community-minded person, you may want to find out information about issues of public importance and try to get the government to address problems. For example, you can find out:

- How many deaths have occurred in a government hospital and for what reasons or what the shortfall of doctors and nurses is compared with sanctioned staff;
- The daily attendance of teachers in government schools;
- How many people are being housed in local jails compared with the sanctioned capacity of the jail;
- How often inspectors visit factories and other manufacturing units to check that they are not illegally releasing hazardous materials into the environment;
- How many contractors have been blacklisted by the municipal authorities and of the blacklisted how many have been given contracts for executing public works.

Part 3: From whom can I get information?

The J&K RTI Act applies to the entire State. The J&K RTI Act specifically spells out the government bodies from which you can and cannot get information. It also requires that bodies covered by the Act nominate specific officers who will be responsible for receiving and processing your requests for information.

What bodies are covered?

The J&K RTI Act gives you the right to access to information held by “public authorities”.⁷ Public authorities include bodies which are:

- Established or constituted by or under the Constitution of India or the Constitution of J&K;
- Established or constituted by a law of Parliament or the Legislature of J&K;
- Established or constituted by a notification or order of the State Government;
- Owned, controlled or substantially financed by the State Government, including non-government organisations which receive substantial funding from the State.

The definition of “public authorities” is deliberately broad because it is essential that all bodies functioning in the public sector are brought within the scope of the law. In effect, all administrative levels of the J&K Government are covered. This means that people in J&K can ask for information from any and all *halqa panchayats*, Block Development Councils, municipalities, offices of Tehsildars, Assistant Commissioners, Deputy Commissioners and Divisional Commissioners, all government departments from the Secretariat level to the field level, councils, boards and corporations established, funded or controlled by the State Government, schools and colleges which are established, run and/or funded by the State Government as well as public sector banks.

It is a notable feature of the Act that it also covers non-government organisations, which are substantially financed by government funds. This means, that where public monies are given to a private organisation, that organisation should be open to scrutiny from the public. In practice, privately aided schools, colleges, hospitals or any charitable organisation implementing government schemes, such as the midday meals programme, will be required to disclose information under the RTI Act.

⁷ Section 2(f) of the J&K RTI Act (hereafter all sections references are to the sections of the J&K RTI Act unless otherwise specified).

Who do I approach within the body holding the information?

Ideally, anyone within a public authority should assist you in submitting your application. However, to make sure that there is a clear contact point for the public, the J&K RTI Act designates two different types of officials to handle requests in public authorities: Public Information Officers (PIOs) and Assistant Public Information Officers (APIOs).

- **Public Information Officers:** PIOs must be designated in all administrative units or offices of public authorities in J&K. PIOs are responsible for receiving and making decisions on requests for information.⁸ They also have a duty to assist requesters who are having trouble making their applications. The names of PIOs must be prominently displayed on notice boards of all offices and on their websites.
- **Assistant Public Information Officers:** The J&K RTI Act also requires public authorities to designate Assistant PIOs at the sub-district or sub-divisional level, to forward applications to the relevant PIO located at higher levels. This system has been put in place so that people in outlying areas, far away from government headquarters, will have less difficulty in submitting and following up their applications. The APIO has a duty to forward the application to the PIO within five days of receipt. APIOs are not responsible for actually giving you the information because that is the primary responsibility of the PIO.⁹ However, if the information is easily accessible, they should log your application and provide the information to you as soon as possible.

PIOs should not make you run around to submit an application

In some government ministries/departments, multiple PIOs may have been appointed to handle and process RTI applications. This can be quite confusing for requesters because the PIOs may often force them to run from PIO to another until they find “the right one.” Several departments under the Government of India have appointed multiple PIOs to handle duties under the Central RTI Act in different sections and divisions. Upon the directions of the Central Information Commission nodal PIOs are appointed in such public authorities to receive all applications and distribute them to the relevant PIOs. Similarly it is advisable for a public authority with multiple PIOs in J&K to appoint a nodal PIO to receive all information requests and distribute them to the designated PIO in the appropriate division or section. A single window system manned by a nodal PIO could be set up at the headquarters of the public authority to receive applications and send them to the responsible PIOs for processing them.

⁸ Section 5(1).

⁹ Section 5(2).

The Central Government has designated APIOs in the district level post offices across the country, to receive RTI applications from people related to all matters handled by the Central Government and forward them to the relevant PIOs in different public authorities. People in J&K can use this facility to seek information from the Central Government under the Central RTI Act. For a full list of Central APIOs designated by the Department of Posts log on to the RTI portal set up by the Government of India at: <http://rti.gov.in> However this facility is not available for seeking information from public authorities under the J&K Government.

Some organizations are partially excluded¹⁰

Unfortunately the Criminal Investigation Department (CID) in J&K is exempted from the ordinary obligations of transparency and disclosure of information unlike other public authorities. Under Section 21 of the J&K RTI Act, the State Government can notify any security or intelligence organization as being exempt from the obligations of disclosing information to people. However the CID is cannot deny access to information relating to allegations of corruption and human rights violation that is available with it. The CID is required to provide information about allegations of human rights violations only if the J&K State Information Commission gives its approval. This process must be completed within 45 days of receiving the information request.

¹⁰ Section 21.

Part 4: What information can I get?

The J&K RTI Act promotes the maximum disclosure of information. In practice, this means you can get most information that is held by public authorities, subject to a few exceptions, which are designed to protect sensitive information from being released, where its release would cause more harm than public good.

What information is accessible?

The J&K RTI Act allows you access to a wide range of information held by public authorities in different forms. For example, you can use the J&K Act to get hold of records, manuscripts, files, file notings, microfilm, microfiche, facsimiles, documents, memos, emails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data which is in electronic form, any material produced by a computer or any other device, and even information relating to a private body which a public authority can get under an existing law.¹¹

Under the J&K RTI Act, you have the:

Right to Inspect Records or Works

You can ask to inspect any work, document or record in person. For example, you can ask to physically inspect the construction of a bridge or installation of a handpump to make sure that the work is being undertaken according to proper service standards or you can examine government files as one way of keeping down costs so that you decide what papers you want and then ask only for copies of those you want;¹²

Right to Certified Copies

You can get certified copies or extracts of documents or records and can even ask to take notes from documents and records;¹³

Right to Get Samples or Models

You can ask for certified samples of materials or models. For example, you can ask for a sample of the road being built in front of your house so that you can check whether proper materials are being used in accordance with the contract;¹⁴

¹¹ Section 2(d)

¹² Section 2(i)(i).

¹³ Section 2(i)(ii).

¹⁴ Section 2(i)(iii).

Right to Get Information in Electronic Form

You have the right to get information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic form or through printouts. The J&K RTI Act has been drafted broadly enough so that even information held in new types of technology will be covered.¹⁵

You can access information about private bodies from public authorities

Apart from getting information generated or compiled by public authorities under the J&K RTI Act, you can also request information from a public authority which relates to a private body, if the public authority can access that information under an existing law. For example, the Department of School Education in J&K collects a range of information about schools which they aid or fund. Similarly the Department of Health in J&K may collect information about the working of private hospitals under its jurisdiction. These kinds of information are also covered within the definition of the term “information” in Section 2(d) of the J&K RTI Act and a resident of J&K can seek and obtain such information. The point of this provision is to prevent public authorities from rejecting a request on the ground that it belongs to private bodies, or because they have neglected to collect such information despite having a duty to do so. If they have not collected the information yet, your request will encourage them to contact the private bodies and obtain the required information from them.

Is there any information which is not accessible?

Though the J&K RTI Act gives you the right to access a very broad range of information, there are still situations wherein you may not be able to get access to information because it is very sensitive. Such information is “exempt” from being given to you by the government, on the basis that making it public would cause more harm than good to the public. The J&K RTI Act spells out specific cases where information can legitimately be denied to you,¹⁶ namely if:

- (a) disclosure would harm national security, scientific or economic interests of India or relations with a foreign State or lead to the incitement of an offence;
- (b) any court of law or tribunal has forbidden the information from being published or the release would constitute a contempt of court;

¹⁵ Section 2(i)(iv).

¹⁶ Sections 8(1) and 9.

- (c) disclosure would cause a breach of privilege of Parliament or the State Legislature;
- (d) the information is confidential commercial information, trade secrets or intellectual property or giving it out would harm the competitive position of a third party (such as the company that provided it to the public authority);
- (e) the information is available to a person because he has a fiduciary relationship with another person (such as a doctor/patient or lawyer/client relationship);
- (f) disclosure would endanger the life or physical safety of a person;
- (g) disclosure would impede the process of criminal investigation or apprehension or prosecution of offenders;
- (h) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers, although information should be released after a decision is made;
- (i) the information requested is personal information, the giving out of which has nothing to do with any public activity, or which would cause an unwarranted invasion of the privacy of the individual;
- (j) disclosure would infringe the copyright of a body other than the State.

These exemptions are not absolute. Even where the information you have requested is covered by an exemption, if the public interest in disclosure outweighs the harm against which the exemptions are protecting, then it should still be released. This is known as the “public interest override” and it applies to all categories of exempt information.¹⁷ For example, in the past, access to copies of defence contracts between the Government of India and foreign companies was denied under the pretext of protecting the national and security interests of the country. However, if there are allegations of payment of kickbacks and undue influence exerted by middlemen to secure these contracts, there is a greater public interest in knowing the details of the contract. Taxpayers have a right to know whether the country got value for money spent, whether the best quality equipment was selected or not, and whether bribes were paid to crucial people in the decision making process. This information cannot be denied using the exemption for security and strategic interests provided in the Central RTI Act because there is a greater public interest in disclosing it.

¹⁷ Section 8(2). See the box on page 29 for further discussion on the “public interest override”.

Information Parliament can get, you can get too

The guiding principle that determines information access under the J&K RTI Act is that any information which cannot be denied to Parliament or the J&K Legislature cannot be denied to you.¹⁸ So, even where an exemption applies, if that information has to be given to the Parliament or the J&K Legislature, then it has to be given to you.

In any case, exempt information, like most other things, has a shelf life and will not be exempt forever. With the passage of time the sensitivity of the exempt information may decrease and releasing that information may no longer cause any harm. For example, information about infiltration along the borders of J&K may be sensitive and disclosure today may harm the security interests of J&K. However 20 years on such information may no longer be sensitive. So it may be disclosed to a requestor. The J&K RTI Act allows you to seek and receive information about any event, occurrence or matter after 20 years even though at one time or another it may have been covered by one or more exemptions.¹⁹

Under the J&K RTI Act only exemptions related to security, economic or strategic interests of the State, foreign relations, privilege of Parliament or the J&K Legislature and Cabinet papers will continue to apply to information that is more than 20 years old. All other exemptions will not apply to information that is more than 20 years old.

Public Authorities are Slow on Proactive Disclosure

The J&K RTI Act requires all public authorities in J&K to provide as much information as possible to the people voluntarily. Specific topics on which public authorities must proactively disclose information are also listed in the law. However many public authorities have been slow to prepare and disseminate information about their organization, structure, working, finances and decision-making processes. The J&K State Information Commission supervises the implementation of the J&K RTI Act in all public authorities. In March 2012 the Commission conducted a study of the website of all departments in J&K to assess their performance on proactive disclosure.

¹⁸Section 8(1)

¹⁹ Section 8(3)

According to the Commission's report, available on its website²⁰, more than a third of the 36 departments do not have websites of their own. What means they will use to volunteer information about themselves is a big question. The Commission also found that less than 20 out of more than 300 public authorities in J&K had proactively disclosed information about themselves on their websites. Taking serious notice of the weak performance of such a large number of public authorities, the Commission has instructed the J&K General Administration Department to circulate a time-frame to all public authorities within which to prepare the information they are required to disclose proactively. The Commission has sought a compliance report from all public authorities in this regard.

²⁰ The report is accessible on the the website of the J&K State Information Commission at : <http://jksic.nic.in/Data%20ofAdm%20Deptt.%20data.pdf>, accessed on 20th December, 2012

Part 5: What information must be proactively published?

The J&K RTI Act requires all public authorities covered under the law to publish *suo moto* or proactively a wide range of information on their own, even if no one has specifically requested it. This is a key provision because it recognises that some information is so useful and important to the community at large, that it should be given out regularly, without anyone specifically requesting it. More broadly, it recognises that transparency is generally in the public interest and that public authorities should therefore strive to make as much information public as possible.

Information that promotes participation and oversight

Section 4 of the J&K RTI Act requires all public authorities to routinely publish 17 categories of information,²¹ which should be updated regularly.²² This ensures that citizens always have access to authentic, useful and relevant information. The information to be published falls under the following general areas:

Structure of the organisation - Its functions and duties, powers and duties of its officers, a directory of its employees, monthly remuneration received by each employee.

For example: The organisational chart of the organisation, names of the officers in charge of departments, the functions and powers of each and every officer employed and the salary they receive.

Process of functioning - The procedures followed in decision-making, norms, rules and regulations, categories of documents held by the public authority.

For example, instructions and guidelines of the J&K Government on how ration cards are issued, pension schemes are administered and benefits under various health-related schemes. In fact the very laws, rules, regulations, internal orders, memoranda and circulars that guide the day-to-day functioning of public authorities must be disclosed.

²¹ Section 4(1)

²² Section 4(2)

Financial details and schemes relating to the organisation - The budget for all authorities (including the schemes and activities they manage and any reports regarding implementation) the manner of execution of subsidy programmes (including funds allocated and the details of beneficiaries of such programmes) plus particulars of recipients of all concessions, permits or authorisations granted by the office.

For example: Expenditure estimates, details of grants and funds received by the public authorities, lists of people below the poverty line (BPL), regular updates on the administration of rural development schemes, details of the beneficiaries under the Employment Guarantee Scheme, recipients of industrial licences, and budget documents for panchayats.

Details of consultative arrangements - Opportunities for people to get involved in the formulation of policies or their implementation, as well as a statement of government boards, committees, councils and advisory groups.

For example: Committees of Panchayats and municipalities to deal with specific issues, legislative committees, boards of inquiry, departmental purchase committees, departmental promotion committees or technical advisory bodies.

Details related to accessing information - A list of all the categories of documents available in an office, details of information available/held in electronic form, facilities available to citizens to access information, and the names and designations of Public Information Officers.

For example: Days and timings of public dealings, timings of libraries and reading rooms, and contact names for all officials working to administer the J&K RTI Act.

Public authorities need to make sure that all Section 4 information gets widely disseminated. It is not enough to just collect it all and keep it on file. It needs to be published widely and in forms which make it accessible to ordinary people - for example, by posting the information on office notice boards, publishing it in newspapers, uploading it onto government websites, making public announcements and making sure that it is published in the local language of the area.²³ At a minimum, every PIO has to have the information

²³ Section 4(2),(3)&(4)

available in the form of a document or on a computer where it can be produced for ready inspection or given out immediately if requested as a printout or photocopy instantly.²⁴

Information that promotes accountable decision-making

The government regularly develops policies, projects and schemes that affect the public. The J&K RTI Act requires that all public authorities also publish all relevant facts when formulating policies or announcing decisions. This means that citizens can more actively engage in the policy process and can more effectively scrutinise whether decisions made were soundly based.²⁵ This would include, for example, publishing details of any plans relating to the acquisition of private lands for constructing dams or power projects, or the development of new poverty alleviation policies and schemes.

Public authorities now also have to give the reasons for their decisions to all people who will be affected by them.²⁶ For example, if a decision has been made to withdraw the benefits given to a resident of J&K under a welfare scheme, then the public authority taking the decision should specifically write to the affected person to explain the reasons for doing so. In any case, the decision should be published so that all members of the public can scrutinise whether decisions are being made properly.

You have no application fee or long wait for Section 4 information!

The J&K RTI Act envisages that proactive disclosure information will be widely published for free by the government. No specific application needs to be made and no application fee paid. Because it is not treated as an application, you do not need to wait 30 days to get the information. The information should be given to you immediately. At most, you may be charged for the cost of any copies you may ask for, but inspection should be free. If a public authority asks you to submit an application with a fee, you should ask them to check with the J&K State Information Commission, who will be sure to confirm that you do not have to file an application.

²⁴ Section 4(4)

²⁵ Section 4(1)(c)

²⁶ Section 4(1)(d)

Part 6: How do I request information?

If you want to access specific information not proactively disclosed by the government, for example, if you want to know how your MLA is spending his/her constituency development fund (CDF), how much money is sanctioned and actually spent for road and drain maintenance in your village/town or if you want to see a copy of the contract for refurbishment of a ministry's offices, the J&K RTI Act gives you the right to make a specific written request for information to a public authority.²⁷

Step 1: Identify the public authority which holds the information

The first thing you will need to do is identify which public authority holds the information you want. If you are not certain who that is, make a list of the possible public authorities who you think might deal with the information and then consider the one most likely to have it. You do not need to be too worried about getting it wrong, because the J&K RTI Act requires that even if the office to which you submit your application does not have the information you have requested, they should not return the application, but instead are under a duty to transfer the application to the relevant public authority within five days.²⁸ If your application is transferred, the first public authority must inform you of the transfer in writing. The second public authority then becomes responsible for providing you with the information you have requested within the original 30 day period.

For example: If you want to know how much money was allocated to construct a by-lane in your village/colony, you would need to submit an application to the PWD office or local municipal corporation responsible for roads and public works in your area. Or if you want to know about the progress of your application for a new electricity connection then you need to apply to the electricity department. Or if you want to know details of the kinds of free health services available free at primary health care centres, then you would need to submit an application to the health department.

²⁷ Section 6(1)

²⁸ Section 6(3)

Step 2: Identify who to submit your application to within the public authority

Once you have identified the public authority that holds the information you want, you will need to decide who to submit the application to. You should be able to get a list of Public Information Officers (PIOs) and Assistant Public Information Officers (APIOs) appointed in each department from the relevant department website or by contacting the department directly and asking them for guidance. You should note though, that if you submit your application to an APIO, then the time limits for a response to your application increase from 30 days to 35 days. The J&K RTI Act requires that every department must maintain a list of its PIOs and APIOs in electronic or in printed form.

Although it is the duty of EVERY public authority covered under the J&K RTI Act to designate PIOs to receive and process applications, it has been reported that some public authorities have yet to designate PIOs and are refusing applications for information on that basis. If this happens to you, you can directly complain to the J&K State Information Commission and demand the appointment of PIOs (see Part 8 for more details). The J&K State Information Commission has the power to require every public authority to appoint a Public Information Officer.²⁹

Step 3: Draft a clearly focused application

You can make a written or electronic application in English, Hindi or Urdu.³⁰ When writing out your application, it is important that you draft your request in a clear and concise way. It is absolutely essential that you make your request as specific as possible so that you get the information you want and avoid getting loads of documents you do not want and for which you may have to pay for. It is important to draft your application in specific terms so that the PIO cannot return it on the grounds that it was too vague or difficult to understand.

The Central Government has fixed a limit of 500 words for each RTI application. The name and contact details of the applicant and the PIO and any annexure attached to the application will be excluded from this word limit.

²⁹ Section 15(1)(a)

³⁰ Section 6(1)

You do not need to explain why you want information

The J&K RTI Act makes it very clear in Section 6(2) that there is no need for you to give reasons for why you want a particular piece of information. You can request any kind of information without saying why or for what purpose you want the information in your application. This reflects the fact that the right to information is YOUR right, and you do not need to justify your request. Secrecy is now what needs to be justified.

The J&K Act does not specify a particular form that must be used to make applications. *The Jammu & Kashmir Right to Information Rules 2012* do not prescribe a fixed format for application. In a landmark decision under the Central RTI Act, the Central Information Commission has ruled that a request for information even on an ordinary piece of paper should be treated as a formal application. Government departments may prescribe forms for administrative purposes but this should not prevent handwritten applications from being made on plain paper or photocopied forms.³¹

Step 4: Submit your application

After completing the application, you need to send it to:

- The PIO in the public authority which has the information you want; or
- The APIO located at the sub-district or sub-divisional level near you, who is then under a duty to forward your application to the relevant PIO.

You can submit your application in person or send it by post, fax or email. If you are sending your application by post you should send it by registered post or under certificate of posting (UCP) so that you have proof of postage and the PIO cannot claim that he/she never received the application. If you are submitting your application in person, always make sure to ask for a receipt for the application. The acknowledgement should indicate the time and date when the application was received, where it was received and who received it.

The J&K RTI Act requires that an application fee must be paid before an application will be processed. According to the J&K RTI Rules, 2012 you are required to pay an application fee of Rs. 10/- while submitting an request for information (see Annex 2). If you submit

³¹ NDTV(2006) "Slumdweller Wins Right to Information", NDTV.com, 8 February: <http://www.ndtv.com/morenews/showmorestory.asp?category=National&slug=Slum+dweller+%27wins%27+right+to+information&id=84602> as on 20 March 2006.

your request in person, the PIO or the APIO must give you a signed acknowledgement on the spot indicating the date of receipt of your request. You are also entitled to receive a receipt indicating the amount of application fee that you have paid. In some departments the PIOs may not accept the fee themselves as they may not be authorized to receive cash from the public. So they may send you to the cash section where all monies are received by the department. In any case be sure to get a receipt for any fees you pay. Alternatively, if you send your application by post, you may pay the application fee by demand draft, banker's cheque or Indian Postal Order. If you pay the application fee in cash you will be required to attach proof of payment along with your application. You may also pay fees through electronic mode if such facilities have been created by the J&K Government or the public authorities.

People who are "Below the Poverty Line" pay no fees³²

Applicants who are below the poverty line (BPL) do not have to pay any fees under the J&K RTI Act. When applying for information, BPL cardholders need to attach a copy of the their BPL card as proof or an extract from the BPL list containing their name or some other such proof signed by a competent officer. Alternatively, when submitting an application in person, BPL applicant have a right to get the PIO to put an acknowledgement of their BPL status on their application as proof.

Suggested format for applications under J&K RTI*

It is important when writing your application that you word your question tightly so that it is perfectly clear what information you want. At a minimum, your application should contain enough information to enable a PIO to provide you with the information you want. An application under the J&K RTI Act would look something like the following:

³² Section 7(5)

Form - 1

[See rule 4(1)]

Application form under Right to Information Act, 2009

I.D No. _____ (For official use)

Date : _____

To

The Public Information Officer,
 _____ Department

Subject : Request for Information under J&K Right to Information Act, 2009.

1. Name of the Applicant :
2. Address :
3. Particulars of the Information :
 - a. Department :
 - b. Information required :
4. I state that the information sought does not fall within restrictions contained in section 8 and 9 of the Act and to the best of my knowledge it pertains to your Department.
5. A fee of Rs.50/- (Rupees Fifty only) towards Application Fee has been paid in the form of Non-judicial Stamp Paper/Demand Draft/Cheque/Postal Order/Treasury Receipt etc.
6. Further, I also undertake to pay any additional fees/charges (if applicable) as prescribed under the Right to Information Act and or relevant Rules.

(Signature of the Applicant) :

Telephone No:

Fax No:

E-mail Address :

1. No fee is required to be paid if application written on Non-judicial Stamp paper of Rs.50/-
2. No fee shall be charged from person living below poverty line for information under rule 6 and rule 7.
3. The fee shall be deposited in the Government Treasury under "Major Head : 0070-Other Administrative Services"

* This form is available on the website of the J&K State Information Commission at : <http://jksic.in/pages/JKRTI-FORM1.pdf>

Step 5: Wait for a decision

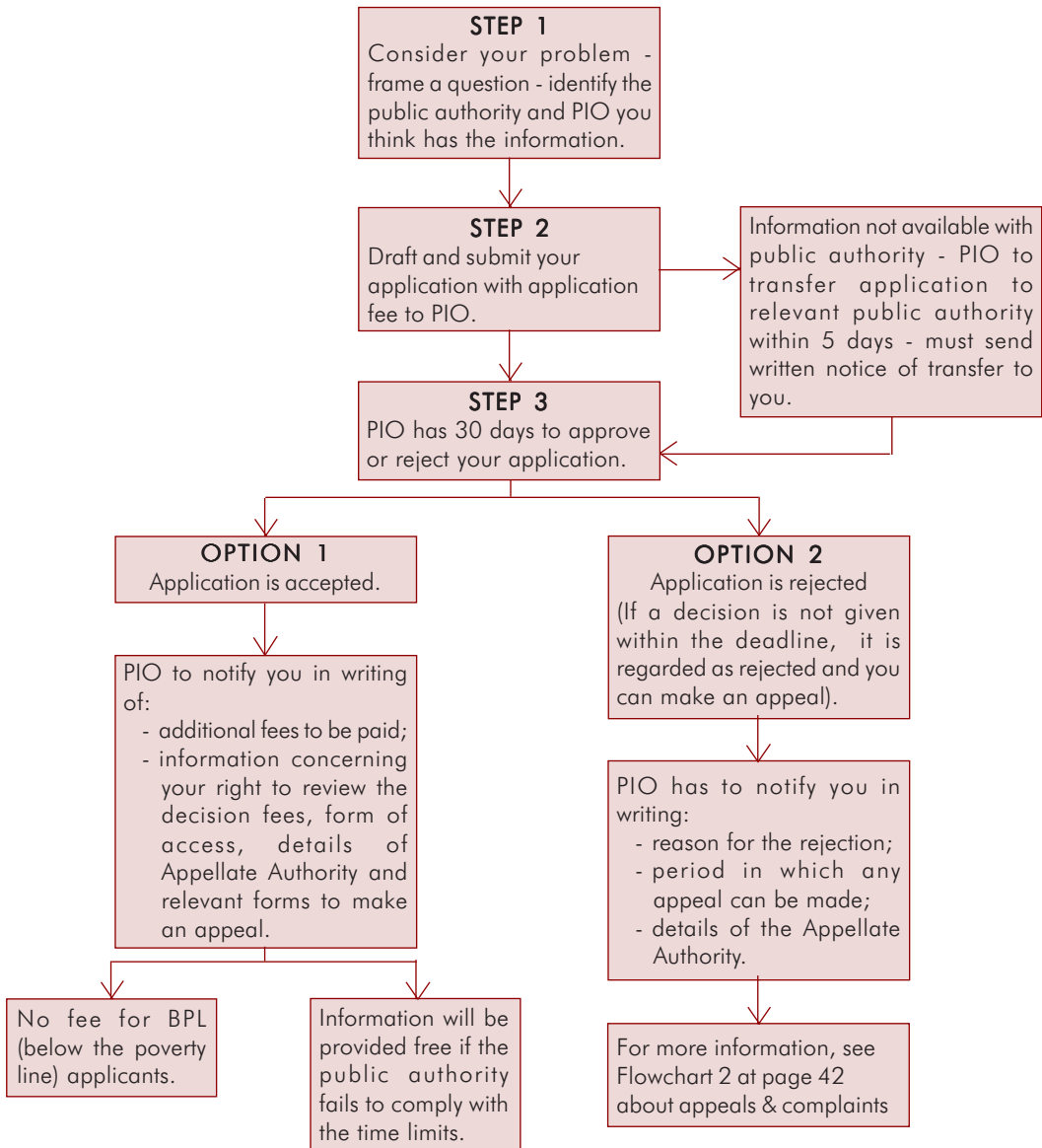
Once the PIO receives your application, complete with the application fee, he/she is required to process it as fast as possible but no later than 30 days from the date on which he/she receives the application.³³ If an APIO passed the application on, another 5 days gets added to this timeline.³⁴ However, where the information requested is vital to ensuring the life or liberty of a person, a decision has to be made within 48 hours.³⁵ For example, if a person is picked up by the police without an arrest warrant or an arrest memo, his family, friends or even a concerned third person can ask for his whereabouts from the PIO of the police department and a response must be made within 2 days. Where such an application is made, it is good practice to include in the application an explanation as to why you think the application relates to “life or liberty” so the PIO does not delay assessing your application.

³³ Section 7(1)

³⁴ Section 5(2)

³⁵ Section 7(1)

Flow Chart 1: Application Process



Part 7: How is a decision made on my application?

When processing your request, the PIO will need to determine immediately whether the information you have requested:

- (a) Is available in the office, and if not, transfer it to another public authority and provide you with written notice of the transfer;
- (b) Relates to confidential third party information and therefore requires consultation with the third party before a decision can be made; and
- (c) Is covered by an exemption and whether there is a public interest in disclosing it.

What if the information involves a “Third Party”?

Usually, people make applications for information created by the government which relates to the public authority receiving the application. In such cases, there are only two parties involved in the request process – the requester and the public authority. However, sometimes requesters will ask for information which relates to or was submitted by third parties to the public authority. For example, if you want to take a look at the bids submitted by private contractors in a tender process or the tax records of a private individual or a private company, that private contractor or company will be treated as a third party in relation to your application.

Sometimes - but not always - the J&K RTI Act requires that third parties are consulted about applications. A third party only needs to be consulted if:

- the PIO is considering releasing the information; AND
- the information relates to the third party or was given to the public authority by the third party “in confidence”; AND
- the third party treated the information as confidential.

This last requirement is key. While a lot of information might relate to third parties, there are only a small number of cases where the third party would have treated the information as confidential. Information like lists of recipients of subsidies or permits, submissions to committees or government contracts, although involving third parties, do not involve confidential third party information and do not therefore require consultation with the third party.

Where the 3-part test above is satisfied, the third party has the right to be consulted about whether the information should be released. The PIO needs to send a written notice within 5 days inviting the third party to make a submission regarding disclosure.³⁶

The third party has 10 days from the date the notice is received to make a submission.³⁷ Whether or not a response is received, the PIO has to make a decision about whether or not to disclose the information within 40 days of receipt of the application. Before making a decision, the PIO must take into account any representation received from a third party. However, even if the third party objects, the PIO may order disclosure of the information if no exemption applies. In such a case, the third party can appeal the decision to the departmental Appellate Authority and later to the J&K State Information Commission (see Part 8 for more details).

What if the PIO approves my application?

If the PIO decides to give you the information, the PIO will send you a decision notice within 30 days. The notice will include advice regarding any additional fees payable to actually access the information you have requested and inform you of your right to appeal the decision about the amount of fee charged or the form in which you want to access the information, including details of the Appellate Authority, time limit and any other forms.³⁸ Note that if the PIO fails to meet the time limits prescribed under the J&K RTI Act, then the information has to be provided free of cost to you.³⁹

The J&K Government has prescribed additional fees for access (see Annex 3 for details). The notice sent by the PIO needs to include an explanation of how any additional fees were calculated.⁴⁰ For example, if you have requested information that totals 100 A4 pages and as the cost prescribed for providing A4 size paper is Rs 2 per page, then the PIO will need to show that the total cost would be: $100 \times 2 = \text{Rs } 200$. The PIO does not have the power to charge you additional fees for searching, collecting or processing the information. In the decision notice you are sent, the PIO will ask you to deposit the calculated fee so that the information can be dispatched to you. The intervening time between sending the notice and the payment of additional fees is excluded from the 30 day time limit for providing information.⁴¹

³⁶ Section 11(1)

³⁷ Section 11(2)

³⁸ Section 7(3)

³⁹ Section 7(6)

⁴⁰ Section 7(3)(a)

⁴¹ Section 7(3)(a)

You may opt to collect the information yourself by visiting the PIO's office or prefer to receive it by post. There is no provision in the J&K RTI Rules to collect postage charges from an applicant. Remember that you also have the right to inspect the information/ records requested. Before you seek copies of the records, you may inspect the records free of cost for one hour. If you require more time you will be charged at the rate of Rs. 5 for every extra 15 minutes or less. You may also take notes during the inspection. Inspecting documents could cut down costs because you can use the inspection time to decide which documents you really need.

No additional fee may be charged from BPL applicants for providing information. If the PIO charges you money for giving the information despite the fact that you had provided proof of your BPL status, you have the right to send a complaint to the J&K State Information Commission. You also have the option of filing a first appeal before the First Appellate Authority.

No bar on requests for voluminous amounts of information⁴²

The J&K RTI Act specifically states that information has to be provided in the form that you request, UNLESS it would disproportionately divert the resources of the public authority or is likely to damage the record.⁴³ Unfortunately, some departments have been using this provision to deny citizens access to information. This issue was the subject of a complaint filed with the Central Information Commission (CIC). Mr Sarbajit Roy applied to the Delhi Development Authority (DDA) for information relating to the modification of the Master Plan of Delhi. In particular, he requested access to the responses the Board of Enquiry and Hearing had received from the public on the draft Master Plan. The DDA refused to part with the information on several grounds, including that giving the information would disproportionately divert the resources of the DDA. After hearing from both Mr Roy and the DDA, the CIC stated that the Act does not authorise a public authority to deny information if it is voluminous. It simply allows the authority to provide the information in a form which is easy to access. The CIC has directed the DDA to provide Mr Roy with an opportunity to examine the responses and give him certified copies of those identified by him. You may use this decision to support your submissions to the J&K State Information Commission if the PIO rejects your request on the ground that you have sought voluminous information.

⁴² Central Information Commission (2006) Appeal No. 10/1/2005-CIC, 25 February: www.cic.gov.in as on 20 March 2006.

⁴³ Section 7(9).

What if the PIO rejects my application?

The PIO can only reject your application if the information you have requested falls under one of the exemptions in the J&K Act (see Part 4 for details) and the PIO additionally decides that there is no overriding public interest in releasing the information. No other reason is valid under the J&K RTI Act for justifying why an information request is refused. For example, it is not enough that the information might embarrass the government or an official or that you have not provided a good enough reason for wanting the information. You have a fundamental right to information – and officials are the ones who must justify continued secrecy.

Applying the “public interest override” to exemptions

Section 8(2) of the J&K RTI Act requires that even where an exemption applies to an application for information, a public body may release the information if the public interest in disclosure outweighs the interest protected by the exemption. The term “public interest” is not defined anywhere in the J&K RTI Act. This makes sense because what is in the public interest will change over time and will also depend on the particular circumstances of each case. Because of this, public authorities - more specifically, PIOs and departmental Appellate Authorities - as well as the J&K State Information Commission will need to consider each case on its individual merits. They need to decide whether any exemption applies and if so, whether it is overridden by more important public interest considerations, such as the need to promote public accountability, the imperative to protect human rights, or the fact that disclosure will expose an environmental or health and safety risk.

The PIO has to give you written notice of his/her decision to reject your request within the 30 day time limit.⁴⁴ The decision notice must state:

- (a) The reasons for the rejection, which should include information regarding the exemption being relied upon and any relevant facts considered by the PIO in arriving at the decision;
- (b) The period within which you can appeal the decision;
- (c) The name and contact details of the Appellate Authority to whom you can make an appeal.

⁴⁴ Section 7(8)

If the PIO fails to give you a decision notice, then this is regarded as a “deemed refusal”.⁴⁵ You may then appeal to the departmental Appellate Authority or send a complaint to the concerned J&K Information Commission (see Part 8 for details).

You can have information “partially disclosed” to you

Sometimes one document will contain both some sensitive information which falls under an exemption, and some information which could be disclosed without causing any harm. In such cases, access to the information which is not sensitive can still be provided. This is known as “partial disclosure”. In practice, this means the PIO will often black out portions of a document - certain lines or paragraphs - or will disclose some documents requested but not others. If a PIO decides to partially disclose information, he/she has to notify you that you will only be getting partial disclosure of the information you asked for, the reasons for the decision, the details of the officer who made the decision, the fees to be paid, and your right to get the decision reviewed.

⁴⁵ Section 7(2)

Part 8: What if I do not get the information I requested?

Unfortunately, with secrecy still very much the norm in the bureaucracy, PIOs today frequently reject RTI applications on flimsy grounds. For example, PIOs have rejected applications because the information was not under their control even though they have a duty to transfer the application in such cases, they have often applied exemptions wrongly and some have even refused to accept applications because the PIO is not available in the office or is on leave.

In anticipation of non-compliance, the J&K RTI Act sets in place appeals and complaints procedures which provide requesters with cheap, simple options for taking issue with decisions or poor performance of public authorities and government officials under the Act. Requesters can make appeals to a senior officer within the concerned department (referred to as the Appellate Authority) or they can complain to the Jammu & Kashmir State Information Commission.

Appeals vs Complaints – what is the difference?

If a PIO rejects your RTI application entirely or provides access only to a part of the information you seek, you may file an APPEAL to the Appellate Authority designated in that public authority. The Appellate Authority is an officer senior in rank to the PIO. After hearing from you and the PIO, the Appellate Authority has to determine whether the PIO made a correct decision on your application. If the Appellate Authority's order does not satisfy you, you can file a second appeal before the J&K State Information Commission.

A COMPLAINT may be made to the J&K State Information Commission if your grievance is about any other matter, for example, non-appointment of a PIO in a public authority, refusal of the APIO to receive your application and forward it to the PIO, charging unreasonable fees, providing incomplete, false or misleading information, destroying a record which was the subject of your request or any other matter relating to seeking and receiving information under the J&K RTI Act. In all such instances you may directly file a complaint before the Information Commission. After inquiring into the complaint, the J&K Information Commission may give appropriate directions to the public authority and impose a fine on the PIO or the APIO who deserves to be penalised.

Option 1 - Make an appeal

The appeals process falls under section 16 of the J&K RTI Act and envisages a two-step process: firstly, an appeal to the Appellate Authority and secondly, an appeal to the J&K State Information Commission. The appeals process is supposed to be a quicker, cheaper way of enabling requesters to get a decision reviewed, as opposed to going to the courts.

First appeal to the Appellate Authority

In every public authority, an officer who is senior in rank to the PIO has been designated to hear appeals. He/she is referred to as the Appellate Authority. The original decision or rejection notice you receive from the PIO should include contact details for the relevant Appellate Authority so that you know to whom you can go to get the decision reviewed. If the notice is deficient, you may want to check the website of the public authority or contact the PIO directly and ask for the Appellate Authority's details.

You can make an appeal to the Appellate Authority if:

- (a) you are aggrieved by the decision made;
- (b) no decision was made within the proper time limits;
- (c) you are a third party consulted during the application process and you are unhappy with the decision made by the PIO.

You need to send your appeal to the Appellate Authority within 30 days from the date on which you received the decision (or you should have received a decision) from the PIO. However, if you miss that deadline but the Appellate Authority feels that you have been prevented from making an appeal within this time limit for justifiable reasons, he/she may allow you to submit an appeal even after the 30 days have expired.⁴⁶

You need to send your appeal to the concerned Appellate Authority in writing. You need not address him/her by name. Merely referring to him/her as the First Appellate Authority in your appeal is adequate. Neither the J&K RTI Act nor the J&K RTI Rules prescribe any format for submitting a first appeal. So you may file the first appeal on plain paper. Alternatively, you may use Form #5 provided on the J&K State Information Commission's website for filing a first appeal.

⁴⁶ Section 16(1)

**Format of First Appeal Available on the Website of the
J&K State Information Commission***

Form - 5

[See rule 20 (1)]

First appeal under the J&K Right to Information Act, 2009.

I.D. No. _____
(for official use)

To

The first appellate authority,
_____ Department.

1. Name of the applicant :
2. Address :
3. Particulars of the Incharge of Office :
 - a. Name :
 - b. Address :
4. Date of submission of application in Form -1.
5. Date on which 30 days from submission of Form-1 is over :
6. Reasons for appeal :
 - a. No response received in Form-3, or Form - 4 within 30 days of submission of Form-1.
 - b. Aggrieved by the response received within prescribed period. (a copy of the reply received by attached).
 - c. Grounds for appeal.
7. Last date for filling the appeal.
8. Particulars of Information required :-

Place :

Dated :

Signature of the applicant

Email address, if any

Tele No. _____

.....Cut from here.....

Acknowledgement

I.D. No. _____ Dated : _____

Received appeal application from Shri _____ resident of
_____ under J&K Right to Information Act, 2009.

Signature of the Receipt Clerk,
Office of the first appellate authority
_____ Department

Tele No. _____

Email Address _____

Website _____

* You may file your first appeal on plain paper as well, so long as you provide all the information listed in this format.

You are not required to pay any fee for filing your first appeal under the J&K RTI Act.

Ordinarily after receiving your appeal, the Appellate Authority is required to give his/her decision within 30 days. This time limit is extendable, but the maximum time limit for a decision from the Appellate Authority is 45 days. If additional time is taken over and above the 30 day time limit, the Appellate Authority has to record the reasons for the extension in writing and provide those reasons to you when issuing his/her final order.⁴⁷

How are appeals usually handled by Appellate Authorities?

The J&K RTI Act does not prescribe a procedure that Appellate Authorities should follow when deciding appeals. In general, however, appeals proceedings should not be adversarial but should be a search for the truth, to simply find out whether the J&K RTI Act was applied properly. In any appeal, it is the PIO who has to prove that the rejection of an application was justified. This means that in any hearing, the PIO should first be asked to explain themselves. Only if they make a defensible case should you be called on to explain why you think the PIO is wrong. In any case, the Appellate Authority needs to apply his/her mind to consider all the facts again and decide whether the action of the PIO was correct. All parties involved - you, the PIO and any third party who was consulted about the disclosure - have the right to be heard before any decision is made.

If the Appellate Authority accepts your appeal and decides that the information should be given to you, then he/she should inform you and the public authority of the decision in writing. If the Appellate Authority rejects your appeal, the notice of the decision to you must include details of your right to appeal to the J&K State Information Commission.

Notably the J&K RTI Act does not give Appellate Authorities the power to impose penalties on officials even when non-compliance with its provisions is proven. Only the J&K State Information Commission has the power to impose penalties. However the Appellate Authority has a duty to make a reference to the J&K State Information Commission about the wrongful actions of a PIO so that appropriate penalty may be imposed. If the Appellate Authority fails to do so, on his own, you may demand of him to send a reference to the J&K state Information Commission against the errant PIO. Alternatively, you may want to make a complaint to the J&K State Information Commission demanding imposition of penalty on the errant PIO (see page 39 for details).

⁴⁷ Section 16(7)

Second appeal to the Information Commission

If you are dissatisfied with the decision of the Appellate Authority, the J&K RTI Act provides you with the option of filing a second appeal before the J&K State Information Commission within 90 days of receiving that decision.⁴⁸ You may file a second appeal even if the Appellate Authority does not pass an order on your first appeal within the time limit of 45 days. You must file the second appeal within 90 days of lapse of that time limit. The J&K State Information Commission has the discretion to admit appeals received after the 90-day period if there is reasonable cause for delay.

The J&K State Information Commission - Champion of Openness

The J&K Government has constituted the J&K state Information Commission according to the provisions of the J&K RTI Act.⁴⁹ The Commission has a Chief Information Commissioner and two Information Commissioners. The Commission has a number of key roles to play in ensuring that the J&K RTI Act is an effective tool in assisting the people of J&K to access information. Specifically the J&K State Information Commission is responsible for:

- *Handling complaints and appeals:* All residents of J&K have the right to appeal or complain to the J&K State Information Commission if their information needs under the J&K RTI Act have not been fulfilled. In reviewing decisions, the Information Commission has broad powers of inquiry – including the right to summon and see any document even if an exemption is claimed by the public authority. The Information Commission also has strong and binding powers to require public authorities to comply with the J&K RTI Act; these include ordering release of information, appointment of PIOs, improvement of records management systems, provision of compensation and imposition of fines.⁵⁰
- *Monitoring implementation:* At the end of each year, the J&K State Information Commission has to produce an annual report which is tabled in the J&K State Legislature. The report has to include basic application and appeal statistics as well as comment on implementation efforts and recommendations for improvements. The Commission's annual reports are based on monitoring information submitted by each public authority under the Commission's jurisdiction.⁵¹

⁴⁸ Section 16(4)

⁴⁹ Section 12(1)

⁵⁰ Section 16(9) & Section 17

⁵¹ Section 22

- *Special human rights oversight:* The J&K RTI Act permits the J&K State Government to exempt security and intelligence agencies from the ordinary obligations of transparency and information disclosure like other public authorities. Yet these bodies must provide information about allegations of corruption and human rights violation when requested. Information about allegations of human rights violation will be given only with the approval of the J&K State Information Commission.

The J&K State Information Commission is also a public authority under the J&K RTI Act with obligations to be transparent and provide residents of J&K with information about its own working when requested. The J&K State Information Commission has a crucial role to play in ensuring the J&K RTI Act is implemented effectively. It can lead by example and residents of J&K need to be vigilant to ensure that the Commission works effectively.

You must send your appeal to the J&K State Information Commission in writing. The J&K State Government has notified Rules about what information needs to be included in a second appeal sent to the Information Commission. The basic facts that you must include in your appeal are listed below (see Annex 2, page 3). You must attach to your appeal supporting documents such as: self attested copies of orders against which you are filing the appeal, copies of any documents that you wish to rely upon for supporting your case along with an index of documents referred to in the appeal.

The J&K State Information Commission manages appeals in accordance with procedures prescribed under the J&K RTI Rules, 2012. Commission has the power to take oral or written evidence on oath/affidavit; inspect documents or copies; hear and receive affidavits from the PIO against whom the appeal has been made and/or the Appellate Authority who has decided the first appeal; and to hear from you.⁵² If the decision of a PIO or Appellate Authority relates to a third party, then that third party also has the right to be heard by the J&K State Information Commission before it makes a decision.⁵³

Burden of proof⁵⁴

In any appeals proceeding, the burden of proof that the denial of a request was justified lies on the person who wants to keep the information secret - the PIO or a third party.

⁵² Section 15(3)

⁵³ Section 16(2)

⁵⁴ Section 16(6)

In practice, this means that you should only need to interact with the Commission after the person who wants to withhold the information has first been questioned, because they are the ones who have to show the J&K State Information Commission that they are right. If a hearing is then organised, the PIO or third party arguing for secrecy needs to be called on to make their case first. You will only need to make a case if the Commission thinks the PIO or third party has a point worth considering. At that stage, you then need to argue in favour of disclosure.

The J&K Information Commission is not meant to function like a court. Appeals proceedings are meant to be informal and non-confrontational. Information Commission has a duty to inform you of the date of hearing at least seven days before that date. You are free to choose to attend the hearing or send an authorised representative to argue your case before the Commission. Your representative need not necessarily be a lawyer. Instead you could request any person knowledgeable about the J&K RTI Act to assist you or represent you during a hearing. Hearings are usually held face-to-face with all parties present at the office of the Information Commission. However if you are unable to attend the hearing in person, you may request that the hearing be conducted through video conferencing, if such facilities are available at the Information Commission's office and in your town or city also. The Information Commission prefers to dispose off second appeals in a single hearing unless you or the public authority seeks postponement of the hearing for genuine and credible reasons.

The J&K State Information is required to give its decision on a second appeal within 60 days of receiving it. However the Commission may extend this deadline up to a maximum of 120 days. Whenever the Commission gives its decision after the initial 60-day period lapses, it must record reasons for the delay in that decision itself.

If the J&K State Information Commission decides that your appeal is justified, the Commission will need to give you a written decision. The Information Commission has broad and binding powers to:

- (a) order the public authority to take concrete steps towards meeting its duties under the J&K RTI Act, for example, by providing access to the information you requested or by reducing the amount of fees you need to pay;⁵⁵
- (b) order the public authority to compensate you for any loss you may have suffered in the process;⁵⁶

⁵⁵ Sections 16(9)(a)(i)(ii)(iii)

⁵⁶ Section 16(9)(b)

- (c) impose penalties on the PIO or any other official who failed in their duties under the J&K RTI Act.⁵⁷

If the Information Commission decides that your case is groundless, it will reject your appeal.⁵⁸ In either case, the Commission must give notice of its decision to you and the public authority, which should include any right of appeal.⁵⁹

⁵⁷ Section 17

⁵⁸ Section 16(9)(d)

⁵⁹ Section 16(10)

Option 2 - Make a complaint

In addition to the appeals route you have the option of sending a complaint to the Information Commission directly under Section 15(1) of the Act, if you are not satisfied with the decision of the PIO or if you think a public authority is failing to comply with its duties under the J&K RTI Act. This is a particularly useful route if you wish to seek a penalty for the PIO who violated the provisions of the J&K Act while dealing with your RTI application. So even after you receive the information on the orders of the Appellate Authority, you may demand that the PIO be penalized for contravening the law. You can do this by sending a complaint to the J&K State Information Commission.

You can file a complaint⁶⁰ if you have any trouble in accessing information under the J&K RTI Act, for example if:

- (a) you have not been able to submit an application either because a PIO has not been appointed in a particular department to accept your application or an APIO has refused to accept your application;
- (b) you have been refused access to any information requested;
- (c) you do not get a response to your request or access to the information you requested within the specified time limit;
- (d) you have been asked to pay fees which you think are unreasonable;
- (e) you believe the information you have been given is incomplete, misleading or false;
- (f) you face any other problem related to accessing information under the J&K RTI Act.

This last provision is purposely broad to allow you to complain to the J&K State Information Commission in relation to ANY problems that prevent you from effectively accessing information, even those not mentioned specifically under the J&K RTI Act. These include, for example, failure by a public authority to - implement proactive disclosure requirements properly, appoint PIOs, provide proper training to officials or failure by the government to produce the User's Guide required under the J&K Act.

Apart from imposing penalties or recommending disciplinary action against a PIO, the J&K State Information Commission can give recommendations to public authorities to improve compliance with the provisions of the J&K RTI Act.

Whether the Information Commission is hearing an appeal or a complaint, it has the same inquiry and decision-making powers (see pages 31-34 in relation to appeals to Information Commissions for details). In summary, the Information Commission has broad

⁶⁰ Section 15(1)

inquiry powers because it has the same powers as a civil court.⁶¹ If after inquiring into the second appeal, the J&K Information Commission decides that your plea is justified, it may issue binding orders requiring the public authority to take necessary steps to redress your grievance. The J&K Information Commission has very broad powers to compel the public authority to comply with the provisions of the J&K Act, for example, by ordering release of the information you requested, appointing PIOs to receive and process RTI applications or directing that more categories of information be disclosed proactively. The Information Commission can also require the public authority to compensate you for any loss or detriment suffered because of rejection of the request for information and can impose a penalty on non-compliant officials.⁶² Alternatively, if the Information Commission finds that your second appeal or complaint is not justified it can reject it. In such a case you may file a writ petition before the J&K High Court seeking judicial review of that decision.

J&K State Information Commission has the power to impose penalties

J&K State Information Commission alone - and not Appellate Authorities - have the power to recommend disciplinary action⁶³ and impose monetary penalties⁶⁴ of Rs 250 per day up to a maximum of Rs 25,000 on officials who are found to have:

- refused to receive an application;
- failed to provide information within the time limits specified in the Act;
- malafidely denied a request for information;
- knowingly given incorrect, incomplete or misleading information;
- destroyed information which was the subject of a request; or
- obstructed in any manner the furnishing of information.

Before a penalty can be imposed, an official must be given an opportunity to be heard. The official has to prove to the Information Commission that he/she acted reasonably and diligently.

⁶¹ Section 15(3)

⁶² Section 16(9) & Section 17

⁶³ Section 17(2)

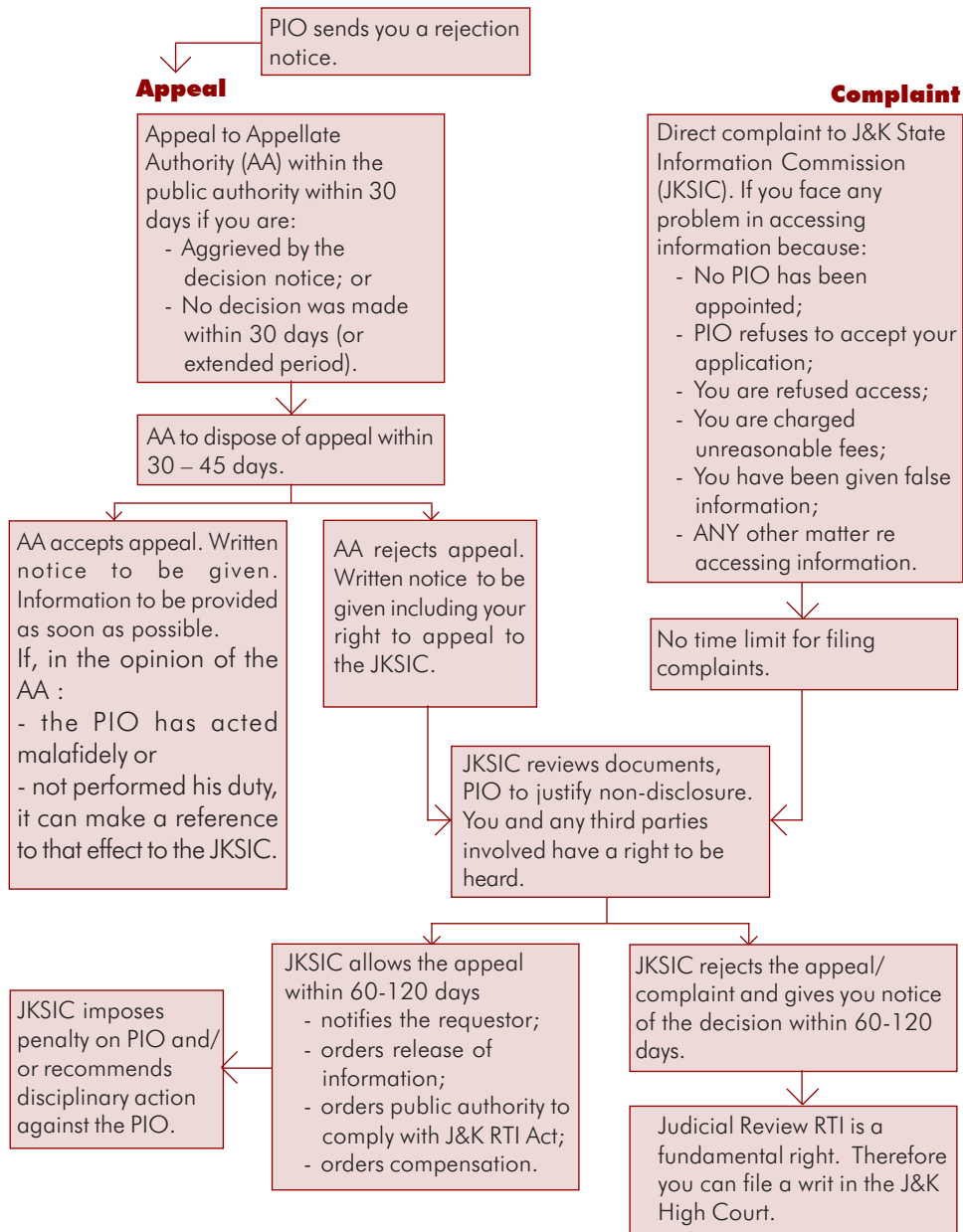
⁶⁴ Section 17(1)

Option 3: Appeal to the courts

The J&K RTI Act specifically bars courts from entertaining any suit or proceeding⁶⁵ before a petitioner exhausts all remedies (appeals and complaint procedures) available under the J&K RTI Act. Ordinarily, no court can interfere in any appeal or complaint proceeding pending before the J&K State Information Commission. If you are faced with a situation where you are not satisfied with the decision of the J&K State Information Commission, you may file a writ petition before the J&K High Court. Under Article 226 of the Constitution of India read with Article 103 of the Constitution of Jammu and Kashmir. Theoretically you may also move the Supreme Court against a decision of the J&K State Information Commission because RTI is a fundamental right. Under Article 32 of the Constitution any person may move the Supreme Court of India to entertain a petition about violation of a fundamental right. However, in practice it is advisable to approach the Supreme Court after exhausting the option of moving the J&K High Court. Decisions of the J&K State Information Commission cannot be challenged before the lower courts.

⁶⁵ Section 20

Flow Chart 2: Appeals & Complaint Process



Part 9: How can I help promote the Right to Information?

The J&K RTI Act sets out a legal framework for accessing information, but the key to the law's practical success as a tool for good governance lies in your hands. Resident of J&K have a fundamental duty to use the J&K RTI Act to ensure that public authorities across the State of J&K are meeting their obligations and fulfilling their duties to develop a strong and pro-people access to information regime. The right to information can become a powerful and living right with your help.

Requesting information

To make sure that the J&K RTI Act is effective as a tool for curbing corruption and improving government service-delivery, people have to use it to apply for information from the government. This is one of the surest ways of getting the government accountable and answerable to the people.

Already, individuals and civil society groups have begun using the J&K RTI Act to expose massive corruption and mismanagement in government, to ensure that government schemes and plans are being properly implemented, to demand accountability in government and above all to demand a say in how policies are being designed and implemented across Jammu & Kashmir.

Monitoring the government

Applying and getting the information you want is only a first step. What you do with the information you get is just as important. For example, if the information you have reveals evidence of misconduct, corruption or misadministration, it is essential that you take the matter up with higher authorities - whether this be the Information Commission, the police, the courts or an anti-corruption agency - and ensure that it becomes a matter of public knowledge. In fact, even the J&K RTI Act itself needs to be monitored in this way. You can monitor its implementation to assess whether officers in public authorities are making efforts to comply with the law and the government is meeting its obligations to publish information, appoint PIOs and provide access in a timely manner. Based on your findings, you can lobby and advocate with the government to improve its efforts at implementation.

Tackling Delay in Passport Delivery⁶⁶

For anybody who wants to travel abroad, passports and visa are two most essential documents. Passports are issued by the Ministry of External Affairs of the Central Government and serve as proof of identity, signature and address of a person. Residents of Jammu and Kashmir can apply for passports through the Regional Passport Offices situated in Jammu and Srinagar. Despite the Ministry's declared norms and time-limits, residents of J&K face many obstacles in obtaining their passports.

The J&K Criminal Investigation Department (CID) is tasked with verifying the background of applicants for passports. The application moves down the bureaucratic ladder from the headquarters until it reaches the SB Sector Officer who actually conducts the verification based on police station records and visits to the residence of the applicant. The SB Sector Officer submits a report of his findings and the file moves back to the headquarters of CID through the same channel for a decision whether or not to grant the passport. If an applicant has any criminal cases registered against him, or is involved with militant activities according to official records the CID submits an adverse report. Getting a passport is difficult in the face of an adverse report.

Ghulam Nabi Malik of Poonch, J&K applied for a passport in order to be able to perform a Haj visit. He also received an acknowledgement of his application from the Passport Office. After completing the verification procedure, the SB Sector Officer allegedly submitted an adverse report stating that Ghulam's family was blacklisted as his brother-in-law was said to have been involved with a militant organization during the 1990s. Ghulam did not hear from the passport office for several months despite the lapse of the deadline within which his passport ought to have been issued.

Ghulam attended the RTI training workshops jointly organized by the J&K RTI Movement and CHRI. Having learnt that under the RTI Act all public authorities can be held accountable for their actions, he sent an application to the CID demanding to know reasons for the delay in his case. In May 2012, within 20 days of sending the RTI application, the passport authorities delivered Ghulam's passport to his house. Ghulam, says RTI worked like a magic wand and he performed the Haj a few months later.

⁶⁶ Based on personal interviews conducted by Amikar Parwar of CHRI, with Ghulam Nabi Malik of Poonch and member of the J&K RTI Movement.

Educating and advising others

Today, across Jammu & Kashmir, few are aware that such an empowering law has come into force and is accessible to them. The State Government is responsible for spreading awareness and education on the J&K RTI Act amongst the public, but its efforts have been slow. It is the duty of all the people residing in Jammu & Kashmir to ensure that the message of RTI is spread far and wide across the State in all local languages and through as many mediums as possible. If you have used the J&K RTI Act - irrespective of whether your efforts have been successful or unsuccessful - you should consider making your experience public knowledge by writing an article for the papers or publishing your case study on the internet or simply by talking about it with your friends and colleagues. You can also help people to make similar requests for information by teaching them how to ask, write and submit an application. Your experience in using the J&K RTI Act can serve as a source of inspiration to others and sharing it is vital to ensuring that the J&K RTI Act is successfully entrenched in the hearts and minds of the public.

Corruption in Housing Assistance Scheme Exposed⁶⁷

Kutabal is a remote village in Anantnag district of J&K where several families live below the poverty line (BPL). The State Government implements a housing assistance scheme for such people under the name: Indira Awaas Yojana (IAY). This scheme is sponsored by the Central Government in order to provide financial assistance to BPL families for constructing new houses. IAY beneficiaries are selected from permanent waitlists drawn up with the approval of the Deh Majlis (village assembly comprising of all residents of the village aged 25 years and above). The waitlists are prepared on the basis of the list of persons living BPL put together by the State Government from field level surveys. Only such persons identified as shelterless by the Deh Majlis are entitled to receive housing benefits under IAY.

However Deh Majlis meetings were rarely, if ever, held in Kutabal. Fayaz Ahmad Wani who is from a BPL family, living in the same village, noticed that only persons who were well off or belonged to the families of government officials were enjoying the benefits of IAY.

Upset by this injustice in the delivery of IAY, in May 2012 Fayaz submitted an RTI application to the office of the Block Development Officer which sanctions IAY allotments.

⁶⁷ Source : <http://kashmirwatch.com/features.php/2012/08/12/rti-activist-forces-sarpanch-to-refund-swindled-iyay-money.html>, along with personal interview conducted by Amikar Parwar of CHRI.

He sought a copy of the complete list of beneficiaries of IAY during the years 2008-2011.

Kutabal's halqa panchayat (rural self-governing body set up under The J&K Panchayati Raj Act, 1989) is controlled by a father and son duo who got elected as Deputy Sarpanch (Deputy Chairman) and Panch (member). Fayaz was attacked by anti-social elements within a few days of submitting the RTI application. He suspects that the attack may have been engineered by the very elements who were threatened by his demand for transparency. Fayaz did not budge from his demand for transparency.

A few weeks later Fayaz received the information. Official records revealed that only the near and dear ones of the Deputy Sarpanch had benefitted from IAY allotments. One of the beneficiaries worked as a government employee. He was simply not entitled to be on the BPL or IAY Lists. An IAY allotment was made in the name of a school-going student from the same family. The list revealed one ghost allottee as well. Fayaz shared these findings with the local media which splashed cover stories of corruption in the implementation of IAY.

Fearing legal action the Deputy Sarpanch returned more than Rs. 5 lakhs to the State's Treasury. Fayaz was elated with the success of his RTI intervention. However he has not stopped at this. He sent a complaint of corruption against the officials of the panchayat which is being investigated by the State Vigilance Organisation. The panchayat officials have started convening meetings of the Deh Majlis since this intervention.

Fayaz was trained at workshops organized by the J&K RTI Movement in collaboration with CHRI.

Joining the RTI movement

Across the country and in Jammu & Kashmir, there are many activists and civil society groups working to promote the right to information. These groups are actively finding ways of making this right accessible to men, women and marginalised communities across India with remarkable results and success stories. In addition, there are also a number of online discussion forums and local groups which are closely involved in monitoring the application and implementation of the J&K RTI Act. You may want to join one of these

groups and/or an organisation working in Jammu & Kashmir on the right to information. You could even set up a discussion group of your own (see Annex 5 for details of some groups working on J&K RTI).

Getting involved with the RTI implementation campaign

Many groups are networking throughout the country to consolidate the gains already made and to continue building pressure on the government to implement the RTI Act properly. For example, the National Campaign for People's Right to Information (NCPRI) was set up in 1996 with the prime objective of carrying out advocacy on the right to information at the national level. They lobbied to get the RTI Act passed and now focus on improving implementation. In addition, there are a number of online discussion groups where activists across the country can discuss and share their experiences. For example, in Maharashtra, right to information supporters set up the web based discussion group Mahadhikar (now Hum Janenge) to serve as a platform for sharing experiences, discussing problems, and devising strategies for tackling deficiencies in the law and its implementation, and coordinating activities to promote the right to information. Similarly, in Karnataka, advocates set up the KRIA KATTE discussion board. These on-line forums have been a very useful way for drawing people together from diverse backgrounds and locations to pursue a united campaign.

Exposing Sales Tax Defaulters⁶⁸

The J&K Government collects sales tax levied on the sale and purchase of commodities in the State. However many individuals, companies and firms do not pay up the tax amounts collected during a financial year. There is also a strong impression that corruption prevents tax defaulters from being brought to book.

Under the J&K RTI Act, Balwinder Singh, Convenor of the Sangarsh RTI Movement in Jammu sought a list of names, addresses and details of commercial units of all defaulters who owed more than Rs. 10 lakhs in sales tax dues for the years 2000-2011. He also sought to know details of action taken by the Government against the defaulters.

The information received from the Department revealed that there were more than 800 identified defaulters of whom about 650 belonged to Jammu and more than 200 belonged to Kashmir. Large public sector enterprises which provide electricity and telephony services in the State topped the list of defaulters owing several crores of rupees in tax dues. The proceedings against some of these bodies had simply not moved on due to a stay granted by the tax Tribunal. In several other cases the Deputy Commissioner (Appeals) had stayed the tax recovery proceedings. According to official figures these defaulters owe Rs. 592 crores in tax dues.

The records also showed that more than a third of the defaulters (numbering 263) were not traceable to continue proceedings against them. These findings were flashed across the media generating debate on the working of the tax authorities in J&K.

⁶⁸ <http://www.greaterkashmir.com/news/2011/Aug/15/govt-departments-bigwigs-among-sales-tax-defaulters-84.asp>

Holding Public Authorities Accountable through RTI⁶⁹

The river Tawi is the lifeline of Jammu city and neighbouring settlements. The Public Works Department (PWD) of J&K developed a plan to construct an additional bridge across this river. In 2004 the Department awarded the contract for constructing the bridge to the Uttar Pradesh State Bridges Corporation Ltd (UPSBCL). A few months later UPSBCL completed the construction work worth Rs. 6 crores and handed it over to the administration for public use.

Raman Sharma, a journalist and founding member of Save My Tawi Campaign, noticed that the debris left behind by the construction company lay in the middle of the river blocking its flow and causing accumulation of garbage and polythene bags. More than eight years had passed since the completion of construction activities. In April 2012 Raman filed an information request with the PWD department asking as to who was responsible for clearing up the debris and the time limit set for cleaning up the that portion of the river flow. The PWD Department replied that no time limits were set by the Department, however it acknowledged that UPSBCL had the responsibility for clearing up the debris soon after the construction was completed. The Department assured him that it would take up the responsibility of removing the debris using the balance of Rs. 1 crore from the contract amount that was yet to be paid to UPSBCL.

Raman, an active member of the Sangarsh RTI Movement and the J&K RTI Movement, conducts training programmes to encourage residents of J&K to use the J&K RTI Act to hold public authorities accountable.

⁶⁹ Source : <http://www.tribuneindia.com/2012/20120324/jmtrib1.htm>, along with personal interview conducted by Amikar Parwar of CHRI.

Annex 1: Jammu & Kashmir Right to Information Act 2009

EXTRAORDINARY

REGD. NO. JK—33



THE

JAMMU & KASHMIR GOVERNMENT GAZETTE

Vol. 121] Jammu, Fri., the 20th March, 2009/29th Phal., 1930. [No. 51-5

Separate paging is given to this part in order that it may be filed as a
separate compilation.

PART III

Laws, Regulations and Rules passed thereunder.

GOVERNMENT OF JAMMU AND KASHMIR
CIVIL SECRETARIAT—LAW DEPARTMENT

Jammu, the 20th March, 2009.

The following Act as passed by the Jammu and Kashmir State Legislature received the assent of the Governor on 20th March, 2009 and is hereby published for general information :—

THE JAMMU AND KASHMIR RIGHT TO INFORMATION ACT, 2009.

(Act No. VIII of 2009)

[20th March, 2009.]

An Act to provide for setting out the regime of right to information for the people of the State to secure access to information under the

2 The J&K Govt. Gazette, 20th March, 2009/29th Phal., 1930., [No. 51-5]

control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a State Information Commission and for matters connected therewith or incidental thereto.

Whereas, the Constitution of India has established democratic Republic ; and

Whereas, democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Government and its instrumentalities accountable to the governed ; and

Whereas, revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Government, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information ; and

Whereas, it is necessary to harmonize these conflicting interests while preserving the paramountcy of the democratic ideal ; and

Whereas, it is expedient to provide for furnishing certain information to citizens who desire to have it.

Be it enacted by the Jammu and Kashmir State Legislature in the Sixtieth Year of the Republic of India as follows :—

CHAPTER I

Preliminary

1. *Short title, extent and commencement.*—(1) This Act may be called the Jammu and Kashmir Right to Information Act, 2009.

(2) It extends to the whole of the State.

(3) It shall come into force at once.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

- (a) "Act" means the Jammu and Kashmir Right to Information Act, 2009 ;
- (b) "competent authority" means—
 - (i) the Speaker in the case of the Legislative Assembly of the State and the Chairman in the case of the Legislative Council of the State ;
 - (ii) the Chief Justice of the High Court in the case of the High Court ;
 - (iii) the Governor in the case of other authorities established or constituted by or under the Constitution of India or the Constitution of Jammu and Kashmir ;
- (c) "Government" means the Government of Jammu and Kashmir ;
- (d) "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 ;
- (e) "prescribed" means prescribed by rules made under the Act by the Government or the competent authority, as the case may be ;
- (f) "public authority" means any authority or body or institution of self-government established or constituted—
 - (i) by or under the Constitution of India or the Constitution of Jammu and Kashmir ;

4 The J&K Govt. Gazette, 20th March, 2009/29th Phal., 1930. [No. 51-5]

- (ii) by any other law made by Parliament ;
- (iii) by any other law made by the State Legislature ;
- (iv) by notification issued or order made by the Government, and includes any—
 - (A) body owned, controlled or substantially financed ;
 - (B) non-Government organization substantially financed, directly or indirectly by funds provided by the Government ;
- (g) "Public Information Officer" means the Public Information Officer designated under sub-section (1) and includes a Assistant Public Information Officer designated as such under sub-section (2) of section 5 ;
- (h) "record" includes—
 - (i) any document, manuscript and file ;
 - (ii) any microfilm, microfiche and facsimile copy of a document ;
 - (iii) any reproduction of image or images embodied in such microfilm (whether enlarged or not) ; and
 - (iv) any other material produced by a computer or any other device ;
- (i) "right to information" means the right to information accessible under the Act which is held by or under the control of any public authority and includes the right to—
 - (i) inspection of work, documents, records ;
 - (ii) taking notes, extracts or certified copies of documents or records ;

- (iii) taking certified samples of material ;
- (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device ;
- (j) "State Information Commission" means the State Information Commission constituted under sub-section (1) of section 12 ;
- (k) "State Chief Information Commissioner" and "State Information Commissioner" means the State Chief Information Commissioner and the State Information Commissioner appointed under sub-section (3) of section 12 ;
- (l) "third party" means a person other than the citizen making a request for information and includes a public authority.

CHAPTER II

Right to Information and Obligations of Public Authorities

3. *Right to information.*—Subject to the provisions of the Act, every person residing in the State shall have the right to information.

4. *Obligations of public authorities.*—(1) Every public authority shall—

- (a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under the Act and ensure that all records that are appropriate to be computerized are, within a reasonable time and subject to availability of resources, computerized and connected through a network all over the State on different systems so that access to such records is facilitated ;
- (b) publish within one hundred and twenty days from the commencement of the Act,—
 - (i) the particulars of its organization, functions and duties ;

6 The J&K Govt. Gazette, 20th March, 2009/29th Phal., 1930. [No. 51-5

- (ii) the powers and duties of its officers and employees ;
- (iii) the procedure followed in the decision making process, including channels of supervision and accountability ;
- (iv) the norms set by it for the discharge of its functions ;
- (v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions ;
- (vi) a statement of the categories of documents that are held by it or under its control ;
- (vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof ;
- (viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public ;
- (ix) a directory of its officers and employees ;
- (x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations ;
- (xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made ;
- (xii) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes ;

- (xiii) particulars of recipients of concessions, permits or authorizations granted by it ;
 - (xiv) details in respect of the information, available to or held by it, reduced in an electronic form ;
 - (xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use ;
 - (xvi) the names, designations and other particulars of the Public Information Officers ;
 - (xvii) such other information as may be prescribed ; and thereafter update these publications every year ;
- (c) publish all relevant facts while formulating important policies or announcing the decisions which affect public ;
- (d) provide reasons for its administrative or quasi-judicial decisions to affected persons.
- (2) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of the Act to obtain information.
- (3) For the purposes of sub-section (1), every information shall be disseminated widely and in such form and manner which is easily accessible to the public.
- (4) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Public Information Officer available free or at such cost of the medium or the print cost price as may be prescribed.

8 The J&K Govt. Gazette, 20th March, 2009/29th Phal., 1930. [No. 51-5]

Explanation :—For the purposes of sub-sections (3) and (4), “disseminated” means making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority.

5. *Designation of Public Information Officers*.—(1) Every public authority shall, within one hundred days of the commencement of the Act, designate as many officers as the Public Information Officers in all administrative units or offices under it as may be necessary to provide information to persons requesting for the information under the Act.

(2) Without prejudice to the provisions of sub-section (1), every public authority shall designate an officer, within one hundred days of the commencement of the Act, at each sub-divisional level or other sub-district level as an Assistant Public Information Officer to receive the applications for information or appeals under the Act for forwarding the same forthwith to the Public Information Officer or senior officer specified under sub-section (1) of section 16 or the State Information Commission, as the case may be :

Provided that where an application for information or appeal is given to a Assistant Public Information Officer a period of five days shall be added in computing the period for response specified under sub-section (1) of section 7.

(3) Every Public Information Officer shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information.

(4) The Public Information Officer may seek the assistance of any other officer as he or she considers it necessary for the proper discharge of his or her duties.

(5) Any officer, whose assistance has been sought under sub-section (4), shall render all assistance to the Public Information Officer seeking his or her assistance and for the purposes of any contravention

of the provisions of the Act, such other officer shall be treated as a Public Information Officer.

6. *Request for obtaining information.*—(1) A person, who desires to obtain any information under the Act, shall make a request in writing or through electronic means in English, Urdu or Hindi accompanying such fee as may be prescribed, to—

- (a) the Public Information Officer of the concerned public authority ;
- (b) the Assistant Public Information Officer,

specifying the particulars of the information sought by him or her :

Provided that where such request cannot be made in writing, the Public Information Officer shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

(2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.

(3) Where an application is made to a public authority requesting for an information,—

- (a) which is held by another public authority ; or
- (b) the subject matter of which is more closely connected with the functions of another public authority,

the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer :

Provided that the transfer of an application pursuant to this subsection shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.

10 The J&K Govt. Gazette, 20th March, 2009/29th Phal., 1930. [No. 51-5

7. *Disposal of request.*—(1) Subject to the proviso to sub-section (2) of section 5 or the proviso to sub-section (3) of section 6, the Public Information Officer on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9 :

Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.

(2) If the Public Information Officer fails to give decision on the request for information within the period specified under sub-section (1), the Public Information Officer shall be deemed to have refused the request.

(3) Where a decision is taken to provide the information on payment of any further fee representing the cost of providing the information, the Public Information Officer shall send an intimation to the person making the request, giving—

- (a) the details of further fees representing the cost of providing the information as determined by him, together with the calculations made to arrive at the amount in accordance with fee prescribed under sub-section (1), requesting him to deposit that fees, and the period intervening between the despatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of thirty days referred to in that sub-section ;
- (b) information concerning his or her right with respect to review the decision as to the amount of fees charged or the form of access provided, including the particulars of the appellate authority, time limit, process and any other forms.

(4) Where access to the record or a part thereof is required to be provided under the Act and the person to whom access is to be

provided is sensorily disabled, the Public Information Officer shall provide assistance to enable access to the information, including providing such assistance as may be appropriate for the inspection.

(5) Where access to information is to be provided in the printed or in any electronic format, the applicant shall, subject to the provisions of sub-section (6), pay such fee as may be prescribed :

Provided that the fee prescribed under sub-section (1) of section 6 and sub-sections (1) and (5) of section 7 shall be reasonable and no such fee shall be charged from the persons who are of below poverty line as may be determined by the Government.

(6) Notwithstanding anything contained in sub-section (5), the person making request for the information shall be provided the information free of charge where a public authority fails to comply with the time limits specified in sub-section (1).

(7) Before taking any decision under sub-section (1), the Public Information Officer shall take into consideration the representation made by a third party under section 11.

(8) Where a request has been rejected under sub-section (1), the Public Information Officer shall communicate to the person making the request,—

- (a) the reasons for such rejection ;
- (b) the period within which an appeal against such rejection may be preferred ; and
- (c) the particulars of the appellate authority.

(9) An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.

12 The J&K Govt. Gazette, 20th March, 2009/29th Phal., 1930. [No. 51-5

8. Exemption from disclosure of information.—

(1) Notwithstanding anything contained in the Act, there shall be no obligation to give any citizen,—

- (a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State or lead to incitement of an offence ;
- (b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court ;
- (c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature ;
- (d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information ;
- (e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information ;
- (f) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes ;
- (g) information which would impede the process of investigation or apprehension or prosecution of offenders ;
- (h) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers :

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the

decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over :

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed ;

- (i) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information :

Provided that the information which cannot be denied to the Parliament or the State Legislature shall not be denied to any person.

(2) Notwithstanding anything in the State Official Secrets Act, Samvat 1977 or any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(3) Subject to the provisions of clauses (a), (c) and (h) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Government shall be final, subject to the usual appeals provided for in the Act.

9. *Grounds for rejection to access in certain cases.*—Without prejudice to the provisions of section 8, a Public Information Officer may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.

14 The J&K Govt. Gazette, 20th March, 2009/29th Phal., 1930. [No. 51-5

10. *Severability*.—(1) Where a request for access to information is rejected on the ground that it is in relation to information which is exempt from disclosure, then, notwithstanding anything contained in the Act, access may be provided to that part of the record which does not contain any information which is exempt from disclosure under the Act and which can reasonably be severed from any part that contains exempt information.

(2) Where access is granted to a part of the record under sub-section (1), the Public Information Officer shall give a notice to the applicant, informing—

- (a) that only part of the record requested, after severance of the record containing information which is exempt from disclosure, is being provided ;
- (b) the reasons for the decision, including any findings on any material question of fact, referring to the material on which those findings were based ;
- (c) the name and designation of the person giving the decision ;
- (d) the details of the fees calculated by him or her and the amount of fee which the applicant is required to deposit ; and
- (e) his or her rights with respect to review of the decision regarding non-disclosure of part of the information, the amount of fee charged or the form of access provided, including the particulars of the senior officer specified under sub-section (1) of section 16 or the State Information Commission, as the case may be, time limit, process and any other form of access.

11. *Third party information*.—(1) Where a Public Information Officer intends to disclose any information or record, or part thereof on a request made under the Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Public Information Officer shall, within five days from the receipt of the request, give a written notice to such third party of the request

and of the fact that the Public Information Officer intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information :

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

(2) Where a notice is served by the Public Information Officer under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Public Information Officer shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), 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 decision to the third party.

(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 under section 16 against the decision.

CHAPTER III

The State Information Commission

12. *Constitution of State Information Commission.*—(1) The Government shall, by notification in the Government Gazette, constitute a body to be known as the Jammu and Kashmir State Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under the Act.

16 The J&K Govt. Gazette, 20th March, 2009/29th Phal., 1930. [No. 51-5]

(2) The State Information Commission shall consist of—

(a) the State Chief Information Commissioner ; and

(b) two State Information Commissioners.

(3) The State Chief Information Commissioner and the State Information Commissioners shall be appointed by the Governor on the recommendation of a committee consisting of—

(a) the Chief Minister, who shall be the Chairperson of the committee ;

(b) the Leader of Opposition in the Legislative Assembly ; and

(c) a Cabinet Minister to be nominated by the Chief Minister.

*Explanation :—*For the purposes of removal or doubts, it is hereby declared that where the Leader of Opposition in the Legislative Assembly has not been recognized as such, the Leader of the single largest group in opposition of the Government in the Legislative Assembly shall be deemed to be the Leader of Opposition.

(4) The general superintendence, direction and management of the affairs of the State Information Commission shall vest in the State Chief Information Commissioner who shall be assisted by the State Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the State Information Commission autonomously without being subjected to directions by any other authority under the Act.

(5) The State Chief Information Commissioner and the State Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

(6) The State Chief Information Commissioner or a State Information Commissioner shall not be a Member of Parliament or

Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

(7) The headquarters of the State Information Commission shall be at such place in the State as the Government may, by notification in the Government Gazette, specify.

13. *Term of office and conditions of service.*—(1) The State Chief Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment :

Provided that the State Chief Information Commissioner shall not hold office as such after he has attained the age of sixty-five years.

(2) Every State Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such State Information Commissioner :

Provided that every State Information Commissioner shall, on vacating his office under this sub-section, be eligible for appointment as the State Chief Information Commissioner in the manner specified in sub-section (3) of section 12 :

Provided further that where the State Information Commissioner is appointed as the State Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the State Information Commissioner and the State Chief Information Commissioner.

(3) The State Chief Information Commissioner or a State Information Commissioner shall before he enters upon his office make and subscribe before the Governor or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the Schedule.

18 The J&K Govt. Gazette, 20th March, 2009/29th Phal., 1930. [No. 51-5]

(4) The State Chief Information Commissioner or a State Information Commissioner may, at any time, by writing under his hand addressed to the Governor, resign from his office :

Provided that the State Chief Information Commissioner or a State Information Commissioner may be removed in the manner specified under section 14.

(5) The salaries and allowances payable to and other terms and conditions of service of—

(a) the State Chief Information Commissioner shall be the same as that of an Election Commissioner ;

(b) the State Information Commissioner shall be the same as that of the Chief Secretary to the State Government :

Provided that if the State Chief Information Commissioner or a State Information Commissioner, at the time of his appointment is, in receipt of a pension, other than a disability or wound pension, in respect of any previous service under the Government of India or under the Government of the State, his salary in respect of the service as the State Chief Information Commissioner or a State Information Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity :

Provided further that where the State Chief Information Commissioner or a State Information Commissioner is, at the time of his appointment, in receipt of retirement benefits in respect of any previous service rendered in a Corporation established by or under any Central Act or State Act or a Government company owned or controlled by the Central Government or the State Government, his salary in respect of the service as the State Chief Information Commissioner or the State Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits :

Provided also that the salaries, allowances and other conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall not be varied to their disadvantage after their appointment.

(6) The Government shall provide the State Chief Information Commissioner and the State Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under the Act, and the salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed for the purpose of the Act shall be such as may be prescribed.

14. *Removal of State Chief Information Commissioner or State Information Commissioner.*—(1) Subject to the provisions of sub-section (3), the State Chief Information Commissioner or a State Information Commissioner shall be removed from his office only by order of the Governor on the ground of proved misbehaviour or incapacity after the High Court, on a reference made to it by the Governor, has on inquiry, reported that the State Chief Information Commissioner or a State Information Commissioner, as the case may be, ought on such ground be removed.

(2) The Governor may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the State Chief Information Commissioner or a State Information Commissioner in respect of whom a reference has been made to the High Court under sub-section (1) until the Governor has passed orders on receipt of the report of the High Court on such reference.

(3) Notwithstanding anything contained in sub-section (1), the Governor may by order remove from office the State Chief Information Commissioner or a State Information Commissioner if a State Chief Information Commissioner or a State Information Commissioner, as the case may be,—

(a) is adjudged an insolvent ; or

20 The J&K Govt. Gazette, 20th March, 2009/29th Phal., 1930. [No. 51-5]

- (b) has been convicted of an offence which, in the opinion of the Governor, involves moral turpitude ; or
- (c) engages during his term of office in any paid employment outside the duties of his office ; or
- (d) is, in the opinion of the Governor, unfit to continue in office by reason of infirmity of mind or body ; or
- (e) has acquired such financial or other interest as is likely to affect prejudicially his functions as the State Chief Information Commissioner or a State Information Commissioner.

(4) If the State Chief Information Commissioner or a State Information Commissioner is in any way, concerned or interested in any contract or agreement made by or on behalf of the Government or participates in any way in the profit thereof or in any benefit or emoluments arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.

CHAPTER IV

Powers and Functions of the Information Commission, Appeal and Penalties

15. Powers and functions of Information Commission.—

(1) Subject to the provisions of the Act, it shall be the duty of the State Information Commission to receive and inquire into a complaint from any person,—

- (a) who has been unable to submit a request to the Public Information Officer either by reason that no such officer has been designated under the Act, or because the Assistant Public Information Officer has refused to accept his or her application for information or appeal under the Act for forwarding the same to the Public Information Officer or senior officer specified in sub-section (1) of section 16 or the State Information Commission, as the case may be ;

- (b) who has been refused access to any information requested under the Act ;
- (c) who has not been given a response to a request for information or access to information within the time limit specified under the Act ;
- (d) who has been required to pay an amount of fee which he or she considers unreasonable ;
- (e) who believes that he or she has been given incomplete, misleading or false information under the Act ; and
- (f) in respect of any other matter relating to requesting or obtaining access to records under the Act.

(2) Where the State Information Commission is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.

(3) The State Information Commission shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, Samvat 1977, in respect of the following matters, namely :—

- (a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things ;
- (b) requiring the discovery and inspection of documents ;
- (c) receiving evidence on affidavit ;
- (d) requisitioning any public record or copies thereof from any court or office ;
- (e) issuing summons for examination of witnesses or documents ; and
- (f) any other matter which may be prescribed.

22 The J&K Govt. Gazette, 20th March, 2009/29th Phal., 1930. [No. 51-5]

(4) Notwithstanding anything inconsistent contained in any other Act of the State Legislature, the State Information Commission may, during the inquiry of any complaint under the Act, examine any record to which the Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds.

16. *Appeal.*—(1) Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Public Information Officer, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Public Information Officer, in each public authority :

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) Where an appeal is preferred against an order made by a Public Information Officer under section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

(3) Where any Officer, at the time of deciding an appeal under sub-section (1) is of the opinion that the public Information Officer has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified or malafidely denied the request for information or has knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information he or she shall make a reference to that effect to the State Information Commission.

(4) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the State Information Commission :

Provided that the State Information Commission may admit the appeal after the expiry of the period of ninety days if it is satisfied that

the appellant was prevented by sufficient cause from filing the appeal in time.

(5) If the decision of the State Public Information Officer against which an appeal is preferred relates to information of a third party, the Information Commission shall give a reasonable opportunity of being heard to that third party.

(6) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Public Information Officer who denied the request.

(7) An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.

(8) The decision of the State Information Commission shall be binding.

(9) In its decision, the State Information Commission has the power to—

(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of the Act, including—

(i) by providing access to information, if so requested, in a particular form ;

(ii) by appointing a Public Information Officer ;

(iii) by publishing certain information or categories of information ;

(iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records ;

24 The J&K Govt. Gazette, 20th March, 2009/29th Phal., 1930. [No. 51-5]

- (v) by enhancing the provision of training on the right to information for its officials ;
 - (vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4 ;
 - (b) require the public authority to compensate the complainant for any loss or other detriment suffered ;
 - (c) impose any of the penalties provided under the Act ;
 - (d) reject the application.
- (10) The State Information Commission shall give notice of its decision, including any right of appeal, to the complainant and the public authority.
- (11) The State Information Commission shall within sixty days from the receipt of appeal decide the appeal in accordance with such procedure as may be prescribed :

Provided that the State Information Commission may decide an appeal within such extended period, not exceeding one hundred and twenty days from the date of filing thereof, as the case may be, for reasons to be recorded in writing. ~~extend~~

17. *Penalties.*—(1) Where the State Information Commission at the time of deciding any complaint, appeal or reference is of the opinion that the Public Information Officer has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees :

Provided that the Public Information Officer shall be given a reasonable opportunity of being heard before any penalty is imposed on him :

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Public Information Officer.

(2) Where the State Information Commission, at the time of deciding any complaint, appeal or reference is of the opinion that the Public Information Officer has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Public Information Officer under the service rules applicable to him.

CHAPTER V

Miscellaneous

18. *Protection of action taken in good faith.*—No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under the Act or any rule made thereunder.

19. *Act to have overriding effect.*—The provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in the State Official Secrets Act, Samvat 1977, and any other law for the time being in force or in any instrument having effect by virtue of any law other than the Act.

20. *Bar of jurisdiction of courts.*—No court shall entertain any suit, application or other proceeding in respect of any order made under the Act and no such order shall be called in question otherwise than by way of an appeal under the Act.

21. *Act not to apply to certain organizations.*—(1) Nothing contained in the Act shall apply to such intelligence and security organizations being organizations established by the Government, as the

26 The J&K Govt. Gazette, 20th March, 2009/29th Phal., 1930. [No. 51-5]

Government may, from time to time, by notification in the Government Gazette, specify :

Provided that the Information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section :

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the State Information Commission and, notwithstanding anything contained in section 7, such information shall be provided within forty-five days from the date of the receipt of request.

(2) Every notification issued under sub-section (1) shall be laid before each House of the State Legislature.

22. *Monitoring and reporting.*—(1) The State Information Commission shall, as soon as practicable after the end of each year, prepare a report on the implementation of the provisions of the Act during that year and forward a copy thereof to the Government.

(2) Each Department shall, in relation to the public authorities within their jurisdiction, collect and provide such information to the State Information Commission as is required to prepare the report under this section and comply with the requirements concerning the furnishing of that information and keeping of records for the purposes of this section.

(3) Each report shall state in respect of the year to which the report relates,—

- (a) the number of requests made to each public authority ;
- (b) the number of decisions where applicants were not entitled to access to the documents pursuant to the requests, the provisions of the Act under which these decisions were made and the number of times such provisions were invoked ;

- (c) the number of appeals referred to the State Information Commission for review, the nature of the appeals and the outcome of the appeals ;
- (d) particulars of any disciplinary action taken against any officer in respect of the administration of the Act ;
- (e) the amount of charges collected by each public authority under the Act ;
- (f) any facts which indicate an effort by the public authorities to administer and implement the spirit and intention of the Act ;
- (g) recommendations for reform, including recommendations in respect of the particular public authorities, for the development, improvement, modernization, reform or amendment to the Act or other legislation or common law or any other matter relevant for operationalising the right to access information.

(4) The Government may, as soon as practicable after the end of each year, cause a copy of the report of the State Information Commission, referred to in sub-section (1) to be laid before each House of the State Legislature.

(5) If it appears to the State Information Commission that the practice of a public authority in relation to the exercise of its functions under the Act does not conform with the provisions or spirit of the Act, it may give to the authority a recommendation specifying the steps which ought in its opinion to be taken for promoting such conformity.

23. *Government to prepare programmes.*—(1) The Government may, to the extent of availability of financial and other resources,—

- (a) develop and organize educational programmes to advance the understanding of the public, in particular of disadvantaged communities as to how to exercise the rights contemplated under the Act ;

28 The J&K Govt. Gazette, 20th March, 2009/29th Phal., 1930. [No. 51-5

- (b) encourage public authorities to participate in the development and organization of programmes referred to in clause (a) and to undertake such programmes themselves ;
- (c) promote timely and effective dissemination of accurate information by public authorities about their activities ; and
- (d) train Public Information Officers of public authorities and produce relevant training materials for use by the public authorities themselves.

(2) The Government shall, within eighteen months from the commencement of the Act, compile in the official language of the State a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right specified in the Act.

(3) The Government shall, if necessary, update and publish the guidelines referred to in sub-section (2) at regular intervals which shall, in particular and without prejudice to the generality of sub-section (2), include—

- (a) the objects of the Act ;
- (b) the postal and street address, the phone and fax number and, if available, electronic mail address of the Public Information Officer of every public authority appointed under sub-section (1) of section 5 ;
- (c) the manner and the form in which request for access to an information shall be made to a Public Information Officer ;
- (d) the assistance available from and the duties of the Public Information Officer of a public authority under the Act ;
- (e) the assistance available from the State Information Commission ;

- (f) all remedies in law available regarding an act or failure to act in respect of a right or duty conferred or imposed by the Act including the manner of filing an appeal to the Commission ;
- (g) the provisions providing for the voluntary disclosure of categories of records in accordance with section 4 ;
- (h) the notices regarding fees to be paid in relation to requests for access to an information ; and
- (i) any additional regulations or circulars made or issued in relation to obtaining access to an information in accordance with the Act.

(4) The Government must, if necessary, update and publish the guidelines at regular intervals.

24. *Power to make rules by Government.*—(1) The Government may, by notification in the Government Gazette, make rules to carry out the provisions of the Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) the cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4 ;
- (b) the fee payable under sub-section (1) of section 6 ;
- (c) the fee payable under sub-sections (1) and (5) of section 7 ;
- (d) the salaries and allowances payable to and the terms and conditions of service of the officers and other employees under sub-section (6) of section 13 ;
- (e) the procedure to be adopted by the State Information Commission in deciding the appeals under sub-section (11) of section 16 ; and

30 The J&K Govt. Gazette, 20th March, 2009/29th Phal., 1930. [No. 51-5

- (f) any other matter which is required to be, or may be, prescribed.

25. *Power to make rules by competent authority.*—(1) Subject to the provisions of section 24, the competent authority may, by notification in the Government Gazette, make rules to carry out the provisions of the Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) the cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4 ;
- (b) the fee payable under sub-section (1) of section 6 ;
- (c) the fee payable under sub-section (1) of section 7 ; and
- (d) any other matter which is required to be, or may be, prescribed.

26. *Laying of rules.*—Every rule made by the Government under the Act shall be laid, as soon as may be after it is made, before each House of the State Legislature, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be ; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

27. *Power to remove difficulties.*—(1) If any difficulty arises in giving effect to the provisions of the Act, the Government may, by order published in the Government Gazette, make such provisions not

inconsistent with the provisions of the Act as appear to it to be necessary or expedient for removal of the difficulty :

Provided that no such order shall be made after the expiry of a period of two years from the date of the commencement of the Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of the State Legislature.

28. *Repeal and saving.*—(1) The Jammu and Kashmir Right to Information Act, 2004 and the Jammu and Kashmir Right to Information (Amendment) Act, 2008 are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken or any order made before such repeal shall be deemed to have been done, taken or made, as the case may be, under the corresponding provisions of this Act.

32 The J&K Govt. Gazette, 20th March, 2009/29th Phal., 1930. [No. 51-5]

SCHEDULE

[See section 13 (3)]

FORM OF OATH OR AFFIRMATION TO BE MADE BY THE STATE CHIEF INFORMATION COMMISSIONER/THE STATE INFORMATION COMMISSIONER

"I, _____ having been appointed State
Chief Information Commissioner/State Information Commissioner
Swear in the name of God that I will bear true faith and allegiance
Solemnly affirm

to the Constitution of the State as by law established, that I will uphold
the sovereignty and integrity of India, that I will duly and faithfully and
to the best of my ability, knowledge and judgement perform the duties
of my office without fear or favour, affection or ill-will and that I will
uphold the Constitution and the laws".

(Sd.) MOHD ASHRAF,

Additional Secretary to Government,
Law Department.

Annex 2: J&K Right to Information Rules, 2012

www.jkgad.nic.in
E-mail gadjk@jk.nic.in

Fax No. 0194 – 2473664 (S)
0191 – 2545702 (J)



GOVERNMENT OF JAMMU AND KASHMIR
GENERAL ADMINISTRATION DEPARTMENT
(Administration Section)
Civil Secretariat, Jammu/Srinagar

Notification
Srinagar, the 30th of August, 2012

SRO 279.- In exercise of the powers conferred by sub-section (1) of section 24 of the Jammu and Kashmir Right to Information Act, 2009 (Act No. VIII of 2009), the Government hereby makes the following rules, namely:-

CHAPTER I **General**

1. Short title and commencement.-

- (1) These rules may be called the Jammu and Kashmir Right to Information Rules, 2012.
- (2) They shall come into force on the date of their publication in the Government Gazette.

2. Definitions.-

- (1). In these rules, unless the context otherwise requires –
 - (a) "Act" means the Jammu and Kashmir Right to Information Act, 2009;
 - (b) "Commission" means the Jammu and Kashmir State Information Commission;
 - (c) "section" means the section of the Act.

Alame

- (2) All other words and expressions used in these rules and not defined but defined in the Act shall have the meanings respectively assigned to them in the Act.

CHAPTER II

Matters Relating to Fee and Cost

3. A request for obtaining information under sub-section (1) of section 6 shall be accompanied by an application fee of rupees ten by way of cash against proper receipt or by demand draft or bankers cheque or Indian Postal Order payable to the Accounts Officer of the public authority;
4. For providing the information under sub-section (1) of section 7, the fee shall be charged by way of cash against proper receipt or by demand draft or bankers cheque or Indian Postal Order payable to the Accounts Officer of the public authority at the following rates:-
 - a. rupees two for each page (in A-4 or A-3 size paper) created or copied;
 - b. actual charge or cost price of a copy in larger size paper;
 - c. actual cost or price for samples or models; and
 - d. for inspection of records, no fee for the first hour; and a fee of rupees five for each fifteen minutes (or fraction thereof) thereafter.
5. For providing the information under sub-section (5) of section 7, the fee shall be charged by way of cash against proper receipt or by demand draft or bankers cheque or Indian Postal Order payable to the Accounts Officer of the public authority at the following rates:-
 - a. for information provided in diskette or floppy rupees fifty per diskette or floppy; and
 - b. for information provided in printed form at the price fixed for such publication or rupees two per page of photocopy for extracts from the publication.



CHAPTER III

Appeal procedure

6. Contents of appeal.- An appeal to the Commission shall contain the following information, namely :-

- (i) name and address of the appellant;
- (ii) name and address of the Public Information Officer against the decision of whom the appeal is preferred;
- (iii) particulars of the order including number, if any, against which the appeal is preferred;
- (iv) brief facts leading to the appeal;
- (v) if the appeal is preferred against deemed refusal, the particulars of the application, including number and date and name and address of the Public Information Officer to whom the application was made;
- (vi) prayer or relief sought;
- (vii) grounds for the prayer or relief;
- (viii) verification by the appellant; and
- (ix) any other information which the Commission may deem necessary for deciding the appeal.

7. Documents to accompany appeal.- Every appeal made to the Commission shall be accompanied by the following documents, namely :-

- (i) self-attested copies of the Orders or documents against which the appeal is being preferred;
- (ii) copies of documents relied upon by the appellant and referred to in the appeal; and
- (iii) an index of the documents referred to in the appeal.

8. Procedure in deciding appeal.- In deciding the appeal the Commission may.-

- (i) hear oral or written evidence on oath or on affidavit from concerned or interested person;
- (ii) peruse or inspect documents, public records or copies thereof;
- (iii) inquire through authorized officer further details or facts;
- (iv) hear Public Information Officer, Assistant Public Information Officer or such Senior Officer who decided the first appeal, or such person against whom the complaint is made, as the case may be;
- (v) hear third party; and
- (vi) receive evidence on affidavits from Public Information Officer, Assistant Public Information Officer, such Senior Officer who decided the first appeal, such person against whom the complaint lies or the third party.

Alhomo

9. Service of notice by Commission.- Notice to be issued by the Commission may be served in any of the following modes, namely :-

- (i) service by the party itself;
- (ii) by hand delivery (dasti) through Process Server;
- (iii) by registered post with acknowledgement due; or
- (iv) through Head of office or Department.

10. Personal presence of the appellant or complainant.- (1) The appellant or the complainant, as the case may be, shall in every case be informed of the date of hearing at least seven clear days before that date.

(2) The appellant or the complainant, as the case may be, may at his discretion at the time of hearing of the appeal or complaint by the Commission be present in person or through his duly authorized representative or may opt not to be present.

(3) Where the Commission is satisfied that the circumstances exist due to which the appellant or the complainant, as the case may be, is being prevented from attending the hearing of the Commission, then, the Commission may afford the appellant or the complainant, as the case may be, another opportunity of being heard before a final decision is taken or take any other appropriate action as it may deem fit.

(4) The appellant or the complainant, as the case may be, may seek the assistance of any person in the process of the appeal while presenting his points and the person representing him may not be a legal practitioner.

11. Order of the Commission.- Order of the Commission shall be pronounced in open proceedings and be in writing duly authenticated by the Registrar or any other officer authorized by the Commission for this purpose.

Quorum

CHAPTER IV Miscellaneous

12. Interpretation.- If any question of interpretation of these rules arise, the decision of the Government in General Administration Department shall be final.

13. Repeal and saving.- (1) The Jammu and Kashmir Right to Information Rules, 2010 are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken or any order made or any direction issued thereunder before such repeal shall be deemed to have been done, taken, made or issued, as the case may be, under the corresponding provisions of these rules.

By order of the Government of Jammu and Kashmir

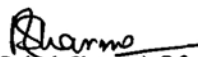
Sd/-
(Sheikh Mushtaq Ahmad) IAS
Secretary to Government,
General Administration Department
Dated:-30.08.2012

No.: GAD(Adm.)78/2009-V

1. All Principal Secretaries to Government.
2. Director General of Police, J&K.
3. Financial Commissioner, Revenue, J&K.
4. Chairman, J&K Special Tribunal.
5. Principal Secretary to Hon'ble Chief Minister/H.E the Governor.
6. All Commissioner/Secretaries to Government.
7. Chief Electoral Officer, J&K.
8. Principal Resident Commissioner, J&K Government, 5-Prithvi Raj Road, New Delhi.
9. Director General, J&K Institute of Management, Public Administration and Rural Development.
10. Chairman Bureau of Public Enterprises.
11. Divisional Commissioner, Kashmir/Jammu.
12. Chief Executive Officer, Economic Reconstruction Agency.
13. All Heads of Departments/Managing Directors.
14. Registrar General, J&K High Court, Srinagar.
15. Registrar, University of Kashmir, Srinagar, University of Jammu, Sher-i-Kashmir Agriculture Science & Technology, Jammu/Kashmir, Baba Ghulam Shah Badshah University, Rajouri, Islamic University, Kashmir, Shri Mata Vaishno Devi University, Katra.
16. Secretary, J&K Legislative Assembly/Council.
17. All Deputy Commissioners.
18. Director, Estates.
19. Director Information, J&K with the request to provide wide publicity to the rules through electronic and print media.
20. Director Archives, Archaeology and Museums.
21. Secretary, J&K Public Service Commission.
22. Secretary, J&K State Information Commission, Srinagar.
23. Secretary, J&K Academy of Art, Culture & Languages.
24. Secretary, J&K State Accountability Commission, Srinagar.
25. Secretary, J&K Backward Classes Commission, J&K, Srinagar.
26. Secretary, J&K State Women's Commission.

Qasim

27. Secretary, J&K Services Selection Board.
28. Secretary, J&K State Electricity Regulatory Commission.
29. Secretary, J&K State Advisory Board for Pahari Speaking People.
30. Secretary, J&K State Advisory Board for Development of Gujjar & Bakerwals.
31. Secretary, J&K State Advisory Board for the Development of Kissan.
32. Secretary, J&K State Advisory Board for Welfare & Development of Other Backward Classes.
33. Secretary, J&K State Social Welfare Board.
34. Chairman, Board of Professional Entrance Examination.
35. S.S.P. (Security), Jammu/Srinagar.
36. S.S.P (Security), Civil Secretariat, Srinagar.
37. General Manager, Government Press, Srinagar/Jammu with the request to print 1000 copies of rules and forward the same to General Administration Department.
38. Additional Secretary/Principal Private Secretary to Chief Secretary.
39. Trade Agent J&K Government, Mumbai.
40. Resident Representative, J&K Government, Chandigarh.
41. Manager, State Properties, Amritsar.
42. Additional Secretary/Private Secretary to Hon'ble Chief Minister.
43. Special Assistant to Hon'ble Deputy Chief Minister.
44. Special Assistants & Private Secretaries to all Hon'ble Cabinet Ministers/ Hon'ble Ministers of State.
45. Private Secretary to Advisor to Hon'ble Chief Minister.
46. Private Secretary to Chief Executive Councilor, LAHDC, Leh/Kargil
47. OSD to Political Advisor to Hon'ble Chief Minister.
48. Private Secretary to Economic Advisor to Government.
49. Private Secretary to Chairman, J&K Bank Limited.
50. Private Secretary to Chairman, State Board of School Education Jammu/Srinagar.
51. Private Secretary to Secretary to Government, GAD.
52. Private Secretary to Advocate General, J&K for information of Learned Advocate General.
53. SRO File/Stock file/I/C website.


 (Rajesh Sharma) 30.8.12
 Deputy Secretary to Government,
 General Administration Department

Annex 3: Important Notifications

www.jkgad.nic.in

Fax No. 0194-2473664 (Sgr.)
0191-2545702 (Jmu)
E-mail gad-jk@nic.in



Government of Jammu and Kashmir
General Administration Department
(Administration)
Civil Secretariat, Srinagar/Jammu

Notification

Jammu, 18th April, 2011

SRO 132 - In exercise of the powers conferred by Sub Section (7) of Section 12 of the Right to Information Act, 2009 (Act. No.VIII of 2009), the Government hereby notifies the following locations for the office(s) of the J&K State Information Commission:-

- | | |
|---------------------------------|---|
| 1. Central Office (Headquarter) | Move office
(May-Oct. Srinagar)
(Nov-April, Jammu) |
| 2. Divisional Office, Kashmir | Srinagar |
| 3. Divisional Office, Jammu | Jammu |

By order of the Government of Jammu and Kashmir.

Sd/-

Commissioner/Secretary to Government
General Administration Department

No:GAD(Adm)78/2009-V

Dated:- 18 -04-2011

Copy to the:-

1. Advocate General, J&K, Jammu.
2. Chief Information Commission, J&K, Jammu.
3. Director General of Police, J&K, Jammu.
4. All Principal Secretaries to Government.
5. Chief Electoral Officer, J&K, Jammu.
6. Principal Resident Commissioner, J&K Government, New Delhi.
7. Financial Commissioner (Revenue).
8. Commissioner of Vigilance, J&K, Jammu.
9. Principal Secretary to HCM/HEG.
10. All Commissioners/Secretaries to Government.
11. Chairman, J&K Special Tribunal.
12. Principal Accountant General, J&K.
13. Director General, IMPA.
14. Divisional Commissioner, Jammu/Kashmir.
15. Secretary, J&K Public Service Commission.
16. All Head of Departments.
17. All Deputy Commissioners.
18. Managing Directors of all PSUs/Boards.
19. Secretary, J&K State Information Commission.
20. Secretary, J&K State Accountability Commission.
21. Secretary, Services Selection Board.
22. Secretary, J&K State Legislative Assembly/Council.
23. General Manager, Government Press, Srinagar/Jammu.
24. Principal Pvt. Secretary to Chief Secretary.
25. Pvt. Secretary to Commr./Secretary GAD.
26. Government Order file/Stock file.

(Tahir Mustafa Malik)

Under Secretary to Government
General Administration Department



**GOVERNMENT OF JAMMU AND KASHMIR
GENERAL ADMINISTRATION DEPARTMENT**

**Notification
Jammu, the 12th March, 2012.**

SRO-86.- In exercise of the powers conferred by section 21 of the Jammu and Kashmir Right to Information Act, 2009 (Act No. VIII of 2009), the Government hereby specifies the Criminal Investigation Department (CID) as an organization of the State for purposes of the said section.

By Order of the Government of Jammu & Kashmir.

**Sd/-
(Sheikh Mushtaq Ahmad) IAS
Secretary to Government
General Administration Department**

No.: GAD(Adm.)110/2009-V

Dated:-12.03.2012

1. Director General of Police, J&K.
2. All Principal Secretaries to Government.
3. Financial Commissioner, Revenue, J&K.
4. Chief Electoral Officer, J&K.
5. Chairman, J&K Special Tribunal.
6. Director General, J&K Institute of Management, Public Administration and Rural Development.
7. Principal Secretary to Hon'ble Chief Minister/H.E the Governor.
8. Accountant General, J&K, Jammu.
9. Commissioner of Vigilance, J&K.
10. Principal Resident Commissioner, J&K Government, 5-Prithvi Raj Road, New Delhi.
11. All Commissioner/Secretaries to Government.
12. Divisional Commissioner, Kashmir/Jammu.
13. Chief Executive Officer, Economic Reconstruction Agency.
14. All Heads of Departments/Managing Directors.
15. Registrar General, J&K High Court, Jammu.
16. Secretary, J&K Public Service Commission
17. Secretary, J&K Legislative Assembly/Council.
18. All Deputy Commissioners.
19. Director, Estates.
20. Director, Information, J&K
21. Director, Archives, Archaeology and Museums.
22. Director, Defence Labour Procurement.
23. Managing Directors of all Public Sector Undertakings.
24. Secretary, J&K State Information Commission, Jammu.
25. Secretary, J&K Academy of Art, Culture & Languages.
26. Secretary, J&K State Accountability Commission, Jammu.

Draw

27. Secretary, J&K Backward Classes Commission, J&K, Jammu.
28. Secretary, J&K State Women Commission.
29. Principal Private Secretary to Chief Secretary.
30. Secretary, J&K Services Selection Board.
31. Secretary, J&K State Electricity Regulatory Commission.
32. Secretary, J&K State Advisory Board for Pahari Speaking People.
33. Secretary, J&K State Advisory Board for Development of Gujjar & Bakerwals.
34. Secretary, J&K State Advisory Board for the Development of Kissan.
35. Secretary, J&K State Advisory Board for Welfare & Development of Other Backward Classes.
36. Secretary, J&K State Social Welfare Board.
37. General Manager, Government Press, Srinagar/Jammu for publication in the extraordinary issue of the Government Gazette. 200 printed copies of the notification may be supplied to this department within one day positively.
38. Private Secretary to Hon'ble Chief Minister.
39. Special Assistant to Hon'ble Deputy Chief Minister.
40. Special Assistant to Economic Advisor to Government.
41. Private Secretaries to all Hon'ble Cabinet Ministers/ Hon'ble Ministers of State.
42. Private Secretary to Advisor to Hon'ble Chief Minister.
43. OSD to Political Advisor to Hon'ble Chief Minister.
44. Private Secretary to Chairman, J&K Bank Limited.
45. Private Secretary to Chairman, State Board of School Education Jammu/Srinagar.
46. Private Secretary to Secretary to Government, GAD
47. Private Secretary to Advocate General, J&K for information of Learned Advocate General.
48. Government Order File/Stock file/website.


(Rajesh Sharma)

Deputy Secretary to Government,
General Administration Department

RC



Jammu and Kashmir State Information Commission
(Constituted under the Right to Information Act, 2009)
Old Assembly Complex, Srinagar. Fax No. 0194-2484269,
Wazarat Road, Near Old DC Office, Jammu, Fax No.0191-2520947

Subject: Filing of complaints/2nd appeals under J&K RTI Act 2009.

N O T I C E

It is notified for general information of the public that the complaints/Second appeals under J&K Right to Information Act 2009 or any representation/application should be addressed to Secretary/or Registrar, J&K State Information Commission Srinagar/Jammu and no such papers should be addressed to State Chief Information Commissioner/or State Information Commissioner.

It is also notified that the complainants/appellants should file an extra copy of their complaint/appeal with their papers in the Commission for the purpose of sending the same to the respondents for filing their counter reply.

(M.A.Wani)
Deputy Secretary ,
State Information Commission.

NO:SIC/CO/2011/

Dated :- 10-04-2011

Copy to:



Jammu and Kashmir State Information Commission

جموں اینڈ کشمیر ریٹ آف انفارمیشن کمیشن

(Constituted under The Right to Information Act, 2009)

Wazarat Road Near D.C. Office, Jammu, Fax No. 0191-2520947, 2520927

Old Assembly Complex, Srinagar. Fax No. 0194-2484268, 2484269

www.jksic.nic.in

N O T I C E

It is notified for general information of the public that submission of complaints/2nd appeals/rejoinders etc. "**through email**" to the J&K State Information Commission is not acceptable. The Commission shall not register such complaints or second appeals u/s 15 and 16 of the J&K Right to Information Act 2009, unless these are submitted properly in writing, strictly according to the procedures laid down in the J&K Right to Information Act-2009 and Rules-2010. While submitting a complaint/second appeal, the complainant or appellant is required under Rules to furnish an appeal duly accompanied by:

- (a) Self attested copy of the original RTI Application submitted before the Public Information Officer (PIO) concerned;
- (b) Copy of receipt/acknowledgement issued by the PIO/Office of the PIO as a proof of having filed RTI Application
- (c) Copy of the proof of the application fee submitted along with application to PIO;
- (d) Copy of the order or decision or response, if any, from the PIO to whom the application was made;
- (e) Self attested copy of the first appeal submitted before the First Appellate Authority with documentary proof of the filing of first appeal;
- (f) Copy of the order or decision or response, if any, from the First Appellate Authority against which the second appeal is being preferred;

(g) A certificate stating that in respect of the information sought which is the subject matter of the appeal:-

(i) no other request for information/application has been previously filed or is pending with any public authority and if so, particulars thereof;

(ii) no appeal, complaint or petition is pending with any court or tribunal or with any other authority including the first appellate authority or a public authority and;

(iii) is not covered by any other appeal, complaint or petition filed before the Commission and , if so, the result thereof;

(h) An index of the documents referred to in the appeal;

2) The complainants /appellants are also advised to submit two sets of appeal/complaint papers for sending the one copy of the same to the respondents.

(Atta-Ur- Rehman Natnoo)KAS
Secretary
J&K State Information Commission

No: SIC/Co/Adm/notice/12/2012

Dated: 06 /03/2012

Copy to the:

1. Director Information, J&K, Jammu with the request to have this notice published in three leading local dailies each from Srinagar and Jammu.
2. Director, DDK Srinagar for telecasting it as a news item.
3. Station Director, Radio Kashmir Srinagar/Jammu for broadcast as a local announcement in Kashmiri/Urdu/Dogri.
4. Registrar SIC for information.
5. PS to CIC for information of HCIC.
- 6-7 Assistant Registrar, SIC Jammu/Srinagar for information.
8. I/C Website /Circular File.

Annex 4: J&K State Information Commission-Contact details*

State Chief Information Commissioner	Sh. G.R. Sufi	0191-2520937(J) / 0194-2484267(S)
State Information Commissioners	1. Dr. Sudesh Kumar Sharma (Jammu) 2. Sh. Nazir Ahmad (Kashmir)	0191-2520927 (J) 0194-2484262

Jammu Office	Wazarat Road, Near DC Office, Jammu. 0191-2520927. 0191- 2520947, 0191-2520937 Email:informationcommission@gmail.com
Srinagar Office	Old Assembly Complex , Srinagar , Kashmir. 0194-2484268 Email:informationcommission@gmail.com
Website	jksic.nic.in

Details of Public Information Officer and First Appellate Authority of the JKSIIC:

Designation at JKSIIC	Designated as	Phone number
Secretary	1 st Appellate Authority	0191-2475268
Deputy Secretary	PIO	0191-2475261
Section Officer	APIO	9906006858
Extension Officer	APIO	9419132989

* The State Information Commission operates in the winter season (November to April) from the Jammu Office and in summer, from the Srinagar office (May to October).

* As per information available on the website of the JKSIIC, as on 18-12-12.

Annex 5: Resources & links

■ Right to Information - A Citizen Gateway

A RTI portal developed by the Government of India for citizens to access information published by government departments on the web.

Website: <http://rti.gov.in/>

■ Central Information Commission

The official website of the Central Information Commission which gives citizens an insight into the functioning of the Commission, its decision making processes, decisions on appeals and complaints, etc.

Website: <http://www.cic.gov.in>

■ Commonwealth Human Rights Initiative

A comprehensive background to the right to information movement in India along with the latest developments at the Centre and the States.

Email: info@humanrightsinitiative.org

Website: http://humanrightsinitiative.org/index.php?option=com_content&view=article&id=62&Itemid=71

■ National Campaign for People's Right to Information

The NCPRI was formed to advocate for the right to information at the national level. It is a national forum for civil society groups, activists and individuals across India to share their experiences on the right to information and is a platform for discussion, debate and advocacy between individuals and the Government.

Email: ncprimailinglist@yahoogroups.com

Website: www.righttoinformation.info

■ RTI India

RTI India is a community portal dedicated to discussing issues related to the implementation of the RTI Act in India.

Website: www.rtiindia.org

■ RTI Anonymous

RTI Anonymous is an online service, through which, any Indian citizen can file RTI applications anonymously. The RTI Anonymous Community will file those RTI Applications in their name and upload the documents obtained as a reply on this website.

Website: <http://getup4change.org/rti/>

- **HumJanenge**
An online discussion board focused on the monitoring the use and implementation of the right to information in India, providing a forum for discussing issues/problems and sharing successes. Hum Janenge's primary networking mode is via their listserve, which all members of the public are welcome to sign up to.
 Email: humjanenge@yahoogroups.co.in
- **Jankari**
A call centre in Bihar for facilitating use of RTI especially by people living in villages who are unable to read and write. The call center executives is virtually write applications on behalf of the complainants. A sum of Rs. 10 as fees (under RTI provisions) is automatically charged in the caller's telephone bill. The caller is be allotted a registration number by the call centre. Ph. No. : 155331 (premium call charges) and 155330 (normal call charges)
- **RTI Foundation of India**
A web resource developed by a group of professionals based in Indore who have watched the implementation of the RTI Act over the years. They have created a website for providing access to important developments, decisions, analytical articles and other important resources on RTI.
 Website: <http://www.rtifoundationofindia.com/>
- **Right to Information Group, Aligarh, Uttar Pradesh**
 Website: <http://www.rtigroupaligarh.blogspot.com>
- **SARTIAN**
South Asia Right to Information Advocates Network (SARTIAN) is a community of RTI practitioners in S. Asia. Through the SARTIAN web platform CHRI anchors focused discussions on themes related to RTI amongst RTI advocates. SARTIAN is also a one-stop platform for resources on RTI developed in the S. Asian region and at the global level.
 Website: <http://sartian.org>
- **J&K RTI Movement**
A civil society group that promotes awareness about J&K RTI Act amongst the people and uses it for seeking transparency and accountability of the public authorities.
 Contact person: Dr. Sheikh Ghulam Rasool (Ph: +91 8803943048)
 Website: jkrtimovement.com
- **Sangarsh RTI Movement, Jammu**
A civil society group promoting awareness and usage of the J&K RTI Act in the Jammu region.
 Contact persons: Balvinder Singh (Ph: +91 9419195295), Raman Sharma (Ph. +91 97968110)

CHRI Programmes

CHRI's work is based on the belief that for human rights, genuine democracy and development to become a reality in people's lives, there must be high standards and functional mechanisms for accountability and participation within the Commonwealth and its member countries. CHRI furthers this belief through strategic initiatives and advocacy on human rights, access to information and access to justice. It does this through research, publications, workshops, information dissemination and advocacy.

Strategic Initiatives:

CHRI monitors member states' compliance with human rights obligations and advocates around human rights exigencies where such obligations are breached. CHRI strategically engages with regional and international bodies including the Commonwealth Ministerial Action Group, the UN, and the African Commission for Human and Peoples' Rights. Ongoing strategic initiatives include: Advocating for and monitoring the Commonwealth's reform; Reviewing Commonwealth countries' human rights promises at the UN Human Rights Council and engaging with its Universal Periodic Review; Advocating for the protection of human rights defenders and civil society space; and Monitoring the performance of National Human Rights Institutions in the Commonwealth while advocating for their strengthening.

Access to Information:

CHRI catalyses civil society and governments to take action, acts as a hub of technical expertise in support of strong legislation and assists partners with implementation of good practice. It works collaboratively with local groups and officials, building government and civil society capacity as well as advocating with policy makers. CHRI is active in South Asia, most recently supporting the successful campaign for a national law in India; provides legal drafting support and inputs in Africa; and in the Pacific, works with regional and national organisations to catalyse interest in access legislation.

Access to Justice:

Police Reforms: In too many countries the police are seen as oppressive instruments of state rather than as protectors of citizens' rights, leading to widespread rights violations and denial of justice. CHRI promotes systemic reform so that police act as upholders of the rule of law rather than as instruments of the current regime. In India, CHRI's programme aims at mobilising public support for police reform. In East Africa and Ghana, CHRI is examining police accountability issues and political interferences.

Prison Reforms: CHRI's work is focused on increasing transparency of a traditionally closed system and exposing malpractices. A major area is aimed at highlighting failures of the legal system that result in terrible overcrowding and unconscionably long pre-trial detention and prison overstay, and engaging in interventions to ease this. Another area of concentration is aimed at reviving the prison oversight systems that have completely failed. CHRI believes that attention to these areas will bring improvements to the administration of prisons as well as have a knock-on effect on the administration of justice overall.

The Right to Information is a power tool, which gives you the chance to transform the way the government and its officials function. By asking the government for information, you ask for the government to be transparent and accountable to you. Today, this power tool is in your hands.

Don't Sit on the Sidelines. Get Involved And Use Your Right to Information TODAY!

If you want to know more about your right to information please log on to CHRI's RTI India website at http://www.humanrightsinitiative.org/index.php?option=com_content&view=article&id=54&Itemid=53

The web page dedicated to RTI related developments in Jammu & Kashmir ([humanrightsinitiative.org/index.php?option=com_content&view=articles&id=499&Itemid=427](http://www.humanrightsinitiative.org/index.php?option=com_content&view=articles&id=499&Itemid=427)) provides a snapshot of the civil society campaign, links to important resources and case studies of usage of the law.

The national section of the website (http://www.humanrightsinitiative.org/index.php?option=com_content&view=article&id=65&Itemid=84) provides a comprehensive background to the right to information campaign in India, details of activities and advocacy, government and civil society resources and contact details of various organisations working at the national level.

Published in partnership with:



USO House, 6, Special Institutional Area, New Delhi 110067, INDIA
Phone: +91-11-2686 2064/2686 3846 Fax: +91-11-2686 2042
www.southasia.fnst.org www.stiftung-freiheit.org

Supported in part by a grant from:

OPEN SOCIETY FOUNDATIONS



Commonwealth Human Rights Initiative

B-117, First Floor, Sarvodaya Enclave
New Delhi - 110 017, INDIA
Tel: +91-11-4318-0201, Fax: +91-11-2686-4688
E-mail: info@humanrightsinitiative.org
Website: www.humanrightsinitiative.org



Sangarsh RTI Movement

Hall no. 301, A/2 South Block
Bahu Plaza, Jammu-180004
Email: jkrtiact@gmail.com
Tel: +91 9419195295/
+91 9796811012



J&K RTI Movement

Near new R & B Office,
Opposite Power Grid Station
Chadoora District Budgam
Jammu and Kashmir-191113
Tel: +91 8803943048
Email: jkrtimovement@gmail.com