

An Analysis of the RTI Rules Applicable to the Rajasthan High Court and the Subordinate Courts



With Recommendations for Improvement



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.

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With Recommendations for Improvement

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Preface

The Commonwealth Human Rights Initiative (CHRI) is committed to the promotion and protection of access to information. Over the past 12 years, as a resource centre and a leading advocate of access to information, CHRI has acted as a hub of technical expertise in support of strong access legislation. It has also been working collaboratively with local groups to spread awareness about the right to information and to build the demand for information held by public authorities. It engages in policy dialogue for greater levels of transparency in government and assists officials to implement access laws.

CHRI sees the right to information as a human right that helps in the practical realisation of all other rights. It creates much needed transparency in governance and participation by people in government. This builds confidence between state and citizen and consequently promotes harmony and peace.

In India, CHRI has advocated strongly for, and contributed to, the creation of a progressive law on access to information. Since 2005, when the Right to Information law was enacted, it has worked hard to create awareness of the law amongst officials at all levels and large civil society networks including those working with vulnerable groups, on civil liberties and social justice and on governance issues.

Under our laws the duty to provide information extends to all arms of government – no less the judiciary. The law requires that all information held by these bodies will be available either through proactive disclosure or on request. Only a narrow band of information can be withheld if it can be shown that it is more in the public interest to withhold that information than disclose it.



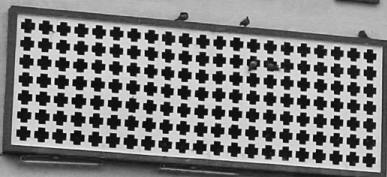
However, it is fair to say that even several years after its enactment there is a general official reluctance to ensure that information is easily available. Several kinds of obstacles often come in the way of easy access including cumbersome procedural rules, fees and even gratuitous inclusions of entirely extra-legal conditions to give information, such as asking for reasons why the information is being sought.

The present publication is the second in a series on the extant Right to Information Rules as they relate to the Rajasthan High Court and the Subordinate Courts. Our recommendations have been prompted by an examination of the Rules across jurisdictions which found major inconsistencies between the Rules of various courts and also some that may act as obstacles to access to information.

We hope that this book will help in bringing in consistency of practice across the court system, and most importantly encourage each court to review and refine procedures and adopt liberal and assisting approaches to information giving that make information access simple and easy for the public.

Maja Daruwala
Director, CHRI

**AN ANALYSIS OF
THE RTI RULES APPLICABLE TO
THE RAJASTHAN HIGH COURT
AND THE SUBORDINATE COURTS**



राजस्थान उच्च न्यायालय




The Rajasthan High Court and the Subordinate Courts

General:

The Rajasthan High Court (RHC) notified the Rajasthan Right to Information (High Court & Subordinate Courts) Rules, 2006 (RTI Rules) on 5th October 2007 – 24 months past the 120-day deadline stipulated in the Right to Information Act, 2005 (RTI Act/principal Act). The date appended to the Rules indicates a delay of at least 11 months between the drafting of the Rules and its notification in final form. The RHC stands 10th in the chronological order of High Courts that put in place mechanisms to operationalise the RTI Act. The RTI Rules are accessible on the RHC website.¹

To the best of our knowledge these rules have not been amended till date.

1 <http://hcraj.nic.in/rti-rules-2006.pdf> : accessed on 24th May, 2011.
See Annexure 1 for complete text



The Rules lay down procedures that citizens must observe when seeking information from RHC and its subordinate courts. The Rules explain how authorised officers, namely, the public information officer (PIO), the Assistant PIO (APIO) and the Appellate Authority (AA) shall give effect to the provisions of the principal Act.

An appreciation of the positive aspects of the RTI Rules is given below followed by an analysis of other provisions that need to be amended to put them at par with the letter and spirit of the principal Act.

1. Positive Aspects

- 1.1 Information to be provided or request rejected ‘normally within 15 days’:** If the information requested is found fit for disclosure under Rule 5, the PIO is required to provide it to the requester as soon as practicable, and, preferably within 15 days. Similarly, the PIO is expected to issue a rejection order, where necessary, within 15 days. These are welcome improvements over the principal Act as they require the PIO to make a decision on the request within a period shorter than the 30-day deadline mentioned in the principal Act.

RECOMMENDATION #1

The designated AA may be instructed to monitor compliance with Rule 5 to ascertain whether the requirement of expeditious disposal is diligently observed or not.

- 1.2 Issue of acknowledgement to the applicant:** Rule 4(2) requires the PIO to issue an acknowledgement to the applicant in Form B and register it when the application is submitted along with the application fee. Similarly, Rule 7(2) requires the Appellate Authority (AA) to acknowledge the receipt of an appeal. These are welcome provisions that ensure the requester has documentary proof of submitting his/her request or first appeal.
- 1.3 Time-bound compliance with the order of the Appellate Authority:** Rule 7(3) requires RHC to supply the requested information within 30 days if the AA orders disclosure. This is also a positive improvement as no such time limit is stipulated in the principal Act. In the absence of powers of sanction, a mechanism must be provided for the AA to monitor compliance

with his/her orders. Rule 7(3) may be amended to require the PIO to report back compliance to the AA in a time-bound manner.

RECOMMENDATION #2

In Rule 7(3) the following words may be inserted after the words "information to the applicant": "with intimation of compliance to the Appellate Authority".

- 1.4 Information cost of which is within Rs. 50/- to be provided free of cost:** According to Rule 8(1) no additional fee will be charged for information if the amount does not exceed Rs. 50/-. In other words, information may be provided to an applicant free of charge if the reproduction cost is within Rs. 50. This is a progressive provision and goes a step ahead of the letter and spirit of the principal Act.
- 1.5 Dissemination of information about administrative structure:** Rule 3 requires the Registrar General to make available as much information relating to the administration and functioning of the High Court as possible through the RHC website. This is in tune with the requirements under Section 4(1)(b) of the RTI Act. However, the RHC website is lagging behind in keeping with many other requirements of proactive disclosure mandated by Section 4(1)(b) of the RTI Act. Information such as names, designations and other particulars of the PIOs and the rules, regulations, instructions, manual and records held by or under the control of public authorities are among the information required to be voluntarily disclosed under the Act. The RHC website however, has disclosed only its 'work arrangement u/S 4 of RTI Act'. Although Rule 2 mentions the order by which the Chief Justice designates the PIO and APIO, the text of these orders are not available on the website. The website also does not contain the Rajasthan High Court Rules 1952 that these Rules mention (according to the Rules an applicant has to refer to the Rajasthan High Court Rules 1952 or General Rules (Civil) 1986 for additional fee related information, see para 2.2.2). Non-availability of these vital sources of information creates hurdles and restricts the requestor's fundamental right to know. Moreover, the objective of the RTI law is to encourage public authorities to put as much information as possible in the public domain voluntarily so that people's need to make formal applications for information is reduced. The RHC may make more efforts to comply with Section 4(1)(b) of the RTI Act.

2. Aspects Requiring Rectification Through Amendment

2.1 Application Process:

The Rules require the applicant to file an application in Form A and pay the prescribed application fee. If the requested information does not fall within the jurisdiction of the PIO then he/she is required to convey this fact to the applicant in Form C as early as practicable, normally within fifteen days and in any case not later than thirty days from the date of receipt of the application. If the requested information falls under the jurisdiction of the PIO but attracts any exemption specified under Section 8 or 9 of the principal Act, then a rejection order will be issued, preferably within fifteen days, in Form D. If the requested information is partly outside the PIO's jurisdiction and/or partly under Section 8 or 9 of the principal Act, then the PIO is required to provide such part information that is permissible under the Act while rejecting the remaining part in Form E within a maximum period of 30 days of receiving the application.

Problems with the application process:

2.1.1 Compulsory use of Forms: The Rules require that all applicants use Form A to submit information requests and Form G to submit an appeal to the AA. This insistence on using a preprinted form can create problems under certain circumstances. If preprinted application forms are not easily available, a citizen may simply not be allowed to submit an information request by the PIO. Making the use of application forms compulsory is a restriction imposed on potential information seekers and is clearly avoidable. Plain paper applications must also be allowed as long as they contain the minimum contents prescribed under Section 6 of the principal Act. The High Court of Karnataka and the Madras High Court have not prescribed any proforma for submitting information requests. This good practice may be emulated by RHC.

RECOMMENDATION #3

The following para may be added to Rule 4(1) and to Form A & Form G attached to the Rules:

“An application made on plain paper shall also be accepted provided it contains information relevant to all the fields mentioned in Form A.”

- 2.1.2 Applicants are required to provide extra information:** Form A attached to the Rules requires the applicant to provide a 'self-attested photograph' and other details such as father's name, age, occupation, email address, official and residential telephone numbers. Form G requires the applicant to provide similar details at the time of submitting an appeal to the AA. This is in excess of the principal Act which in Section 6 clearly states that an applicant will not be required to give any other personal details except those that may be necessary for contacting him. Form A may be amended to delete all these requirements which are beyond the requirements prescribed by the principal Act.

RECOMMENDATION #4

- a. The box for pasting a 'self-attested photograph' on the top right corner of Form A may be deleted.
- b. Item no. 1(b), (c) & (d) in form A and form G may be deleted.

- 2.1.3 Applicants are required to state that the information sought is not exempt under the Act and pertains to the RHC:** Form A attached to the RTI Rules requires the applicant to make a statement: "I state that the information sought does not fall within the restrictions contained in Section 8 & 9 of the Act and to the best of my knowledge it pertains to your office". Insisting on the applicant to make such a statement serves little purpose. Whether the information requested attracts any of the exemptions or not is a judgement that must be made by the PIO or the AA or any other competent authority within RHC. The citizen is not competent to make such a judgement as he/she is not the creator or the holder of the information. There is no good reason why an applicant must be forced to make such a declaration. Further, the exemptions themselves are not absolute. Section 8(2) of the principal Act provides for the disclosure of exempt information in the public interest if it outweighs the harm to any of the interests protected in Section 8(1). This declaration is in excess of the provisions of the principal Act and may be deleted.

RECOMMENDATION #5

- Item no. 4 in Form A may be deleted.

2.1.4 Applicants are required to make a declaration: Rule 10(2) imposes an obligation on every requestor to declare that (i) the motive for obtaining such information is proper and legal; (ii) that the request made is in accordance with the provisions of the Act and these Rules; and that (iii) the request is not detrimental to the safety or preservation of the record in question.

The RTI Act gives effect to a citizen's fundamental right to seek and obtain information and a requestor should not be required to produce his motive for exercising his/her fundamental right, let alone declare that his/her motive is proper and legal. Section 6(2) of the principal Act clearly states that a requestor 'shall not be required to give any reason for requesting the information', so there is no reason why the requestor should be asked to declare that his/her motive is proper and legal. This amounts to the RHC treating every applicant as being potentially capable of mischief. Such an attitude does not augur well for a democracy that India is where citizens are the masters and the judiciary is established only to serve the public interest. Rule 10(2)(i) may be deleted.

It is also nowhere stated in the Principal Act that the requestor be made to declare that his/her request for information is in accordance with the Act and the Rules. It is highly unreasonable to expect the requestor to be well versed in the law and the Rules to be able to make such a declaration. The Act takes this fact into account and provides for assistance to the requestor by the PIO at the time of writing his/her application. It is the responsibility of the PIO to ensure that the application has been made in accordance with the requirements of the principal Act and the Rules.

It does not serve any purpose to require the requestor to declare that his/her information request is not detrimental to the safety or preservation of the record in question when the records are not in his/her possession. The requestor, who is not the holder of the sought information, cannot make a judgement if his/her request is likely to harm the safety or preservation of the requested information. This is a judgement that the PIO must make in conjunction with the officer or section responsible for holding the requested record. According to Section 7(9) of the principal Act, if supply of information, in the form in which it is requested, is likely to be detrimental to the safety or preservation of the record in question, information may be provided in any other form than the one requested by the applicant. It appears that this provision of the principal Act has been misconstrued in Rule 10. Rule 10(2)(iii) may be deleted.

RECOMMENDATION #6

Rule 10(2) in its entirety may be deleted.

- 2.1.5 No provision for transfer of applications:** Rule 5(1) states that if the requested information does not fall within the jurisdiction of the PIO, the PIO will inform the applicant in Form C and will advise him/her about the authority to whom the application should be made. The principal Act in Section 6(3) provides for transfer of such applications by the PIO to the relevant public authorities. The absence of a detailing provision relating to Section 6(3) in the RHC RTI Rules is a major lacuna. Transfer of the application in whole or in part is a mandatory requirement. This is a statutory right of the applicant. The Rules must not be drafted in a manner that extinguishes the right recognized in the principal Act. Public officials have knowledge of the workings of other public authorities and can much more easily ensure effective transfer of requests if they pertain to other public authorities. There is no reason to make the applicant run from pillar to post in search of the concerned public authority. The Rules may be amended to include a provision for transfer of the RTI Rules applicable to RHC.

RECOMMENDATION #7

- a. In Rule 5(1) the following new sub-rule (i) may be inserted:

“(i) If the requested information wholly or partially, does not fall within the jurisdiction of the authorized person, the public authority shall transfer the entire application or such parts thereof, to the concerned PIO, as soon as practicable, and in any case not later than 5 days, from the date of receipt of the application and inform the applicant of such transfer in writing;”

- b. Item No. 1 in Form C may be substituted with the following:

“As the information requested by you is not available with our office and is more closely linked with the working of (mention name of the public authority) your application has been transferred under Section 6(3) of the RTI Act to: (mention designation of the PIO and address of the relevant public authority to which the application has been transferred) on (mention date of transfer).

- c. Item no. 2 in Form C may be substituted with the following:

“You are requested to contact the PIO of the aforementioned public authority for further action on your application”

- d. Item No. 2 in Form E may be deleted.

2.1.6 No progress on evolution of a system for processing online applications: According to Rule 11, the RHC is required to make every effort to facilitate the submission of applications through electronic media and is required to evolve a system of depositing fees and supplying information through such medium. However, not much seems to have been done to this effect even after more than three years of these Rules being notified. The RHC must create systems for receiving RTI applications online.

2.2 Fee-related provisions:

The specifics of fees payable under the Rules are summarised below:

Application fee :	Rs 100
Application fee for tender documents/bids/ quotation/ business contract:	Rs. 500
Mode of payment	Non-judicial stamp
Additional fee:	
Photocopy	Fee leviable for certified photocopy under Raj. High Court Rules 1952
Inspection of records	No fee for the first hour. Rs 25 per additional 15 Minutes
Priced publications	Price of the Publication so fixed
Other than priced publications	Cost of medium/print cost
Mode of payment:	Non – judicial stamp
Appeal fee:	Rs 100 per appeal
Mode of payment:	Non- judicial stamp

Problems with the fee-related provisions:

- 2.2.1 Application fee is higher than the lowest benchmark set by other High Courts:** The RTI Rules stipulate a fee of Rs. 100 as an application fee for ordinary information and Rs. 500 for tender documents, bids, quotations and business contracts. These figures are ten to fifty times more than the Rs. 10 application fee stipulated by the High Courts of Karnataka and Kerala. The Government of India has also stipulated only Rs. 10 as the application fee. Similarly, the RTI Rules notified by the Government of Rajasthan also require only Rs. 10 to be paid as application fee. There is no reason why RHC should collect more fees than the lowest benchmark set by other competent authorities and governments. There is also no reason why RHC should collect separate and higher fees of Rs. 500 for tender documents, bids, quotations and business contracts. The RTI Fees and Cost Rules notified by the Government of India does not make a distinction between kinds of information for collecting application fees. This discrepancy amounts to unequal treatment of RTI applicants and may violate Article 14 of the Constitution. The RHC is constitutionally mandated to uphold the sanctity of the fundamental rights of citizens. Equality of all and equal treatment of all by the law is a guaranteed fundamental right. The RHC cannot breach the very code it is sworn to protect. The Rules may be amended to reduce the application fee to Rs. 10 for all kinds of information.

RECOMMENDATION #8

- a. In Rule 4(1), the figure “100” may be substituted with the figure “10”.
- b. In Rule 4(1), the lines “Provided that where...Rs. 500 per application” may be deleted.
- c. In item no. 5 of Form A, the figure “100” may be substituted with the figure “10”.

- 2.2.2 Additional fee for photocopied information as per General Rule (Civil) 1986 or RHC Rules 1952:** The RHC RTI Rules stipulates the additional fee rate for photocopying information will be as per the General Rule (Civil) 1986 or Rajasthan High Court Rules 1952. This unnecessarily burdens the applicants with the task of referring to the General Rules or RHC Rules in order to ascertain for themselves how much additional fees may be expected of them. Neither of these Rules is available on the RHC website. The RTI Rules of most High Courts contain a clear fee structure including the rates

payable for providing photocopies. The RHC may amend its RTI Fee Rules to charge Rs. 2 per page for photocopied information, as is the case in most High Courts and clearly state as such in the Fee table given in the Rules.

RECOMMENDATION #9

In Rule 8 item no. 3, under 'Price/Fee in Rupees' the para- "fee leviable for certified photostat copy under General Rule (Civil) 1986 or Raj. High Court Rules 1952" may be substituted by "Rs. 2 per page".

- 2.2.3 Restriction on providing information if additional fee is deficient:** Rule 5(5) (ii) states that if the additional fee paid by the requestor is insufficient a notice shall be displayed on the notice board stating the quantum of deficiency and the requestor is to pay the deficient amount within five days failing which his/her application will be filed. This is not in tune with the process of disposal of a request laid down in Section 7 of the principal Act. Section 7(3) of the RTI Act, 2005 clearly states that the PIO will send an intimation containing details of additional fees, including 'calculations made to arrive at the amount' (additional fee) in accordance with the fees prescribed in the Rules, to the requestor. The information may be provided to the requestor once the additional fee has been paid. Rule 5(5)(ii) whereby the deficient amount payment of which has to be made within five days of the display is clearly in violation of the provisions of the principal Act and may be amended. The citizen's right to information includes the right to be informed about the exact amount of fees payable for obtaining the information requested. The Rules must not be drafted in a manner that extinguishes the very right.

RECOMMENDATION #10

a. Rule 5(5)(ii) maybe amended as:

"If the requested information is fit for disclosure on payment of any further fee as prescribed in these Rules the PIO shall send an intimation to the person making the request giving –

- i. Details of fees representing the cost of information, as per the Rules,
- ii. Information concerning his/her right with respect to review of the decision as to the amount of fees charged or the form of access provided, including particulars of the appellate authority, time limit, process and any other forms."

b. Item no. 3 in Form B may be deleted.

2.2.4 Absence of adequate modes of payment: The Rules notified by the RHC mentions non-judicial stamp as the only mode of fee payment. It would be useful to provide a wider choice of modes of payment such as cash, banker's cheque, demand draft and Indian Postal Order as has been done in the RTI Fees and Cost Rules notified by the Government of India. While doing so, it would also be useful to state in whose name these instruments may be drawn. Even court fee stamps may be used for the purpose of fee payment.

RECOMMENDATION #11

In Rule 4(1) the words: "or Court Fee Stamp or Demand Draft or Pay Order or Indian Postal Order drawn in favour of the Registrar General" may be inserted after the words "non-judicial stamp".

2.2.5 Fee is charged for admitting first appeal: Rule 7(1) requires every requester who is aggrieved by a decision of the PIO to pay Rs. 100 while submitting an appeal under Section 19(1) of the principal Act. There is no enabling provision in the principal Act for RHC to collect fees while admitting appeals. Unlike Section 6(1) which clearly provides for collection of an application fee and Section 7 which provides for collection of additional fee for providing the information, there is no mention of any fee payment in Section 19 of the principal Act which relates to appeals mechanisms. Similarly, Section 28(2) which empowers the Chief Justice of RHC to notify Rules for implementing the principal Act also makes no reference to collection of fees at the first appeal stage. Clearly, Parliament's intention was to make provisions for fee payment only at the application and information disclosure stage and not at the appeals stage. Given this scheme of fee payment in the principal Act, the general power of rule-making given in Section 28(1) of the principal Act cannot be invoked to impose a new kind of fee on the applicant. It is a cardinal rule of delegated legislation that no tax or fee may be charged by an authority to which powers have been delegated by the legislature unless a specific provision has been made in the principal Act for this purpose.

The Supreme Court ruled in 1992, saying: "The rules are meant only to carry out the provisions of the Act and cannot take away what is conferred by the Act or whittle down its effect."² Requiring appellants to pay a fee while submitting first appeals also has the effect of whittling down their

2 Commissioner of Income Tax Bombay v Gwalior Rayon Silk Manufacturing Company Ltd., AIR 1992, SC1782

right to have the information access dispute adjudicated free of cost. This Rule is clearly in excess of the provisions of the principal Act. Further, it is common knowledge that in a parliamentary democracy not one paisa may be collected from the citizenry by way of tax or fees without Parliament's approval. The Madras High Court and the High Courts of Karnataka, Andhra Pradesh, Jharkhand, Orissa and Rajasthan do not impose appeals fee on potential appellants. GOI and a large majority of the state governments also do not charge fees for admitting first appeals. RHC may amend the Rules to delete the requirement of collecting fees for admitting appeals.

RECOMMENDATION #12

- a. The existing Rule 7(1)(b) may be amended to delete "...by depositing fee Rs. 100/- in the shape of non-judicial adhesive stamp duly affixed on the memo of appeal."
- b. Item no. 9 in Form G may be deleted.

2.3 New restrictions on disclosure:

2.3.1 Rejection on the basis of non-availability of the requested information:

According to Rule 5(3), a PIO may reject a part of the information request if it falls outside his/her jurisdiction. This is clearly contradictory to Section 7(1) and Section 6(3) of the principal Act. According to Section 7(1), a PIO may reject an information request only for reasons provided in Section 8 and Section 9 of the principal Act. No other reason is valid. This supreme position is further protected in Section 22 where the principal Act is given an overriding effect in the event of any inconsistency with any provision of other laws or legal instruments. Section 8 and Section 9 do not contain any provision that enables a PIO to reject a request on the grounds that it falls outside his/her jurisdiction. Instead Section 6(3) requires the PIO to transfer that part of the request which does not fall within the jurisdiction of his/her public authority to such other public authority whose working is closely related to that subject matter. This transfer must be effected within five days and the applicant must be informed in writing (see recommendation #7). Rule 5(3) is clearly in violation of the letter and spirit of the principal Act. This Rule may be deleted.

RECOMMENDATION #13

- a. In Rule 5(3) the words: “is partly outside the jurisdiction of the authorized person or/and” may be deleted.

See Recommendation #7

2.3.2 Compulsory denial of information falling under Section 8 of the RTI Act:

Rule 5(2) states that information falling in one or more of the categories of restrictions listed in Section 8 & 9 of the Act will not be disclosed at all. This Rule displays ignorance of the public interest override clause mentioned in the principal Act. According to Section 8(2) of the RTI Act, information exempt under Section 8(1) may be disclosed if public interest in disclosure outweighs the harm to the protected interests. The public interest test must be applied even if an information request on the face of it appears fit for rejection. The compulsion to reject an information request without considering the public interest clause is against the letter and spirit of the principal Act.


2.3.3 Restriction on inspection of records:

Rule 9(1) permits a requestor to inspect records for not more than two hours in total. This time-limit of two hours for inspection of RHC is a highly retrograde provision. There is no such time-limit for inspection in the principal Act or in the RTI Rules notified by the Government of India or the Government of Rajasthan. The RTI Act enables an individual to exercise his/her fundamental right to know, the exercise of which should not be constrained by such a time-limit. Furthermore, very often an applicant has to go through old and bulky records which may be time consuming. The Delhi High Court and many other High Courts allow inspection for an unlimited period of time while charging a reasonable fee for inspection beyond the first hour. RHC may adopt a similar practice and amend the Rules to delete any time-limit.

RECOMMENDATION #14

In Rule 9(1) the words “In no case such inspection shall continue for more than two hours in all” may be deleted.

- 2.3.4 New grounds listed for rejecting an information request:** In addition to recognising the exemptions contained in Section 8 and Section 9, Rule 10(1) introduces new grounds for not providing information. This is a clear



case of overreach beyond the provisions of the principal Act in a retrograde manner. The general rulemaking power given in Section 28(1) may not be used to introduce more grounds for rejecting a request in the subordinate legislation. This is a cardinal principle behind the exercise of the powers of delegated legislation. The retrograde Rules have been analysed below:

Rule 10(1)(i) states that information relating to the document of records produced in a judicial proceeding may not be given to an applicant. The principal Act confers a general duty on public authorities such as courts to furnish information on request without asking for reasons and if none of the exemptions in Section 8 and Section 9 are applicable. This supreme position is further protected in Section 22 where the principal Act is given an overriding effect in the event of any inconsistency with any provision of other laws or legal instruments. Neither Section 8 nor Section 9 contains any provision that enables a PIO to reject a request related to records produced in judicial proceedings. There is no reason why the general rulemaking power in Section 28(1) must be used to introduce new restrictions on citizens' rights to obtain information. Rule 10(1)(i) may be deleted.

Rule 10(1)(ii) states that information likely to affect the security of any institution or public order may not be given. This is also a new restriction imposed through the rule-making route without any parallel in the principal Act. This Rule is in excess of the rule making powers granted by the principal Act and may be deleted.

Rule 10(1)(iii) states that information not related to any public activity shall not be disclosed. **Rule 10(1)(iv)** bars disclosure of information that could cause unwarranted invasion to the privacy of any person. Both these provisions are contained in Section 8 of the principal Act. Section 8(1)(j) of the RTI Act provides for non-disclosure of personal information disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of privacy of the individual. However, the same section also provides for disclosure of such information if there is a larger public interest in doing so. This override is absent in the Rules. Rule 10(1)(iii) and Rule 10(1)(iv) may be deleted in order to avoid duplication.

Rule 10(1)(v) bars the disclosure of information related to a policy matter under consideration. This provision violates Section 4(1)(c) of the principal Act which requires every public authority to 'publish all relevant facts while formulating important policies or announcing decisions which affect public'. The objective of Parliament in crafting Section 4(1)(c) of the RTI Act was to ensure that every public authority encourages public debate around a

policy issue falling within its jurisdiction so that appropriate feedback may become available to it while finalising the matter. This Rule denies individuals a valuable opportunity to advise the policy making process and obstructs the creation of an informed citizenry. Rule 10(1)(v) may be deleted.

Rule 10(1)(vi) states that information that can be availed under the provisions of the Rajasthan High Court Rules, 1952, General Rules (Civil), 1986 or General Rules (Criminal) 1980 shall not be provided under the RTI Rules. The RTI Act does not prevent the operation of other laws relating to access to information. It is a cardinal principle in law that when two options are available to a person he/she is best placed to make a choice between them. The RHC may not compel a citizen from using the RTI Act to seek access to records that may be made available under the other RHC Rules. Further, the High Court Rules will require a stranger to a judicial proceeding to show sufficient cause for seeking information. The RTI Act empowers any citizen to seek the same kinds of information without having to furnish reasons. There is no bar on the disclosure of proceedings relating to judicial proceedings unless a court has ordered against it or if disclosure will amount to contempt of court. Rule 10(1)(vi) may be deleted.

RECOMMENDATION #15

Rule 10 in its entirety may be replaced by the following:

“10. The Rajasthan High Court and Sub-ordinate Courts shall

1. Publish all relevant facts while formulating important policies or announcing the decisions which affect the public;
2. Provide reasons for its administrative or quasi-judicial decisions to affected persons.”

- 2.3.5 RTI Applications to be retained for only 1 year: Rule 12 requires RHC to retain applications made under the RTI law for one year after its disposal and the register containing details of the applications for 20 years. It is not clear if this implies disposal of an RTI application by the concerned public authority or the final disposal of the matter by the appellate authorities. In order to avoid the destruction of RTI application-related records which have not yet reached a stage of finality this one-year period may be extended to such time as is required for the final disposal of the matter by the appellate bodies.



RECOMMENDATION #16

In Rule 12 the words “ one year” may be replaced by “ until such time as any final appeal is disposed of by any appellate authority or an appropriate court”.

ANNEXURES

ANNEXURE 1

RAJASTHAN RIGHT TO INFORMATION (HIGH COURT & SUBORDINATE COURTS) RULES, 2006

G.S.R. 66 – In exercise of powers conferred by sub-section (1) of Section 28 of the Right to Information Act, 2005 the Chief Justice of Rajasthan High Court (Competent Authority) hereby makes following rules:-

1. Short title and commencement –

- (1) These rules shall be called “Rajasthan Right to Information (High Court & Subordinate Courts) Rules, 2006”.
- (2) They shall come in to force from the date¹ of their publication in the Official Gazette.

2. Definitions.- (1) In these rules, unless the context otherwise requires,-

- (a) ‘**Act**’ means the Right to Information Act, 2005 (22 of 2005).
 - (b) The ‘**Appellate Authority**’ means designated as such by the Chief Justice of High Court vide SO 1 PI & 2 PI dated 6-1-2006 as may be amended from time to time.
 - (c) ‘**Authorized Person**’ means Public Information Officer and Assistant Public Information Officer designated as such by the Chief Justice vide SO 1 PI & 2 PI dated 6-1-2006 as may be amended from time to time.
 - (d) ‘**Chief Justice**’ means The Chief Justice of Rajasthan High Court.
 - (e) ‘**Form**’ means a form appended to these rules;
 - (f) ‘**Section**’ means a Section of the Act.
- (2) Words and expression used but not defined in these Rules, shall have the same meaning as assigned to them in the Act.

3. Dissemination of Information about Administrative Structure – The Registrar General shall make every endeavour to make available as much information relating to the administration and functioning of the High Court as possible for public information, in the web site of the High Court.

4. Application for seeking information –

- (1) Any person seeking information under the Act shall make an application in Form ‘A’ to the Authorized Person along with non-judicial stamp, of Rs. 100 duly affixed on/attached to it, which shall be non refundable:

Provided that where the information relates to tender documents/bids/ quotation/business contract, the application fee shall be Rs. 500 per application.

-
1. Notification No. 1/S.R.O./2007 dated 05.10.2007, published in Raj. Gazette E.O. Part 4 (Ga) (I) dated 22.10.2007.

- (2) The Authorized person shall duly acknowledge the receipt of the application as provided in form-B and shall get it registered in register to be maintained in the format appendix-AB.
- (3) The information requested for shall be so sufficiently specified in the application as to lead to its identification without any difficulty, ambiguity or doubt.

5. Disposal of the application by the Authorized person.-

- (1) If the requested information does not fall within the jurisdiction of the Authorized person, it shall be conveyed to the applicant in Form C as early as practicable, normally within fifteen days and in any case not later than thirty days from the date of receipt of the application, advising the applicant, wherever possible, about the authority concerned to whom the application should be made.
- (2) If the requested information falls within the authorized person's jurisdiction and also in one or more of the categories of restrictions listed in Section 8 & 9 of the Act, or is otherwise liable to be rejected, the Authorized person, on being satisfied, will issue the rejection order in Form D as early as practicable, normally within fifteen days and in any case not later than thirty days from the date of the receipt of the application.
- (3) If the required information is partly outside the jurisdiction of the authorized person or/ and partly falls in categories listed in Section 8 & 9 of the Act of Rule 10 of these Rules, the authorized person shall supply only such information as is permissible under the Act and is within its own jurisdiction and reject the remaining part giving reasons thereof. He shall convey it in form 'E' to the applicant also.
- (4) The information shall be supplied as early as practicable, normally within fifteen days and in any case not later than thirty days from the date of the receipt of the application. A proper 'acknowledgement' shall be obtained from the applicant in token of receipt of information in Form 'F'.
- (5) (i) Whenever information is being supplied in the shape of a Photo Stat Copy or True Copy of the document and the charges deposited for preparing the copy are sufficient the following procedure will be followed:-
 (ii) The application shall be made-over to the copiest/typist/photostat copier also together with the original document who will prepare the copy and shall make his initial on each page as also at the foot of the last page of the copy, thereafter he and the comparer will compare the copy with the original and the comparer will put his dated initial at the foot of the last page of the copy. Authorized person will make and endorsement of it being a true copy of the original.

If the fee payable for preparing the copy is insufficient a notice shall be displayed on the notice board stating quantum of deficiency within a period not later than 5th day from the date of filing of application for information. The applicant shall make the deficiency good within next 5 days failing which the application will be filed.

(iii) Where the photo stat copy is applied for and the photo stat copying machine is not available in the office of authorized person, the procedure for the depositing charges shall be the same as is being followed for providing certified photo stat copies under General Rule (Civil) 1986 or the High Court Rules 1952, as the case may be.

6. Third Party's Right.- If the authorized person intends to disclose any information of record or part thereof which relates to or has been supplied by a third party and has been treated as confidential by that third party, he will give a written notice to such third party of the request within five days from the receipt of the request that he intends to disclose the information of record or part thereof, and invite the third party within ten days to make a submission in writing or orally, whether such information should be disclosed. The authorized person while taking a decision about disclosure of information shall take into the consideration submission of the third party.

7. Appeal.- (1) Any person-

(a) to whom response is not given in Form C,D or E nor the copy or the information is supplied within 30 days from the date of submission of Form A or,

(b) who is aggrieved by the response received within the prescribed period, may prefer an appeal in Form 'G' to the Appellate Authority by depositing fee Rs. 100/- in the shape of non-judicial adhesive stamp duly affixed on the memo of appeal. Order/communication supplied to him in Form C,D, or E, against which the appeal is being preferred, shall be presented in original with the memo of appeal, whenever it is applicable.

(2) On receipt of the appeal, it shall be acknowledged and after giving the opportunity of hearing to the applicant appellant and the departmental nominee (if any) it will be disposed of within 30 days from the date of its presentation.

(3) If the appeal is allowed the Authorized person shall supply information/ additional information to the applicant within such period as may be directed by the Appellate Authority which shall not exceed 30 days in any case from the date of receipt of the order.

8. Fees.- (1) The charges for preparing copies/information shall be levied at the following rate, namely :

Sr. No.	Description of Information	Price/ Fee in Rupees
1.	Where the information is available	Price of the publication is fixed in the form of a priced publication
2.	For other than priced publication	Cost of the medium or print cost price
3.	Where the Photo stat copy is to be prepared through the market stat copy under General Rule (Civil) 1986 or Raj. High Court Rules 1952	Fee leviable for certified photo got prepared through the market stat copy under General Rule (Civil) 1986 or Raj. High Court Rules 1952

Provided that, of the fee chargeable does not exceed Rs. 50/- , no amount shall be recovered and in other cases amount exceeding Rs. 50/- shall be chargeable.

9. Inspection.-

- (1) If the applicant seeks inspection of record only, he shall submit application in Form 'A' along with Rs. 100/- in the shape of non-judicial adhesive stamp. The Authorized person shall examine the application and may allow or by written order refuse to allow such inspection. In the later case the copy or refusal order will be provided free of charge to the applicant. If the application is allowed, no inspection fee shall be charged for first sixty minutes but thereafter the applicant shall submit fee amounting Rs. 25/- for every additional 15 minutes or part thereof which shall also be paid in shape of non-judicial adhesive stamp. In no case such inspection shall continue for more than two hours in all.
- (2) Unless contrary is provided, the General Rules (Civil) 1986 and High Court Rules, 1952 as relates to the inspection of record shall mutatis mutandis shall be applicable to such inspection.

10. Restrictions.- (1) No information shall be provided to any applicant in the following matters :

- (i) In respect of the document of records produced in a judicial proceeding.
 - (ii) The information, which is likely to affect the security of any institution or the public order.
 - (iii) The information, which has no relationship with the public activity.
 - (iv) The information, which could cause unwarranted invasion to the privacy of any person.
 - (v) If it relates to a policy matter under consideration.
 - (vi) If a copy can be issued under the provisions of Rajasthan High Court Rules, 1952, General Rules (Civil), 1986 or General Rules (Criminal), 1980.
- (2) The following declaration shall have to be made by applicant in the application itself :-
- (i) the motive for obtaining such information is proper and legal.
 - (ii) that the request made is in accordance with the provisions of the Act and these Rules.
 - (iii) the request is not detrimental to the safety or preservation of the record in question.

11. Online applications.- Every endeavor shall be made to facilitate the making of application through electronic media and evolution of system of depositing of the fee and supply of the copy through scientific device.

12. Preservation of record.- The application for information shall be retained for one year after its disposal. The Register shall be retained for 20 year.

FORM 'A'
Form of application for seeking information
(See Rule 4)

I.D. No.
(for official use)

Non :
Judicial
Stamp of
Rs. 100/-

Self Attested
Photograph

To,
The authorized person,
.....

1. (a) Name of the applicant
(b) Father's Name
(c) Age
(d) Occupation
2. Address
3. Particulars of information
 - (a) Concerned department/Section
 - (b) Particulars of information required
 - (i) Details of information required
 - (ii) Period for which information asked for
 - (iii) Other details
4. I state that the information sought does not fall within the restrictions contained in Section 8 & 9 of the Act and to the best of my knowledge it pertains to your office.
5. A non-judicial stamp of Rs. 100/- has been affixed on/ attached to the application.

Place :
Date :

Signature of Applicant
E-mail address, if any,
Telephone No. (Office) :
(Residence) :

Note :- Please ensure that the Form is complete in all respect and there is no ambiguity in providing the details of information required.

FORM 'B'
Acknowledgment of Application

I.D. No.

Dated

1. Received an application in Form A from Shri/Ms.
Resident of under section
..... Of the Right to Information Act, 2005.
2. The Information is proposed to be given normally within fifteen days and in any case within thirty days from the date of receipt of application. In case it is found that the information asked for cannot be supplied, the rejection letter shall be issued stating reason thereof.
3. The applicant shall have to submit the balance fee, if any, with the Authorized person within five days from the date of displaying notice of deficiency which, if necessary, will be displayed on the notice board within five days from today.

Signature and Stamp of the
Authorized person

Place :

Date :

FORM 'C'
Outside the jurisdiction of the Authorized Person
[Rule 5(1)]

No.

Date

To,

Sir/Madam,

Please refer to your application I.D. No. dated
addressed to the undersigned regarding supply of information on

1. The requested information does not fall within the jurisdiction of this Authorized Person and therefore, your application is being filed.
2. You are requested to apply to the concerned authorized person i.e.
.....

Yours faithfully,
Authorized person

FORM 'D'
Rejection Order
[Rule5 (2)]

No.....

Date

To,
Sir/Madam,

Please refer to your application I.D. No. Dated
addressed to the undersigned regarding supply of information on
.....

1. The information asked for cannot be supplied due to following reasons :-

(i)

(ii)

2. As per Section 19 of the Right to Information Act, 2005, you may file an appeal to the Appellate Authority within thirty days of the issue of this order.

Yours faithfully,
Authorized person

FORM 'E'
Form of Supply of information to the applicant
[Rule 5 (3)]

No.....

Date

To,
 Sir/Madam,

Please refer to your application I.D. No. Dated
 addressed to the undersigned regarding supply of information on

1. The information asked for is enclosed for reference

or

The following part information is being enclosed* -

(i).

(ii).

(iii).

The remaining information about the other aspects cannot be supplied
 due to the following reasons* :-

(i).

(ii).

(iii).

2. The requested information does not fall within the jurisdiction of this
 Authorized person*-

3. As per Section 19 of the Right to Information Act, 2005 you may file an
 appeal to the Appellate Authority within thirty days of the issue of this order*.

Yours faithfully,
 Authorized person

*Strike out if not applicable



FORM 'F'
Receipt

Application I.D. No.

Dated

The receipt of the information as applied by me is hereby acknowledged.

Date

Signature
Name

FORM 'G'
Appeal under Section 19 of the
Right to Information Act, 2005
[Rule 7(1)]

I.D. No.
 (for official use)

To,

Appellate Authority

Address :

1. (a) Name of the Applicant

(b) Father's Name

(c) Age

(d) Occupation

2. Address

3. Particulars of the authorized person

(a) Name

(b) Address

4. Date of submission of application in Form-A

5. Date on which 30 days from submission of Form A is over

6. Reasons for appeal

(a) No response received in Form B, or C within thirty days of submission of Form-A.

(b) Aggrieved by the response received within prescribed period (copy of the reply receipt be attached)

(c) Grounds for appeal

7. Last date for filling the appeal.

8. Particulars of information

(i) Information requested

(ii) Subject

(iii) Period

9. A non-judicial stamp of Rs. 100/- has been affixed on/ attached to the application.

Place :

Signature of Applicant

Date :

E-mail address, if any,

Telephone No. (Office) : (Residence) :

Acknowledgement

I.D. No. Dated

Received an Appeal application from Shri/Ms

Resident of under section 19 of the Right to information Act, 2005.

Signature of Receipt Clerk,

Appellate Authority

Telephone No.

E-mail Address

Web-site

APPENDIX-AB

**REGISTER OF APPLICATIONS
FOR INFORMATION
IN THE COURT,**

Sr. No. with the date of Application	Name of the applicant with Address	Date of estimating the value Court fees to be paid	Date of filing of of deficit stamp	Date of delivery of information	Signature of the applicant	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)

N.B. :-

- (1) If application is rejected, brief reasons thereof shall be entered in red ink in the remarks column.
- (2) If there is delay beyond the prescribed period in delivery of the information, the reasons for such delay be noted in the remarks column.
- (3) Register be verified by the State Public Information Officer/State Asst. Public Information Officer, once in every week.

ANNEXURE 2

Rajasthan Right to Information (High Courts and Subordinate Courts) Rules, 2006

Compilation of Recommendations for Change

Sl.	Rule	Recommendation for change
1.	Rule 4	<p>i.) In Rule 4(1), the following para may be added: “An application made on plain paper shall also be accepted provided it contains information relevant to all the fields mentioned in Form A”.</p> <p>ii.) In Rule 4(1), the figure “100” may be substituted with the figure “10”.</p> <p>iii.) In Rule 4(1), the lines “Provided that where...Rs. 500 per application” may be deleted.</p> <p>iv.) In Rule 4(1) the words: “or Court Fee Stamp or Demand Draft or Pay Order or Indian Postal Order drawn in favour of the Registrar General” may be inserted after the words “non-judicial stamp”.</p>
2.	Rule 5	<p>i.) In Rule 5(1) the following new sub-rule (i) may be inserted: “(i) If the requested information wholly or partially, does not fall within the jurisdiction of the authorized person, the public authority shall transfer the entire application or such parts thereof, to the concerned PIO, as soon as practicable, and in any case not later than 5 days, from the date of receipt of the application and inform the applicant of such transfer in writing”.</p> <p>ii.) In Rule 5(3) the words: “is partly outside the jurisdiction of the authorized person or/and” may be deleted.</p> <p>iii.) Rule 5(5)(ii) maybe amended as- “If the requested information is fit for disclosure on payment of any further fee as prescribed in these Rules the PIO shall send an intimation to the person making the request giving:</p> <p>i.) Details of fees representing the cost of information, as per the Rules;</p> <p>ii.) Information concerning his/her right with respect to review of the decision as to the amount of fees charged or the form of access provided, including particulars of the appellate authority, time limit, process and any other forms”.</p>

3.	Rule 7	<p>i.) In Rule 7(3) the following words may be inserted after the words "information to the applicant": "with intimation of compliance to the Appellate Authority".</p> <p>ii.) The existing Rule 7(1)(b) may be amended to delete the following line - "...by depositing fee Rs. 100/- in the shape of non-judicial adhesive stamp duly affixed on the memo of appeal."</p>
4.	Rule 8	<p>In Rule 8 item no. 3, under 'Price/Fee in Rupees' the para- "fee leviable for certified photostat copy under General Rule (Civil) 1986 or Raj. High Court Rules 1952" may be substituted by - " Rs. 2 per page"</p>
5.	Rule 9	<p>In Rule 9(1) the words "In no case such inspection shall continue for more than two hours in all" may be deleted.</p>
6.	Rule 10	<p>i.) Rule 10 in its entirety may be replaced by the following: "10. The Rajasthan High Court and sub-ordinate courts shall -</p> <ol style="list-style-type: none"> 1. Publish all relevant facts while formulating important policies or announcing the decisions which affect the public; 2. Provide reasons for its administrative or quasi-judicial decisions to affected persons."
7.	Rule 12	<p>In Rule 12 the words " one year" may be replaced by " until such time as any final appeal is disposed of by any appellate authority or an appropriate court".</p>
8.	Form A	<p>i.) In Form A, the following para may be added: "An application made on plain paper shall also be accepted provided it contains information relevant to all the fields mentioned in Form A."</p> <p>ii.) In the box for pasting non-judicial stamp, the figure "100" may be substituted with the figure "10".</p> <p>iii.) The box for pasting 'self-attested photograph' on the top right corner of Form A may be deleted.</p> <p>iv.) Item no. 1(b), (c) & (d) in form A may be deleted.</p> <p>v.) Item no. 4 in Form A may be deleted.</p> <p>vi.) In item no. 5 of Form A, the figure "100" may be substituted with the figure "10".</p>

9.	Form B	Item no. 3 in Form B may be deleted.
10.	Form C	<p>i.) Item no. 1 in Form C may be substituted with the following: “As the information requested by you is not available with our office and is more closely linked with the working of (mention name of the public authority) your application has been transferred under Section 6(3) of the RTI Act to: (mention designation of the PIO and address of the relevant public authority to which the application has been transferred) on (mention date of transfer).</p> <p>ii.) Item no. 2 in Form C may be substituted with the following: “You are requested to contact the PIO of the aforementioned public authority for further action on your application”</p>
11.	Form E	Item no. 2 in form E may be deleted.
11.	Form G	<p>i.) In Form G, the following para may be added: “An application made on plain paper shall also be accepted provided it contains information relevant to all the fields mentioned in Form G.” Item no. 1(b), (c) & (d) in Form G may be deleted.</p> <p>ii.) Item no. 9 in Form G may be deleted.</p>

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 focused on 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.

Under India's Right to Information (RTI) Act, the judiciary is as much bound by the provisions of the RTI Act as any other arm of the government. However, the fact remains that even after five years since its enactment all kinds of obstacles often come in the way of easy access to information including cumbersome procedural rules, hefty fees, and even inclusions of entirely extra-legal conditions that applicants need to satisfy in order to get information under this Act.

The present publication is the second in a series of publications on RTI in the judicial sphere. This book analyses the difficult provisions in the RTI Rules that apply to the various offices of the judiciary in Rajasthan. We hope our analysis and recommendations for improvement in the Rules will encourage each court to review and refine its procedures and adopt liberal and assisting approaches to implement RTI.



Commonwealth Human Rights Initiative

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