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MAHARASHTRA RIGHT TO INFORMATION ORDINANCE, 2002

A USER GUIDE *

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Right to Information in Maharashtra

The Government of Maharashtra (GoM) on September 23, 2002 promulgated the Maharashtra Right to Information Ordinance (“Ordinance”) – this Ordinance will replace the Maharashtra Right to Information Act of 2000 (“2000 Act”). The 2000 Act was modeled on the Tamilnadu Right to Information Act of 1997 that was a toothless law and had long list of exceptions that ensured that people were not able to access the information that they need. The repeal of the 2000 Act by the GoM is a very welcome move. The initiative to advocate for repeal was taken by Anna Hazare, a committee was set up under the Chairmanship of the Chief Minister – among other persons the committee consisted of Mr. Madhav Godbole, Prof S.P Sathe and Anna Hazare. The Ordinance is a very detailed and is one of the best models in terms of legislation on the issue in comparison with other states in India that have laws on right to information². However, unless citizens use this law and unless a demand for information is generated and public bodies are made to respond to this demand the law will remain in paper and will not be worth anything.

Given this background we need to understand the concept of right to information and more specifically the Ordinance itself. A law on right to information essentially aims to put in place a system through which people can access information. This user guide aims to provide a simple understanding of the Ordinance, systems and procedures set up enable people to access information in Maharashtra.

1. What is right to information?

- Right to have access to information held by the government. This information could be in the form of records, files, registers, maps, data, drawings, etc.
- Right to Information not only means the citizens right to ask for information that they want – it also includes more importantly so the duty of public bodies to disclose information *suo moto* (on its own). This means that the government has a positive duty to give certain types of information without waiting to be asked for it. This would include information on issues concerning projects that directly affect the people or the environment, information on health, agriculture, weather conditions, or simply, information about the services provided or the functions performed by various public bodies.

For example: if a flyover is being constructed in Mumbai – the public has the right to know, purpose served by the flyover, benefits and negative effects, information regarding the cost of the project, time frame for completion, nature of traffic disruption, information regarding the contractor undertaking the construction, etc. This type of information must be made known to all

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² Though there is no central legislation yet on right to information (a bill has been pending before parliament since 2000) there are many states in the country that have taken the initiative and enacted laws. Tamilnadu, Goa, Karnataka, Maharashtra, Rajasthan and National Capital Territory of Delhi. In Madhya Pradesh and Chattisgarh where there is no law on the issue executive orders have been issued in over 50 government departments to provide access to information to people.

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citizens – it should not be necessary for each citizen to approach the concerned department individually.

2. What are your information rights under the Ordinance³?

The Ordinance gives you the right to seek information regarding affairs of the *Government of Maharashtra and Public Authorities* – this information could be in the form of records, documents, floppies or any other electronic mode.

In addition to the above the following information must be provided to the public on request:

- Information regarding decision making in a case will be made available after the decision had been taken;
- Information relating to occurrence, event or matter that has taken place fifteen years before the date of request will be provided;
- Any information that cannot be withheld from the Parliament or the State legislature cannot be denied to a citizen.

3. What is a Public Authority⁴?

As stated above you have the right to information from the Government of Maharashtra and also from a Public Authority. Government of Maharashtra would mean and include every single department and office of the Government. We now need to understand the meaning of Public Authority.

Public authority has been defined to mean a body:

- established or constituted by a law of the State of Maharashtra or the Center;
- owned and controlled by the State;
- whose composition and administration are predominantly controlled by the Government ;
- whose functions are of a public nature ;
- on which office bearers are appointed by the Government;
- which receives aid from the government directly or indirectly – this includes bodies that have received land at concessional rates from the government, or have received monetary concessions like tax exemptions.

4. What is a Competent Authority⁵ ?

The Ordinance has defined the term Competent Authority in detail. You need to understand the role importance of the Competent Authority since this person designated by the Ordinance has many obligations and responsibilities in implementing right to information in Maharashtra.

A Competent Authority is :

- the head of every administrative department of the State Government
- the administrative heads of all public and other authorities in the State
- the registrar of co-operative societies for co-operative societies registered under the Maharashtra Co-operative Societies Act, 1960;
- the registrar of societies for societies registered under Societies Registration Act, 1960;

³ Section 2(5) and Section 9.

⁴ Section 2(6).

⁵ Section 2(3).



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- the charity commissioner for Charity Commissioners Office and public trusts registered under the Bombay Public Trusts Act, 1950;
- the commissioner of labour for trade union registered under him;
- the secretary of the Maharashtra Public Service Commission for the administrative wing of the Commission;
- the registrar of the Lok-ayukta and Upa-lokayuktas

(a) What are the obligations of the Competent Authority⁶?

The Competent Authority has four main obligations with respect to the departments, bodies and public authorities under its control:

- appointment of public information officers;
- appointment of the appellate authority;
- maintenance of records;
- publication of certain kinds of information.

(b) What information is required to be published by the Competent Authority⁷?

Right to Information does not only mean your right to ask for information, it is also the duty on the part of the government to provide information from time to time without people asking for the same. This is known as *suo moto disclosures*.

Each and every government department and public authority must publish the following information from time to time:

- particulars of its organization, functions and duties;
- powers and duties of the officers and employees and procedure followed by them in decision-making.
- norms set up by the public authority for carrying out its functions
- rules, regulations, instructions, manuals, government resolutions, orders, guidelines and list of records in the office that can be made available to citizens;
- details of facilities available to citizens for obtaining information
- name, designation and other particulars of the public information officer.

In addition to the above the government departments and public authorities must also

- publish all relevant facts concerning important decisions (administrative or quasi-judicial) and policies that affect the public while announcing such decisions and policies.
- before sanctioning or initiating any project communicate to the public generally or to the persons affected facts available to it or to which it has reasonable access and which information should in its opinion be made known to the affected persons.

5. Who is a Public Information Officer⁸?

A Public Information Officer (PIO) is a person designated to be the liaison between the government and the public. If you want to use the Ordinance to seek information you have to

⁶ Section 4.

⁷ Section 4(b) and (c). While the law says that information had to be published the Rules do not contain provision on where this publication must be made. This is a big failing as there is no way to ensure compliance

⁸ Section 2(7) and Section 5; Rules 3 and 4.



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approach the PIO. The PIO is in essence the person who delivers information under the Ordinance and the first point of contact as far as the citizen is concerned.

- Every office and administrative unit of the Government/Public Authorities should have at least one PIO.
- PIO's are to be appointed at various levels like village, taluka, sub-division district and regional division.
- It is the duty of the relevant Competent Authority to appoint PIO's.
- The name, designation and address of the public information officer must be displayed in a prominent place on the premises of every office of the Government and public authorities.
- List of PIO's is to be prepared by the relevant Competent Authority and this information should be available to the general public.
- A PIO may seek the assistance of another officer or employee in order to discharge his duties – this officer or person shall also be considered a PIO for the purpose of the Ordinance.

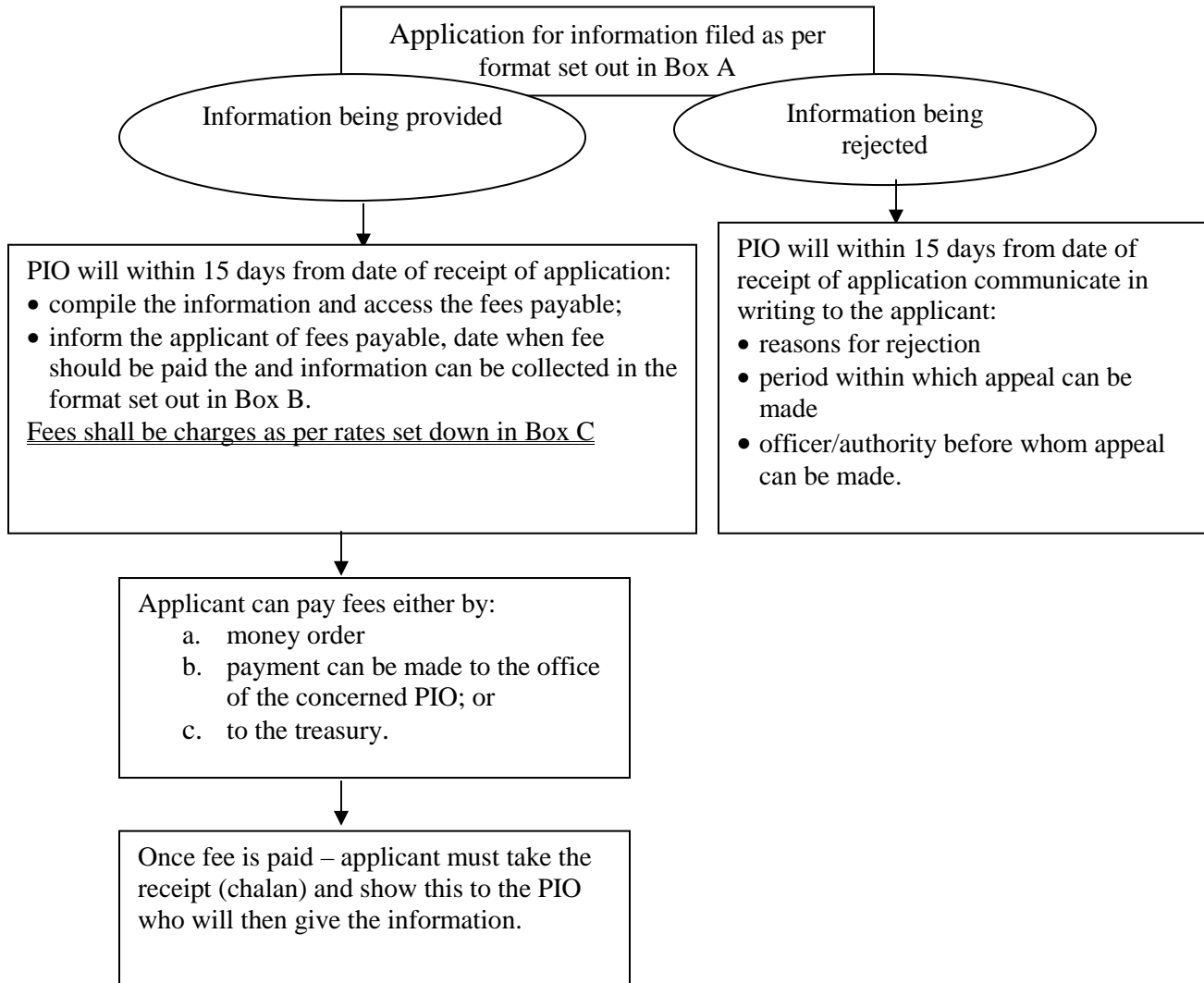
(a) What are the duties of a PIO ?

- Deal with requests for information
 - accept applications
 - see if information can be provided
 - gather the information
 - access the fees payable
 - communication with applicant informing them of fees payable and when information can be collected, rejections, etc.
- Provide assistance to citizens seeking information.
- Follow the procedure in the Ordinance to provide information or reject applications.
- Every PIO must maintain a register in respect of applications received – the register is to contain the following information:
 - Name of applicant;
 - Date of application;
 - Details of information provided:
 - If application rejected – details of the same:
 - Whether appeal filed:
 - Other remarks

The duties mentioned above is not a comprehensive list, there are many other duties and functions of the PIO which will become clearer in the course of understanding procedures and systems set up under the Ordinance.



6. What is the procedure to seek information⁹?



(a) What is the time limit for either the providing or rejecting information?

Ordinarily the time limit prescribed is **15 working days** but in some cases the time limit can be extended by another 15 workings days – before extending the time limit the reasons must be recorded and the applicant must be informed of the extension by the PIO. In addition where the information applied for involves the **life and liberty of a person** , the information should be supplied **within 24 hours** from the time of receipt of application.

⁹ Section 6.



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7. What are the grounds on which information can be rejected¹⁰?

Like all fundamental rights the right to information is not absolute and is subject to certain exceptions. Under the Ordinance information can be denied on the following grounds:-

- prejudicial to the sovereignty and integrity of India, security or interest of the state, relation with a foreign state or lead to incitement of violence;

Who decides?

The PIO cannot decide to withhold information on the above ground, the PIO must, through the Competent Authority approach *the Committee* that will consider the request and give its decision. While communicating the decision of the Committee to the applicant the PIO must tell the applicant that the Committee was consulted on the issue.

What is the Committee¹¹?

There is a Committee constituted under the Ordinance with the Committee has only one function which is to determine if disclosure of information requested by an applicant would be prejudicial to the sovereignty and integrity of India, security or interest of the state, relation with a foreign state or lead to incitement of violence.

The Committee consists of:

Additional Chief Secretary , (Home Department)... Chairman
Principal Secretary and Special Enquiry Officer,.... Member
(General Administration Department)
Principal Secretary or Secretary (Legislation).....Member
(Law and Judiciary Department)

- forbidden to be published by a court of law or a tribunal or may constitute contempt of court;
- breach of privilege of the Parliament or the State legislature
- pertaining to service records of a person
- received in confidence from foreign governments or international organizations
- endanger life or security of a person or compromise the assistance given in confidence for law enforcement or security purposes.
- prohibited under Official Secrets Act, 1923.
- impede process of investigation or apprehension/prosecution of offenders

(a) Exempted information that can be disclosed in Public Interest¹²:

In addition to the above there are certain grounds on which information can be denied but if the Competent authority feels that information falling within this category must be revealed to *protect a larger public interest* – then this information may be disclosed. The type of information that subject to a public interest over ride are:

- trade or commercial secrets, or intellectual property where disclosure would harm competitive position of a third party;

¹⁰ Section 7.

¹¹ Section 2(2).

¹² Section 7(d),(e) and (k).



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- available to a person in his fiduciary relationship
- personal information that has no relation to public activity and would cause unwarranted invasion of privacy.

(b) Can information be completely rejected on the ground that it relates to a record that is exempted¹³?

No, a request for information cannot completely be rejected on the ground that it relates to a record which is exempted. If it is possible to reasonably sever the exempt information from the record then the PIO must try to provide the non-exempt part to the applicant.

(c) Are there any other grounds for rejecting information¹⁴?

Governments even today routinely publish information, under the Ordinance the PIO can reject a request for information if:

- the information is already published in the official gazette;
- the information is available to the public;
- the volume of information asked for is so large that retrieval of information would require large resources to be diverted;

In the above instance it is the duty of the PIO to help the applicant reframe the request in order to facilitate supply of information.

- the request relates to information that is required by law to be published at a particular time.

8. What are the remedies in case of a rejection or delay¹⁵?

The Ordinance provides a remedy for the citizen by making provision for two levels of appeals first to the appellate authority and second to the Lok-ayukta or Upa-Lokayukta. The only exception to this rule is when information is denied on the ground that disclosure is prejudicial to the sovereignty and integrity of India, security or interest of the state, relation with a foreign state or will lead to incitement of violence, then the appeal against this order must be made directly to the Lok-Ayukta or the Upa Lok Ayukta.

(a) Who is an Appellate Authority¹⁶?

The Appellate Authority is either the Competent Authority himself or an officer authorized by the Competent Authority. Guidelines to be followed by Competent Authority in appointing Appellate Authority are as follows:

Appeals against District or Taluka level PIO's.	Sub-Division level officer.
Appeals against Sub-division level PIO's .	District level officer.
Appeals against District level PIO's.	Regional or divisional level officer.
Appeals against Regional or divisional level PIO's.	Head of concerned department.
Appeals against PIO's at level of administrative department.	Head of concerned administrative department.

¹³ Section 10.

¹⁴ Section 8.

¹⁵ Section 11.

¹⁶ Section 2(1) and Rule 5.



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(b) How does a citizen know who the correct Appellate Authority is ?

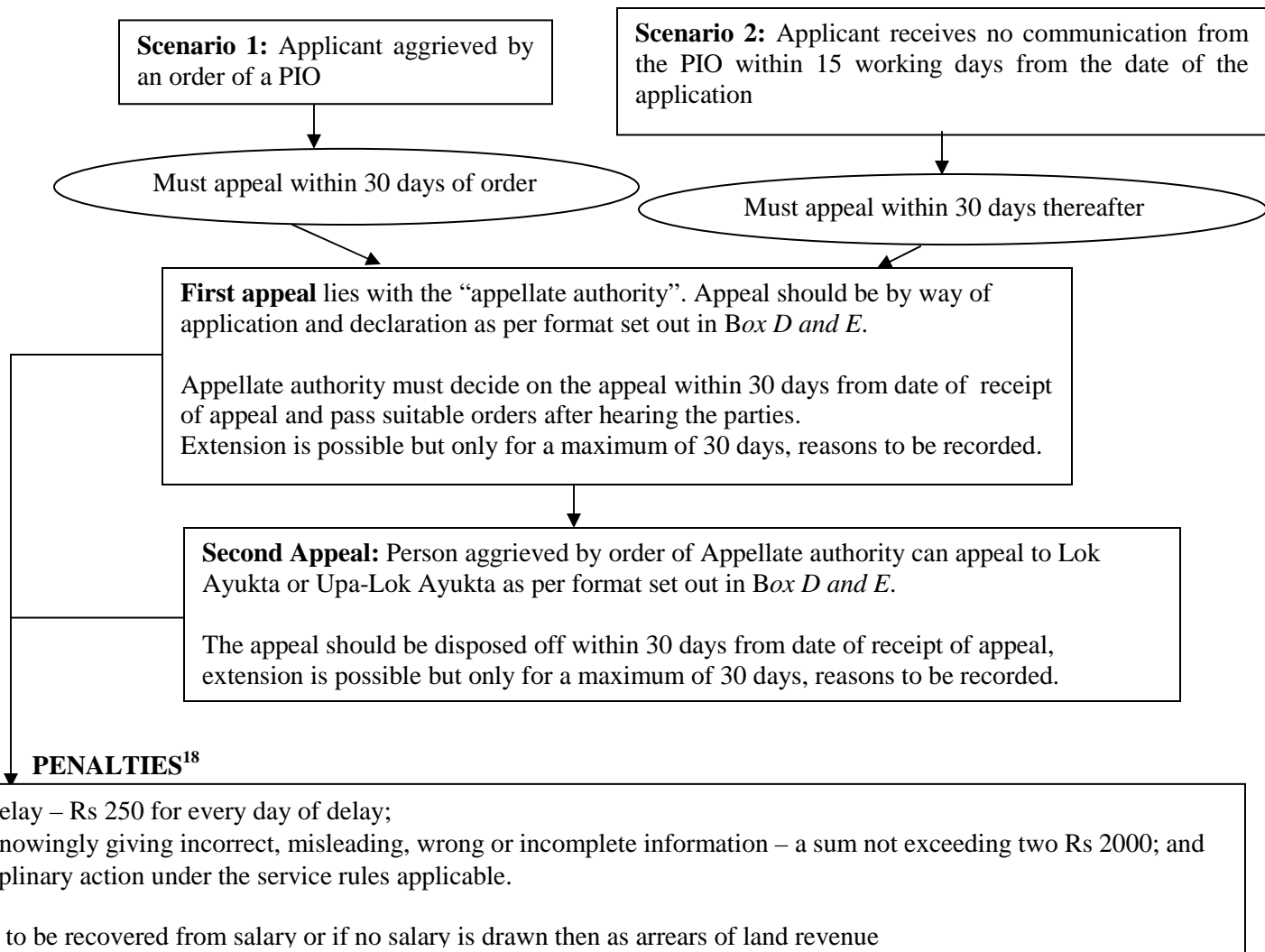
When the PIO's rejects a request for information details of the Appellate Authority must be mentioned in the rejection letter.

(c) What are a Lok Ayukta and Upa-Lok Ayukta?

A Lok Ayukta is essentially a watchdog of the administration – it investigates complaints of corruption and misadministration in the State government. The Maharashtra Lok Ayukta and Upa Lok Ayukta Act, 1971 governs the working of these bodies. The office of the Lok Ayukta in Mumbai is on 1st floor, New Administration Building, Madame Cama Road, Opp. Mantralaya.

9. What is the appeal procedure¹⁷?

The Ordinance recognizes two grounds for appeal:



¹⁷ Section 11 and Rule 7.

¹⁸ Section 12.



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10. Who will monitor the implementation of the Ordinance¹⁹?

According to the Ordinance the Government has to set up *Councils at the State level and at the divisional level* for monitoring the working of the Ordinance. It is the duty of these Councils to review the working of the Ordinance once every six months and make recommendations to the Government.

At the State level the Council will be under the chairmanship of the Chief Secretary or Additional Chief Secretary. At the divisional level the Council under the chairmanship of the Divisional Commissioner. The members of the Councils will consist of representatives of the media, Ngo's, academics and others.

11. What is a Records Commission²⁰?

In order to make old records available to the public the Government has decided to set up a records commission that will advise the Government on release of old records to the public.

The records commission shall consist of representatives of the Government and persons of repute and standing in society including academics.

Decisions of the records commission are binding on the Government and must be implemented within three months of the ruling. In case the government decides to overrule a decision of the records commission a statement must be tabled in the State legislature.

12. Protection to Government servants and officers²¹?

The Ordinance gives a Government servant immunity from prosecution and suits for any action taken by him in good faith in implementing the Ordinance.

¹⁹ Section 13.

²⁰ Section 14.

²¹ Section 15.



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Box A: Format of Application form under Maharashtra Right to Information rules, 2002²²

<p>To, The Public Information Officer (Name of office and address)</p> <ol style="list-style-type: none"> 1. Full name of applicant : 2. Address : 3. Particulars of Information required : <ol style="list-style-type: none"> i. Subject matter of information*: ii. The period to which information relates**: iii. Description of the Information required *** : iv. Whether information is required by post or in person : (actual postage charges will be included in additional fees) v. In case by post (ordinary, registered or speed): vi. Purpose for which information is required: <p>Place : _____ Signature of applicant</p> <p>Date : _____</p> <p><small>* Broad category of subject to be indicated (eg: government land/ service matters licenses, etc) ** Relevant period for which information is required should be indicated *** Specific details of information required is to be indicated</small></p>	<div style="border: 1px solid black; padding: 2px;">Court fee stamp of Rs 10</div>
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Box B: Format of letter if intimation to be sent by PIO if information is being provided ²³.

<p>From : (Designation of PIO)</p> <p>To, Name and address of applicant</p> <p>Sir,</p> <p>Please refer to your application dated _____ addressed to the undersigned requesting information on _____. The above information is ready to be supplied to you. The additional fee for supplying this information to you is Rs _____.</p> <p>You are requested to pay the fee at this office or send the money order or make payment in the government treasury and send copy of challan to this office and collect the information.</p> <p>The amount of fees shall be deposited in the budget head No. "0070_Other Administrative Services, 60-Other Services, 800 – other receipts, (18) – Right to Information ordinance, 2002(0070-016-1)"</p> <p>Please make the payment on or before</p> <p style="text-align: right;">Public Information Officer</p>
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Box C: Fee Structure²⁴

Sl no	Description of document	Rupees
1	When the concerned department has already fixed the price of the document, map, etc	The price so fixed + postage charges where applicable
2	Where information is readily available – by Xeroxing, copying or by any other way	0.50 per page + postage charges where applicable
3	If information is not readily available and needs to be collected	Rs 2 per page + postage charges where applicable.

²² Annexure A of Rules.

²³ Annexure B of Rules.

²⁴ Schedule to the Rules.



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Box D- Format of appeal²⁵:

	Court fee stamp of Rs 20
<p>From:</p> <p style="padding-left: 40px;">(applicants name and address)</p> <p>To,</p> <p>(Name , designation and address of appellate authority)</p> <ol style="list-style-type: none"> 1. Full name of applicant : 2. Address : 3. Particulars of Public Information Officer: 4. Date of receipt of order appealed against: 5. Last date for filing appeal: 6. Particulars of information: <ol style="list-style-type: none"> i) Nature and subject matter of information required: ii) Name of office or department to which information relates: iii) Purpose for which information is required: iv) Grounds for appeal <p>Place : Signature of applicant</p> <p>Date :</p>	

Box E: Declaration²⁶

Declaration
<p>I(Name of applicant), son/daughter/wife of Hereby declare that the particulars furnished in the appeal are to the best of my knowledge and belief true and correct and that I have not suppressed any material fact.</p> <p>Place:</p> <p>Date: Signature of applicant</p> <p>To..... (Name and address of Appellate Authority).</p>

Format of application for second appeal²⁷:

The format of application and declaration for second appeal is the *same as Box D and E* respectively *except for the following changes*:

- a) the appeal must be addressed to the “Lok-Ayukta or the Upa-Lok Ayukta (Maharashtra State); and
- b) “Particulars of Public Information Officer” in the application must be replaced with “Particulars of Appellate Authority”.

²⁵ Annexure C.

²⁶ Annexure C.

²⁷ Annexure D.