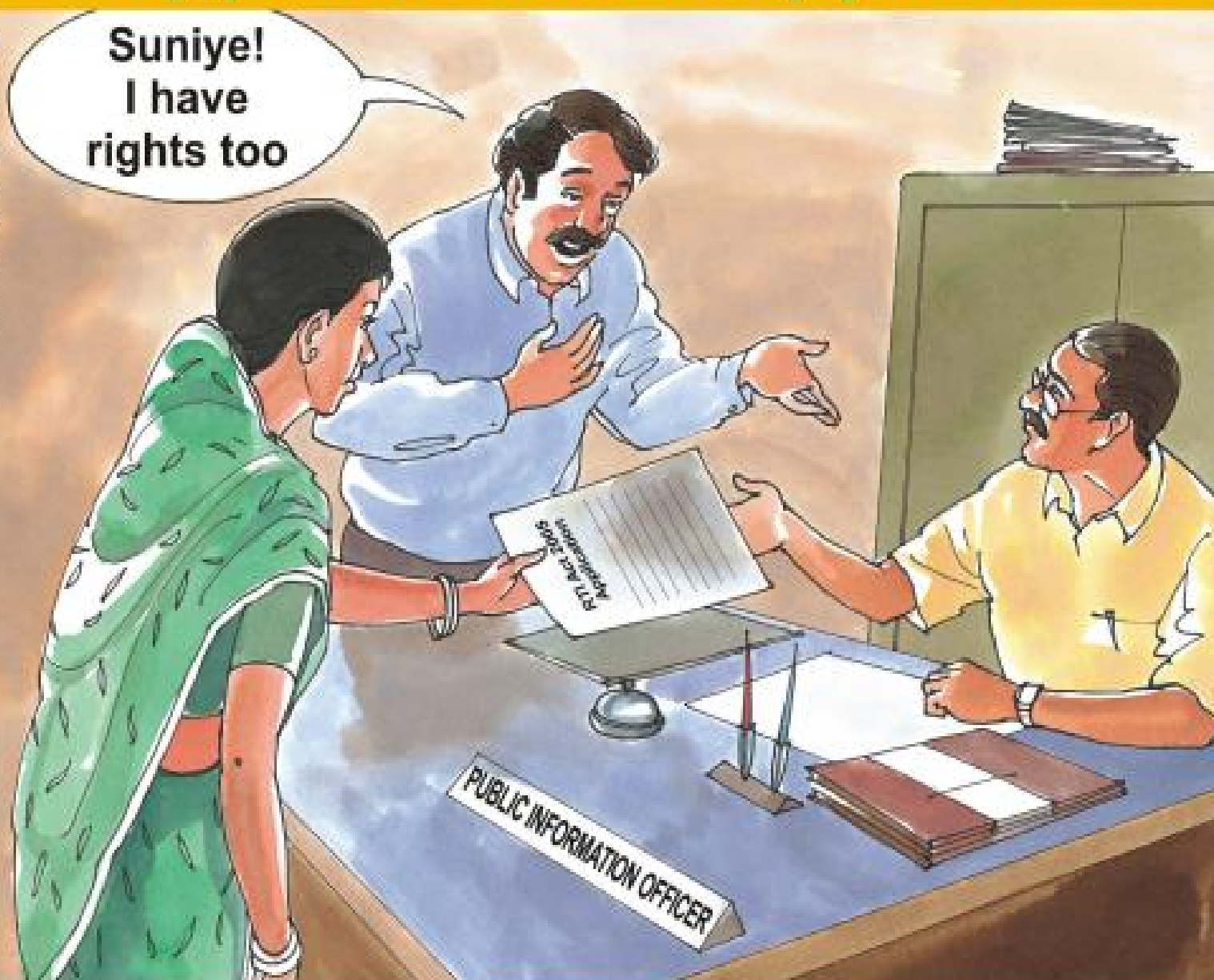


Guidance Series

# Dealing With Third Parties: Applications & Appeals

Right to Information Act 2005



**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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## Guidance Series

# Dealing With Third Parties: Applications & Appeals

*“Access to information and broad public participation in decision-making are fundamental to sustainable development”.<sup>1</sup>*

- UN General Assembly, 1997

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March 2006

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<sup>1</sup> UN Doc. A/RES/S-19/2, 19 September 1997, para 108.

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# Foreword

It was with great excitement that the *Right to Information Act 2005* was enacted in June 2005.<sup>2</sup> The right to information promises a new era of open governance in India and an opportunity for ordinary people to more effectively engage with the officials and institutions who are supposed to promote their welfare and rights.

The usefulness of the Act for the citizens of India is directly dependent on the effectiveness of governments' implementation efforts. Not only new institutions – most notably Information Commissions – but also new systems, processes and bureaucratic cultures need to be developed and entrenched.

This publication is a contribution to the developing body of literature directed at interpreting and applying the new RTI Act in practice. It is one in a series of Guidance Notes created by the Commonwealth Human Rights Initiative to assist officials as they tackle some of the complexities of the new law.

This Guidance Note deals with the specific issue of the rights of third parties. Under the RTI Act, not only applicants for information and public authorities have rights and duties. Third parties also have certain rights to intervene when an application relates to information about them or which they have provided to public authorities. This Guidance Note seeks to provide guidance on how to process an application and an appeal which might involve a third party.

|                     |   |
|---------------------|---|
| <b>First party</b>  | The person submitting an application or appeal                  |
| <b>Second party</b> | The public authority responsible for processing the application |
| <b>Third party</b>  | Any other person or body, including another public authority    |

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<sup>2</sup> The RTI Act was passed by the Lok Sabha (Lower House) on 11 May 2005, by the Raj Sabha (Upper House) on 12 May 2005 and received Presidential assent on 15 June 2005. Parts of the Act came into force upon Presidential assent, but the Act came fully into force on 12 October 2005, 120 days after Presidential assent.

This Guidance Paper and the accompanying research and dissemination have been made possible with the financial support of the British High Commission, New Delhi.

Thanks also to the entire CHRI Right to Information Team whose lively discussions and debates were invaluable.

## Part 1: Who is a “Third Party”?

Public authorities<sup>3</sup> create and store many documents and records in the course of their routine work, most of which are now accessible under the *Right to Information Act 2005* (RTI Act). Usually, requesters will make applications to access information in records created by government officials about government activities, decisions and policies. In those cases, there are usually only two parties involved in the request process – the requester and the public authority. No special procedure is required to deal with such information requests. The Public Information Officer (PIO) merely has to assess whether the requested documents can be disclosed or not. If the documents fall outside the purview of the exemptions listed in s.8(1) of the RTI Act,<sup>4</sup> then the PIO will order its release. If on the other hand, the information is covered by an exemption and the public interest does not still warrant disclosure,<sup>5</sup> the PIO will issue a rejection order.

However, a public authority may hold information – such as letters, submissions, reports, advisory opinions and the like – that were not created by them. Instead, the information might have been received from other public authorities in the course of routine work or from members of the public. Public authorities may also hold information which mentions people other than the requester or the public authority.

Under the RTI Act, where a requester asks for information which *relates to* someone or was *provided by* someone other than the requester or the public authority processing it, then the application is said to involve a “third party”. Sometimes - but not always - third parties will need to be consulted about the release of their information.

Section 2(n) of the Act defines a third party as “a person other than the citizen making a request for information and includes a public authority”.

Records supplied by a third party but held by a public authority are included within the definition of “information” under the RTI Act<sup>6</sup> and can be the subject of a request. Applications for such information cannot be denied on the ground that the record requested was created by a third party, rather than the public authority receiving the information request.

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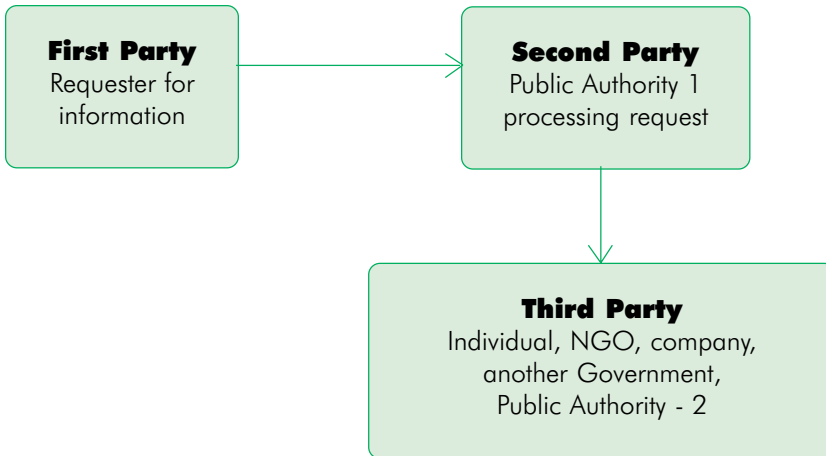
<sup>3</sup> Defined in section 8(i), *Right to Information Act 2005*.

<sup>4</sup> See Annex 1 for all relevant provisions in full.

<sup>5</sup> See section 8(2), *Right to Information Act 2005*.

<sup>6</sup> Defined in section 2(f), *Right to Information Act 2005*.

The definition of “third party” is very broad under the RTI Act, covering anyone other than the public authority dealing with the application and the requester. The definition even includes other public authorities. This means that when an application is received by Public Authority 1, that public authority may need to formally consult with Public Authority under the RTI Act, even though, as government bodies, public authorities should all be assumed to be talking to each other when they are processing applications.



There are many instances where a requester may want to access information provided by third party. For example, a requester may ask for:

- ☞ Correspondence between two Department Heads in relation to implementation of a specific government policy - one of the Department heads is a third party;
- ☞ Letters from the public received by a particular MP in relation to certain draft legislation or the development of a particular government scheme - the letter-writers are third parties;
- ☞ All tenders received from companies involved in a tender run by a public authority - the companies are third parties.

Where information was supplied or created by a body other than the public authority which received the application, the third party consultation process set out in s.11 of the Act may sometimes need to be followed. However, just because someone falls within the definition of third party, does not mean that they will need to be consulted under the RTI Act. As Part 2 explains, only in a very limited number of cases, involving confidential third party information, will there be consultation with the third party.



## Part 2: When does a third party need to be consulted?

As a matter of practical good sense, it can be important for a PIOs to consult a third party to ensure that a PIO has all the relevant information needed to make an informed decision. For example, a third party might explain to a PIO why certain information is sensitive commercially or they can clarify exactly why they think that disclosure would harm their competitive interests. Consulting with a third party can help a PIO to work out if an exemption applies or where the public interest lies.

It is NOT a requirement under the RTI Act that ALL applications which involve third part information will require that third parties are consulted before the information will be disclosed.

Section 11(1) - the key third party provision - makes it clear that it is only when ALL the criteria below are satisfied that a third party's right to be informed and heard arises.

### Criteria 1: The PIO must be intending to disclose the information

If the PIO does not intend to release the information, then the third party does not need to be consulted. A rejection notice will be issued to the requester, which will include details of the exemption in the RTI Act which is being relied upon to deny the information. For example, if Person A asks for a copy of the telephone bill of Person B, the PIO may reject the application on the basis it would constitute an unwarranted invasion of the privacy of the individual and there is no public interest in its release. Person B does not need to be contacted because their information is not, in any case, going to be disclosed.

AND

### Criteria 2: The information relates to or has been supplied by a third party

There are two types of information which the Act recognises may affect third party interests:

- ☞ The first is information which *relates to third parties*. For example, a person's medical records held at a government hospital, an assessment by a government regulator of

a company's financial stability or copies of electricity and water bills held by a public authority.

- ☞ The second is information which has been *provided to a public authority by a third party*. For example, individual income tax returns, tender bids or complaints from whistleblowers to vigilance officials about corruption.

AND

### **Criteria 3: The information has been treated as confidential by the third party**

The last criteria is the most important and *must* be satisfied before a third party needs to be consulted about an application. Even if the information requested relates to or was supplied by a third party, nonetheless, the PIO must assess whether the information was *treated as confidential* when it was given to the public authority by the third party.

If, when the information was given to a public authority, it was understood that it could be made public, then there is no obligation to consult the third party. There was no expectation that the information would be kept secret so the third party has no right to object to disclosure. For example, details of BPL cardholders can be made public because the cardholders never supplied their details in confidence. Likewise, annual reports, lists of participants in government welfare schemes and assets statements of senior officials are all regularly placed in the public domain and cannot be considered confidential.

#### **Not all third party information will attract the consultation process in s.11**

There is a wide variety of third party information held by public authorities which can be regularly and uncontroversially released. For example, the results of tender processes and contracts negotiated with private companies, although sensitive during the tender and contracting process, can – and should – be released by public authorities once negotiations are complete. Companies' annual reports, shareholder lists, environmental assessments or hazardous waste disposal plans held by public authorities can all be released. They relate to third parties but they were not provided confidentially. They do not attract any exemption and in any case, the public interest clearly weighs in favour of their disclosure. Lists of recipients of government subsidies or beneficiaries under rural development schemes must even be proactively published under s.4 of the Act. In any case, the information was not supplied confidentially so there can be no objection to disclosure.

### Confidentiality & third parties: Misunderstanding by Delhi Development Authority

A citizen using the RTI Act asked the Delhi Development Authority (DDA) for a copy of representations made to the DDA by members of the public in relation to the development of the DDA Master Plan. The DDA rejected the request on a number of grounds, including arguing that representations from the public were confidential and all such people would become third parties.

On appeal, it was argued that this interpretation of the law was incorrect. The representations being requested were made by people in response to a public notice. The DDA Rules require a Board of Enquiry to be constituted to look at such representations. Proceedings of the Board are conducted in public view and people are even invited to make oral submissions at public hearings. In this context, it is inconsistent to argue that public submissions have been treated as confidential. However, if a person who provides a representation has specifically requested that it be treated as confidential, then the third party will need to be consulted in accordance with s.11 of the Act. This interpretation was confirmed by the Central Information Commission.<sup>7</sup>

Conversely, where a third party has supplied information to a public authority in confidence, and has continued to treat the information as confidential, the third party has a right to be consulted. For example, there may be a case where an employee has written to a Lokyukta (Ombudsman) to complain about corrupt activities in his office and has asked for his complaint to be confidential because he fears reprisals. If the Lokyukta was considering releasing the employee's (third party) letter in response to an application because he felt that its publication was in the public interest, the employee would have a right to be consulted and make a submission about why he thinks secrecy should be maintained.

However, even if the information was initially submitted in confidence but over time has no longer been "treated by the third party as confidential", then the third party has no right to be consulted about disclosure. For example, in the United Kingdom, the terms of a contract between an airport and an airline company were considered highly confidential when the contract was signed. However, when the contract was requested from the airport 7 years later, the UK Information Commissioner found it was no longer protected because much of the information had been released into the public domain in the interim and was no longer being treated by the airline company as confidential.<sup>8</sup>

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<sup>7</sup> "Disclose Ryanair agreement", OUT-LAW News, 28 February 2006, [www.out-law.com/page-6686](http://www.out-law.com/page-6686).

<sup>8</sup> Central Information Commission, Appeal No. 10/1/2005-CIC, Decision dated: 25 February 2006: see <http://www.cic.gov.in/> and click on "Decisions of CIC" on the left-hand frame.

## Part 3: How does the third party consultation process work?

If all 3 criteria discussed in Part 2 are met, then s.11(1) requires that the PIO must, within 5 days of receiving an application, contact the third party and invite them to make a written or oral submission within 10 days regarding whether the information should be disclosed.

Section 11(1) specifically requires that a PIO send a written notice to the third party inviting them to make a submission. The notice should be sent by registered post, so that there is a record on file of when it was sent and to ensure that the notice does actually reach the third party. It can also be faxed.

If the PIO has a phone number for the third party, it would be advisable that the PIO follow up within a few days with a phone call to check that the third party has received the notice and is aware of the consultation process. If the third party makes an oral submission at that time, the PIO should capture that response in writing, so there is a record on file of the third party's comments. This will be important if the PIO's decision is eventually appealed.

It is good practice to send a copy of the third party notice to the requester so that they know what is going on with their application. At that time, the PIO should advise the requester that processing of their request may be delayed because a third party has 10 days to make their submission and a PIO can accordingly take an additional 10 days to process a request and send out a decision notice.

### Time limits for dealing with third parties

Section 11(1) states that where a third party needs to be consulted (see Part 2 for criteria) a written notice must be sent within 5 days advising that they can make a submission to the PIO regarding disclosure of their information. The third party has 10 days from receipt of the notice to make a submission.

Section 7(1) requires a PIO to make a decision within 30 days of receipt of a request, or 48 hours where the information relates to a person's life or liberty. However, s.11(3) clarifies that, notwithstanding anything in s.7, if a third party has been given an opportunity to make representation, then the PIO has up to 40 days within which to make a decision.

The third party may send their submission in writing or request a hearing before the PIO to be able to make an oral submission. If there is no response from the third party to the notice, consideration should be given to sending a second notice, ideally by telephoning the third party and following up by courier so that the courier can ensure that the notice is put into the hands of the third party. Although this is not required by the RTI Act, this approach is a demonstration that the PIO has acted in good faith and is advisable to ensure the PIO is protected from a penalty if his/her decision is eventually appealed.

Whether or not a response is received, where a third party has been given an opportunity to make a representation, the PIO *must* make a decision regarding whether or not to disclose the information within no more than 40 days. This is justified on the basis that, where the third party has been given an opportunity to be heard, their silence can legitimately be construed as lack of any objection. It would not be fair to a requester for their application to be held up indefinitely while the PIO tries to track down a third party (or multiple third parties, in some cases) and specifically make sure that they have no objections. Making every reasonable effort to provide the third party with an opportunity to make a submission should be sufficient.

## Part 4: Considering third party representations & making a decision

Refusal of a third party to consent to disclosure does not automatically mean that the PIO should decide that the application should be rejected and the information should be withheld. Section 7(7) and section 11(1) of the Act only state that a PIO shall take into consideration the representations made by a third party before making a decision. However, the final decision still rests with the PIO.

Even if a third party claims confidentiality, a PIO cannot reject an application for information unless an exemption under s.8(1) or 9 applies and the public interest does not weigh in favour of disclosure.

PIOs have no general discretion to withhold information simply because it relates to confidential third party information. If a PIO is going to reject an application, they must be able to point to a specific exemption in the Act and they must be sure that there is no overriding public interest in disclosure. There are some obvious exemptions which may legitimately apply to protect confidential third party information:

- ☞ Section 8(1)(d): Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party;
- ☞ Section 8(1)(e): Information available to a person in his fiduciary relationship, such as information held by a doctor about their patient or a lawyer about their client;
- ☞ Section 8(1)(f): Information received in confidence from a foreign Government, such as intelligence information or war plans;
- ☞ Section 8(1)(g): 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;
- ☞ Section 8(1)(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;
- ☞ Section 9: Where providing access would involve an infringement of copyright belonging to a person other than the State.

Even if a PIO believes that a third party's submission supports the application of one of the exemptions in the Act, in accordance with both s.8(2) and s.11(1) of the Act, the PIO must still consider whether the public interest override applies (see CHRI's "Guidance Note on Weighing Up The Public Interest" for a detailed discussion). In brief, this requires that even if an exemption applies, the PIO must still give a decision notice requiring that the third party information is released *if the public interest in disclosure outweighs the harm to the third party's interests*. However, s.11(1) explicitly states that even where the public interest weighs in favour of disclosure, third party trade or commercial secrets protected by law can still not be disclosed.

### Protecting third party commercial information while promoting the public interest

Private companies often provide public authorities with confidential corporate information. For example, when reporting to a government regulator, companies may need to disclose secret profit forecasts or they may provide sensitive financial information in their tax returns or during a tender process. It is foreseeable that a requester may want to access commercial information to hold a company accountable for failing to comply with government regulations or to expose corruption. However, many private companies will want to argue against disclosure on the basis that they will lose their competitive advantage if their sensitive corporate information is made public.

In such cases, a Public Information Officer will need to assess whether any exemption applies which would require that a company's corporate information should be kept secret. If this first threshold test is met, the PIO will then need to weigh up whether the public interest in disclosing such information – for example, exposing corruption in a tender process or disclosing quality control processes where there is an allegation of public health risks – outweighs the private company's commercial interests in keeping the information confidential.

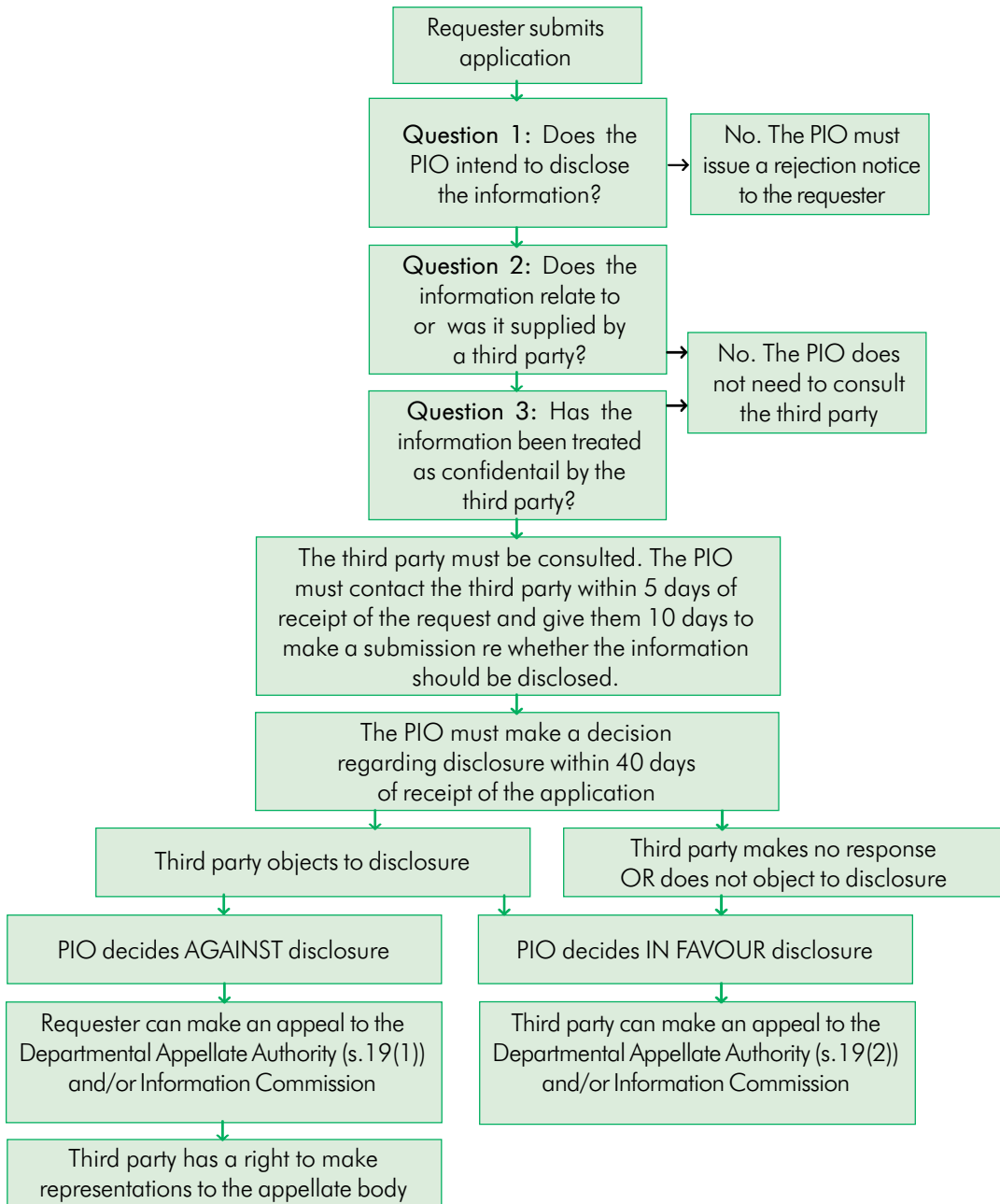
When the PIO is balancing the public interest, if he/she is inclined towards disclosure, in accordance with s.11(1) he/she must consult the third party company and get their considered view on why the information should be kept secret. Even if the Act did not require such consultation, it is good practice to talk to the third party about why their information might be sensitive, because commercial information can be very technical and it may not be obvious to a non-technical public official why disclosure of particular commercial information might fall within an exemption. Once the PIO has consulted with the third party, he/she must then weigh up the competing interests one final time and then make a decision.

The PIO is the person responsible for finally making a decision – taking into account any third party submissions. A third party cannot tell a PIO how they should handle the information; they can only state their case and then leave the decision to the judgment of the PIO, in accordance with the provisions of the entire RTI Act. In practice, decisions will go one of four ways:

- (1) **No third party response**: If the third party does not make a representation despite the efforts of the PIO to contact them, the PIO can assume that the third party has no objection to disclosure. The PIO may then order release of the information. In this scenario, the PIO will provide the citizen with the information requested upon payment of whatever fees may be calculated in accordance with the fee rules notified by the appropriate Government.
- (2) **No objection by the third party**: If the third party makes a representation but says that they have no objection to disclosure, then the PIO may order disclosure. In this scenario, the PIO will provide the citizen with the information requested upon payment of whatever fees may be calculated in accordance with the fee rules notified by the appropriate Government.
- (3) **Third party objection and information withheld**: If the third party makes a representation against disclosure, the PIO has to consider this objection in light of the exemptions in s.8(1) and the public interest override in s.8(2) of the RTI Act. If the objections of the third party can be justified, the PIO will issue a rejection order to the requester accompanied by details of appeal rights. The decision will activate the right of the requester to make an appeal or complaint.
- (4) **Third party objection and information disclosed**: If the third party makes a representation against disclosure and the PIO nonetheless finds either that no exemption applies or an exemption applies but the public interest warrants disclosure, the PIO must give the third party a notice of his/her decision to disclose the information, along with details of any appeal rights. The PIO should take care not to disclose the documents or records in question to the requester until any appeal is dealt with or the time for lodging an appeal has passed. A notice also needs to be sent to the requester, which should include advice to the requester about the third party's right to appeal, including the relevant time limits. Otherwise, the requester may not understand why they might face a delay in accessing the information to which the PIO has said they are entitled.



## Flowchart: Third party consultation process



## Part 5: Can third parties make appeals?

The Act clearly gives third parties the right to make appeals, both to the departmental appellate authority and to the relevant Information Commission. This means that even where a PIO gives a decision to release information to a requester, nonetheless, a third party can appeal that decision. Section 11(4) of the Act specifically requires that where third parties are consulted about disclosure, they must be sent a notice once a final decision is made and that notice should specify their appeal rights.

### Can information be released if an appeal could still be lodged by a third party?

Common sense suggests that where the PIO decides to release information against third party objections, the PIO must only release the information after the last possible day to lodge an appeal has expired. Otherwise the third party's right of appeal – which is clearly recognised by s.11(4) and s.19(2) of the Act – would be useless because their information will already have been disclosed to the requester before they have had a chance to lodge a complaint against the decision to release it.

If the PIO discloses the information before a third party has had a chance to appeal, the PIO might leave themselves and their public authority open to a suit for compensation before the appropriate Information Commission, if a third party suffers any loss or detriment as a result. The third party could argue that the PIO was negligent in releasing the information and nullifying their appeal rights. This could also lead to the launch of inquiries or disciplinary proceedings against the PIO under the relevant service rules.

## Appeals to the Departmental Appellate Authority

Section 11(4) recognises that third parties have the right to appeal against a PIO's decision. In this context, s.19(2) specifically gives third parties the right to appeal to the internal Departmental Appellate Authority, who is an officer senior in rank to the PIO. This is commonly referred to as the "first internal appeal". The appeal to the Departmental Appellate Authority must be lodged within 30 days of the decision by the PIO.

As with all decisions under the Act, when any appeal body reviews a PIO's decision, they must base their decision only on whether one of the exemptions in sections 8(1) or 9 apply and whether the public interest weighs in favour of disclosure.

As yet, there have been no appeal rules notified which specify the appeal procedures to be followed by Departmental Appellate Authorities. Given the absence of relevant rules, it is advisable that Departmental Appellate Authorities follow the procedure in s.11 for consulting third parties (see Part 3 for more) when disposing of appeals. This includes sending a written notice to the third party inviting a submission and giving the third party an opportunity to make verbal or written submissions. Existing practice shows that the Departmental Appellate Authority will usually hold a hearing, where all parties involved – the third party, the public authority and the requester – will be invited to state their case.

Every effort must be made to complete the proceedings within 30 days in accordance with s.19(6) of the Act. If the procedure takes more time, the Departmental Appellate Authority will need to record reasons for the delay on the file and in any order it issues. Under no circumstances is a delay of more than 15 days allowed. Ultimately, the Departmental Appellate Authority must give its decision within 45 days.

## Appeals to an Information Commission

The right of appeal to an Information Commission is not explicitly provided for under the Act. However, it is generally understood that third parties can approach the Commissions to reconsider a decision by the PIO to disclose their information, either under s.19(4) or 18(1)(f) of the Act.

### Can third parties sue for compensation where they are not properly consulted?

Under s.19(8)(b) of the Act, every Information Commission has the power to “compensate a complainant for any loss or detriment suffered”. At the time of writing, there has as yet been no litigation on this provision. However, it remains possible that a third party could complain to an Information Commission if the third party consultation processes is not complied with and they suffer loss as a result. For example, if a PIO releases confidential intellectual property information without first asking the third party for their opinion on the disclosure, and a rival company then uses the information and its commercial value is lost, the third party may sue for compensation for that loss. In practice, this means that PIOs and Appellate Authorities should always make sure that they properly consider whether a third party needs to be consulted – and keep a note of their reasons for deciding on whether to consult the third party so that they can defend their decision if necessary. Notably, officials are protected by s.21 against legal proceedings where they acted in “good faith” – so it is important to keep good file notes to prove they applied the law properly, not negligently.

The proceedings of the Information Commissions vary between jurisdictions, because the Act permits different appeal rules to be promulgated in the Centre and the States. Based on current practice however, it is likely that where a third party complains against a decision, the Commission will hold a hearing, where all parties involved – the third party, the public authority and the requester – will be invited to state their case.

Section 19(9) of the Act explicitly requires Information Commissions to give requesters and public authorities notice of their decisions in writing. Where a third party is involved, good practice would recommend that Information Commissions also provide the third party with a notice of the decision.

### Third party “confidentiality” needs to be interpreted narrowly<sup>9</sup>

In Queensland, a State in Australia, a Member of the Legislative Assembly (the MLA) wrote a letter to the Chairman of the Queensland Corrective Services Commission (QCSC, the public authority in the case) raising concerns the public had raised with the MLA regarding the possible grant of parole to an inmate of the QCSC. The inmate sought access to numerous documents relating to him held by the QCSC, including the letter from the MLA (the third party in this context).

The PIO released some documents, but refused to release the MLA’s letter. The inmate applied for an internal review, during which the MLA was consulted as a third party. The MLA objected to disclosure of his letter on the basis that he was exempt as an MLA, the letter was confidential and “electorate office matters are exempt from FOI applications”. Upon review, the internal appellate authority decided to release the letter, finding there would be no harm to any important interest from disclosure.

The MLA appealed to the Information Commissioner. The Commissioner invited the MLA to make submissions in support of his argument against disclosure. Although the Queensland Act exempts MLAs from the scope of the Act, the Information Commissioner held that once an MLA had made a submission to a public authority covered by the Act, that submission was no longer automatically exempt. The Commissioner then went on to find that no exemption applied to the letter, holding in particular that: *“The MLA has provided no evidence that the letter was communicated on the basis of an express mutual [or implicit] understanding that the information in it would be treated in confidence”* and therefore there was no requirement that the letter should be withheld.

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<sup>9</sup> Queensland Information Commissioner, Decision No. 97012, Application S71/97: see <http://www.infocomm.qld.gov.au/indexed/decisions/html/97012.htm>

## **Part 6: Can third parties be heard during requester's appeals?**

Where, after hearing from a third party, a PIO or Departmental Appellate Authority decides not to disclose information, the requester has a right to appeal and continue to seek disclosure of that information.

Section 19(4) of the Act gives third parties the right to make representations to either the Departmental Appellate Authority or the Information Commission during an appeal which "relates to third party information". This makes practical sense because an appeal body will be once again considering the issue of whether or not information should be disclosed, and just as before in relation to an application, a third party should have a chance to explain any reasons they may have for wanting to keep the information secret.

However, s.19(4) does not specifically lay down a consultation process for appeals which relate to third party information. Rather, the Act only requires that third parties are given a "reasonable opportunity of being heard". To meet this requirement, Departmental Appellate Authorities and Information Commissions would be well advised to follow the general guidelines of s.11 as much as possible, by contacting a third party as soon as possible, in writing and/or by telephone or fax, and inviting them to make a written or oral submission which will then be considered during the appeal. The third party needs to be given notice of any hearing with sufficient time to organise their attendance if they wish to be present.

Even where a third party makes a representation during an appeal by a requester, it is still up to the Departmental Appellate Authority or Information Commission whether or not to release the information and – as always – information may only legitimately be withheld if it falls under one of the exemptions in sections 8 or 9 AND the public interest in disclosure does not outweigh the public interest in keeping the information secret.

## Annex 1: Relevant provisions from RTI Act 2005

| Section | Provisions   |
|---------|--|
| 2       | <p>(f) “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;</p> <p>(h) “public authority” means any authority or body or institution of self- government established or constituted—</p> <ul style="list-style-type: none"> <li>(a) by or under the Constitution;</li> <li>(b) by any other law made by Parliament;</li> <li>(c) by any other law made by State Legislature;</li> <li>(d) by notification issued or order made by the appropriate Government, and includes any— <ul style="list-style-type: none"> <li>(i) body owned, controlled or substantially financed;</li> <li>(ii) non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government;</li> </ul> </li> </ul> <p>(n) “third party” means a person other than the citizen making a request for information and includes a public authority.</p> |
| 7       | <p>(1) Subject to the proviso to sub-section (2) of section 5 or the proviso to sub-section (3) of section 6, the Central Public Information Officer or State Public Information Officer, as the case may be, 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:</p> <p>(7) Before taking any decision under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall take into consideration the representation made by a third party under section 11.</p>  |
| 8       | <p>(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—</p> <ul style="list-style-type: none"> <li>(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;</li> <li>(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;</li> </ul>  |

| <b>Section</b> | <b>Provisions</b>   |
|----------------|---|
| 8 (1)          | <p>(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;</p> <p>(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;</p> <p>(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;</p> <p>(f) information received in confidence from foreign Government;</p> <p>(g) 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;</p> <p>(h) information which would impede the process of investigation or apprehension or prosecution of offenders;</p> <p>(i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:</p> <p style="padding-left: 40px;">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:</p> <p style="padding-left: 40px;">Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;</p> <p>(j) 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 Central Public Information Officer or the State 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:</p> <p style="padding-left: 40px;">Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.</p> |
| 8 (2)          | <p>Notwithstanding anything in the Official Secrets Act, 1923 nor 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.</p>   |

| Section | Provisions   |
|---------|--|
| 9       | Without prejudice to the provisions of section 8, a Central Public Information Officer or a State Public Information Officer, as the case may be, 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.   |
| 11 (1)  | <p>Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, 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 Central Public Information Officer or State Public Information Officer, as the case may be, 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:</p> <p style="padding-left: 40px;">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.</p> <p>(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, 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.</p> <p>(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, 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.</p> <p>(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 19 against the decision.</p> |
| 19 (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 Central Public Information Officer or State Public Information Officer, as the case may be, 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 Central Public Information Officer or State Public Information Officer as the case may be, 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.  |



| <b>Section</b> | <b>Provisions</b>  |
|----------------|--|
| 19 (2)         | <p>Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, 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.</p> <p>(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.</p> <p>(6) 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.</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. Accordingly, as well as a broad human rights advocacy programme, CHRI advocates access to information and access to justice. It does this through research, publications, workshops, information dissemination and advocacy.

**Human Rights Advocacy:** CHRI makes regular submissions to official Commonwealth bodies and member governments. From time to time CHRI conducts fact finding missions and since 1995, has sent missions to Nigeria, Zambia, Fiji Islands and Sierra Leone. CHRI also coordinates the Commonwealth Human Rights Network, which brings together diverse groups to build their collective power to advocate for human rights. CHRI's Media Unit also ensures that human rights issues are in the public consciousness.

## ACCESS TO INFORMATION

**Right 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. CHRI 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.

**Constitutionalism:** CHRI believes that constitutions must be made and owned by the people and has developed guidelines for the making and review of constitutions through a consultative process. CHRI also promotes knowledge of constitutional rights and values through public education and has developed web-based human rights modules for the Commonwealth Parliamentary Association. In the run up to elections, CHRI has created networks of citizen's groups that monitor elections, protest the fielding of criminal candidates, conduct voter education and monitor the performance of representatives.

## 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 interference.

**Prison Reforms:** The closed nature of prisons makes them prime centres of violations. CHRI aims to open up prisons to public scrutiny by ensuring that the near defunct lay visiting system is revived.

**Judicial Colloquia:** In collaboration with INTERIGHTS, CHRI has held a series of colloquia for judges in South Asia on issues related to access to justice, particularly for the most marginalised sections of the community.

If you want to access more resources on the right to information - in India and internationally, please visit CHRI's website.

For more information about the right in India, log on to CHRI's website at <http://www.humanrightsinitiative.org/programs/ai/rti/india/india.htm>.

- The India - National section of the website (<http://www.humanrightsinitiative.org/programs/ai/rti/india/national.htm>) provides a comprehensive background to the campaign, details of national activities and advocacy, government and civil society resources and contact details of various organisations working at the national level.
- The India - States section of the website (<http://www.humanrightsinitiative.org/programs/ai/rti/india/states/default.htm>) has separate web pages for the 28 States and 7 Union Territories, where you can access the rules, regulations, information on the latest implementation efforts of each State Government and contact details of organisations working on the right to information.

For more information about the right internationally, please log on to:

- The International Standards section of the website ([http://www.humanrightsinitiative.org/programs/ai/rti/international/intl\\_standards.htm](http://www.humanrightsinitiative.org/programs/ai/rti/international/intl_standards.htm)) for links to United Nations standards and regional standards.
- The Member States section of the website (<http://www.humanrightsinitiative.org/programs/ai/rti/india/national.htm>) for links to all Commonwealth right to information laws and resources.
- The Implementation section of the website ([http://www.humanrightsinitiative.org/programs/ai/rti/implementation/preparing\\_for\\_implementation.htm](http://www.humanrightsinitiative.org/programs/ai/rti/implementation/preparing_for_implementation.htm)) for links to international resources on preparing for implementation, applying exemptions, training officials and monitoring the law.



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