



Commonwealth Human Rights Initiative



The Right to Information Act, 2005

(Passed by the Indian Parliament in May 2005)

An Introduction

- Venkatesh Nayak



Coverage and Entry into Force

- ❑ Covers all of India except Jammu and Kashmir (J&K passed its own *Freedom of Information Act* in 2004)
- ❑ Covers offices owned, established, or financed by the Central, State Govts. and the Union Territories
(9 states have their own information access laws)
- ❑ any body owned, controlled or substantially financed by them directly or indirectly
- ❑ non-govt. organisations substantially financed with funds provided by them directly or indirectly
- ❑ Central *Freedom of Information Act*, 2002 will be repealed
- ❑ Entry into force within 4 months. But some provisions – with immediate effect





'information' and 'right' - Definitions

Information

=

Records, documents, memos, emails, opinions, advice, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in electronic form

&

information about private bodies that can be accessed under existing laws by a public authority

Right



to inspect works, documents, records



to take notes, extracts or certified copies



to information whose disclosure is in the public interest



to obtain information in electronic form



to take samples

(Sec. 2)





What is not open ?

(Sec. 8)

No obligation to give any citizen information –

- ✓ that would prejudicially affect the sovereignty, integrity, security, scientific or economic interest and relation with a foreign state
- ✓ that would lead to the commission of an offence
- ✓ whose release is forbidden by a court or tribunal or if disclosure might constitute contempt of court
- ✓ Whose disclosure may lead to breach of privileges of Parliament or State Legislatures
- ✓ whose release is likely to impede investigation or prosecution process
- ✓ from foreign govt. received in confidence
- ✓ if it is available to a person in his fiduciary relationship – except in public interest





What is not open ?

(Sec. 8)

Information –

- ✓ whose disclosure may endanger life and safety of a person
- ✓ such as commercial and trade secrets, IPRs etc. except in public interest
- ✓ if it is about source of information or assistance given in confidence for law enforcement or security purposes
- ✓ of a personal and private nature unless required in the larger public interest except in public interest
- ✓ Cabinet papers including deliberations of Council of Ministers, Secretaries and other Officers

(But decisions of Council of Ministers and materials based on which they are taken must be made public after the decision is taken and the matter is completely over)





Guiding principles for disclosure

- Information which cannot be denied to Parliament or Legislature of a State shall not be denied to any person

[Sec. 8(1)]

- **All exemptions subject to public interest over ride**

- access must be allowed if public interest outweighs harm to the public authority – to be decided by PIO or appellate body

[Sec. 8(2)]

- **Partial Disclosure**

- Entire file/record is not exempt even if it contains exempt information. Non-exempt portions may be released after severing exempt parts

[Sec. 10(1)]





Guiding principles for disclosure

➤ Time bound disclosure

- All information about any event, occurrence or matter must be given after 20 years

Except...

- information relating to sovereignty, security, integrity, scientific and economic interest of the State
- information that may lead to commission of an offence
- Cabinet papers and records of deliberations of Council of Ministers , Secretaries and other officers
- information that may lead to breach of privileges of Parliament and State Legislatures

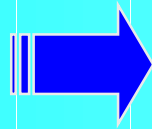




Competent Authority &

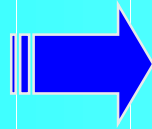
Public Authority

Competent Authority



- ❑ Speaker Lok Sabha / Vidhana Sabha
- ❑ Chairman of the Rajya Sabha / Legislative Council
- ❑ Supreme Court and High Courts – Chief Justices
- ❑ President of India or the Governor for all other authorities created by or under the Constitution
- ❑ For UTs – Administrator (Lt. Governor)
- ❖ Any body constituted under the Constitution or law made by Parliament / State Legislature
- ❖ Any body constituted by notification issued by Central /State Govts.

Public Authority



- ❖ Any other body owned or controlled by the Central / State Govts.

[Sec. 2]





Public Authority

Duty of Proactive Disclosure

Every Public Authority must publish these on a regular basis -

- ✓ Particulars of its organisation, duties and functions
- ✓ Powers and duties of its officers and employees
- ✓ Procedure to be followed in its decision-making process, including channels of supervision and accountability
- ✓ Norms set out by it for discharge of its functions
- ✓ Information about rules, regulations, instructions, manuals & records used by its employees for discharging its functions
- ✓ Statement of the categories of documents held by it or under its control
- ✓ Details of any arrangement for consultation or representation by members of public in relation to policy formulation and implementation

(Comes into force with immediate effect)

[Sec. 4]





Public Authority

Duty of Proactive Disclosure

Every Public Authority must publish these on a regular basis -

- ✓ List of boards, councils committees and other bodies consisting of 2 or more persons for getting advice including whether their meetings are open to the public or if minutes of meetings are accessible to them
- ✓ Directory of its officers and employees and monthly salary received including the system of compensation as provided in its regulations
- ✓ Budget allocated to each of its agencies, indicating particulars of all plans, proposed expenditure and reports of disbursements
- ✓ Details of implementation of subsidy programmes including the amounts allocated, the beneficiaries and other details
- ✓ Details of any concessions, permits or authorisations granted
- ✓ Details of information held by it which is in electronic form

(Comes into force with immediate effect)

[Sec. 4]





Public Information Officer (PIO)

As soon as the RTI Bill is enacted-

PIOs must be designated in each Public Authority at the level of its administrative units or offices under it and

Asst. PIOs must be designated at sub-divisional or sub-district level

Duties

- ✓ Accept requests and give information within time limit
- ✓ Assist those who cannot read and write to fill up application
- ✓ Give information in the format requested as far as possible
- ✓ If granting partial access give reasons why and the materials on the basis of which this decision was taken
- ✓ If information is received from third party (includes any other public authority) then give them 10 days to file objections
- ✓ If refusing to give information, give reasons in writing and also inform who is the Appellate Authority and time limit for filing appeals





Application Process

[Sec. 6 & 7]

- ❖ **Apply in person or electronically** → request in English or local official language
- ❖ **Time limit for giving information** → 30 days
- ❖ **If information concerns life and liberty of a person** → must be given within 48 hrs
- ❖ **If information is given by third party then invite objections if any** → add 10 extra days
- ❖ **No action on application for 30 days** → deemed refusal

(Reasons for seeking information shall not be asked)





Fees payable

- ❖ **Application fees to be prescribed by appropriate Govt.**
- ❖ **Must be reasonable. No fee for **B**_{elow} **P**_{overty} **L**_{ine} applicant**
- ❖ **Cost of giving information may be charged on the requestor**
(Details of fees and how the figure was arrived at must be given in writing)
- ❖ **Requestor may seek review of the fees from the Appellate Authority if it is unreasonable**
- ❖ **Time between date of dispatch of intimation about fees and actual payment excluded while calculating 30 day time limit**
- ❖ **If information is not given within the time limit it must be given free of cost**





Appellate Authority (AA)

[Sec. 12-19]

First Appeal (Internal)



to the officer immediately senior to the PIO in the concerned public authority
(within 30 days from the date of refusal letter but delay may be condoned if sufficient cause is shown)

Time limit = 30 days

Second appeal (External)



to the Central / State Information Commission

(within 90 days from the date of decision of first AA but delay may be condoned if sufficient cause is shown)

No time limit for CIC/SIC to decide on appeals

Decision of CIC/SIC is binding

Burden of proof lies on PIO for justifying denial of information

Appeal against IC's decision can be filed in High Court but not lower courts





Central Information Commission

[Sec. 12-14]

- ❖ **1 Chief Information Commissioner (5 yr term) and max. 10 Information Commissioners (ICs) (one 5 yr term)**
- ❖ **Central Information Commission to be based in Delhi**
- ❖ **Chief Information Commissioner to be in Delhi but ICs could be based in other parts**
- ❖ **Commission will be independent of Govt. control**
- ❖ **CIC and ICs to be appointed by President with immediate effect**
- ❖ **Names recommended by committee - PM (Chair), Leader of Opposition in the Lok Sabha and 1 Cabinet Minister nominated by PM**





Central Information Commission

[Sec. 12-14]

- ❖ CIC's salary equal to Chief Election Commissioner's
- ❖ IC's salary equal to Election Commissioner's
- ❖ Candidate should be eminent person in public life with knowledge and experience in law, science, technology, social service, management, journalism, mass media or administration and governance
- ❖ CIC and retiring ICs will be eligible for appointment to any other public office
- ❖ Can be removed after Presidential reference to Supreme Court for misbehaviour and incapacity
 - misbehaviour = profiting from govt. or private contract during term
- ❖ President can remove without reference to SC for –
 - insolvency, conviction of offence for moral turpitude; taking up paid job outside office during term; infirmity of body or mind or having acquired financial or other interest detrimental to functioning in CIC





State Information Commission

[Sec. 15-17]

- ❖ 1 State Chief Information Commissioner (5 yr term) and max. 10 State Information Commissioners (SICs) (one 5 yr term)
- ❖ State Information Commission could be in any part of the State – to be decided by the States
- ❖ Commission will be independent of State Govt. control
- ❖ SCIC and SICs to be appointed by Governor with immediate effect
- ❖ Names recommended by committee - CM (Chair), Leader of Opposition in the Vidhan Sabha and 1 Cabinet Minister nominated by CM
- ❖ Similar powers and functions as Central Information Commission





State Information Commission

[Sec. 15-17]

- ❖ SCIC's salary equal to Election Commissioner's
- ❖ State Information Commissioner's salary equal to State Chief Secretary's
- ❖ Candidate should be eminent person in public life with knowledge and experience in law, science, technology, social service, management, journalism, mass media or administration and governance
- ❖ SCIC and retiring SICs will be eligible for appointment to any other public office
- ❖ Can be removed after Governor's reference to Supreme Court for misbehaviour and incapacity
 - misbehaviour = profiting from govt. or private contract during term
- ❖ Governor can remove without reference to SC for –
 - insolvency, conviction of offence for moral turpitude; taking up paid job outside office during term; infirmity of body or mind or having acquired financial or other interest detrimental to functioning in CIC





Information Commission (Central and State)

Powers & Functions

❖ **Duty to receive complaints –**

- ✓ If requests cannot be filed because PIO is not appointed
- ✓ When first AA upholds PIO's decision of refusal
- ✓ If there is no response on request within time limit
- ✓ If requestor thinks fees charged are unreasonable
- ✓ If requestor thinks information given by PIO is incomplete, false or misleading
- ✓ Any other matter relating to obtaining information under this law

❖ **ICs have powers of Civil Court to conduct inquiry**

All records (including those covered by exemptions) must be given to IC during inquiry for examination

[Sec. 18]





Information Commission (Central and State)

- ❖ **Power to secure compliance from Public Authority includes -**
 - ✓ To appoint PIO in a Public Authority if none exists
 - ✓ Require Public Authority to compensate for any loss suffered by requestor due to unreasonable denial
 - ✓ Seek annual report from Public Authority of compliance with this law
 - ✓ Get the Public Authority to publish all information it is required to publish under this law
 - ✓ Enhance training provisions for officials on RTI
 - ✓ Get Public Authority to make necessary changes to records, management, maintenance and destruction procedures
 - ✓ Impose penalties as stipulated in this law

ICs to submit annual report to Parliament / Vidhan Sabha through Central / State Govt. about its work and implementation of this law





Third Party

[Sec. 2&11]

- A person other than the person making a request for information and includes a public authority
- If information requested is given by third party and treated as confidential by the third party then PIO must give it written notice inviting objections
- Third party must be given notice within 5 days of receiving information request
- Third party may give verbal or written submissions to PIO within 10 days of receiving notice
- Third party can appeal to First Appeal body within 30 days and to IC within 90 days





Who is not covered?

[Sec. 24(1) and Schedule 2]

- IB & RAW
- Directorate of Revenue Intelligence
- Central Economic Intelligence Bureau
- Directorate of Enforcement
- Narcotics Control Bureau
- Aviation Research Centre
- Special Frontier Force
- CRPF, ITBP, CISF, NSG
- Special Service Bureau
- Assam Rifles
- Special Branch (CID) Andaman and Nicobar
- Crime Branch (CID) Dadra and Nagar Haveli
- Special Branch Lakshadweep Police

and any other intelligence or security organisation established by State govts.

Matters relating to corruption and human rights violations covered by law **must be given**

Information can be given only if concerned IC approves
Time limit – 45 days





Penalty Provisions

[Sec. 20-21]

❖ **IC can penalise PIO Rs. 250/- per day up to a maximum of Rs. 25,000/- for -**

- Refusal to receive application
- Not furnishing of information within time limit
- Malafidely denying information
- Knowingly giving incorrect, incomplete, misleading information
- Knowingly giving incorrect information
- Destroying information which was the subject of request
- Obstructing furnishing of information in any manner

**Without
reasonable
cause**

**For persistent violation
of the law IC can
recommend disciplinary
action**





Public Authority – Other Duties

Every Public Authority must –

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





Other Duties of Central / State Govts.

Subject to availability of resources govts. must -

- ✓ Develop **educational programmes** for the public especially for the **disadvantaged communities** to exercise their RTI
- ✓ Encourage public authorities to participate in the development and organisation of these programmes
- ✓ **Train** PIOs and produce relevant **training materials** for them
- ✓ Promote timely and effective dissemination of **accurate information** about the **activities** of the public authorities
- ✓ Within 18 months compile a **User Guide** in the official language for the benefit of citizens

