

BACKGROUNDER FOR CIVIL SOCIETY ON FILE NOTINGS

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THE PROBLEM / BACKGROUND: The Right to Information Act was enacted by the Indian Parliament in May 2005. It got the Presidential assent in June and the Act came into force on October 12 last year. It provided a historic opportunity for citizens in India to ask for information that were hitherto held from them for a long time. The issue of file notings — notes that detail the reason bureaucratic decisions are made — has been a bone of contention ever since the legislation was passed. No sooner was the Act passed in Parliament, the Department of Personnel and Training (the nodal agency for the implementation) of the act, had declared on its website that file notings were not covered by the Right to Information Act, 2005. Notwithstanding the united opposition by civil society and the media on this issue, in December, 2005, the DOPT was instructed by the Prime Minister to change rules so that disclosure pertaining to file notings could be disclosed only if it was related to social and development issues.

The controversy over file notings was settled by a decision of the Central Information Commission (CIC) that declared in two of its ruling, this year that file notings clearly fall within the purview of the definition of the terms 'information' and 'record' and has recently issued the Department a show cause notice to the DOPT for refusing to take its own interpretation off the website. In July 20, 2006, the cabinet decided to amend the Right to Information Act, 2005 that would put file noting outside the preview of the Act causing much furor amongst civil society and media at large. The press statement from the Prime Minister's Office on 26th July did seek to clarify that "Government has remained committed to the principles of greater transparency and accountability in the public decision-making process". Nevertheless, it is to be noted that in the absence of availability of the full text of the proposed amendments there is room for suspicion about the scope and intention of cabinet approved amendments. The press note also reiterates that it was only clarifying that "the Union Cabinet had in fact approved last week an amendment to section 2 (i) (a) of the Act that specifically provides that file notings of all plans, schemes and programmes of the Government that relate to development and social issues shall be disclosed." **BUT WHY CLARIFY WHAT WAS NEVER IN DOUBT?**

WHAT IS FILE NOTINGS:

- At the outset, we must first consider the definition of the term 'information' under the RTI Act. Section 2(f) of the RTI Act states that *"information" means any material in any form, including records, documents, memos, emails, 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.* This definition of the term information is very wide. In order to determine whether 'file notings' fall within the ambit of 'information', an understanding of the legal connotation of certain terms like 'record', 'document', 'file', and 'opinion' is essential. The nature of a file noting comes within the ambit of opinion, advice, reports, and papers.
- The definition of 'information' under Section 2(f) the RTI Act includes opinion. The term 'opinion' means something more than mere retailing of gossip or of hearsay; it means judgment of belief, that is, a belief or a conviction resulting from what one thinks on a particular question. The belief or conviction may manifest itself in conduct or behaviour, which indicates the existence of the belief or opinion. Therefore, file notings may be construed as an expression of opinion by government officials with regard to any matter under their consideration and therefore in the context of the RTI Act, should be treated as accessible information.
- The term 'information' has been very widely interpreted and has not been exhaustively defined under the RTI Act. File notings can therefore be interpreted to clearly constitute 'information' in the form of records, documents, or opinions.
- Further, the exemptions laid down in Section 8 of the RTI Act also do not expressly permit the exclusion of file notings. Therefore, the demand for a blanket exemption on disclosure of file notings as suggested by government officers is not legally tenable under the provisions of the RTI Act.
- It is therefore clear that the legislative attempt has been to interpret the term 'information' broadly, and specifically to cover types of information, which some authorities seek to exclude from the purview of the RTI Act such as file notings. The objective of the RTI Act is securing access to information under the control of public authorities, by citizens in order to promote transparency and accountability in the working of every public authority and control corruption. The disclosure of file notings will therefore serve as a further check and discourage public officials to involve in corrupt practices.
- It is worthwhile to review the international best practices followed with regard to access of information. A comparative study of the Freedom of Information Acts of some of the countries like United Kingdom, Australia and Canada, from which we have drawn upon heavily, indicate that the term 'information' has been interpreted very broadly, with emphasis on maximum disclosures and minimum exemptions. No special exemptions have been made with regard to disclosure of file notings in any of these Acts.

WHY FILE NOTINGS ARE IMPORTANT?

- The underlying rationale why file notings are important pieces of information and should be disclosed is because it allows people to know about the way decisions are taken and that the ladder of decision-making is adhered to. And that only those people authorized to make decisions are taking the decisions. That decision made against rationale that people willing to stand up to.
- Because it indicates the movement of the file and who have had access to it;
- The chronology of the decision making process;
- The rationale behind the decision finally arrived at;
- There are rules that govern the decision making process. These are laid down in various manuals regulations and guidelines. They include the hierarchy through which a decision making process must start and where it must finish. There is no room for the extraneous interloper. Yet there are many who may influence the process because they are powerful or have vested interest. File notings indicate for sure where the file has been and who has had a hand in the decision-making. Ensuring that file notings may be scrutinised at some future date means that those not in the line of decision-making will hesitate to call for the file or make notes on it. This will assist the honest bureaucrats who are trying to do their job without extraneous influence;
- Because it is a way of checking that only such considerations have been taken into account, which should have, been taken into account and not any other. Arbitrary decision-making means that a) things that should not have been taken into consideration have been taken into consideration, or that b) things that should have been taken into consideration have been left out. Decisions are also considered to be arbitrary when decision maker is not at arms length from the decision. If the decision maker or the person who is giving advice gives it when he has an interest in the outcome then there is bias and that is revealed in the file notings. It is imperative that things that should not be hidden when giving advice are noted in the file or revealed by the advice giver;
- Revelation of file notings means that government is bound to keep closely to the rules of business and the criteria set down;
- It leads to rules based governance rather than a patronage and discretion based governance;
- It means that there is less room for the exercise of discretions without justifications;
- It means there is much less possibility of rational decisions being overridden for expediency;
- Because written criteria would be the basis for judging whether the right decision had been arrived at rationally and all due diligence had been exercised;
- Exceptions would have to be justified in the public eye;
- File notings are the anatomy of governance. It is the X-ray through which the maladies of governance can be examined.
- If file notings are to be exempt from public knowledge, the present Act allows it under very proper circumstances. It does not allow blanket exemptions because something belongs to a category like cabinet papers but rather by virtue of its content. If the content is such that to reveal it would harm the public interest and retaining it would actually serve the public interest then file notings are exempt even under the present law.

APPEAL/PETITION/RECOMMENDATION/SUGGESTION

We therefore appeal to the civil society to undertake activities both at the national and at the state level to protest the retrograde decision by the Union Cabinet to amend the RTI Act as well through our activities stop the Government from its sinister design.

ACTIVITIES AT THE NATIONAL LEVEL:

- If you can please join us in for a Dharna in front of Jantar Mantar to protest against the retrograde amendment from 7-15th August
- The Media too has been roped/backgrounder has been sent more than 400 journalists all over the country to write/do a features story on the programme. Spread the message far and wide to your networks and contacts
- Join us for a Seminar/Meeting/Workshop at YMCA on 10 and 11, August, 2006.

ACTIVITIES AT THE STATE LEVEL

In case it is not possible for you to join the Dharna in Delhi for any reasons, you can still continue with your campaign in your state

- You can organise Dharna of like minded people/youth/students/media, civil society
- Liaison with and cultivate the media in your campaign (send the backgrounder for Journalists to your networks)
- Send a petition to PM/and other people listed below
- Send a petition to your Chief Minister and Governor
- Meet the Chief Minister and the Governor with your petition if its possible
- Get important and influential people in your city and state to speak on the issue

LIST OF RESOURCE PERSONS AND THEIR CONTACT DETAILS To WHOM YOU SHOULD SEND IN YOUR PETITION AT THE EARLIEST

Name	Office	Phone/Fax	E-Mail
President			presidentofindia@rb.nic.in
Dr. Manmohan Singh	PMO	Prime Minister's Office Room No. 152, South Block New Delhi – 110011 Fax: (011) 23016857/23019545	manmohans@sansad.nic.in
Smt Sonia Gandhi		Ph: 3012686, 3014161, 3014481 Fax: +91 11 23018651; 23794616	10janpath@vsnl.net , soniagandhi@sansad.nic.in
Sanjay Baru	Media Adviser- PMO	Ph: 2301 2312 Fax:2301 9545 2301 6857	Sanjaya_baru@hotmail.com
Shri Priyaranjan Dasmunsi	Minister for Information and Broadcasting and Minister for Parliamentary Affairs	Ph: 011 24653778, 24653895 Fax: (011) 24653727	
Suresh Pachauri	Minister of State-Ministry of Personnel, Public Grievances and Pension	Room No. 102, North Block New Delhi – 110001 Fax: (011) 23092716	pachouri@sansad.nic.in
H R Bharadwaj	Minister of Law and Justice	Ministry of Law and Justice Room No. 402, A – Wing Shastri Bhawan, Dr Rajendra Prasad Road New Delhi – 110001 Fax:(011) 23015223	lawminister.india@nic.in , hansrajb@sansad.nic.in
Pulok Chatterjee	Additional Secretary--PMO	Ph: 2301 2312 Fax:2301 9545; 2301 6857	
Rakesh Malhotra	DOPT		rakeshmalhotra@dpt.nic.in , usestb1@dpt.nic.in