

Dear all,

Many of you might have learnt from recent media reports that the Department of Personnel and Training of the Central Government has declared on its website that 'file notings' are not covered by the Right to Information Act, 2005 (see <http://www.persmin.nic.in/RTI/WelcomeRTI.htm>). This is in itself a diminution of the scope of terms like '**records**', '**opinions**' and '**advices**' which are covered under the definition of 'right to information' in Sec. 2. We have also learnt that preparations are being made to exempt 'file notings' from disclosure under the Act either by way of an amendment to the Act or through clarificatory orders which the Central Government is empowered to issue under Sec. 30.

It is of the utmost urgency that all activists, advocates and organisations working on RTI, transparency and accountability **take urgent action without delay to block this move to exempt file notings** before it reaches fruition. File notings contain details of the decision making process in any public matter – such as who said what and who rejected whose view and on what grounds before a decision was reached in government. By denying access to notings of officers, the citizens' right to information is not only severely restricted but the very purpose of the Act namely – "to promote transparency and accountability in the working of every public authority" is defeated.

If you believe it is important to thwart the exemption of file notings we urge you to write to all of the four persons mentioned below–

- 1) **Dr. Manmohan Singh**
Prime Minister of India
Prime Minister's Office
Room No. 152, South Block
New Delhi – 110011
Fax: (011) 23016857/23019545
Email: manmohans@sansad.nic.in

- 2) **Mr. Suresh Pachouri**
Minister of State for Personnel and Public Grievances
Ministry of Personnel, Public Grievances & Pension
Room No. 102, North Block
New Delhi – 110001
Fax: (011) 23092716
Email: pachouri@sansad.nic.in

- 3) **Mr. 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
Email: lawminister.india@nic.in, hansrajb@sansad.nic.in

- 4) **Smt. Sonia Gandhi**
Chairperson, National Advisory Council
2 Motilal Nehru Place, New Delhi - 110011
Fax: (011) 23018646
Email: 10janpath@vsnl.net, soniagandhi@sansad.nic.in

We have appended below a possible model of the protest letter that you might like to send to the above addresses against the move to exempt file notings. Or you may draft your own letter separately. **In either case we would be grateful if you would copy your letter to us by email at mandakini@humanrightsinitiative.org or by post to CHRI, B-117, First Floor, Sarvodaya Enclave, New Delhi – 110017.**

Please circulate this urgent-action-appeal widely amongst your own networks and urge your fellow-activists and concerned citizens to send similar letters to the Government.

Text of the protest letter:

Dear sir/madam,

Re: Exclusion of 'File Notings' from the Purview of the Right to Information Act 2005.

We are deeply disturbed to read reports of intensifying resistance to the fulsome implementation of the new Right to Information Act 2005 (RTI Act). We are most particularly concerned to hear that there are moves within Government to exclude 'file notings' from the purview of the Act.

File notings come firmly within the purview of the RTI Act. These notings, - unless they satisfy the criteria for exemptions under Sec. 8, which lay out the limited occasions on which information can be withheld, - must be made public on request. Even where these fall within the Sec. 8 criteria file notings can be made public where the greater public interest is served in disclosing the information. Moreover, the nature of file notings is inevitably that of advice, opinions, recommendations or suggestions etc and these are specifically covered by the definition of 'information'.

We have been given to understand that there is an argument that file notings are part of the deliberative process and therefore somehow can be removed from the purview of the Act. Sec. 4(1)(b) of the Act makes it mandatory for every public authority to publish amongst other things – "the procedure followed in the decision making process, including channels of supervision and accountability" and "the norms set by it for the discharge of its functions."

We would like to draw your attention to the fact that even Cabinet papers which are ordinarily exempt from disclosure, under Sec. 8(1)(i) of the Act are also subject to disclosure ultimately. The Act requires that not only these decisions be made public but the reasons and the material on the basis of which these decisions have been arrived at be made public after the matter is complete and over. Given this level of openness required of the Cabinet – the highest decision-making body in the

Executive – there is no justification for keeping out of public view file notings which contain, the reasons and their material basis in other matters, where decisions have been taken at levels lower than the Cabinet. There is nothing sacrosanct about these notings per se.

The notings penned by officers form an important and inseparable part of the 'record' and 'file' and the Act ensures citizens access to both the form and the contents of this decision-making process. It is our strong belief that to remove file notings from the definition of 'information' and 'record' or to provide some special protection to file notings would entirely destroy the legislative intent of the Act.

It has been reported that there is a widespread view within officialdom that disclosure of file notings would deter officers from recording their opinions freely and fairly on matters of public importance.

Both the Judiciary and Parliament are long used to functioning openly without any adverse effects and it is only the bureaucracy that presently functions under this unnecessary veil of secrecy. Amending the law to take away file notings from the public domain is a retrograde measure that will appease only that miniscule part of officialdom that stands to unduly benefit from such secrecy.

Exempting file notings would not only truncate the definition of the term 'file' mentioned in the Act but also irreparably damage the other important facets of the term 'information' such as 'opinions' and 'advices' contained in Sec. 2(f). Similarly exclusion of notings would completely nullify the operation and the import of Sec. 4(1)(c) and (d) which requires every public authority to proactively "publish all relevant facts while formulating policies or announcing the decisions to affected persons" and "provide reasons for its administrative or quasi-judicial decisions to affected persons." In short such an amendment would rend asunder the very core and spirit of the RTI Act.

Sec. 30 of the Act gives your Government the power to remove any difficulties that may arise in giving effect to the Act's provisions. This power is to be used to further the objectives of openness and transparency and remove hindrances and obstacles. It must be exercised consistently with the provisions of the Act and not in a manner that will defeat the very purpose of the law. Under Sec. 25(3)(g) of the Act, Ministries in your Government have the power to recommend amendments for enforcing the right to access information. Far from operationalising the right, any amendment to exclude file notings would only curtail this fundamental right. Such retrograde measures intended to curtail the citizen's right to access information are also against the mandate provided within the Act for amendment, clarification and reform.

Any support for a move to exclude file notings would in one stroke go back on the promise contained in your Government's Common Minimum Programme, that "the Right to Information Act would be made more progressive, participatory and meaningful." It will take us so far back that the legislative effort of the present Government will have been meaningless.

When the Act was being debated in Parliament it was stated, when resisting amendments, that the law would only be amended in light of experience. But even before the Act has become fully operational, Government is eager to pacify powerful

bureaucrat lobbies with retrograde amendments that sadly presage the fate of any administrative reforms which your Government says it is committed to.

We would urge you to allow the Act to stand as it is and let practical experience show how well it can serve the nation by: saving it billions in reduced corruption; ensuring better targeted development; and ensuring enhanced government performance. India is renowned the world over for the vigorous grassroots movement that fuelled efforts to make this law a reality. It would dishonour those very poor people, who have fought so hard and risked so much, to dilute it or put any obstacles in the way of its fullest implementation.

Respectfully Yours,

(Name and address of the sender)