

8 August 2005

Dear

Re: Right to Information Act 2005 - Clarifying the procedures for appointment of State Information Commissioners and establishment of the Commission

I am writing from the Commonwealth Human Rights Initiative (CHRI), New Delhi. I refer to my previous correspondence with you regarding implementation of the new Right to Information Act 2005 (RTI Act).

As you will be aware, the Act is set to come into force on 12 October 2005. One of the key sections of the Act which will need to be implemented prior to this date will be the establishment of a new State Information Commission, including the selection of Commissioners. We note for your information that the State Governments of Maharashtra and Karnataka have already begun the process of setting up and staffing the office of the State Information Commission. In Karnataka, the former Chief Secretary, Shri K K Mishra has recently been appointed as the State Information Commissioner.

As State Governments begin a similar process of setting up their State Information Commissioners, I wanted to bring your attention to s.15(2)(b) of the Act which states that "*The State Information Commission Shall Consist of...such number of State Information Commissioners, not exceeding ten, as may be deemed necessary.*" There have been some suggestions in the press that 10 Commissioners should be appointed by States as a priority, but s.15(2)(b) merely indicates that a Commission may be staffed with a *maximum* of 10 Information Commissioners. It does not REQUIRE all 10 Commissioners to be appointed. Notably, the Uttaranchal Government has already indicated its intention of appointing the Chief Information Commission and then only possibly one or two more Commissioners initially.

When deciding upon the number and choice of Information Commissioners that will be appointed by your Government, I would urge you to consider the following issues:

- **Appointment Procedures:** There is considerable concern within civil society that the office of the State Chief Information Commissioner and Information Commissioners will become a sinecure for retired bureaucrats. I would urge the State Government, while considering retired officials, to also equally consider appointing individuals from outside the civil service with a proven commitment to openness and transparency. This is expressly permitted under s.15(5) of the Act. This approach has shown success in many jurisdictions, for instance, in Scotland where the Information Commissioner formerly worked as the head of an NGO. The representation of the Commission should also give due representation to women and minority groups.
- **Expected Number of Appeals:** Ideally, before determining the staffing size of the Commission, an estimate should be made of the number of appeals the Commission will be expected to handle. Obviously, the number of

Commissioners appointed should be enough – but not more than is necessary – to handle the appeals in a timely, competent manner. What should be avoided though, is a scenario whereby ten Commissioners are appointed but they do not have enough work to do. This could result in the public perceiving the Commission as just another bloated public sector body which is wasting taxpayers' money.

- **Budget:** When determining the staffing complement of the Commission, I understand that the Government will also want to consider the budget available. Of course, as stated earlier, there should be no delay in disposing of appeals. However, to maximise the efficiency of the Commission, in the early days of the Act you may want to consider appointing less Commissioners but employing more qualified staff to support Commissioners to discharge their duties effectively. As the number of appeals grows, more Commissioners and more staff may be appointed to ensure that processing times remain limited to 30-45 days.
- **Staffing Support:** In order to ensure proper expertise is available to the Commission, consideration should be given to enabling the Commission to recruit specialist staff with particularly useful skills from outside the public service. This would reduce the amount of training necessary for Commission staff and would also strengthen the (perceived) independence of the Commission. The approach to staffing should be flexible, to ensure maximum access by the public, timely disposal of appeals and to keep costs within budget.

I would urge the your Government to consider these issues carefully when setting up the office of the State Information Commission and appointing its staff.

I would also like to take this opportunity to raise the issue of requiring a **time limit for disposal of appeals by the Information Commission**. The original RTI Bill 2004 tabled in Parliament in December 2004 required appeals to be disposed of within 30 days, with an extension of up to 15 days being permitted. The final Bill did not include this time limit. To ensure that the appeals regime works effectively and appeals are not simply allowed to languish unchecked, I encourage you to include a time limit for disposal of appeals to the Information Commission in the Rules that you promulgate under the Act.

If you would like to discuss these issues in further detail, please do not hesitate to contact me on (0)9810 199 745 or (011) 2685 0523 or via email at majadhun@vsnl.com and Mr. Venkatesh Nayak, Co-Coordinator, Right to Information Programme at venkatesh@humanrightsinitiative.org.

Kind regards



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Director