



## Commonwealth Human Rights Initiative

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New Delhi- 110001

12 July 2005

Maja Daruwala

*Director*

Dear Sirs:

### *Members*

T. Ananthachari

N.R. Madhava Menon

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Anu Aga

K. S Dhillon

### **Re: Right to Information – Request for exemption by the Central Vigilance Commission and Central Bureau of Investigations**

I am writing from the Commonwealth Human Rights Initiative (CHRI). CHRI's Right to Information Programme is dedicated to advocating for the right to information, as well as assisting governments to develop and implement effective RTI laws.

I understand from a report published in the Indian Express on 11 July 2005 "Info Law: CBI, CVC Say Keep Us Out", that the Central Vigilance Commission (CVC) and Central Bureau of Investigations (CBI) have written to the Government requesting immunity from coverage under the national Right to Information Act 2005, by exercising the power under s.24 (2) to include the CVC and CBI in the Second Schedule of the Act.

I would urge that such requests be rejected. On principle, the CVC and CBI should not be exempted from the coverage of the law. Both are public bodies working in the public interest funded by public money. In accordance with the spirit of open government which the new RTI Act 2005 seeks to promote, they therefore need to be open to public scrutiny.

More specifically, reports indicate that the CVC feels that as a statutory body it does not fall under the category of a "public body" and is somehow exempt. This is an entirely incorrect assumption. All bodies that are created under statute are specifically defined by the Act as "public authorities" and are therefore covered by the Act. In any case, s.24 (2) which permits the exemption of bodies from the Act can only be exercised in relation to "intelligence or security agencies" – a criteria which the CVC does not meet.

Both the CBI and the CVC may genuinely fear that the application of the RTI Act 2005 may jeopardise their investigations. However, it is crucial to note that the Act already includes sufficient exemptions clauses at s.8 (1) to protect genuinely sensitive information. Specifically, both the CBI and CVC are not under an obligation to provide:

- *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 (Clause 8 (1)(g))*
- *Information which would impede the process of investigation or apprehension or prosecution of offenders (Clause 8(1)(h))*

Additionally, the CBI is not required to disclose:

- *Information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security...interests of the State...or lead to incitement of an offence (Clause 8(1)(a))*

It is important to note that under Schedule 2 of the Act, even where security and intelligence agencies are kept outside the purview of the RTI Act, they are still duty bound to disclose information concerning allegations of corruption or violation of human rights committed in the course of their actions.

The CBI and the CVC are set up with the specific purpose of investigating cases of corruption in high places of power and their claim to immunity under the RTI Act is unreasonable. Furthermore, these agencies perform a number of routine functions that are characteristic of every public authority which involves spending public funds and decision-making that affects not only its own officers but also the public at large. These categories of information, by the very logic and purpose behind the RTI Act, should be made available to the public suo motu or on request. There is simply no case for entertaining the requests of the CBI, the CVC or any other agencies that may claim immunity in future owing to the sensitive nature of the work that they are mandated to do. I would urge you not to recommend to Parliament expansion of Schedule 2.

The national Right to Information Act 2005 is a key piece of legislation which promises to usher in a new era of openness, transparency and accountability in government. Considering that the sensitive information which the CVC and CBI hold is already protected from disclosure, I would urge you not to accede to their requests to be exempted from the Act. As anti-corruption bodies, it in fact behoves these agencies to set a positive example for other agencies and bureaucrats by taking a lead in implementing the RTI Act 2005 promptly and effectively.

If you would like more information on the exemption clauses or any other specific points of the law or if we can be of assistance to you in any other way please do not hesitate to contact me on (0) 9810 199 745 or (011) 2685 0523 or via email at [majadhun@vsnl.com](mailto:majadhun@vsnl.com) or Ms Charmaine Rodrigues, Co-Coordinator - RTI Programme at those numbers or [charmaine@humanrightsinitiative.org](mailto:charmaine@humanrightsinitiative.org).

Sincerely,



Maja Daruwala  
Director

- Cc: Mr P Shankar, Central Vigilance Commissioner, Central Vigilance Commission, Satarkata Bhawan, A-Block, GPO Complex, INA, New Delhi –110023.
- Mr U S Mishra, Director, Central Bureau of Investigations, CBI Headquarters, CGO Complex, Lodhi Road, New Delhi – 110003.
  - Shri. S. Regunathan, Chief Secretary, Government of the National Capital Territory of Delhi, Indraprastha Sachivalaya, ITO, New Delhi – 110011.
  - Smt. Sonia Gandhi, Chairperson, National Advisory Council. 10 Janpath, New Delhi – 110011.
  - Shri. Arun Bhatnagar, Secretary, National Advisory Council (for circulation to all NAC members), 2 Motilal Nehru Place, New Delhi – 110011.