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Secretary for Legislation
Legislative Department
Ministry of Law and Justice
Room # 405, A Wing, Shastri Bhawan,
Dr Rajendra Prasad Road
New Delhi- 110001

2 August 2005

Dear Sirs,

Re: Clarification of section 5(2) of the Right to Information Act 2005-re appointment of Assistant Public Information Officers.

I am writing to draw your attention to s.5(2) of the recently enacted national Right to Information Act 2005 and to urge you to issue a clarification to all State Governments regarding the appointment of Assistant Public Information Officers (APIOs).

Section 5(2) currently reads:

“Without prejudice to the provisions of sub-section (1), **every public authority shall designate an officer, within one hundred days of the enactment of this Act, at each sub-divisional level or other sub-district level as a Central Assistant Public Information Officer or a State Assistant Public Information Officer**, as the case may be, to receive the applications for information or appeals under this Act for forwarding the same forthwith to the Central Public Information Officer or the State Public Information Officer or senior officer specified under sub-section (1) of section 19 or the Central Information Commission or the State Information Commission as the case may be...”

However, this wording does not reflect the original intention of the National Advisory Committee (NAC), which originally suggested a provision which envisaged that the APIO would Act as a Clearing House for ALL applications to ANY public authority. It is my understanding that it was not the NAC's intention that every public authority would have to designate an APIO. I refer in this context to the original provisions proposed by the NAC (s.5(1)(a)):

“**An officer at each sub-divisional level or other appropriate sub-district level, shall be designated a Public Information Officer, within three months of this act coming into force, for the purposes of this Act.** He/she shall receive all requests for information, and appeals, both under the State and Central Acts, and pass them on to a designated authority for onward transmission to the relevant department/agency.

It was for this reason that s.5(1)(b) of the NAC draft also allowed for an additional period of five days for processing applications submitted to APIOs – because this would allow time for the application to be moved from the APIO to the relevant public authority. However, if the APIO is already an official from the public authority then there is no need for this additional time to be permitted. Presumably, the APIO under the NAC draft would be appointed by the Nodal Agency at the sub-divisional and sub-district level and there would be one APIO for each sub-division or sub-district, who would receive all applications or appeals and forward these to the relevant PIO at the department level.

This approach is preferable to the scenario of each public authority appointing APIOs for every department at the sub-divisional and/or sub-district level as is envisaged under the current provision in the Act. This approach will be incredibly complicated and burdensome on many public authorities.

This matter needs urgent attention and clarification as State Governments begin the process of identifying and appointing PIOs and APIOs in their departments. I would urge the Department of Personnel and Training to issue a circular to all State Governments clarifying the implementation of s.5(2) of the current Act.

If you would like to discuss this letter 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 or Ms Charmaine Rodrigues, Co-Coordinator - RTI Programme at those numbers or charmaine@humanrightsinitiative.org.

Sincerely,



Maja Daruwala
Director

- Cc: Shri Manmohan Singh, Prime Minister of India, Room No 152, South Block,
New Delhi – 110001
- Smt. Sonia Gandhi, Chairperson, National Advisory Council, 10 Janpath, New Delhi – 110011
 - Mr. Arun Bhatnagar, Secretary, National Advisory Council, 2 Motilal Nehru Place – 110001 (for distribution to all NAC members)