

Shri A N Tiwari
Secretary for Personnel
Ministry of Personnel,
Public Grievances and
Pensions
Government of Delhi
Gate 4, North Block
New Delhi- 110001

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

Shri T Jacob
Joint Secretary
Department of Personnel
and Training
Room No. 111, North
Block
New Delhi- 110 001

Date: 09/08/2005

Dear Sirs,

Re: Right to Information Act 2005: clarification re application of fees and exemptions provisions

I am writing in continuation of the discussion my colleague Mr Venkatesh Nayak has had with Mr. T Jacob, Jt. Secy. Department of Personnel and Training about certain key provisions of the *Right to Information Act, 2005*. The sections dealing with fees and public interest require more clarification in terms of their operation in practical terms. I would urge the Government to issue a clarificatory Government Order explaining the procedure that needs to be adopted while giving effect to these sections.

Public Interest and Exemptions

Section 8(2) of the RTI Act provides for a public interest override even where information requested is covered by one or more of the exemptions in s8 (1). Section 8(2) explicitly provides that the decision making power as to what is in the public interest vests with the "**public authority**". I have quoted the text below –

*"Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions permissible in accordance with sub-section (1), a **public authority** may allow access to information, if public interest in disclosure outweighs the harm to the protected interests."*

However in three categories of exempt information listed in Sec. 8(1), three more entities namely, the **competent authority**, the **Public Information Officer** and the **appellate authority** have been given specific powers to determine whether information needs to be disclosed in public interest. I have quoted below the relevant provisions–

*"8(1)(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the **competent authority** is satisfied that larger public interest warrants the disclosure of such information"*

*"8(1)(e) information available to a person in his fiduciary relationship, unless the **competent authority** is satisfied that the larger public interest warrants the disclosure of such information"*

*“8(1)(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual unless the **Central Public Information Officer** or the **State Public Information Officer** or the **appellate authority**, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information...”*

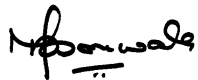
- PIOs and Appellate Authorities will need clarification as to how Sec. 8(2) will be reconciled with Sec. 8(1)(d), (e) and (j) as different entities have been provided concurrent jurisdiction on the same subject. It is also necessary to clarify whether the release of information can be secured upon the order of the Departmental Appellate Authority or the appropriate Information Commission based on the merits of the case or this has to wait until the competent authority concurs with their decision. Furthermore it needs to be clarified whether the PIO has the power to communicate with the appropriate competent authority seeking permission for release of the information rather than issue a rejection order outright. If yes will the deadline of 30 days continue to apply to this case considering the usual delays that may occur while in taking decisions on such controversial matters.

Fees for BPL requestors

Another point that needs clarification is whether a requestor belonging to the BPL category is required to pay additional fees towards the cost of providing information as may be prescribed by the PIO under Sec. 7(3).

If you would like to discuss these issues and/or the Report 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. If you would like additional copies of the report please contact Mandakini Devasher at the same numbers or via email at mandakini@humanrightsinitiative.org.

Kind regards,



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 New Delhi - 110001 (for distribution to NAC members)