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2 August 2005

Dear Sirs

Re: Implementing the Right to Information: Need for clarification of key issues

I refer to the letter sent by Mr. Venkatesh Nayak, CHRI to Mr. Jacob, Joint Secretary, DoPT, dated 25 July 2005 regarding the two-day State Level workshop on Implementing the Right to Information organised by the Uttaranchal Government in collaboration with CHRI and our letter dated 27 July 2005 enclosing the Workshop Report.

Having had more discussions with activists and officials in recent days, I wanted to write again to draw a few specific issues from the Report to your attention. You will see from the Report that Central Government clarification was requested on a number of issues, to ensure consistent interpretation, implementation and application of the law.

Most notably, I would urge the Government to address as an urgent priority:

- **Section 4 “Manuals”:** There was considerable confusion and concern amongst officials regarding the requirement to produce 17 “manuals” under s.4(1), as advised by the DoPT in its circular dated 26 May 2005 to all Chief Secretaries. I would suggest that the reference to “manuals” does not properly reflect the objectives of s. 4 proactive disclosure – which is simply to routinely publish and disseminate key information *“in a manner and form which is easily accessible and understood by the public”*.

There is no need to produce manuals per se, but rather every public authority should consider each s.4 requirement separately and determine what form of publication would most effectively ensure that the information reaches and is understood by the public. I would urge the DoPT to clarify this issue with State Governments urgently, as current advice may prove burdensome, difficult to implement and unnecessary.

- **Production of a Process Manual for PIOs and Appellate Authorities, including Guidance Notes on Exemptions:** There was considerable discussion around how to apply various provisions of the Act consistently, most notably the exemption clauses in s. 8 of the Act. I would encourage the Government to develop detailed process manuals and guidance notes which can provide practical guidance to officials on how to implement the Act, to ensure consistent application of the law in all jurisdictions. These model manuals/guidelines could then be adapted by State Governments as necessary.

- **Establishment of State Information Commissions:** The Uttaranchal Government indicated that the Centre would need to provide financial resources to support the establishment of the State Information Commission. In this context, it would be useful for the Central Government to send out a circular clarifying that State Governments are not under a legal obligation to appoint all 10 Commissioners permitted in accordance with s.15(2)(b). To do so, would have huge financial implications in terms of salaries. The number of Commissioners should be in line with the number of appeals that are anticipated.

Clarification was also needed regarding how the Information Commission will dispose of appeals in practice. Is it anticipated that each Commissioner will make decisions separately or will the Commissioners sit together as a Commission and decide by consensus or majority? This confusion has been exacerbated because the original 2004 Bill referred to one Commissioner with Deputies, whereas the amended 2005 Bill refers to a Commission with multiple Commissioners. International practice demonstrates that Information Commissioners and Information Commissions work differently.

In light of these and other concerns raised by senior government officials, I would urge the DoPT to consider sending out circulars to State Governments clarifying some of ambiguous and/or confusing provisions of the Act. In this context, I hope that you find the Workshop Report useful and informative in identifying the concerns of government officials preparing to implement the Act.

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
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