

Smt Sonia Gandhi
Chairperson
National Advisory Council
2 Motilal Nehru Place
New Delhi – 110011

13 October 2005

Dear Mrs Gandhi

Re: Exclusion of 'File Notings' from the Purview of the Right to Information Act 2005.

I am writing to you deeply disturbed by reports of intensifying resistance to the fulsome implementation of the new Right to Information Act 2005 (RTI Act). We are most particularly concerned to hear that there are moves within Government to exclude 'file notings' from the purview of the Act. The latest news report about the operationalisation of the RTI Act published in the Times of India dated 13 October 2005 states that "file notings by bureaucrats wont be made public". This position is based on the FAQs about the RTI Act publicized on the website of the Department of Personnel and Training.

File notings come firmly within the purview of the RTI Act. These notings, - unless they satisfy the criteria for exemptions under Sec. 8, which lay out the limited occasions on which information can be withheld, - must be made public on request. Even where these fall within the Sec. 8 criteria file notings can be made public where the greater interest is served in disclosing the information. Moreover, the nature of file notings is inevitably that of advice, opinions, recommendations or suggestions etc and these are specifically covered by the definition of 'information'.

We have been given to understand that there is an argument that file notings are part of the deliberative process and therefore somehow can be removed from the purview of the Act. Sec. 4(1)(b) of the Act makes it mandatory for every public authority to publish amongst other things – "the procedure followed in the decision making process, including channels of supervision and accountability" and "the norms set by it for the discharge of its functions." Madam, I would like to draw your attention to the fact that even Cabinet papers which are exempt from disclosure, under Sec. 8(1)(i) of the Act are also ultimately subject to disclosure. The Act requires that not only these decisions be made public but the reasons and the material on the basis of which these decisions have been arrived at be made public after the matter is complete and over. Given this level of openness required of the Cabinet – the highest decision-making body in the Executive – there is no justification for keeping out of public view file notings which contain, the reasons and their material basis in other matters, where decisions have been taken at levels lower than the Cabinet. There is nothing sacrosanct about these notings per se.

The notings penned by officers form an important and inseparable part of the 'record' and 'file' and the Act ensures citizens access to both the form and the contents of this decision-making process. It is our strong belief that to remove file

notings from the definition of 'information' and 'record' or to provide some special protection to file notings would entirely destroy the legislative intent of the Act.

It has been reported that there is a widespread view within officialdom that disclosure of file notings would deter officers from recording their opinions freely and fairly on matters of public importance. In particular, the Central Department of Personnel and Training on its website has indicated that 'file notings' are not included under the definition of 'information' under the Act. This view has no legal foundation and is in our opinion misleading officials in their duty.

Based on our own experience of training and interacting with close to 1750 officers (till date) from the Central and State Governments, it has become apparent to us that there is a large majority of officers who are not in favour of file notings being exempt from the purview of the Act. Everywhere, a majority of these officers asserted that disclosure of file notings would help end arbitrariness and extraneous considerations that are known to influence the decision-making process within government in many cases. We would urge you to listen to these voices that do not perhaps reach you at your high level.

Both the Judiciary and Parliament are long used to functioning openly without any adverse effects and it is only the bureaucracy that presently functions under this unnecessary veil of secrecy. Amending the law to take away file notings from the public domain is a retrograde measure that will appease only that miniscule part of officialdom that stands to unduly benefit from such secrecy.

Exempting file notings would not only truncate the definition of the term 'file' mentioned in the Act but also irreparably damage the other important facets of the term 'information' such as 'opinions' and 'advice' contained in Sec. 2(f). Similarly exclusion of notings would completely nullify the operation and the import of Sec. 4(1)(c) and (d) which requires every public authority to proactively "publish all relevant facts while formulating policies or announcing the decisions to affected persons" and "provide reasons for its administrative or quasi-judicial decisions to affected persons." In short such an amendment would rend asunder the very core and spirit of the RTI Act.

Sec. 30 of the Act gives the Central Government the power to remove any difficulties that may arise in giving effect to the Act's provisions. This power is to be used to further the objectives of openness and transparency and remove hindrances and obstacles. It must be exercised consistently with the provisions of the Act and not in a manner that will defeat the very purpose of the law. Under Sec. 25(3)(g) of the Act, Ministries have the power to recommend amendments for enforcing the right to access information. Far from operationalising the right, any amendment to exclude file notings would only curtail this fundamental right. Such retrograde measures intended to curtail the citizen's right to access information are also against the mandate provided within the Act for amendment, clarification and reform.

Madam, any support for a move to exclude file notings would in one stroke go back on the promise contained in the UPA's Common Minimum Programme, that "the Right to Information Act would be made more progressive, participatory and

meaningful.” It will take us so far back that the legislative effort of the present Government will have been meaningless.

When the Act was being debated in parliament it was stated, when resisting amendments, that the law would only be amended in light of experience. But even before the Act has become fully operational, Government is eager to pacify powerful bureaucrat lobbies with retrograde amendments that sadly presage the fate of any administrative reforms which the UPA says it is committed to.

Madam, during the debates on the draft Right to Information Bill within the National Advisory Council, you have been very supportive of including the most progressive provisions so as to enable maximum disclosure of information to citizens. Similarly, through timely interventions you have discouraged dilution of important provisions attempted by a section of the bureaucracy. It has become essential for you to make another positive intervention on the issue of keeping file notings within the purview of the RTI Act.

We would urge you to allow the Act to stand as it is and let practical experience show how well it can serve the nation by: saving it billions in reduced corruption; ensuring better targeted development; and ensuring enhanced government performance. India is renowned the world over for the vigorous grassroots movement that fuelled efforts to make this law a reality. It would dishonour those very poor people, who have fought so hard and risked so much, to dilute it or put any obstacles in the way of its fullest implementation. Like them, we too are looking to your leadership to protect the rights guaranteed by this Act.

We are happy to provide any clarification on this issue or discuss this further with your office and the Government. We would be deeply appreciative of an opportunity to do so

Respectfully Yours,

A handwritten signature in black ink, appearing to read 'Maja Daruwala', with a horizontal line underneath the name.

Maja Daruwala
Director