

Commonwealth Human Rights Initiative, New Delhi.

The Right To Information Act, 2005

A Summary

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The Right to Information Bill was introduced in the Lok Sabha in December 2004. It was passed by both houses of Parliament with major amendments in May 2005. The assent of the President was received on June 15 and the Act was notified in the Gazette on June 21. The law will become operational by mid-October 2005.

This law was passed by Parliament to enable citizens to exercise their fundamental right to information held by public authorities all over the country (except Jammu and Kashmir). The RTI Act aims to bring about transparency in the functioning of public authorities, contain corruption and hold Governments and their instrumentalities accountable to people. It creates a process for providing information to people. The RTI Act places a duty on officers to provide information to people both proactively and upon request. It provides for a two-tier appeals mechanism to deal with complaints of unreasonable denial of information by public authorities. This law will have an overriding effect vis-à-vis the *Official Secrets Act, 1923* and all other laws and orders passed by Governments that restrict information flow to people.

Coverage: Chapter I

Geographical: Covers all of India except Jammu and Kashmir (Jammu and Kashmir passed its own *Freedom of Information Act* in 2004)

Jurisdictional: Covers offices of Public Authorities established, owned or substantially financed by the Central Government, the State Governments and the Administration of the Union Territories (will include, Panchayats, municipalities and other local bodies). Any body owned, controlled or substantially financially by these governments is also included. This law will be applicable to all non-government organisations substantially financed directly or indirectly by these governments.

Other Bodies: Information relating to a private body that can be accessed by a public authority under any law in force is also covered by the RTI Act.

Comes into force: Section 1

Most provisions will come into force from the 120th day of enactment. Some provisions will come into force with immediate effect, such as – the duty of proactive disclosure, appointment of Public Information Officers and Assistant Public Information Officers and setting up Information Commissions at the Central and State level. *Freedom of Information Act, 2002* will be repealed.

Information means: Section 2

Records, documents, memos, emails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form.

Record means: Section 2

- a) any document, manuscript and file;
- b) any microfilm, microfiche and facsimile copy of a document;
- c) any reproduction of image or images embodied in such microfilm (whether enlarged or not) and
- d) any other material produced by a computer or any other device.

Right to Information means: Section 2

Right to inspect works, documents, records

Right to take notes, extracts or certified copies

Right to take samples

Right to obtain information in electronic form

Right to information whose disclosure is in the public interest

Information which cannot be denied to Parliament or State Legislature shall not be denied to any person.

What is not open? – Section 8

- 1) Information that would prejudicially affect the sovereignty, integrity, security, scientific or economic interest and relation with a foreign state
- 2) Information which would lead to commission of an offence
- 3) Information whose release is forbidden by a court or tribunal or disclosure which might constitute contempt of court
- 4) Information whose release may lead to breach of privileges of Parliament or State Legislatures.
- 5) Commercial and trade secrets, intellectual property etc. that would harm competitive position of third party.
- 6) Information available to a person in his fiduciary relationship (information shared between client and lawyer or landlord and tenant or patient and doctor).
- 7) Information received in confidence from a foreign government
- 8) If information disclosure endangers life and physical safety of any person
- 9) If it is about a source of information or assistance given in confidence of law enforcement or security purposes
- 10) If it is likely to impede investigation and prosecution processes
- 11) Cabinet Papers including deliberations of Ministers, Secretaries and other officers
(but decisions and related reasons contained in them will be made public after the decision has been taken and the matter is complete or over)
- 12) Personal or private information – subject to larger public interest – to be decided by the Public Information Officer.

All exemptions subject to public interest override. If public interest outweighs harm to the public authority information must be disclosed. The power to decide whether public interest is with the Public Information Officer and the Appellate Authorities (see below).

Further grounds for rejection: Section 9

If giving information infringes the copyright of any person other than the State.

Partial Disclosure: Section 10

Partial access to information contained in records covered by exemption clause is allowed.

Time bar on information covered by exemptions – Section 8

Upon completion of 20 years, information about any occurrence, event or matter will be given irrespective of exemptions. But information relating to sovereignty, integrity, security, strategic, scientific and economic interests, information which would lead to incitement to commit an offence, Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers and matters relating to the privileges and immunities of legislators and MPs will not be given even after 20 years. Decision of the Central Government is final as regards computation of the time period.

Who is excluded? – Section 21 and Schedule

Central Intelligence agencies and security agencies like the IB, RAW, Directorate of Revenue Intelligence, Central Economic Intelligence Bureau, Enforcement Directorate, Narcotics Control Bureau, Aviation Research Centre, Special Frontier Force, BSF, CRPF, ITBP, CISF, NSG, Assam Rifles, Special Service Bureau, CID Special Branch of Andaman and Nicobar Islands, CID Crime Branch of Dadra Nagar Haveli and Special Branch, Lakshadweep Police. Similar agencies established by the State Governments will also be included.

But information relating to corruption and human rights must be given but only with the approval of the Central or State Information Commission – as the case may be.

Competent Authority: Section 2

Speaker of the Lok Sabha at the Centre and the Vidhan Sabhas in the States and Union Territories.

Chairman of the Rajya Sabha and the Legislative Councils in the States (wherever applicable).

Chief Justice of India and Chief Justices of High Courts in the States.

President in the case of other authorities created under or by the Constitution (like the Election Commission of India, SC/ST Commission, Finance Commissions etc.) for the Central level.

The Governor at the level of the States.

Administrator of Union Territories (like Lt. Governor)

These Competent Authorities has the power to make rules for implementing the Act within their jurisdiction.

Public Authority: Section 2

Any body constituted under the Constitution or a law made by Parliament or State Legislatures.

Any body constituted by a notification or order issued by the Central and State Governments.

Includes any body owned or controlled by the Central and State Governments.

Any body constituted by notification issued or order made by the appropriate government.

Any body owned controlled or substantially financed by the appropriate government.

Any non-government organizations substantially financed directly or indirectly by funds provided by the appropriate government.

Third Party: Section 2, 11

Any person other than the requestor of information. This category includes another Public Authority. Third party has the right of appeal against PIO's order (see below).

Public Authority's Duties: Section 4, 6, 7, 11

- 1) To maintain data in a catalogued and indexed form and computerize all appropriate records and facilitate access through a country-wide network on different systems.
- 2) Proactive provisions for information disclosure must be implemented (**see below**).
- 3) Provide reasons for its administrative or quasi-judicial decisions to affected persons.
- 4) Proactive publishing of facts while formulating important policies, or announcing the decisions which affect public.
- 5) Provide assistance to an applicant who is sensorily disabled (eg. visually challenged) to access information or inspect records.
- 6) If information is not provided within the time limit then it must be provided to the applicant free of cost subsequently (when the Appellate Authority orders release of information).
- 7) Take into consideration representation made by third party before deciding on an information request.
- 8) Despite the exemptions allow access to information if disclosure in public interest outweighs the harm to the public authority.

Proactive Disclosure by Public Authorities: Section 4

- 1) The particulars of the organisation, functions and duties of the public authority;
- 2) The powers and duties of its officers and employees;
- 3) The procedure followed in its decision making process, including channels of supervision and accountability;
- 4) The norms set out by it for the discharge of its functions;
- 5) Information regarding the rules, regulations, instructions, manuals and records used by its employees for the discharge of its functions,
- 6) A statement of the categories of the documents held by it or under its control;
- 7) Information regarding any arrangement that exists for consultation or representation, by members of the public, in relation to the formulation of policy or implementation;

- 8) Advice given by the boards, councils, committees and other bodies consisting of two or more persons. Additionally information as to whether the meetings of these are open to the public, or the minutes' of such meetings are accessible to the public;
- 9) A directory of its officers and employees;
- 10) The monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
- 11) The budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
- 12) The details of the implementation of subsidy programmes, including the amounts allocated and the details and beneficiaries of such programmes;
- 13) Particulars of recipients of concessions, permits or authorisations granted by it;
- 14) Details of the information available to, or held by it, reduced in an electronic form;
- 15) The particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
- 16) The names, designations and other particulars of the Public Information Officers.
- 17) Any other information that may be necessary.

This proactive disclosure must be carried out with immediate effect and in any case completed within 120 days of the enactment of this law. Thereafter it must be updated every year.

This information should be easily accessible with the PIO as far as possible in electronic format, free of cost or at such cost of the medium or the print cost price that the Government may prescribe.

Public Information Officer (PIO): Section 5

- 1) PIO must be designated with immediate effect by every Public Authority at the level of administrative units or offices under it.
- 2) Asst. PIO must be designated at the sub-divisional or sub-district level with immediate effect by the Public Authority. (PIO includes APIO in the context of contravention of this law)
- 3) PIO has initial authority to decide whether disclosure of information is in public interest or not (applies to information covered by exemptions under Sec. 8).
- 4) PIO has the authority to decide which parts of a record covered by the exemption clause could be disclosed to the applicant (partial disclosure – severability).
- 5) Any officer whose assistance has been sought by the PIO for securing information will also be treated as a PIO and is liable to be punished for not furnishing information in time or for refusing information or for giving wrong information or misleading information.

Duties of a PIO: Sections 7 & 11

- 1) PIO should render assistance to those who cannot write an application.
- 2) Must inform the applicant of the appellate authority who should be approached for review of the decision taken on the fees for supply of information and also the time limit.

- 3) Give information in the form in which it is originally sought subject to resource constraints and preservation of the record in question.
- 4) Give written reasons for rejection of information request, details of the time limit for appeals and the appropriate Appellate Authority.
- 5) If allowing partial access he shall give notice to the applicant stating
 - a) which part will be provided after severing the exempt portions,
 - b) reasons for arriving at this decision including findings on any factual matter relating to the materials on which the findings are based
 - c) name and designation of the person who gave this decision
 - d) details of fees to be deposited
 - e) applicant's rights to seek review of the decision on fee charged or the decision taken – including details of the Appellate Authority and the time limit for filing the review/appeal.
- 6) If information sought has been supplied by third party or is treated as confidential by the third party PIO must give written notice to the latter within 5 days of receiving the information request and take its representation into consideration.
- 7) Third party must be given a chance to make a representation (oral or written) before the PIO within 10 days of receiving the notice.

Application Procedure: Section 6

- 1) Apply in writing or electronically in English or local official language of the area where application is being made.
- 2) Reason for seeking information need not be given.
- 3) Pay fees as may be prescribed (if not belonging to the below the poverty line category).

Time Limit: Section 7

- 1) 30 days from the date of application
- 2) 48 hours for information concerning the life and liberty of a person
- 3) Time taken for calculation of fees and intimation of the same to the applicant will be excluded from the 30 day period
- 4) If the interests of a third party are involved then time limit will be 40 days (maximum period + time given to third party to make representation)
- 5) No action on application for 30 days is a deemed refusal

Fees: Section 7

- 1) Application fees to be prescribed which must be reasonable.
- 2) If further fees are required then the same must be intimated in writing with calculation details of how the figure was arrived at.
- 3) Applicant can seek review of the decision on fees charged by the PIO by applying to the appropriate Appellate Authority.

- 4) No fees will be charged from people living below the poverty line. This benchmark will be decided by the appropriate government.
- 5) Applicant must be provided information free of cost if the decision to release information is taken after the time limit.

Appellate Authority (AA): Section 12 , 19

- 1) **Internal Appeal: First appeal** to the officer immediately senior to PIO in the concerned Public Authority within **30 days** from the date of latter's decision. (delay may be condoned by the AA if sufficient cause is shown)
- 2) **External Appeal: Second appeal** to the Central or State Information Commission (**see below**) within **90 days** of the date on which the decision was given or should have been made by the Appellate Authority. (delay may be condoned by the AA if sufficient cause is shown)
- 3) Third Party appeal against PIO's decision must be filed within 30 days before first appeals body and within 90 days of the decision on the first appeal before the appropriate Information Commission.
- 4) Burden of proving that information denial was justified lies with the PIO.
- 5) **Internal appeals** must be disposed of within **30 days** from the date of filing. Extendable by 15 days if necessary but in any case decision must be given within 45 days. **No time limit fixed for Information Commissions to give their decisions.**
- 6) Decision of the IC is binding. But appeal on a point of fact or law can be filed in the High Court or the Supreme Court.

First Level of Appeal:

Appeals against refusal of information request can be filed with an officer senior in rank to the PIO within the same public authority. (Every public authority will have to appoint appellate authorities along with PIOs).

Supervisory Mechanism:

Central Information Commission: Section 12

- 1) Central Information Commission (CIC) to be constituted through Gazette Notification with immediate effect.
- 2) CIC includes **1** Chief Information Commissioner (CIC) and not more than **10** Information Commissioners (IC) who will be appointed by the President of India.
- 3) Oath of Office will be administered by the President of India according to the form set out in the Schedule.
- 4) It will be based in Delhi. Other offices may be established in other parts of the country with approval from the Central Government.
- 5) CIC will exercise its powers autonomously without being subject to directions by any other authority.

Appointment Process and Qualifications: Section 12

- 1) Appointment Committee includes Prime Minister (Chair), Leader of the Opposition in the Lok Sabha and one Cabinet minister to be nominated by the Prime Minister. (if there is no Leader of Opposition then the Leader of the single largest group in Opposition in the Lok Sabha will sit on the Committee)
- 2) Candidates must be eminent person in public life with knowledge and experience in law, science, technology social service, management, journalism mass media or administration and governance.
- 3) No MP or MLA can be appointed CIC or IC during their term of service. They will have to give up that post upon appointment to the Information Commission.

CIC- Terms of Service: Section 13

- 1) CIC appointed for 5 years from date of entering office. IC will remit office upon attaining 65 years of age even if the term of office is not completed.
- 2) CIC is not eligible for reappointment.
- 3) Term may be extended by one more year if recommended by the Appointment Committee.
- 4) Salary will be of the same level as that of the Chief Election Commissioner. This will not be varied to the disadvantage of the CIC during service.
- 5) If candidate is a pensioner at the time of appointment his /her pension will be part of that salary. **[so no double pay]**
- 6) After end of term CIC will be eligible for appointment to other offices of government.

IC – Terms of Service: Section 13

- 1) IC will be appointed for a five-year term. IC will remit office upon attaining 65 years of age even if the term of office is not completed.
- 2) Salary will be of the same level as that of the Election Commissioner. This will not be varied to the disadvantage of the IC during service.
- 3) If candidate is a pensioner at the time of appointment his /her pension will be part of that salary. **[so no double pay]**
- 4) IC is eligible for appointment as CIC but will not hold office for more than a total of five years including his/her term as IC.
- 5) After end of term IC will be eligible for appointment to other offices of government.

Removal of CIC and IC: Section 14

- 1) Can be removed on grounds of misbehaviour or incapacity. Making profit from a Governmental contract or a private contract during term of office constitutes misbehaviour. **[But making gains from investment in companies like other people is allowed.]**
- 2) President may make a reference to the Supreme Court to inquire into misbehaviour or incapacity.

- 3) If Supreme Court recommends removal on such grounds then CIC or IC may be removed from office by order of the President.
- 4) But President may also order removal of IC or DIC without reference to the Supreme Court on grounds of –
 - a) insolvency
 - b) convicted of an offence involving moral turpitude
 - c) takes up any paid job outside official duties during the term of office
 - d) infirmity of body or mind
 - e) has acquired financial or other interest which is likely to affect his/her functioning as CIC or IC.

State Information Commission: Section 15-17

The State Information Commission must be constituted with immediate effect in all States.

The State Information Commission will have 1 State Chief Information Commissioner (SCIC) and not more than 10 Information Commissioners to be appointed by the Governor.

The Appointments Committee will be headed by the Chief Minister. Other members include the Leader of the Opposition and one Cabinet Minister nominated by the Chief Minister.

The qualifications and terms and conditions of service remain the same as that of the Central Commissioners.

The headquarters of the State Information Commission may be based anywhere in the State concerned and its other offices in other parts of that State.

The salary of the State Chief Election Commissioner will be the same as that of an Election Commissioner. The salary of the State Information Commissioner will be the same as that of the Chief Secretary of the State Government.

The Governor has the power to remove an SCIC or other ICs in the same manner as in the case of the Central Information Commissioners with a reference to the Supreme Court in similar cases and without a reference in other cases spelt above (see Section 14).

CIC/SCIC – Powers and Functions: Sections 18-20

- 1) CIC/SCIC has a duty to receive complaints from any person -
 - a) who has not been able to submit an information request because a PIO has not been appointed
 - b) who has been refused information that was requested
 - c) who has received no response to his/her information request within the specified time limits
 - d) if he/she thinks the fees charged are unreasonable
 - e) if he/she thinks information given is incomplete or false or misleading
 - f) and any other matter relating to obtaining information under this law
- 2) Power to order inquiry if there are reasonable grounds.
- 3) CIC/SCIC will have powers of Civil Court such as -

- a) summoning and enforcing attendance of persons, compelling them to give oral or written evidence on oath and to produce documents or things
 - b) requiring the discovery and inspection of documents
 - c) receiving evidence on affidavit
 - d) requisitioning public records or copies from any court or office
 - e) issuing summons for examination of witnesses or documents
 - f) any other matter which may be prescribed.
- 4) All records covered by this law (including those covered by exemptions) must be given to CIC/SCIC during inquiry for examination.
- 6) Power to secure compliance of its decisions from the Public Authority includes-
- a) appointing a PIO where none exists (if a public authority has not appointed one)
 - b) publishing information or categories of information
 - c) making necessary changes to the records management, maintenance and destruction procedures of the Public Authority.
 - d) enhancing training provision for officials on RTI.
 - e) Seeking an annual report from the Public Authority on compliance with this law
 - f) Require it to compensate for any loss or other detriment suffered by the requestor
 - g) Impose penalties under this law
 - h) Reject the appeal

Reporting Procedure: Section 25

- 1) CIC will send an annual report to the Central Government on the implementation of the provisions of this law at the end of the year. The SCIC will send a report to the State Government
- 2) Each Ministry has a duty to compile reports from its Public Authorities and send them to the CIC/SCIC.
- 3) Each report will contain details of number of requests received by each Public Authority, number of rejections and appeals, particulars of any disciplinary action taken, amount of fees and charges collected etc.
- 4) Central Government will table the CIC report before Parliament after the end of each year. The concerned State Government will table the report of the SCIC before the Vidhan Sabha (and the Vidhan Parishad wherever applicable)

Penalty Provisions: Section 20

Every PIO will be liable for fine of Rs. 250 per day up to a maximum of Rs. 25,000/- for –

- i) not accepting an application;*
- ii) delaying information release without reasonable cause;*

- iii) malafidely denying information;*
- iv) knowingly giving incomplete, incorrect, misleading information;*
- v) destroying information that has been requested and*
- vi) obstructing furnishing of information in any manner.*

The Information Commission (IC) at the Centre and the State levels will have the power to impose this penalty. The Information Commission can also recommend disciplinary action for persistent violation of the law against an erring PIO.

Jurisdiction of Courts: Section 21

Courts are barred from entertaining suits or applications against any order made under this Act except by way of an appeal. Appeals will lie only in the High Court and the Supreme Court as this is an enabling law for exercising a fundamental right.

Some do's for the Central/State Governments: Section 26

- 1) Develop educational programmes for the public especially disadvantaged communities on RTI.
- 2) Encourage Public Authorities to participate in the development and organization of such programmes.
- 3) Promote timely dissemination of accurate information to the public.
- 4) Train officers and develop training materials.
- 5) Compile and disseminate a User Guide within 18 months for the common person in its official languages.
- 6) Publish names, designation postal addresses and contact details of PIOs and other information such as notices regarding fees to be paid, remedies available in law if request is rejected etc.

Rule Making Power: Section 27, 28

Central, State Governments and the Competent Authorities have the power to make rules for implementing this law.

Power to Deal With Implementation Difficulties: Section 30

If any difficulty arises in giving effect to the provisions in the Act, the Central Government may make provisions necessary/expedient for removing the difficulty by Order published in the Officials Gazette during the first two years of enactment.

For further information please contact:

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