

Commonwealth Human Rights Initiative, New Delhi.

The Right To Information Bill, 2004

A Summary

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This Bill introduced in the Lok Sabha in December 2004 is pending approval. It is intended to replace the Freedom of Information Act passed in 2002.

Please send your comments, views and or suggestions to –

The Committee on Petitions, Room No. 81, Second Floor, Parliament House,
New Delhi- 110 001

Email: competition@sansad.nic.in

Coverage: Chapter I

Geographical: All of India except Jammu and Kashmir

Jurisdictional: Only offices of Public Authorities established, owned or substantially financed by the Central Government and the Administration of the Union Territories.

Other Bodies: Information relating to a private body that can be accessed by a public authority under any law in force.

Comes into force: Section 1

From the 120th day of enactment. *Freedom of Information Act*, 2002 will be repealed.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

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.

Information- How old? – Section 8

10 years before the date of request- relating to any occurrence, event or matter. Decision of the Central Government is final as regards computation of the time period.

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) Commercial and trade secrets, intellectual property etc. that would harm competitive position of third party.
- 5) Information received in confidence from a foreign government
- 6) If information disclosure endangers life and physical safety of any person
- 7) If it is about a source of information or assistance given in confidence of law enforcement or security purposes
- 8) If it is likely to impede investigation and prosecution processes
- 9) 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)
- 10) Personal or private information subject to larger public interest

Partial Disclosure: Section 10

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

Who is excluded? – Section 21

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.

Competent Authority: Section 2

Speaker of the Lok Sabha or the Vidhan Sabha

Chairman of the Rajya Sabha (this leaves out Vidhana Parishads in states like Karnataka)

Chief Justice of India

Chief Justice of the High Court

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.)

Administrator of Union Territories (like Lt. Governor)

Public Authority: Section 2

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

Any body constituted by a notification or order issued by the Central Government.

Includes any body owned or controlled by the Central Government.

Third Party: Section 2

Any person other than the requestor of information. This category includes a Public Authority.

Proactive Disclosure: Section 4

Proactively publish, on a regular basis and before commencement of the Act:

- 1) The particulars of its organisation, functions and duties;
- 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 any 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.

Public Authority's Duties: Section 4

- 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 above**).
- 3) Provide reasons for its administrative or quasi judicial decisions to affected persons.
- 4) Proactive publishing of facts before initiating a project or formulating any policy, programme or law to the general public or the affected persons – things to be kept in mind- local language, most effective method of communication in the local area and make such information available in electronic format free of cost with the local PIO.
- 5) Provide assistance to an applicant who is sensorily disabled 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.

Public Information Officer (PIO): Section 5

- 1) PIO Must be designated within 100 days of enactment by the Public Authority.
- 2) Asst. PIO must be designated at the sub-divisional or sub-district level within 100 days of enactment. (PIO includes APIO for interpretation purposes)
- 3) PIO has initial authority to decide whether disclosure of information is in public interest or not (applies to information held or given by a third party also).
- 4) PIO has the authority to decide which parts of a record covered by the exemption clause could be disclosed to the applicant.

Duties of a PIO: Section 7

- 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.

[As third party includes a Public Authority as well, there is enough scope for denying information citing objections raised by another Department or office other than that of the PIO. There is no bar on such third parties from raising unreasonable objections. Keeping in mind the public interest rider this may not end up in denial of information but will unnecessarily and mischievously push the applicant to the Appellate stage.]

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.

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.
- 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) Applicant must be provided information free of cost if the decision to release information is taken after the time limit.

Further grounds for rejection: Section 9

- 1) If it infringes copyright of any person other than the State.

Appellate Authority (AA): Section 16

- 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 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.

[It is not clear whether the third party can file an internal appeal as well.]

- 4) Burden of proving that information denial was justified lies with the PIO.

[This is reversal of burden as requestor need not justify why such information is required]

- 5) Appeals at both stages 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.
- 6) Decision of the CIC is binding. But appeal on a point of fact or law can be filed in the High Court.

Supervisory Mechanism:

Central Information Commission: Section 12

- 1) Central Information Commission (CIC) to be constituted through Gazette Notification.
- 2) CIC includes 1 Information Commissioner (IC) and not more than 10 Deputy Information Commissioners (DIC) 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.

[Does the autonomy bar the Supreme Court from issuing any directions?]

Appointment Process and Qualifications: Section 12

- 1) Appointment Committee includes Prime Minister (Chair), Leader of the Opposition in the Lok Sabha and Chief Justice of India. (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) IC and DIC must be eminent citizens with wide knowledge and experience of administration and governance.

- 3) No MP or MLA can be appointed IC or DIC. They should not be connected with any political party, be in an office of profit or carry on any business or pursue any profession

[These qualifications make retired bureaucrats ideal and perhaps the only candidates for the CIC. Nobody else would qualify. But look at the terms of service clause also.]

IC- Terms of Service: Section 13

- 1) IC 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) IC 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 a Secretary to Government of India. This will not be varied to the disadvantage of the IC 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 IC will not be eligible for appointment on diplomatic assignments or as Administrator of a Union Territory or for any other office which requires a Presidential warrant.

[The usual practice is to charge the salaries of such authorities to the Consolidated Fund. This means Parliament will not discuss this in its sessions but will only vote on it. But this provision is not mentioned in the Bill]

DIC – Terms of Service: Section 13

- 1) DIC will be appointed for a four-year term. DIC 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 a Joint or Additional Secretary to Government of India. This will not be varied to the disadvantage of the DIC 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) DIC is eligible for appointment as IC but will not hold office for more than a total of five years including his/her term as DIC.
- 5) After end of term IC will not be eligible for appointment on diplomatic assignments or as Administrator of a Union Territory or for any other office which requires a Presidential warrant.

[This clause makes sure that one person does not spend more than 5 years at the CIC and all automatic appointments for long periods are out of question. No bureaucrat with ambitions of becoming an Ambassador or Governor will want to become an IC or DIC]

Removal of IC and DIC: 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 IC or DIC 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 IC or DIC.

CIC – Powers and Functions: Section 15

- 1) CIC 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 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 during inquiry for examination.
- 5) Power to secure compliance of its decisions from the Public Authority includes-
 - a) appointing a PIO where none exists **[this supersedes the authority of the Public Authority]**
 - 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 suffered by the requestor
 - g) Impose penalties on the Public Authority
 - h) Reject the appeal

Reporting Procedure: Section 22

- 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.
- 2) Each Ministry has a duty to compile reports from its Public Authorities and send them to the CIC.
- 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.

Penalty Provisions: Section 17

- 1) PIO can be penalized for persistently failing to provide information without reasonable cause.
- 2) CIC can authorize an officer of the Central Government to file a complaint against defaulting PIO with a Judicial Magistrate of First Class.
- 3) PIO can be fined up to Rs. 25,000 or a prison term extending up to five years upon conviction.

[It is not clear what kinds of fines may be imposed by the CIC on the PIO in individual cases. It is also not clear whether fines can be imposed by the first AA. Also there are no provisions for appeals against penalties at any stage except when it reaches the judiciary]

Jurisdiction of Courts: Section 20

Courts barred from entertaining suits or applications against any order made under this Act.

Some do's for the Central Government: Section 23

- 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 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 24/25

Central Government and the Competent Authority to make rules for implementing this law.

Financial Consequences:

Estimated expenditure on the salaries of IC, DIC and other employees – Rs. 1.86 crores. Office expenditure not included for the time being.