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JAMMU AND KASHMIR GOVERNMENT GAZETTE**

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PART III

Laws, Regulations and Rules passed thereunder.

**JAMMU AND KASHMIR LEGISLATIVE ASSEMBLY
SECRETARIAT, SRINAGAR**

Under rule 64 of the Rules of Procedure and Conduct of Business in Jammu and Kashmir Legislative Assembly, the following Bill together with the Statement of Objects and Reasons, is published in an extraordinary issue of the Government Gazette.

By order of the Hon'ble Speaker.

(Sd.) M. RAMZAN,

Secretary.

**THE JAMMU AND KASHMIR RIGHT TO INFORMATION
(AMENDMENT) BILL, 2007.**

[L. A. Bill No. 14 of 2007.]

A Bill to amend the Jammu and Kashmir Right to Information Act, 2004 (Act No. 1 of 2004).

Be it enacted by the Jammu and Kashmir State Legislature in Fifty-eighth Year of the Republic of India as follows :—

1. *Short title and commencement.*—(1) This Act may be called the Jammu and Kashmir Right to Information (Amendment) Act, 2007.

(2) It shall come into force on such date as the Government may, by notification in the Government Gazette, appoint.

2. *Amendment of the Jammu and Kashmir Right to Information Act, 2004 (Act No. 1 of 2004).*—In the Jammu and Kashmir Right to Information Act, 2004 (hereinafter referred to as the 'principal Act') for the expressions "Controlling Officer" and "Incharge of the Office", wherever occurring, the expressions "Controlling Information Officer" and "Departmental Information Officer" shall respectively be substituted.

3. *Amendment of section 2, Act No. 1 of 2004.*—In section 2 of the principal Act —

(i) for clause (a), the following clause shall be substituted ;
namely :—

“(a) 'Controlling Information Officer' means the immediate superior officer above the Departmental Information Officer who supervises and controls the work of the Departmental Information Officer or such officer as may, from time to time, be specified as such by the Government for the purposes of this Act.”;

(ii) after clause (b), the following clause shall be inserted ;
namely :—

“(bb) 'Departmental Information Officer' means an officer or functionary of a department of the Government or a

public body, who is in actual control of any office of the Government or public body, as the case may be, or such officer or functionary as may, from time to time, be specified as such by the Government for the purposes of this Act.” ;

(iii) clause (d) shall be omitted ;

(iv) for clause (g), the following clauses shall be substituted ; namely :—

“(g) ‘right to information, means the right to information accessible under this Act which is held by or under the control of any Office of the Government or public body and includes the right to —

(i) inspection of work, documents, records ;

(ii) taking notes, extracts or certified copies of documents or records ;

(iii) taking certified samples of material ;

(iv) obtaining information in the form of diskettes, floppies; tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device ;

(h) ‘State Information Commission’ means the State Information Commission constituted under sub-section (1) of section 8 A ;

(i) ‘State Chief Information Commissioner’ means the State Chief Information Commissioner appointed under sub-section (3) of section 8 A ;

(j) ‘State Information Commissioner’ means the State Information Commissioner appointed under sub-section (3) of section 8 A ;

(k) ‘third party’ means a person other than citizen making a request for information and includes a public body.” ;

4. *Amendment of section 6, Act No. I of 2004.*—In section 6 of the principal Act, —

(1) in sub-section (1) —

(i) for clauses (d) and (e) the following clause shall be substituted, namely :—

“(d) Cabinet papers including records of deliberations of the Council of Ministers.

Provided that the decisions of Council of Ministers and the material on the basis of which the decisions were taken shall not be exempted from disclosure after the decision has been finally taken, and the matter is complete, or over :

Provided that those matters which come under the exemptions specified in this section shall not be disclosed.

(e) Minutes or records of advice including legal advice, opinions or recommendations made by any officer of a public body during the decision making process :

Provided that the record of advice including legal advice, opinions or recommendations made by any officer of a public body during the decision making, shall not be exempted from disclosure after the decision has been finally taken :

Provided that those matters which come under the exemptions specified in this section shall not be disclosed” ;

(ii) in clause (f) the words “or contravention of a lawful order of a court” shall be omitted ;

(iii) after clause (f) the following clause shall be inserted ;
namely :—

“(ff) Information which has been expressly forbidden to be disclosed by any court of law or tribunal or the disclosure of which may constitute contempt of court.” ;

(iv) after clause (g) the following clause shall be added ;
namely :—

“(h) 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.”.

(2) in sub-section (2) clause (b) shall be omitted.

5. *Insertion of sections 8A, 8B, 8C and 8D in Act No. 1 of 2004.*— After section 8 of the principal Act, the following sections 8A, 8B, 8C and 8D shall be added; namely:—

“8A. *Constitution of State Information Commission.*—

(1) The Government shall, by notification in the *Government Gazette*, constitute a body to be known as the *Jammu and Kashmir State Information Commission* to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The *State Information Commission* shall be headed by *State Chief Information Commissioner* and shall have two *State Information Commissioners* as Members of the Commission.

(3) The *State Chief Information Commissioner* and *State Information Commissioners* shall be appointed by the Governor on the recommendations of a committee consisting of—

- (i) the Chief Minister, who shall be the Chairperson of the Committee;
- (ii) the Leader of Opposition in the Legislative Assembly; and
- (iii) Chief Secretary of the State.

Explanation.— For the purpose of removal of doubts, it is hereby declared that where the Leader of Opposition in the *Legislative Assembly* has not been recognized as such, the Leader of the single largest group in opposition of the Government in the *Legislative Assembly* shall be deemed to be the Leader of Opposition.

(4) The General Superintendence, direction and management of the affairs of the *State Information Commission* shall vest in the *State Chief Information Commissioner* who shall exercise all such powers and do all such acts and things which may be exercised or done by the *State Information Commission* autonomously without being subjected to directions by any other authority under this Act.

(5) The *State Chief Information Commissioner* and *State Information Commissioners* shall be the persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

(6) The State Chief Information Commissioner or a State Information Commissioner shall not be a Member of Parliament or Member of the State Legislature or hold any other office of profit or connected with any political party.

(7) The headquarters of the State Information Commission shall be at such place at which the headquarters of the Government are located.

815. Term of office and conditions of service.— (1) The State Chief Information Commissioner and State Information Commissioner shall hold office for a term of three years from the date on which they enter upon their office and shall not be eligible for re-appointment :

Provided that the State Chief Information Commissioner and State Information Commissioners shall not hold office as such after they have attained the age of sixty-five years.

(2) The State Chief Information Commissioner and State Information Commissioners shall, before they enter upon their office make and subscribe before the Governor or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the Schedule and before subscribing such oath or affirmation submit their property statements.

Information Commissioner may, at any time, by writing under his hand addressed to the Governor, resign from his office ;

Provided that the State Chief Information Commissioner/State Information Commissioner may be removed in the manner specified under section 8C.

(4) The salaries and allowances payable to and other terms and conditions of service of—

- (a) the State Chief Information Commissioner shall be the same as that of the Chief Secretary of the State ; and
- (b) the State Information Commissioner as that of Member of Jammu and Kashmir Public Service Commission :

Provided that if the State Chief Information Commissioner or State Information Commissioner, at the time of his appointment is in receipt of a pension in respect of any previous service under the State Government or under the Government of India, his salary in respect of the service as the State Chief Information Commissioner or State Information Commissioner, as the case may be, shall be reduced by the amount of that pension including commuted portion of pension, if any :

- (c) engages during his term of office in any paid employment outside the duties of his office ;
- (d) is, in the opinion of the Governor, unfit to continue in office by reason of infirmity of mind or body ; or
- (e) has acquired such financial or other interest as is likely to affect prejudicially his functions as the State Chief Information Commissioner/State Information Commissioner, as the case may be.

(4) If the State Chief Information Commissioner/State Information Commissioner is in any way, concerned or interested in any contract or agreement made by or on behalf of the Government or participates in any way in the profit thereof or in any benefit or emoluments arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purpose of sub-section (1), be deemed to be guilty of misbehavior.

8D. Powers and functions of State Information Commission.— (1) Subject to the provisions of this Act, it shall be the duty of State Information Commission, to receive and inquire into a complaint from any person,—

- (a) who has been unable to submit a request to a Departmental Information Officer, either by reason that no such officer has been appointed or because the Departmental Information Officer has refused to accept his or her application for information ;
- (b) who has been refused access to any information requested under this Act ;
- (c) who has not been given a response to a request for information or access to information within the time limit specified under this Act ;
- (d) who has been required to pay an amount of fee which he or she considers unreasonable ;
- (e) who believes that he or she has been given incomplete, misleading or false information ; and
- (f) in respect of any other matter relating to requesting or obtaining access to records.

(2) Where the State Information Commission is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.

(3) The State Information Commission shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, Samvat 1989, in respect of the following matters ; namely :—

- (a) summoning and enforcing the attendance of persons and compelling them to give oral or written evidence on oath and to produce the documents or things ;
- (b) requiring the discovery and inspection of documents ;
- (c) receiving evidence on affidavit ;
- (d) requisitioning any public record or copies thereof from any court or office ;
- (e) issuing summons for examination of witnesses or documents ; and
- (f) any other matter which may be prescribed.

(4) Notwithstanding anything inconsistent contained in any other Act of State Legislature, the State Information Commission may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public body, and no such record may be withheld from it on any grounds."

6. Amendment of section 9, Act No. 1 of 2004.—In section 9 of the principal Act for sub-sections (2) to (4), the following sub-sections shall be substituted ; namely :—

"(2) A second appeal against the decision under sub-section (1) shall lie within sixty days from the date on which the decision has been made or was actually received, to the State Information Commission :

Provided that the State Information Commission, may admit the appeal after the expiry of the period of sixty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) If the decision of the Controlling Information Officer, against which an appeal is preferred relates to information of a third party, the State Information Commission shall give a reasonable opportunity of being heard to that third party.

(2) Where the State Information Commission is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.

(3) The State Information Commission shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, Samvat 1989, in respect of the following matters ; namely :—

- (a) summoning and enforcing the attendance of persons and compelling them to give oral or written evidence on oath and to produce the documents or things ;
- (b) requiring the discovery and inspection of documents ;
- (c) receiving evidence on affidavit ;
- (d) requisitioning any public record or copies thereof from any court or office ;
- (e) issuing summons for examination of witnesses or documents ; and
- (f) any other matter which may be prescribed.

(4) Notwithstanding anything inconsistent contained in any other Act of State Legislature, the State Information Commission may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public body, and no such record may be withheld from it on any grounds."

6. *Amendment of section 9, Act No. 1 of 2004.*—In section 9 of the principal Act for sub-sections (2) to (4), the following sub-sections shall be substituted ; namely :—

"(2) A second appeal against the decision under sub-section (1) shall lie within sixty days from the date on which the decision has been made or was actually received, to the State Information Commission :

Provided that the State Information Commission, may admit the appeal after the expiry of the period of sixty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) If the decision of the Controlling Information Officer, against which an appeal is preferred relates to information of a third party, the State Information Commission shall give a reasonable opportunity of being heard to that third party.

(4) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on Departmental Information Officer who denied the request.

(5) An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within which such extended period not exceeding a total of sixty days from the date of filing thereof, as the State Information Commission may, for reasons to be recorded in writing, extend.

(6) An appeal under sub-section (1) or sub-section (2) shall be accompanied with the proof of the fee deposited or tendered in the manner provided in accordance with section 10.

(7) The decision of the State Information Commission shall be binding.

(8) In its decision, the State Information Commission shall have the power to—

(a) require the public body to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—

(i) by providing access to information, if so requested, in a particular form ;

(ii) by publishing certain information or categories of information ;

(iii) by making necessary changes to its practices in relation to the maintenance, management and destruction of records ;

(iv) by enhancing the provision of training on the right to information for its officials ;

(b) impose any of the penalties provided under this Act ;

(c) require the public body to compensate the complainant for any loss or other detriment suffered ;

(d) reject the application.

(9) The State Information Commission shall give notice of its decision, including any right of appeal, to the complainant and the public body.

(10) The State Information Commission shall decide the appeal in accordance with such procedure as may be prescribed."

7. *Substitution of section 12, Act No. 1 of 2004.*—For section 12 of the principal Act, the following sections shall be substituted ; namely :—

"12. *Penalties.*—(1) Where the Controlling Information Officer, at the time of deciding an appeal under sub-section (1) of section 9 is of the opinion that the Departmental Information Officer has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information he or she shall make a reference to that effect to the State Information Commission.

(2) Where the State Information Commission, at the time of deciding any complaint, appeal or reference is of the opinion that the Departmental Information Officer has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed five thousand rupees :

Provided that the Departmental Information Officer shall be given a reasonable opportunity of being heard before any penalty is imposed :

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Departmental Information Officer.

(3) Without prejudice to the provisions of sub-section (2), where the State Information Commission, at the time of deciding any complaint, appeal or reference is of the opinion that the Departmental Information Officer has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under clause (a) of section 5 or

malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against Departmental Information Officer, under the service rules applicable to him.

12-A. *Monitoring and reporting.*—(1) The State Information Commission shall, ~~as soon as practicable~~ after the end of each year, prepare a report on the implementation of the provisions of this Act during that year and forward a copy thereof to the Government.

(2) Each Department shall, in relation to the public bodies within their jurisdiction, collect and provide such information to the State Information Commission, as is required to prepare the report under this section and comply with the requirements concerning the furnishing of that information and keeping of records for the purposes of this section.

(3) Each report shall state in respect of the year to which the report relates,—

- (a) the number of requests made to each public body ;
- (b) the number of decisions where applicants were not entitled to access to the documents pursuant to the requests, the provisions of this Act under which these decisions were made and the number of times such provisions were invoked ;
- (c) the number of appeals referred to the State Information Commission for review, the nature of the appeals and the outcome of the appeals ;
- (d) particulars of any disciplinary action taken against any officer in respect of the administration of this Act ;
- (e) the amount of charges collected by each public body under this Act ;
- (f) any facts which indicate an effort by the public bodies, to administer and implement the spirit and intention of this Act ;
- (g) recommendations for reform, including recommendations in

respect of the particular public bodies, for the development, improvement, modernization, reform or amendment to this Act or other legislation or any other matter relevant for operationalising the right to access information.

(4) The State Government may, ~~as soon as practicable~~ after the end of each year, cause a copy of the report of the State Information Commission, referred to in sub-section (1), to be laid before each House of the State Legislature.

(5) If it appears to the State Information Commission, that the practice of a public body in relation to the exercise of its functions under this Act does not conform with the provisions or spirit of this Act, it may give to the public body a recommendation specifying the steps which ought in its opinion to be taken for promoting such conformity.

12-B. *Government to prepare programmes.*—(1) The Government may, to the extent of availability of financial and other resources,—

- (a) develop and organize educational programmes to advance the understanding of the public, in particular of disadvantaged communities, as to how to exercise the rights contemplated under this Act;
- (b) encourage public bodies to participate in the development and organization of programmes referred to in clause (a) and to undertake such programmes themselves;
- (c) promote timely and effective dissemination of accurate information by public bodies about their activities; and
- (d) train Departmental Information Officers of public bodies and produce relevant training materials for use by the public bodies themselves.

(2) The Government shall, within ^{twelve}~~eighteen~~ months from the commencement of the Jammu and Kashmir Right to Information (Amendment) Act, 2007, compile in its official language a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right specified in this Act".

FINANCIAL MEMORANDUM

In the amendment Bill, the Government has to constitute/create a State Information Commission to perform the functions as entrusted therein. The proposed composition of the State Information Commission is a 'State Chief Information Commissioner' and 'two State Information Commissioners' with the salaries and allowances as are paid to the Chief Secretary of the State and Members of Jammu and Kashmir Public Service Commission respectively. The annual financial implications involved are as under :-

1. Salaries	Rs. 8.00 lacs
2. TE	Rs. 3.00 lacs
3. Office Expenses	Rs. 1.00 lac
4. Rent for office accommodation	Rs. 3.00 lacs
5. Telephone	Rs. 2.00 lacs
6. Furniture/fixtures	Rs. 1.00 lac
7. POL	Rs. 1.00 lac
8. Educational programme and publicity	Rs. 1.00 lac
Total	<u>Rs.20.00 lacs</u>

CHIEF MINISTER

8. *Addition of Schedule, Act No. 1 of 2004.*—After section 15 of the principal Act, the following Schedule shall be added, namely :—

“SCHEDULE

[See sub-section (2) of section 8B]

**FORM OF OATH OR AFFIRMATION TO BE MADE BY THE
STATE CHIEF INFORMATION COMMISSIONER/THE STATE
INFORMATION COMMISSIONER**

“I, _____ having been appointed
State Chief Information Commissioner/State Information Commissioner
~~Swear in the name of God~~ that I will bear true faith and allegiance to the Consti-
tution of the State as by law established, that I will
Solemnly affirm uphold the sovereignty and integrity of India, that I will duly and faithfully
and to the best of my ability, knowledge and judgement perform the duties
of my office without fear or favour, affection or ill-will and that I will uphold
the Constitution and the laws ”.”

STATEMENT OF OBJECTS AND REASONS

The Amendment Bill is with the aim to implement various provisions of Jammu and Kashmir Right to Information Act in letter and spirit and that is why an autonomous institution of State Information Commission has now been provided in the Bill. Another purpose of the amendment Bill is that the Right to Information Act is given more teeth to make it a forceful legislation as now pecuniary penalty has been provided in the Bill. In the proposed amendment Bill, the monitoring mechanism has also been prescribed to ensure the implementation of Jammu and Kashmir Right to Information Act in full measure. Educating citizens about their rights to obtain information under the Jammu and Kashmir Right to Information Act is another component of the amendment Bill.

CHIEF MINISTER

disciplinary action against Departmental Information Officer, under the service rules applicable to him.

12-A. *Monitoring and reporting.*—(1) The State Information Commission shall, ~~as soon as practicable~~ after the end of each year, prepare a report on the implementation of the provisions of this Act during that year and forward a copy thereof to the Government.

(2) Each Department shall, in relation to the public bodies within their jurisdiction, collect and provide such information to the State Information Commission, as is required to prepare the report under this section and comply with the requirements concerning the furnishing of that information and keeping of records for the purposes of this section.

(17)

RECOMMENDATION OF THE GOVERNOR

The Governor has in pursuance of sub-sections (1) and (3) of section 84 of the Constitution of Jammu and Kashmir recommended to the Jammu and Kashmir Legislative Assembly the introduction and consideration of the Bill.

(Sd.) M. RAMZAN,

Secretary.