

Shri Subas Pani
Chief Secretary
Government of Orissa
Orissa Secretariat
Bhubaneshwar - 751001
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27 October 2005

Dear Shri Pani

Re: Comments on the Orissa Right to Information Rules, 2005

I am writing to you from the Commonwealth Human Rights Initiative in New Delhi. I refer to my previous correspondence with you regarding implementation of the *Right to Information Act 2005* (RTI Act).

We have been reading newspaper reports of the steps being taken by the Orissa Government to implement the RTI Act. We understand that the Orissa Government has recently released Rules under the Act. It is positive that the Rules were notified within the 4-month implementation deadline in the Act.

Although the Rules have been notified, nonetheless we would like to take this opportunity to point out that certain provisions in the Rules do not do justice to the spirit of easy and inexpensive access to information for the general public as required by the Act. We would encourage you to issue an amendment to the Rules addressing these issues. In particular:

- **Clarify Rank of PIOs and Appellate Authorities:** Sections 3(1), (2) and (3) are unnecessarily repetitive of the Act and are too complex. They should be simplified and/or a clarification issues making it clear that:
 - The Assistant PIO need not be situated in the same office as the PIO because this would make him redundant. The Act requires the designation of APIOs at the sub-district and sub-regional level to ensure acceptance of information requests from the public where a PIO is not easily accessible. For the purpose of illustration, the notification of the Government of India (GOI) may be mentioned here. GOI has appointed APIOs in the Head Post Offices all over the country to receive and forward all information requests from people relating to public authorities and departments functioning under it. This shows that it is not necessary for APIOs to be working as officers of the public authority which designates them.

- **Notifying Requester of Delay:** Section 3(4) should be amended and/or a clarification issued requiring that if there is any delay in processing an application, as a matter of courtesy, the requester shall also be notified and an explanation given.
- **Application Format Not Compulsory:** Section 4(1) gives the impression that citizens are compulsorily required to use Form A for submitting information requests. This is not in tune with the practice followed by the GOI which has not prescribed an application format because the Act recognises that citizens have the right to file information requests on plain paper. At a minimum, a clarification needs to be issued to departments advising that they must accept and process applications made on plain paper and post cards as well.
- **Procedure to Obtain Information:** Section 4(2) appears to deal with two separate issues:
 - (1) Providing an acknowledgement, presumably a receipt. This part of the provision should be formulated into a separate clause and more detail specified in the Rules with regard to what must be included in any receipt eg. date of submission, person receiving the application, amount of fee paid and date a response should be received.
 - (2) Providing a notice accepting an application. The provision appears to permit the notice to be sent only after the PIO has satisfied himself of the identity of the applicant. This provision is not valid because under the RTI Act, an applicant is not required to provide proof of his identity unless he is entitled to a fee waiver under the BPL proviso. An applicant making a request for information is not required to give any personal details or proof thereof other than those necessary for contacting him.
- **Extend time for payment of fees:** Section 4(3) requires that an application be rejected if fees are not paid within 15 days of receiving a notice. This period is much too short considering the difficulties some poorer members of the community may have in making the payment. The deadline should be extended to 2 months after which point the application should be suspended. If not, a notice of rejection could be sent, but only after the 2 months is up.
- **Appeal fee invalid:** The requirement under s.7(1) and (3) that appeals to Appellate Authorities or the Information Commission which are not accompanied by a fee are to be rejected is in gross violation of the provisions of the RTI Act. The Act itself does not permit the stipulation of any fee on the applicant for filing an appeal. Therefore imposition of such a fee – and rejection of an appeal on the

basis of non-payment - is invalid. This provision and clauses A(ii) and (iii) in the Schedule of Fees and Rates must be deleted from the Rules.

- **Application fees too high:** The Schedule of fees specifies an application fee of Rs. 20/- This is unreasonable considering the fact that GOI Rules impose a fee of only Rs. 10/-. Under the Act, citizens have the right to approach the newly constituted State Information Commission to seek review of fees if they find them to be unreasonable. It would be in the best interests of the Government of Orissa to reduce the application fee to Rs. 10/- forthwith to bring it in line with the fee set by the GOI to prevent such applications being made.
- **Additional fees too high:** In terms of fees to be charged for providing information, the fee schedule prescribes charging Rs. 15/- per each hour or fraction thereof for inspection of documents. This, in addition to the application fee, would be burdensome to many citizens. GOI has permitted inspection free of charge for the first hour and has stipulated Rs. 5/- for every subsequent 15 minutes. At a minimum the Government of Orissa must reduce its inspection fees to the reasonable level set by GOI.

Further, charging Rs. 5 for each A4 size page typed or photocopied and Rs. 10 per paper for a computer print is unreasonable and violates the principle that all fees should be limited to cost recovery and not aimed at making a profit. It is recommended that an initial number of copies be provided free – for example 10 pages – because collecting the fee will cost more than the fee itself. After that, it is far more reasonable that a fee of Rs. 1 per page for A3 or A4 size be charged because the prevalent market rates do not exceed that figure. Surely the Government does not intend to use the RTI Act to generate revenues for the State? We also suggest that the cost of providing information in a floppy or CD should be no more than Rs. 25 or free if the applicant provides their own disk, in tune with prevalent market rates. A charge of Rs 100 is exorbitant and unreasonable.

We strongly urge you to consider a downward revision of all the fees in the Rules as they make result in practice in limiting access to information by those vast sections of the citizenry who are barely above the poverty line. Further, in place of the single mode of payment through cash as proposed under the Rules, a variety of modes including DD, non-judicial stamps, postal order and money order besides cash and treasury challan should be prescribed.

- **No imposition of costs for damage caused during sample collection:** The provision under Rule 10 that the cost of damage caused to public property in giving information should be included in calculating the additional fees in providing the information, goes against the spirit of the Act and should be removed as a matter of priority. In any case, considering it is a public official who

will be responsible for taking any sample, it seems incredibly unfair that any damage caused by that official should be passed on to the public.

Furthermore, the Rules should also specify the procedure that will be adopted by the PIO for collection of samples and materials used in public works in the course of processing such requests from citizens.

- **Improve monitoring requirements:** While it is positive that Rule 11 requires a register of applications to be kept by all PIOs, the Rules should specify what will be done with the monitoring information. It is recommended that the information should be forwarded to the head of the public authority each month and collated and that that information for the whole public authority should then be forwarded to the nodal agency who should publish all statistics collected, ideally every month.
- **Remove costs for witnesses:** It appears from Rule 12 that the expenditure incurred for the production of witness or documents before the State Information Commission would have to be paid for by the applicant. This provision is opposed to Sec 19(5) and 20(1) of the RTI Act which place the burden of proof in any appeals proceedings on the Central Public Information Officer or State Public Information Officer as the case may be and not on the applicant. This provision is legally invalid as contrary to the main Act and must be deleted from the rules as a priority.
- **Forms:** A number of provisions in the forms need to be reconsidered:
 - **Form A:** Questions 7 and 8 should be deleted because they are irrelevant and unlikely to glean any useful information, while they may confuse applicants. Question 9 is inappropriate because at the point of making the application the requester has no idea how much the fee for access will be, so it is unfair to ask whether the requester will (be able to) pay it.
 - **Form C:** Section (i) should require the PIO to specify exactly which clause in s.8 or 9 is being relied upon and on what factual basis. Section (iii) should be deleted because identify is not a ground for refusal permitted under the Act. Section (iv) should require the PIO to advise where the previously published information can be found. The Form should also include a note requiring the PIO to include a copy of the appeal form with the rejection notice.
 - **Forms D & E:** Question 4 should request a copy of the order “if any”. If one has not been provided, the complainant can answer “no order provided”. Question 5 is redundant because if the date of the order is already noted then the last date for filing the appeal can be calculated by the appellate body.

More generally, we would note that the Rules have been drafted in very complicated language and may be difficult for the ordinary person – and even many officials – to easily understand and apply. If the Rules are amended, I would encourage you to use plain English drafting and also issue the same in Oriya.

Sir, in light of the many concerns raised above, we urge you to make amendments and deletions to the Rules and issue urgent clarifications incorporating these suggestions as soon as possible to avoid any inconvenience to citizens and any confusion amongst implementing officials.

As always, if we can be of any assistance in bedding down the new RTI Act in terms of assisting in training officials, producing training and education materials and/or providing practical guidance on implementation, please do not hesitate to contact me on (0)9810 199 745 or (011) 2685 0523 or via email at majadhun@vsnl.com. Alternatively, please contact Mr Venkatesh Nayak, Co-Coordinator, Right to Information Programme at venkatesh@humanrightsinitiative.org

Yours sincerely,



Maja Daruwala
Director

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- Shri Dillip Kumar Sahu, Principle Secretary, Law Department, Government of Orissa, Secretariat Building, Bhubaneshwar – 751001.
 - Shri T Jacob, Joint Secretary, Department of Personnel and Training, Government of India, Room No 111, North Block, New Delhi – 110001.
 - Shri T K Vishwanathan, Secretary for Legislation, Legislative Department, Government of India, Room #405, A Wing, Shastri Bhawan, Dr Rajendra Prasad Road, New Delhi – 110001.