

Implementation
of
THE RIGHT TO INFORMATION ACT, 2005
Training of Master Trainers Workshops

August 16-17 & 19-20, 2005

Draft Report

(not to be quoted until further notice)

Workshops designed and coordinated by

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Organised by

UTTARANCHAL ACADEMY OF ADMINISTRATION, NAINITAL

and

DEPARTMENT OF INFORMATION, GOVERNMENT OF UTTARANCHAL

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Introduction

The preparations for implementing the Right to Information (RTI) legislation began in the State of Uttaranchal even as Parliament was debating this Bill. The Department of Information was chosen as the nodal agency for implementing this important law throughout the State at all levels of Government. As the Right to Information Act (RTI Act) has an in-built deadline of 120 days to complete preparations for its implementation, the State Government held a series of high level meetings of senior officers to draw up an action plan. Subsequently, orders and instructions were issued to begin work on the proactive disclosure provisions of this law (Sec.4). The process of designating Public Information Officers (PIOs), Assistant Public Information Officers (APIOs) and Departmental Appellate Authorities (DAAs) was set in motion in all departments at various levels of operation. The committee to appoint the members of the State Information Commission was also constituted as required by law. The State of Uttaranchal is a frontrunner amongst the 28 states in the country in terms of progress made towards implementing this all important law.

In July the Government of Uttaranchal invited the Commonwealth Human Rights Initiative (CHRI), New Delhi and YASHADA Pune, the premier training institution for RTI, to a two-day sensitisation workshop on the RTI Act. Participants discussed every provision of the law in detail and identified the challenges that lay ahead for implementation. As Uttaranchal is a newly created state (carved out of Uttar Pradesh in the year 2001) it does not possess previous experience of implementing such a law as do the States of Maharashtra, Karnataka and Delhi. This workshop provided valuable inputs to members of the senior bureaucracy based on the experience of implementing similar laws in other jurisdictions. At the end of the workshop it was decided that the Government would train about 100 Master Trainers selected from within the bureaucracy about the important provisions of this law. These Master Trainers were in turn expected to hold sensitisation workshops in every district for all senior and middle level officers. This strategy of using Master Trainers to spread awareness about the RTI Act amongst officials of all grades was found to be the best strategy considering the limited amount of time available for preparing to implement the law.

The Department of Information handed over the responsibility of hosting and planning the training workshops for Master Trainers to the Uttaranchal Academy of

Administration. CHRI was requested to assist UAA with inputs on the RTI Act while conducting the MT workshops. The agenda, activities and resource materials were finalised during the course of a series of intensive discussions between the UAA, the Department of Information and CHRI. It was agreed that 100 officers of the State Government would be trained in two batches during the third week of August at the UAA premises in Nainital.

Objectives of the Workshops

The overall objective of the workshops was to build capacity of a team of select middle and junior middle level officers from both the departmental and field levels to train their colleagues in the main provisions of the RTI Act and prepare them to implement it, come mid-October. The attendant goals of the workshops were as follows –

- to provide participants with a clear understanding of the main features of the RTI Act and its operational provisions;
- to provide participants with a clear perspective on the progress made all over the State for implementing this law;
- to familiarise participants with the main issues, challenges and difficulties facing public authorities in the implementation of this law and identify workable solutions;
- to help participants understand the duties and responsibilities of the PIOs, APIOs and DAAs;
- to develop capacity of participants to teach the main provisions of the law and the duties and responsibilities of PIOs, APIOs and DAAs to their colleagues in district level workshops.

The Government of Uttaranchal has already appointed Dr. BP Maithani as the State Coordinator of the Task Force to implement the RTI Act. The workshops were also treated as a source of inputs for the process of drafting rules and guidelines for implementing this law.

Topics covered at the workshops

The workshops covered the following topics related to the implementation of the RTI Act in considerable detail –

- ✓ timelines contained in the RTI Act for enforcement of various provisions;
- ✓ the concept and philosophy of RTI;
- ✓ the concept of public authority and its responsibilities;
- ✓ complete and partial disclosure of information;
- ✓ relevance of third party;
- ✓ duties and responsibilities of the PIO and the APIO;
- ✓ the procedure for seeking information – understanding the application process;

- ✓ time limits, fees and fee waiver;
- ✓ exemptions to disclosure;
- ✓ the appeal process and appellate authorities;
- ✓ powers and functions of the State Information Commission;
- ✓ the process of annual reporting required under the law;
- ✓ provisions relating to imposition of penalty;
- ✓ role of the courts;
- ✓ public education for spreading awareness about RTI and the law;
- ✓ role of Master Trainers in developing capacity to understand and implement this law and
- ✓ organising sensitisation workshops at the district level.

Methodology

It was agreed that the participatory approach to learning would be adopted keeping in mind the experience, capabilities and prior knowledge of the law that participants already possess. In order to build capacity of participants to emerge as MTs it was decided that the following methods would be employed to achieve the objectives of the workshop –

- ❖ Presentations by main resource persons;
- ❖ Group discussions
- ❖ Panel discussions
- ❖ Study of relevant source materials and documents

Resource inputs provided

Copies of the following source material were provided to participants –

- Gazette notification of the RTI Act dated 21 June 2005;
- summary of the RTI Act prepared in English by CHRI;
- summary of the RTI Act prepared in Hindi by the Government of Uttaranchal;
- printout of the MS PowerPoint presentation on the RTI Act in Hindi prepared by CHRI;
- template developed by Tata Consultancy Services in order to facilitate preparation of proactive disclosure documents required under Sec. 4;
- FAQs and case studies on the RTI Act developed by YASHADA;
- Recommended agenda for the district level workshops;

- Government Order (GO) issued on July 29, 2005 laying down clear guidelines for implementing various provisions of this Act subsequent to the State level workshop held in collaboration with CHRI in Dehradun.

The Government of Uttaranchal had requested CHRI to develop some basic guidelines about the duties and responsibilities of PIOs, APIOs and DAAs in order to enable them to handle information requests and appeals from citizens. Although many aspects of implementation would depend upon the formulation of rules under the law, CHRI developed some basic guidelines for the consideration of participants. Copies of the following documents (See Annexures 1-3) were distributed to participants not only to apprise them of the need for implementing the law in its letter and spirit but also to seek their opinion and validation so that these guidelines could then be expanded upon and included in the practical guide that the Government is in the process of developing –

- basic guidelines for the consideration of APIOs
- basic guidelines for the consideration of PIOs
- basic guidelines for the consideration of DAAs

Resource persons

Dr. R S Tolia, Chief Secretary, Government of Uttaranchal, Dehradun.

Mr. D K Kotia, Secretary, Information, Government of Uttaranchal, Dehradun.

Mr. Rakesh Sharma, Director, Uttaranchal Academy of Administration, Nainital.

Dr. B P Maithani, State Coordinator of the RTI Task Force, Government of Uttaranchal.

Dr. B M Harbola, Joint Director, Uttaranchal Academy of Administration, Nainital.

Mr. Venkatesh Nayak, Project Coordinator, Right to Information, CHRI, New Delhi.

Participant Profile

The State Government issued a request to all departments to nominate middle level and junior middle level officers who have adequate experience of working in positions of responsibility. It was hoped that they would be able to internalise the learning from the workshops and transmit the same to their colleagues in district level workshops. Care was taken to ensure that 3-4 MTs would be available in each district for conducting these workshops from the last week of August and all departments would have a similar number of MTs available for internal sensitisation. It was originally hoped that MTs would be trained in two batches of 50 over two days. This target was exceeded in the end with about 108 participants attending the workshops in different batches. Four of the participants who attended were women. The oldest serving officer possessed a total of 45 years of experience working in Government while the youngest had less than 2 years of experience. On an average participants had put in 20-25 years of service in various capacities. Given below is a list of designations of officers who attended the workshops –

Additional District Magistrates, Sub-Divisional Magistrates, Executive Engineers, Assistant Executive Engineers, District Supply Officers, District Information Officers,

District Development Officers, Assistant Directors (Revenue), Probationary Officers (Social Welfare), Deputy Director (Education), Chief Accounts Officers, Jt. Chief Personnel Officer, Tarai Development, Jt. Director, Pantnagar Agricultural University, Planning Director of the Uttaranchal Livelihoods Improvement Programme for the Himalayas, Seeds and Certification Officer, Sainik Welfare Officers, Executive Officer, Nagar Palika Parishad, Assistant Sports Director, Joint Cane Commissioner, Officers working with the Department of Parliamentary Affairs, Sarva Shiksha Abhiyan, District Agriculture Office, Water Resources Department, District Rural Development Agency, Commerce Department, Public Works Department, Non-Conventional Energy Development Agency, Small Industries Development Corporation of Uttaranchal Ltd., Hydro Power Development Corporation, Ltd. And other such public authorities.

Overview of the Sessions

The workshops began with a presentation on the objectives, agenda and topics expected to be covered during the workshop. Participants were asked to introduce themselves by mentioning briefly their designation, work area, extent of experience and knowledge of the RTI Act. It was clear that many participants had learned about the law either through the media or in departmental preparatory meetings. They expected to learn more about the law in the course of the workshop. After the introductory lecture explaining the philosophy and concept of RTI and the importance of the RTI Act, most of the first day's sessions were focused on a detailed presentation on the various provisions of the law. Participants were given adequate time to voice their concerns about the challenges to implementation and their questions were taken up by the CHRI resource person during the course of the presentation itself. Dr. B P Maithani, Coordinator, RTI Task Force intervened during the course of the discussions to issue clarifications and seek the opinion of participants about the guidelines they need for implementing the RTI Act better.

Participants were divided into small groups and given a specific topic from the list mentioned above to read up on and prepare for making presentations at the plenary on the second day. This turned out to be a very useful way of ascertaining whether participants had grasped the finer points of the law and its implementation. Most of the groups used transparencies and an OHP to explain the main provisions of the law allotted to them using caricatures and flow charts in a creative manner. This was followed by a detailed discussion on the preparations that require to be made while organising the district level workshops. The discussion was led by Dr BM Harbola Joint Director JAA Nainital.

It is worth noting here that one representative from each district was given a bank draft drawn in the name of the District Magistrate towards covering the expenses regarding these district level workshops. This took care of the concerns raised by participants about the lack of budgetary provision for conducting these workshops during the current financial year. This is a cost effective and time saving method of spreading awareness amongst the majority of officers working at the district level using locally available Master Trainers.

Setting the Agenda – Address of the Chief Secretary

Dr. R S Tolia, IAS, Chief Secretary, Government of Uttaranchal, began his address to the first batch by asking participants to voice any queries, concerns and fears they had about the RTI Act. Participants' questions related to the need for revising weeding rules; the process for refunding fees if information was given after the deadline had lapsed; whether additional fee for providing information was to be charged on BPL applicants; manner of ascertaining BPL identity; the budgetary head on which expenses arising from the implementation of the RTI Act was to be billed; whether reformulation of information requests was allowed under the law; whether there was a limit to the number of information requests citizens could make through one application; procedure for allowing citizens to inspect records and the feasibility of providing photocopying facilities for Gram Pradhans who are the PIOs of Gram Panchayats.

In his response to these queries Dr. Tolia began by commenting on the extent of secrecy that existed in officialdom because of the operation of Official Secrets Act (OSA). He noted with a sense of irony that the rules formulated for implementing the OSA were themselves kept confidential and not available to the public. He said in a democracy every person has the right to know what the government is doing because it is their government. He reminded participants that any such person could become the Chief Minister or the Chief Secretary one day and get access to all secret records held by government. So holding back information from people did not make much sense in a democracy. He jestingly remarked that he had instructed that the 'Gopan Vibhag' (Confidential Department) should henceforth become an 'Open Vibhag' (Department of Transparency) in keeping with the spirit of the RTI Act.

In response to some of the specific questions Dr. Tolia pointed out that government was a never ending and continuous process. Therefore certain practices such as the records room system which had been neglected for a very long time needed to be revitalised. The RTI Act gave officers an opportunity to undertake proper records management. He pointed out that until the passing of the RTI Act only the Chief Minister and the Chief Secretary could requisition any record from any office in the state. The RTI Act now gave every citizen the right to access all such records. Henceforth citizens would become seekers of accountability in government.

Dr. Tolia pointed out that RTI could become a good option for sincere officers who can henceforth give their honest opinion on matters without the fear of displeasing anybody. He urged officers to imbibe the spirit of the law – entrenched in values of transparency and accountability – and implement it not just in letter but also in spirit. He suggested that all orders be put on websites so that no citizen may be required to make an application and wait for 30 days to get a reply. He advised participants to amend the manuals, office procedures and all conventional ways of doing things in government if they came into conflict with the operation of the RTI Act. He made it clear that the Government was serious about implementing the RTI Act in its spirit come what may.

Dr. Tolia suggested that the Media Information Centres in the district be strengthened to become information hubs for the benefit of common people. He reminded participants that they were living in an electronic age where information was a commodity. With mobile phones, emails and faxes information could be transmitted

from one point to another in real time. Therefore it did not make sense to delay giving information to citizens until the 30th day. He urged officers to give information to citizens ungrudgingly and willingly.

Dr. Tolia ended his presentation by urging participants to bring in an open and clean environment to the sphere of government functioning. This alone would build the confidence of people in the administration. He noted that the RTI Act along with the 73rd and the 74th constitutional amendments were two of the best laws that had the potential to make democracy a reality for common citizens. He hoped that Uttaranchal would become a model state in terms of transparency and more importantly with regard to response time for meeting information requests of people. He urged participants to give information to citizens within 24 hours as far as possible as most of the exemptions under Sec. 8 did not relate to the work of officers at the district level. He thanked CHRI for providing research support and inputs on best practices of implementing RTI laws in other countries. He observed that this support was valuable for the Government while preparing to implement this important democratising law in the State.

Address of the Secretary, Information

Mr. D K Kotia, IAS, Secretary, Department of Information – the nodal agency for implementing the RTI Act appreciated the high turnout of participants at the workshop despite inclement weather conditions. He apprised participants with a brief overview of the RTI Act and explained the contents of the July 29th order on the implementation of the RTI Act in Uttaranchal (Annexure 4). He emphasised the crucial role MTs were expected to play in organising the district level sensitisation workshops between August 23- September 6, 2005. He informed participants that the process for designating PIOs, APIOs and DAAs was well under way and that these authorities would be trained during the 2nd and the 3rd week of September. Video uplink with the capital at Dehradun would be provided at each of these meetings so that clarifications on any aspect of the law could be provided to participants in real time.

Addressing some of the fears and concerns expressed by participants about the ways in which this law would change the process of government, Mr Kotia reminded them that giving information to citizens was not a new idea. All offices were already disseminating information amongst citizens by various means. The RTI Act only brought uniformity and systematisation to this old process. Therefore there need be no worry about setting up brand new systems of giving information to people under this law.

Pointing to the philosophy behind the RTI Act Mr. Kotia noted that poor delivery of public services and poor governance were the main reasons for the demand of citizens for the right to access information. He noted that 90% of the members of bureaucracy worked as required by law and efficiently. They need not worry about the implications of the RTI Act as it would not harm such officers. Only 10% of the officers who were deficient would now be compelled to perform better. He noted that the RTI Act provided protection to officers who took action in good faith and they need not worry about any harassment. He emphasised that the main objectives of the RTI Act were to provide a means for citizens to voice their grievances and ensure their participation in government. He reminded the participants that nobody in a democracy could have a quarrel with a law that had such noble intentions.

Mr. Kotia reminded the participants that their duties and responsibilities involved in the main spending public funds in a proper manner for the welfare of the public – their salaries were also paid from those public funds. Therefore there was no valid reason for not involving people in the planning and decision-making processes of government. He emphasised that this participation was of signal value in Uttaranchal where developmental needs outnumbered the amount of public funds available for the purpose. This mismatch put a lot of discretionary power in the hands of officials – one of the reasons why unfair practices were adopted by some officers in decision-making – ultimately leading to corruption. Ulterior motives raised their head in such situations and some officers sought illegal gratification from people in order to exercise their discretionary power in their favour.

Mr. Kotia noted that involving people in the decision-making process would help prioritise needs and lead to making sound spending decisions. He reminded the participants that corruption had reduced considerably in those cases where Panchayats took serious interest in the planning and implementation of developmental programmes. He urged participants to always bear in mind that power was given to them for doing their duty in an efficient manner but not to misuse it or use it for personal gain. If penalties were imposed on erring officers for misuse of power no loss would accrue to the people or the Government. He pointed out that the RTI Act was a tool for sincere officers to overcome political pressure and interference in their work. This law would prevent officers from passing unreasonable orders and making decisions that would not stand up to public scrutiny.

He informed participants that the implementation of the RTI Act would be monitored at the highest level. This law was expected to bring self-regulation and discipline in the way government officers work. The misunderstanding that exists between people and government is often because of a gap in communication. Officers were well advised to bridge this gap by giving information to people proactively. He urged participants not to treat the information requestor as an enemy or adversary. Instead officers could discuss what information the citizen needed and provide him/her with such information without much delay. He noted that all fears and concerns raised by participants had real solutions. But what was required for implementing the RTI Act was a change in mindset. With an open mindset the problems of giving information could be tackled easily. Mr. Kotia concluded his remarks by saying that the RTI Act created a new regime throughout the country – the regime of information where citizens would access it as a matter of right. He urged all officers to be psychologically prepared for this change of regime from secrecy to one of transparency.

Inputs from the faculty, Uttaranchal Administrative Academy

The Director, UAA Mr. Rakesh Sharma, IAS and the Deputy Director Dr. Garbyal participated in the discussions at various stages clarifying doubts raised by the participants on various aspects of the RTI Act. The Director urged the participants to go back to train their colleagues without bearing any misgivings about the law in their minds. He reminded the participants that the RTI Act would prove to be beneficial to them in many ways as it would help them streamline the work of their departments better and also bring about a higher level of efficiency in their work. As most officers were used to giving information to the public in the past there was no reason to be

fearful of the RTI Act unnecessarily. The 2nd workshop came to an end with the concluding remarks of, Director UAA, Nainital.

Problems and Challenges of Implementation

Participants at both workshops raised several old and new concerns with regard to the implementation of the RTI Act at the ground level. (A list of some of these problems and challenges have already been listed in the report of the 2-day State level workshop organised in Dehradun in July.) Some of the major concerns raised by participants and the response/solutions offered by the resource persons are listed below –

1. Conventional Access to Information

Concern: *Government offices have been providing information to people on the basis of their verbal requests in the past. Does the RTI Act require that such informal practices be ended?*

Response: No, there is no need to discontinue the conventional and informal practice of giving information upon verbal request. The RTI Act does not put an end to such practices. If information can be given without delay upon verbal request it is better to give such information to the requestor rather than require him/her to put in a formal application. This helps reduce paper work for the public authority and increases confidence of the citizen in the administration.

2. The Application Process

Concern: *Should a format of application (information request) be prescribed by government?*

Response: The RTI Act does not specify any format for making an information request. Sec. 6(2) that the applicant need give only that much detailed contact information as may be necessary to contact him/her by the PIO while processing the application. A format may be developed in the rules that Central/State Governments are required to frame for implementing this Act for the convenience of the public. But insistence upon using a prescribed proforma may result in illegal profiteering by unscrupulous elements through the sale of application forms. Citizens should be allowed to apply on plain paper giving their contact details and nature of information requested as per guidelines given in Step 2 in Annexure 2.

Concern: *Previous experience has shown that some elements may misuse this law and use information to blackmail honest officers. Should the PIO not be given the power to verify the intentions of the applicant?*

Response: While it is possible that some elements may misuse the RTI Act there is very little opportunity for the PIO to verify the intentions of the applicant. While personal contact details of the applicant are amenable to verification it is near impossible to verify his/her intention in seeking information. Furthermore Sec. 6(2) makes it clear that the applicant will not required to give reasons for seeking information. An honest and sincere officer need not fear blackmail. The best way to

avoid blackmail is to make available as much information as possible proactively. As far as possible upload all information disclosed upon request on the website. When information is accessible by a large number of people the possibility of blackmail diminishes considerably.

Concern: *If the same kind of information is sought by more than one person should it be made available to all such requestors? This will waste a lot of the PIO's time and resources.*

Response: Every public authority should assess the information needs of people who contact it from time to time, This will help the public authority ascertain what kinds of information are requested by people frequently. All such information which has been requested by more than one citizen should be uploaded on the Internet and updated from time to time. Requestors who have access to Internet facilities may be directed to access the information on the concerned website thereby saving PIOs valuable time to devote to other applications or office matters. If such frequently requested information can be made available to the PIO in the Public Information Directory/Manual required to be published under Sec. 4 a lot of time, energy and resources can be saved in the process of satisfying the information needs of citizens.

Concern: *The implementation of this Act will require huge resources that have not been budgeted for during the current year. How will the public authority meet the additional expenses arising out of the implementation of the RTI Act?*

Response: It is true that this law was passed after the budgetary allocations for the current year had been made. So there is no separate head on which to defray these expenses. The Chief Secretary noted that the budget head 'Other expenses' could be used for this purpose.

Concern: *How much information can a citizen request in one application? If he/she asks 20-30 kinds of information in one application should it be given? Or should the citizen be asked to put in fresh applications for each point of information requested and also be asked to pay application fees every time?*

Response: There is no limit on the number of questions that an applicant may request in one application. However if the categories of information requested require a disproportionate diversion of time and resources of the public authority then the PIO should negotiate with the applicant as far as possible in order to find out as to which information was required more urgently. If some of the information requested relates to the work of another public authority the PIO has the power to transfer those parts of the application to such public authority under Sec. 6(3). If it is difficult to provide information in the requested format then the PIO is best advised to discuss the matter with the applicant (wherever possible). If the applicant is not easily reachable except by post then the PIO may give detailed reasons in writing for not being able to meet the information request. This will indicate to the DAA or the SIC that the PIO had taken action in **good faith** and had done all that was possible to honour the citizen's right to seek information if the applicant files an appeal. No penalty will be imposed on the PIO if it is shown that he/she has taken action in good faith (Sec. 21).

3. Duties of the PIO and the Assistant PIO (APIO)

Concern: *If the information requested by the applicant is in the possession of the APIO should he/she not give that information to the applicant?*

Response: The RTI Act is meant for giving citizens easy access to information held by public authorities. There is nothing in this law to stop the APIO from giving information under his/her possession to the information requestor. There is no need to follow the usual process of forwarding the application to the PIO if the APIO can adequately meet the information needs of the applicant.

Concern: *Will the APIO be punished for giving wrong or misleading information just as a PIO can be penalised under this Act?*

Response: Yes, the APIO is liable for penalty for providing wrong or misleading information even under other laws like the Indian Evidence Act and the Indian Penal Code.

Concern: *If the Gram Pradhan who is the PIO of the Gram Panchayat (in Uttaranchal) does not know how to read or write how will he/she be able to meet the information requests of citizens?*

Response: If the Gram Pradhan is unable to read and write he/she may take the assistance of the Secretary of the Panchayat or the Village Development Officer for providing the requested information to the applicant.

Concern: *How does a PIO decide whether the information requested relates to the life and liberty of the individual? If the requestor threatens suicide in the event of being denied access to information should it be given within 48 hours?*

Response: This category of information usually relates to the work of law enforcement and security agencies. Detailed guidelines are available in other jurisdictions in the world for dealing with such applications. The State Government will have to come up with guidelines for treating such information requests with due diligence and urgency. However information requests made under suicide threats must be dealt with due concern and the applicant must be reassured that action will be taken in good faith while dealing with his/her information request. Nothing reassures such a person as a few words of calm headed wisdom and treatment with due compassion.

Concern: *Why should the PIO not use the BPL list available in the district for determining the identify of applicants claiming fee waiver? This will eliminate the procedure for verifying proof of identity.*

Response: BPL list may be used for verifying the identity of a person claiming fee waiver if he/she is ordinarily a resident of the same district. However BPL lists differ from district to district. A citizen should not be denied fee waiver just because his/her name does not appear in the list of the district where he/she has submitted an information request. In order to implement the law in its spirit the PIO is better

advised to accept as proof a photocopy of the BPL/Antyodaya ration card or some other similar documentation of BPL identity prescribed by the Government.

4. Fees – Application and Additional Cost of Providing Information

Concern: *Should the PIO give information if the applicant does not submit proof of payment of application fees nor if proof of BPL identity is attached to the application? Should the APIO forward such applications to the PIO?*

Response: The PIO is required to take a decision about giving or not giving information only if the application is complete in all respects. An application is complete only if it has all contact details about the applicant and the nature of information requested along with proof of payment of application fees or proof of BPL identity if claiming fee waiver (See Step 2 in Annexures 1&2). An APIO may forward only complete applications to the PIO. If the applicant has submitted an incomplete application it is the duty of the PIO or the APIO, as the case may be, to request the applicant to complete the application in all respects to facilitate the commencement of processing of the information request by the PIO.

Concern: *Should BPL applicants be charged the additional cost of providing information requested?*

Response: No, the RTI Act makes it clear that no fee will be charged from people living below the poverty line at any stage [Sec. 7(5)].

Concern: *How will PIOs collect application fees and additional fees for providing information if the request is received by email?*

Response: The Government should specify the mode of fee payment for applications received by email. They could provide for online payment options. Or the applicant may be sent a reply email to pay fees in cash or send proof of payment by any other means prescribed by Government in the rules.

Concern: *The RTI Act states that information must be provided free of cost if it is not given within the time limit specified. What is the process for refunding the money to the applicant?*

Response: Yes, the applicant is entitled to information free of cost if it is provided after the lapse of the deadline stipulated in the Act. The State Government should prescribe the process for refunding the additional fees paid by the applicant. It should also specify whether the application fee will also be refunded to the applicant in such cases. This process of refund must be take into consideration the convenience of the applicant.

Concern: *If the applicant does not pay the additional fees towards cost of providing information within the 30 day deadline will the PIO be penalised for failing to provide information to the applicant?*

Response: No. The PIO will not invite any penalty in such cases. The 30-day clock stops ticking from the date of dispatching the intimation order issued by the PIO and restarts on the date on which the applicant pays the additional fee. For example, if the PIO dispatches the intimation letter on the 5th day from the date of receipt of the complete application only 5 days would have elapsed from the 30 day limit. The clock will restart on the date on which the applicant pays the additional fees. The PIO will have to provide the information within 25 days from the date of payment of additional fees. If the applicant chooses to seek a review of the additional fee from the DAA or the SIC the period taken for giving a decision on this matter will not be included in the 30 day limit.

Concern: *If the applicant does not respond to the intimation letter of the PIO requesting payment of additional fee will the PIO be duty bound to provide information to the applicant? Is the PIO duty bound to provide information within 30 days even in such cases?*

Response: No. The PIO does not have a duty to provide information to the applicant in such cases. The RTI Act states very clearly that the PIO will provide access to information only upon payment of additional fee as may be determined [Sec. 7(1)] by him/her (for non-BPL cases). However if the PIO does not receive a response to his/her intimation letter from the applicant he may send a reminder after 2-3 weeks. If the applicant does not deposit the additional fee within 2 months (allowing a grace period for filing a review of the additional fees and 30 days for the appellate authority to give its decision in such cases) then the PIO may issue a rejection order citing non-payment of additional fees as the reason. This action of the PIO will not amount to unreasonable denial of information and will therefore not invite any penalty. It is advisable for the Government to specify limitation on the time period for such cases in the rules or in the guidelines.

Concern: *What if the applicant claims that he/she did not receive the intimation letter from the PIO and files an appeal with the DAA and the SIC? Will the PIO be penalized?*

Response: The PIO is advised to maintain a copy of the intimation letter in his/her records for use in such cases. Furthermore the PIO may send the intimation letter Under Posting Certificate (UPC) to the applicant. This is ample proof that the PIO had taken action in good faith. The PIO will not attract penalty in such cases. The law requires that the PIO be given an opportunity to present his/her case before the decision to impose a penalty is taken.

5. Transfer of applications

Concern: *If the applicant requests information that relates to the work of several departments is the PIO responsible for giving all that information within the deadline? The PIO will not be able to do any other work in such cases.*

Response: No, the RTI Act makes it clear that the PIO has the power to transfer an application or parts of it if it relates to information held by another public authority or relates more closely to the activities of that other public authority [Sec.

6(3)]. The PIO is not responsible for collecting information from other public authorities especially if it is likely to take more than 30 days to secure such information. It is better to transfer the application to the concerned PIO and inform the applicant about the transfer in writing immediately. This amounts to action taken in good faith and will not attract any penalty to the PIO.

6. Exemptions, complete and partial disclosure

Concern: *The PIO continues to be under the purview of the Official Secrets Act (OSA) of 1923. How will he reconcile his duties under the RTI Act with the secrecy required to be maintained under the OSA? What happens to the oath of secrecy every officer is required to take while joining service?*

Response: The OSA will not have an overriding effect over the RTI Act according to Sec. 22. But the OSA has not been repealed by the RTI Act either. Therefore it is important for Government to give specific guidelines regarding the interaction of the obligations under the OSA with the duties of the PIO under the RTI Act. The Government will probably have to amend the oath of secrecy to bring it in line with the imperative of transparency required under the RTI Act.

Concern: *What is the process for taking a decision on granting partial access to a record? Who is the authority to make this decision within a public authority?*

Response: Sec. 10(2)(b) of the RTI Act makes it clear that the PIO is not always the deciding authority for granting partial access to records that may contain exempt information (The PIO is required to give the name and designation of the person giving the decision of partial access while intimating the same to the applicant.) With the exception of cases where information requested belongs to the category of personal information where the PIO has the authority to decide whether disclosure is in public interest [Sec. 8(1)(j)] it is the public authority or the competent authority which has the power to grant full access or partial access in public interest. The Government should specify in the rules the level at which the decision to grant complete or partial access to exempt records must be taken within the public authority. Care must be taken to ensure that decision in such cases must be taken within the time limit stipulated in the law as there is no grace period provided for this process. The clock continues to tick non-stop in such cases.

Concern: *If the process of taking samples results in substantial damage to the public work concerned can the PIO issue a rejection order?*

Response: This is another area where detailed guidelines are required for the PIO to take action. If taking samples from a public work results in damage to the structure the PIO may mention the same in his rejection order. The SIC will give the PIO a reasonable opportunity to justify denial of the sample. If action is taken in good faith the PIO will not attract any penalty.

Concern: *In 2001 Uttaranchal was carved out of the erstwhile State of Uttar Pradesh. Many files were transferred to the new Government but many more continue to remain with the UP Government although they pertain to decisions taken or work*

done in the areas covered by Uttaranchal at present. Will the PIO be penalized if he/she fails to provide information because such information is contained in the files which are in the possession of the UP Government?

Response: If a PIO is unable to give information because he/she does not have access to such records he/she will not be penalised. If records were not transferred from UP the PIO cannot be held responsible for the same under the principles of natural justice. **As this is a federal matter, the Central Government will have to make rules and issue guidelines as to how information will be accessed in such cases, whether such applications can be transferred from one State to another and which Information Commission will have jurisdiction to entertain appeals in such cases.**

Concern: *In cases where building plans and designs of bridges or other important public structures have been requested and if the PIO has reasonable suspicion that the applicant will use those plans for commercial purposes and make a profit out of it, should such information be given?*

Response: The Government should come out with detailed guidelines regarding the protection available for copyrighted materials and intellectual property rights held by public authorities. If disclosure of building plans and designs affects the economic interests of the State in a prejudicial manner then such information may be covered by Sec. 8(1)(a). But if the PIO is able to justify before the concerned appellate authority that he/she had provided reasons for denying access to such plans no penalty will be imposed. The appellate authority is appointed precisely to give quasi-judicial decisions on the finer points of the law. Therefore if the PIO has taken action in good faith the appellate authority may not impose a penalty even if it decides in favour of disclosing such plans and designs.

Concern: *If there is a flood of applications for inspection of records how will the PIO provide access to all applicants and also do justice to his/her other designated duties?*

Response: The Government needs to make rules and guidelines for PIOs regarding the procedure to be followed for allowing inspection of records. If there is a high demand for the inspection of certain categories of records it is advisable to digitalise such records as far as possible and upload it on the Internet to facilitate easy access to the public. This will reduce the workload of the PIO as well.

Concern: *What if existing departmental manuals prevent disclosure of information to the people?*

Response: All such manuals were drawn up before the RTI Act came into place. These manuals will have to be reviewed in light of the new law and all unreasonable procedures for denying access to information will have to be done away with unless they relate to the exempt categories of information. Even in the case of exempt information the manuals should be so designed as to facilitate complete or partial access in the public interest. All new departmental manuals likely to be drawn

up in future must conform to the new regime of transparency set up under the RTI Act.

Concern: *What if the applicant places a request for information or a record that has already been destroyed under the weeding rules or the retention schedules of the department/public authority? Will the PIO be penalized for failing to give such information?*

Response: The retention schedule and the weeding rules of all public authorities will have to be revised in light of the new regime of transparency set up by the RTI Act. However if the information/record requested has been weeded out the PIO will not be held responsible for the same as the situation is beyond his control. He/she will have to mention the fact that the requested record/information has been destroyed under the weeding rules while issuing the rejection order. The SIC will not penalize the PIO for action taken in good faith.

Concern: *If the law under which a Public Sector Unit (PSU) has been constituted does not allow access to information to the people such as agendas of board meetings etc. will such information have to be given under the RTI Act?*

Response: Even PSUs fall within the category of public authorities. But if an applicant seeks information about trade secrets or IPRs whose disclosure will affect the competitive position of that PSU such information may not be given unless there is a larger public interest involved. If the law constituting the PSU does not allow disclosure of certain categories of information other than the above the appropriate Government should review the statute and bring it in line with the RTI Act. This is an undeniable requirement of the new transparency regime.

Concern: *How can a public authority ensure that the applicant does not misuse the information secured from its PIO?*

Response: While there is no fool proof way of preventing such misuse the Government should issue guidelines for certifying documents and copies of records released under the RTI Act. A stamp impression may be made on every page stating that the document was being released under the RTI Act and the number of pages contained in the document may be mentioned on every page in order to prevent alteration of the contents of the document.

Concern: *If the information given by the PIO in response to a request turns out to be wrong, false or misleading but the PIO was not responsible for the creation that record or such information will he/she be penalized by the SIC?*

Response: The RTI Act provides protection to the PIO for action taken in good faith. If the requested record has not been prepared by the PIO but by some other officer or if the data compiled by the PIO was received from some other officer and the PIO merely passed on that information to the applicant without having prior knowledge that such information is wrong or false or misleading he/she is not guilty of an offence. The SIC will penalize PIOs only in such cases where it may find him/her guilty of malafidely giving wrong, false or misleading information.

Concern: *Does the 20 year limit mentioned in Sec 8(2) apply only to the exempt categories of information? Can any citizen ask any information that is 20 years old even if it does not fall within the category of exemptions? Will the PIO be penalised if he/she is unable to provide such information?*

Response: The time limit for seeking information (i.e. how old?) is not mentioned in any part of the RTI Act except Sec. 8. Ordinarily this limit should apply to non-exempt information as well. In other words any citizen should be able to access information about any event, matter or occurrence after 20 years even if it falls within the categories of exempt information [except 8(1)(a),(c)&(i)]. However the Government should clarify this aspect of the limitation on the accessibility of old records.

Concern: *Will the RTI Act be applied with prospective or retrospective effect? In other words can citizens seek information that is 20 years old the day the law becomes fully operational?*

Response: This is a grey area which the Central Government should clarify. The spirit of the law would be completely lost if it does not provide citizens access to information that is older than the date on which it becomes fully operational.

However a large section of the senior officers and participants at the workshop in Uttaranchal believe that the law must be implemented with prospective effect.

Concern: *Are file notings and opinion given to government covered by the definition of information in the RTI Act? Should such notings and opinion be disclosed to the public?*

Response: Yes, 'opinion' is included under the definition of 'information' under Sec. 2 of the RTI Act. As file notings are opinions expressed by officials they must be disclosed unless they relate to exempt information listed in Sec. 8(1) of the Act.

Forwarding Information Requests and Appeals**Guidelines for the consideration**

of

State Assistant Public Information Officers

under the

Right to Information Act, 2005**Introduction**

The Right to Information Bill was introduced in the Lok Sabha in December 2004. It was passed by both houses of Parliament in May 2005. The assent of the President was received on 15th June and the Act was notified in The Gazette of India on 21st June. The *Right to Information Act* will become operational by the 12th October, 2005 after the completion of 120 days from the date of Presidential assent. The *Freedom of Information Act* passed by Parliament in 2002 has been repealed.

The *Right to Information Act* (RTI Act) will cover all levels of government – Centre, State, district and local self governing bodies like Panchayats and Municipal bodies. It will also cover non-governmental organisations – i.e. NGOs, VOs and other private bodies – that are financed substantially with public funds provided by the government. This means every citizen has the right to put in an application requesting information or copies of records held by these bodies and such information should be given by the concerned body.

The citizens' right to information is not explicitly mentioned in the fundamental rights chapter of the Constitution. But in more than 10 cases the Supreme Court of India has declared that the fundamental right to life and liberty [Art. 21] and the fundamental right to freedom of speech and expression [Art. 19(1)] include every citizen's fundamental right to access information held by public authorities. Parliament passed the RTI Act to enable all citizens to use their fundamental right to access information from public bodies.

The main objectives of the RTI Act are –

- To promote transparency and accountability in the working of every public authority and
- to set up a practical regime for giving citizens access to information that is under the control of public authorities.

The Three Level Regime for Accessing Information

At the first level of the regime, every public authority has designated officers for receiving applications (also called 'information requests') from citizens.

At the second level, every public authority has designated senior officers to look into those cases where citizens' requests for information have been refused. If citizens do not get the requested information or are unsatisfied with the information they have received, under this law they have the right to send an appeal to the Departmental Appellate Authority (DAA) designated within the concerned public authority.

At the third level, an independent State Information Commission (SIC) has been set up to look into those cases where citizens are unsatisfied with the decision of the DAA. The SIC also has the powers and responsibility to monitor compliance of public authorities to this Act and submit an annual report to the State Legislature.

Role of Courts

According to the RTI Act the decision of the SIC is binding on all parties. Courts are barred from inquiring into the decision of the SIC. But it must be remembered that this law gives effect to a fundamental right of citizens. According to the Constitution, the High Courts (Art. 224) and the Supreme Court (Art. 32) have the power to look into any matter relating to the fundamental rights of citizens. Technically, a citizen has the right to approach the High Court or the Supreme Court if he/she is not satisfied with the decision of the SIC.

Role of the Public Information Officer

Under the RTI Act, Public Information Officers (PIOs) should be designated in all administrative units of every public authority in order to receive information requests from citizens. They also have the responsibility and duty to provide the requested information within 30 days. The PIO is the main point person whom citizens will contact for exercising their right to information under this law. In public authorities controlled by the State Government they are called State Public Information Officers (SPIOs).

The Assistant Public Information Officer

The RTI Act requires that the State Government designate Assistant Public Information Officers at the sub-divisional or sub-district level.

Please remember –

– the Assistant Public Information Officer is not an assistant to the CPIO or the SPIO.

In public authorities controlled by State Governments they are called State Assistant Public Information Officers (SAPIOs).

Duties and Responsibilities of SAPIOs

- **DUTY TO FORWARD INFORMATION REQUESTS TO THE PIO**

Under the law the SAPIOs will act like a Post Office. Every SAPIO has the duty and responsibility to receive information requests from citizens and forward them to the PIO of the concerned public authority that is likely to have the information being sought by the applicant.

Please remember –

- ***a SAPIO is not responsible for giving information to the requestor. (It is the responsibility of the Public Information Officer to give information to the requestor.)***
- ***a SAPIO does not have the power to ask the requestor why he/she wants such information.***
(The RTI Act states clearly that the requestor should not be asked to give reasons for seeking information)

- **DUTY TO FORWARD APPEALS TO THE DAA AND THE INFORMATION COMMISSION**

The SAPIO also has the duty and responsibility to receive appeals against the decision of PIOs and forward them to the Departmental Appellate Authority or the State Information Commission as required in the letter of appeal submitted by the aggrieved citizen.

Please remember –

- ***The SAPIO must forward all applications received by him immediately.***
(The RTI Act allows the PIO only 5 extra days over and above the limit of 30 days to give information to the applicant if the request is forwarded through the SAPIO. So it is important to send the application to the PIO without any delay.)
- ***The SAPIO must forward all appeals received by him to the concerned DAA or the SIC immediately.***
- ***The citizen has the right to send a complaint to the IC if the SAPIO does not accept his application and forward it to the PIO. If proven guilty the SAPIO may be fined by the SIC from a minimum of Rs. 250/- up to a maximum of Rs. 25,000/- for each offence.***

Forwarding Information Requests

For Applications received in person

Step 1 : Receiving the Application

As far as possible please receive citizens' applications for information personally.

Advice:

If you are on leave or travelling on duty please delegate the task of receiving applications to your colleague or subordinate in writing. This standby arrangement must be displayed on the main notice board for the benefit of common people.

Step 2 : Checking the Application

Please check whether the application contains the following details and enclosures –

- i) name of the applicant**
- ii) name of the father/husband (as the case may be) of the applicant**
- iii) contact details of the applicant including complete postal address, telephone numbers and email address (if any)**
- iv) name of the public authority from whom the information is being requested**
- v) nature and details of the information requested**
- vi) whether proof of payment of application fee is attached or not**
- vii) if the applicant claims fee waiver whether proof of BPL status is attached or not**
- viii) whether the applicant wishes to receive the information by post?**
- ix) date on which application is being submitted.**

Advice:-

- 1) If the application is not legible please assist the applicant to write it clearly.
- 2) If the applicant has not filled in one or more of the above details please bring the same to his/her notice and request him/her to fill in the details.
- 3) Please make sure that the date mentioned on the application matches with the date on which you are actually receiving the application. This is very important for calculating the deadline while forwarding the application to the PIO.
- 4) The Government will notify the amount of application fees payable.
- 5) The applicant may have attached a bank draft, postal order, court fee stamp or proof of payment of application fee by any other mode prescribed by the Government. All such payments are valid. Please do not insist on a particular mode of payment.
- 6) The applicant may not always know the exact name and complete postal address of the public authority who has the information he/she wants. So please do not insist upon the applicant to furnish these details. ***It is the duty of the SAPIO to send the application to the concerned PIO.*** (The PIO directory published by the State Government may be consulted for this purpose.)
- 7) If claiming fee waiver, the BPL applicant must attach a photocopy of a BPL/Antyodaya ration card or any other valid proof of BPL identity that may be prescribed by the Government.

Step 3 : Collecting Application Fees/Proof of Identity

If the applicant has not already attached proof of payment of application fees you may collect the prescribed application fee in cash.

or

If the applicant has not attached proof of BPL identity in support of his/her claim for fee waiver please request the applicant to furnish the same.

Step 4 : Issuing Receipt

Please issue a written receipt in the prescribed format for every complete application received.

Advice:

- A complete application must include all details mentioned in Step 2 above and proof of payment of application fee or proof of BPL identity (as the case may be).
- Receipt format will be printed in triplicate. Please issue the original to the applicant.

Receipts must be issued to BPL applicants also. This receipt may include details such as the name and address of the applicant, the date on which the application was received and whether application fees has been paid in cash or by any other mode. If fee waiver is being claimed please mention so. Please sign and stamp the receipt.

Advice:

- Please remember this is not just a cash receipt. It is a receipt issued as proof of having received the citizen's application for information with or without the prescribed fees.
- Please issue this receipt immediately. Do not request the applicant to come back another day to collect the receipt.
- Please remember to mention the date on the receipt clearly.

Step 5 : Registering Complete Applications

Please enter the details of the complete application into the RTI Applications register prescribed by Government. All complete applications should be entered into this register the same day they are received.

Step 6: Dispatching Complete Applications to the concerned PIO

Please dispatch the complete application along with the duplicate of the receipt issued, to the concerned SPIO by post or courier on the same day you receive it. If for some reason you are unable to dispatch the application on the same day you should dispatch it the following working day. The prescribed format may be used for the covering letter. This format will contain details such as your name, designation and contact address, date of receipt of application, registration number, fees collected (if any) and enclosures (if any).

Advice:

- If the application is not addressed to a specific SPIO or a public authority please read through the nature of information being requested. This will help you identify the public authority that is most likely to possess the information requested. You may then dispatch the complete application to the concerned PIO using the PIO directory published by the Government.
- You need not maintain a copy of the application for your records.

For applications received by post or courier

- Please follow Step 2.
- If the application is complete in all respects, please enter the details of the application in the prescribed RTI Applications register on the same day you receive it.
- After registering the application in the RTI Applications Register please issue a receipt in the prescribed format and dispatch it to the applicant by post/courier on the same day. If for some reason you are unable to dispatch the receipt on the same day you should dispatch it the following working day.
- If the application clearly mentions the public authority from which information is being requested please dispatch it to the concerned SPIO on the same day you receive it. If for some reason you are unable to dispatch the application on the same day you should dispatch it the following working day.
- If the application is not addressed to a specific public authority please read through the nature of information being requested. This will help you identify the public authority that is most likely to possess the information requested. (The PIO directory published by the State Government may be consulted for this purpose.) You may then dispatch the complete application to the concerned SPIO with a covering letter in the prescribed format.

Advice:

- If the applicant has not attached proof of payment of application fees and has also not claimed fee waiver – please send a communication by post/courier to the sender requesting him to furnish proof of payment of the prescribed application fees or visit your office to pay the fees in cash. If the application contains a contact telephone number please call up the applicant advising him/her to pay the application fees. This action saves time and effort and prevents wastage of stationery.
- Similarly if the applicant has not attached proof of identity despite claiming fee waiver in the application - please send a communication by post/courier to the sender requesting him/her to furnish proof of BPL identity. If the application contains a contact telephone number please call up the applicant advising him/her to furnish proof of BPL identity. This action saves time and effort and prevents wastage of stationery.
- If any of the details are missing or illegible please return the application by post/courier to the sender requesting him/her to fill in the missing or unclear details. If the application contains a contact telephone number please call up the applicant requesting him/her to visit your office to fill in the missing details.

Forwarding Appeals

For appeals received in person:

Step 1 : Receiving Appeals

As far as possible please receive citizens' appeals personally. A SAPIO is empowered to receive appeals addressed to the Departmental Appellate Authority (DAA) and the State Information Commission (SIC).

Advice:

If you are on leave or travelling on duty please delegate the task of receiving appeals to your colleague or subordinate in writing. This standby arrangement must be displayed on the main notice board for the benefit of common people.

Step 2 : Checking Appeals

Please check whether the appeal contains the following details and enclosures –

- i) name of the appellant**
- ii) name of the father/husband (as the case may be) of the appellant**
- iii) contact details of the appellant including complete postal address, telephone numbers and email address (if any)**
- iv) authority to which appeal is being sent (whether DAA or the SIC)**
- v) details of the authority against whose decision the appeal is being made (whether PIO or DAA)**
- vi) nature and details of the information requested originally**
- vii) copy of the information request submitted to the PIO/appeal letter sent to the DAA (whichever is applicable)**
- viii) rejection letter issued by the PIO against the appellant's information request (if any)**
- ix) copy of the order issued by the DAA (if any)**
- x) date on which appeal is being submitted.**

Advice:-

- 1) If the appeal letter is not legible please assist the appellant to write it clearly.
- 2) If the appellant has not filled in one or more of the above details please bring the same to his/her notice and request him/her to fill in the details wherever applicable.
- 3) Please make sure that the date mentioned on the appeal matches with the date on which you are actually receiving the letter. This is very important for calculating the deadline while forwarding the appeal to the concerned appellate authority.
- 4) There is no fee prescribed for filing appeals.
- 5) The appellant may not always know the exact name and complete postal address of the appellate authority he/she wishes to appeal to. So please do not insist upon the appellant to furnish these details. *It is the duty of the SAPIO to send the appeal to the concerned appellate authority.* The directory published by the State Government may be consulted for this purpose.)

Step 3 : Issuing receipt

Please issue a written receipt in the prescribed format for every complete appeal received.

Advice:

- The appellant is not required to pay any fees for sending an appeal.
- The appeal letter must be treated as complete if it contains the above details and enclosures relevant to the case.

Step 4 : Registering the Appeals

Details of every complete appeal letter should be entered in the RTI Appeals register prescribed by the Government.

Step 5: Dispatching Appeals

Every complete appeal must be dispatched to the concerned DAA or the SIC (as the case may be) on the same day you receive it along with a covering letter in the prescribed format. If for some reason you are unable to dispatch the appeal on the same day you should dispatch it the following working day. The covering letter will include details such as your name, designation and contact address, date of receipt of appeal, registration number and details of enclosures.

Advice:

- You need not maintain a copy of the appeal for your records.

For appeals received by post or courier

- ❑ Please follow Step 2. If the appellant has not filled in one or more of the above details please return the appeal letter by post/courier to the sender requesting him/her to fill in the missing or unclear details. If the appeal letter contains a contact telephone number please call up the appellant requesting him/her to visit your office to fill in the missing details. This action saves time and effort and prevents wastage of stationery.
- ❑ If the appeal is complete in all respects, please enter the details of the appeal in the prescribed RTI Appeals register on the same day you receive it.
- ❑ After registering the appeal please issue a receipt in the prescribed format and dispatch it to the appellant by post/courier on the same day. If for some reason you are unable to dispatch the receipt on the same day you should dispatch it the following working day.
- ❑ If the appeal clearly mentions the public authority to which the appeal is being made please dispatch it to the concerned DAA on the same day you receive it. If for some reason you are unable to dispatch the application on the same day you should dispatch it the following working day.
- ❑ If the application is not addressed to a specific public authority please read through the appeal letter. This will help you identify the DAA that is most likely to decide upon the appeal. (The directory published by the State Government

may be consulted for this purpose.) You may then dispatch the complete application to the concerned DAA. If not you may forward the appeal to the State Information Commission directly. The appeal should be accompanied with a covering letter in the prescribed format.

Processing Information Requests**Guidelines for the consideration****of****State Public Information Officers****under the****Right to Information Act, 2005****Introduction**

The Right to Information Bill was introduced in the Lok Sabha in December 2004. It was passed by both houses of Parliament in May 2005. The assent of the President was received on 15th June and the Act was notified in The Gazette of India on 21st June. The *Right to Information Act* will become operational by the 12th October, 2005 after the completion of 120 days from the date of Presidential assent. The *Freedom of Information Act* passed by Parliament in 2002 has been repealed.

The *Right to Information Act* (RTI Act) will cover all levels of government – Centre, State, district and local self governing bodies like Panchayats and Municipal bodies. It will also cover non-governmental organisations – i.e. NGOs, VOs and other private bodies – that are financed substantially with public funds provided by the government. This means every citizen has the right to put in an application requesting information or copies of records held by these bodies and such information should be given by the concerned body.

The citizens' right to information is not explicitly mentioned in the fundamental rights chapter of the Constitution. But in more than 10 cases the Supreme Court of India has declared that the fundamental right to life and liberty [Art. 21] and the fundamental right to freedom of speech and expression [Art. 19(1)] include every citizen's fundamental right to access information. Parliament passed the RTI Act to enable all citizens to use their fundamental right to access information from public bodies.

The main objectives of the RTI Act are –

- To promote transparency and accountability in the working of every public authority and
- to set up a practical regime for giving citizens access to information that is under the control of public authorities.

Definition of Information

- Information means material in any form including records, documents, memos, emails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and
- information relating to any private body which can be accessed by a public authority under any other law for the time being in force.

Definition of Record

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

Definition of Right to Information

Right to information accessible under this Act which is held by or under the control of any public authority and includes the right to –

- inspection of work, documents, records;
- taking notes, extracts or certified copies of documents or records;
- taking certified samples of material;
- 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.

One of the guiding principles of the RTI Act is – “information which cannot be denied to Parliament or a State Legislature shall not be denied to any person.”

The Three Level Regime for Accessing Information

At the first level of the regime, every public authority has designated officers for receiving applications (also called 'information requests') from citizens.

At the second level, every public authority has designated senior officers to look into those cases where citizens' requests for information have been refused. If citizens do not get the requested information or are unsatisfied with the information they have received, under this law, they have the right to send an appeal to the Departmental Appellate Authority (DAA) designated within the concerned public authority.

At the third level, an independent State Information Commission (SIC) has been set up to look into those cases where citizens are unsatisfied with the decision of the DAA. The SIC also has the powers and responsibility to monitor compliance of public authorities to this Act and submit an annual report to the State Legislature.

Role of Courts

According to the RTI Act the decision of the SIC is binding on all parties. Courts are barred from inquiring into the decision of the SIC. But it must be remembered that this law gives effect to a fundamental right of citizens. According to the Constitution, the High Courts (Art. 224) and the Supreme Court (Art. 32) have the power to look into any matter relating to the fundamental rights of citizens. Technically, a citizen has the right to approach the High Court or the Supreme Court if he/she is not satisfied with the decision of the SIC.

Role of the Public Information Officer

Under the RTI Act, Public Information Officers (PIOs) should be designated in all administrative units of every public authority in order to receive information requests from citizens. They also have the responsibility and duty to provide the requested information within 30 days. The PIO is the main point person whom citizens will contact for exercising their right to information under this law. In public authorities controlled by the State Government they are called State Public Information Officers (SPIOs).

Please remember –

- ***as a PIO you may not have access to all records in your office. You have the right to seek assistance from any other officer (senior or subordinate) if you consider it necessary for the proper discharge of your duties under this Act.***
- ***Any officer whose assistance you seek has a duty to render all such assistance. If that officer refuses assistance as a result of which you are unable to provide information to the citizen then he/she is liable for penalty and disciplinary action.***

The Assistant Public Information Officer

The RTI Act requires that the State Government designate Assistant Public Information Officers at the sub-divisional or sub-district level.

Please remember –

- ***the Assistant Public Information Officer is not an assistant to the PIO.***

In public authorities controlled by State Governments they are called State Assistant Public Information Officers (SAPIOs). Under the law the SAPIOs will act like a Post Office. Every SAPIO has the duty and responsibility to receive information requests from citizens and forward them to the PIO of the concerned public authority that is likely to have the information being sought by the applicant.

Please remember –

- ***It is the responsibility of the Public Information Officer to give information to the requestor. (A SAPIO is not responsible for giving information to the requestor.)***

Duties and Responsibilities of the State Public Information Officer

❑ RECEIVE INFORMATION REQUESTS (APPLICATIONS) FROM CITIZENS SEEKING INFORMATION.

Please remember –

- citizens can submit applications personally or by post/courier or through electronic means (such as email etc.) in English, or Hindi or the official language of your area;
- citizens are not required to give reasons for requesting information. Please do not demand an explanation from the requestor as to why he/she needs that information;
- refusal to accept an application from the citizen *without reasonable cause* is an offence under the law. The State Information Commission may impose a fine of Rs. 250/- per day till the application is received up to a maximum of Rs. 25,000/- and also recommend disciplinary action.

❑ PROCESS APPLICATIONS FROM CITIZENS RECEIVED THROUGH SAPIOS.

Please remember –

- citizens have the right to send information requests to the SAPIO. The SAPIO is duty bound to forward such applications to the PIO of the public authority that controls the information requested.

❑ ASSIST A PERSON MAKING AN ORAL REQUEST TO REDUCE IT INTO WRITING

Please remember –

- if a requestor is unable to submit a written request because of some physical disability or due the fact that he/she cannot read or write please render reasonable assistance to reduce the oral request for information in writing. This is a requirement under the law.

- ❑ **IF INFORMATION REQUESTED IS FULLY OR PARTIALLY HELD BY ANOTHER PUBLIC AUTHORITY OR THE SUBJECT MATTER OF THE APPLICATION IS MORE CLOSELY CONNECTED WITH THE FUNCTIONS OF ANOTHER PUBLIC AUTHORITY TRANSFER THE APPLICATION OR THE RELEVANT PART OF THE APPLICATION TO SUCH PUBLIC AUTHORITY. INFORM THE APPLICANT OF SUCH TRANSFER IN WRITING IMMEDIATELY.**

Please remember –

- if you receive a request for information that is not available with your office but is likely to be available with another office or public authority, it is your duty to transfer that request to the concerned public authority. The PIO directory published by the State Government may be used for this purpose.

(If you advise the requestor to approach the concerned public authority he/she may treat this as your refusal to accept the application and send a complaint to the DAA or the SIC. This could lead to litigation which can be avoided by transferring the application to the relevant PIO.)

- You should transfer the application to the PIO concerned as soon as possible and in no case later than five days.
- You should inform the applicant about the transfer of the application in writing immediately. There is no grace period stipulated in the law for communicating this transfer to the requestor.

- ❑ **COLLECT APPLICATION FEES PRESCRIBED IF THE APPLICANT HAS NOT ALREADY SUBMITTED PROOF OF PAYMENT OF THE SAME AND ISSUE RECEIPT**

Please remember –

- You have a duty to collect application fees as may be prescribed by the Government. If the applicant does not submit proof of payment of prescribed fees (by bank draft, postal order, court fee stamp or any other mode of payment prescribed by the Government) along with the application, you may collect the prescribed fees in cash;
- citizens belonging to the BPL category are exempted from paying application fees. A copy of the BPL/Antyodaya ration card may be attached to claim waiver of the application fee;
- please issue a receipt in the prescribed format for every complete application.

- ❑ **ISSUE WRITTEN ORDER REJECTING APPLICATION WITH REASONS AND DETAILS OF APPEAL PROCESS AND APPELLATE AUTHORITY IF REQUESTED INFORMATION FALLS WITHIN ONE OR MORE CATEGORIES OF EXEMPTIONS UNDER SEC. 8 AND ALSO DOES NOT SERVE THE PUBLIC INTEREST IF IT IS RELEASED.**

Please remember –

- You are required to communicate to the applicant in writing –
 - the reason/s for rejecting the request;
 - the period within which the applicant may appeal against the rejection;
 - the particulars of the appellate authority.
- the law specifies 11 categories of information that may not be disclosed to the requestor. Sec. 8 applies to categories of information and not categories of records. (Sec. 9 applies to cases where release of information may infringe upon the copyright of any person other than the State) A record may contain both exempt and non-exempt information. Non-exempt information contained in such records may be disclosed upon request.
- No other exemption contained in any other law including the *Official Secrets Act* and the *Indian Evidence Act*, or rules, orders or procedures prescribed by any public authority will take precedence over the operation of the RTI Act.
- furthermore, if the public interest in disclosing exempt information weighs more than the harm to the protected interests then such information may be released.
- if the requestor appeals against your rejection order he/she is not required to justify why such information is being requested. Under the law the burden of proving why such information cannot be given is placed on the PIO. You will have to prove before the appellate authority that your rejection order was based on reasons valid under this law. If the Information Commission finds your justification unreasonable you are liable to fine and also disciplinary action. So please be very cautious while rejecting an information request.

OR

- ❑ **PROVIDE THE INFORMATION REQUESTED WITHIN THIRTY DAYS OF RECEIPT OF THE APPLICATION. IF INFORMATION CONCERNS THE LIFE AND LIBERTY OF A PERSON THEN PROVIDE SUCH INFORMATION WITHIN 48 HOURS.**

Please remember –

- if the information requested is not covered by any of the exemptions you should ordinarily provide it within thirty days Please do not let applications pile up on your desk. This will only increase your workload in future. Please dispatch all complete applications immediately.
- if the requested information relates to the life and liberty of a person (Art. 21 of the Constitution) then you have a duty to provide such information within 48 hours.
- ordinarily, if the requested information is given by a third party which treats it as confidential then ten extra days are allowed to seek its submission on whether such information may be disclosed (see below). This does not apply to cases involving the life and liberty of a person. Such information must be given within 48 hours because of the sense of urgency involved.

□ IF DECISION IS TAKEN TO PROVIDE INFORMATION THEN INFORM THE APPLICANT IN WRITING ABOUT THE ADDITIONAL FEES CHARGED AS COST OF PROVIDING THE INFORMATION.

Please remember –

- If you decide to provide the requested information you should immediately inform the applicant in writing about the additional fees he/she is required to pay as cost of providing the information. This additional fee must be calculated at the rate prescribed by the Government. The time taken between dispatch of this intimation and the actual payment of fees will not be included while calculating the period of thirty days;
- if the information requested is to be provided in electronic or printed format you may charge additional fees at the rate prescribed by the Government. You will be required to inform the applicant about this additional fee in writing. The time taken between dispatch of this intimation and the actual payment of fees will not be included while calculating the period of thirty days;
- BPL applicants are exempted from paying additional fees for securing the requested information;
- if for some reason the requested information is not provided within the deadline the requestor has a right to receive such information free of cost.

□ ADDITIONAL FEES SO CHARGED SHOULD BE REASONABLE. ALSO GIVE DETAILS OF CALCULATIONS MADE AND INFORM THE APPLICANT OF HIS/HER RIGHT TO FILE APPEAL AGAINST THE ADDITIONAL FEE.

Please remember –

- the Government will prescribe the rates at which you may calculate the additional fees towards cost of providing information. The law requires that such fees be reasonable;
- you have a duty to inform the applicant in writing the details of how the additional fee were calculated and how the amount was arrived at;
- you have a duty to inform the applicant in writing that he/she has a right to demand from the DAA and/or the SIC a review of the additional fees charged by you as cost of providing the requested information. You are required to inform the applicant in writing – the particulars of the appellate authority, the time limit and the process of appeal and any other forms that may be prescribed in this context.

□ AS FAR AS POSSIBLE PROVIDE INFORMATION IN THE FORM IN WHICH IT HAS BEEN REQUESTED.

Please remember –

- the applicant may request information that might have to be extracted or compiled from one or more public records or documents. Furthermore the applicant may request that the information be provided in a specific format. Ordinarily, in such cases you are required to provide information in the format sought by the applicant unless such extraction or compilation –
 - will require spending disproportionately large amount of time, money or human power resources or
 - will adversely affect the safety or preservation of the relevant record/s.

□ IF INFORMATION REQUESTED RELATES TO ONE OR MORE OF THE EXEMPTIONS IN SEC. 8 YOU MAY SEVER THOSE PORTIONS OF THE RECORD (CONTAINING SUCH INFORMATION) THAT ARE EXEMPT AND PROVIDE THE NON EXEMPT PORTIONS.

Please remember –

- a record may contain both exempt and non-exempt information. Non-exempt information contained in such records may be disclosed upon request;
- you may sever the exempt portions in the manner prescribed by Government while providing access to the non-exempt portions of the record;
- While communicating the decision to grant partial access to information or record/s you are required to give in writing -

- reasons for rejecting the request including any factual or material findings on which your rejection is based and the materials on which those findings are themselves based;
- name and designation of the person giving the decision for granting partial access;
- details of fees calculated by him/her and the amount of fee the applicant is required to deposit;
- the applicant's right to seek review of this decision regarding non-disclosure of part of the information, the amount of fee charged, the form of access provided and the particulars of the appellate authority (DAA and SIC as the case may be) and
- time limits within which the applicant may seek a review of the decision, the process of seeking review and any forms that are prescribed for this purpose.

□ PROVIDE ASSISTANCE TO THE APPLICANT WHO IS SENSORILY DISABLED (BLINDNESS OR SOME OTHER FORM OF SENSORY DISABILITY) TO ACCESS THE REQUESTED INFORMATION INCLUDING APPROPRIATE ASSISTANCE FOR INSPECTION.

Please remember –

- if the requestor is sensorily disabled (blindness or some other similar disability) you are required to provide reasonable assistance to such persons to accessing the entire record or non-exempt portions (as the case may be). This includes providing reasonable assistance for inspection.

□ IF INFORMATION REQUESTED WAS GIVEN TO THE PIO'S PUBLIC AUTHORITY BY A THIRD PARTY WHO TREATED IT AS CONFIDENTIAL THEN DISPATCH WRITTEN NOTICE TO SUCH THIRD PARTY SEEKING SUBMISSIONS (IF ANY) WHETHER SUCH INFORMATION SHOULD BE DISCLOSED TO THE REQUESTOR.

Please remember –

- A third party can be anybody other than the applicant and the public authority to which the information request has been sent. This includes any individual, private body and any other public authority;
- You are required to serve a notice to the concerned third party if the information requested by the applicant was given to your public authority and treated as confidential by that third party;

- this notice should be served on the third party within 5 days of receiving the application. You should also inform the third party through this notice of the particulars of the appellate authority, details of the appeal process and the time limit for filing an appeal if a decision is taken to disclose the information.
- The third party is required to make its representation before the PIO within ten days from the date of receiving such notice.
- If the disclosure of information given by third party is more important in the public interest as compared to the harm or injury it may cause to the interests of the third party you should release it to the applicant. However trade or commercial secrets protected by law are exempt from disclosure.

Exemptions covered by Sec. 8 and 9

The RTI Act exempts ten categories of information from disclosure in Sec. 8. But all exemptions are subject to the greater public interest. If public interest in disclosing information outweighs the harm caused to the protected interests then such information should be disclosed by the public authority. Please remember, these exemptions relate to categories of information and not categories of records. Additionally Sec. 9 empowers the PIO to reject an application if disclosure will infringe upon the copyright of a third party other than the State. But this is also subject to the public interest override.

8(1)(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

8(1)(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

8(1)(c) information the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

8(1)(d) 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;

8(1)(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

8(1)(f) information received in confidence from foreign Government

8(1)(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

8(1)(h) information which would impede the process of investigations or apprehension or prosecution of offenders;

8(1)(i) cabinet papers including records of deliberations of the council of Ministers, Secretaries and other officers:

Provided that the decisions of the council of Ministers, the reasons therefore, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

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

8(1)(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information which cannot be denied to Parliament or a State Legislature shall not be denied to any person.”

Processing Information Requests**Guidelines for the consideration**

of

Departmental Appellate Authorities

under the

Right to Information Act, 2005**Introduction**

The Right to Information Bill was introduced in the Lok Sabha in December 2004. It was passed by both houses of Parliament in May 2005. The assent of the President was received on 15th June and the Act was notified in The Gazette of India on 21st June. The *Right to Information Act* will become operational by the 12th October, 2005 after the completion of 120 days from the date of Presidential assent. The *Freedom of Information Act* passed by Parliament in 2002 has been repealed.

The *Right to Information Act* (RTI Act) will cover all levels of government – Centre, State, district and local self governing bodies like Panchayats and Municipal bodies. It will also cover non-governmental organisations – i.e. NGOs, VOs and other private bodies – that are financed substantially with public funds provided by the government. This means every citizen has the right to put in an application requesting information or copies of records held by these bodies and such information should be given by the concerned body.

The citizens' right to information is not explicitly mentioned in the fundamental rights chapter of the Constitution. But in more than 10 cases the Supreme Court of India has declared that the fundamental right to life and liberty [Art. 21] and the fundamental right to freedom of speech and expression [Art. 19(1)] include every citizen's fundamental right to access information. Parliament passed the RTI Act to enable all citizens to use their fundamental right to access information from public bodies.

The main objectives of the RTI Act are –

- To promote transparency and accountability in the working of every public authority and
- to set up a practical regime for giving citizens access to information that is under the control of public authorities.

Definition of Information

- Information means material in any form including records, documents, memos, emails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and
- information relating to any private body which can be accessed by a public authority under any other law for the time being in force.

Definition of Record

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

Definition of Right to Information

Right to information accessible under this Act which is held by or under the control of any public authority and includes the right to –

- inspection of work, documents, records;
- taking notes, extracts or certified copies of documents or records;
- taking certified samples of material;
- 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.

Exemptions to RTI covered by Sec. 8 and 9

The RTI Act exempts ten categories of information from disclosure under Sec. 8. But information covered by all exemptions are subject to disclosure in the greater public interest. If public interest in disclosing information outweighs the harm caused to the protected interests then such information should be disclosed by the public authority. **Please remember, these exemptions relate to categories of information and not categories of records.** An entire record or file need not be considered exempt. So if information requested by an applicant is available in a record that contains exempt information then partial access may be provided by severing those portions of the record which contain exempt information.

Additionally Sec. 9 empowers the PIO to reject an application if disclosure will infringe upon the copyright of a third party other than the State. But this is also subject to the public interest override. Sec. 8 of the RTI Act is reproduced below -

8(1)(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;

8(1)(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;

8(1)(c) information the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

8(1)(d) 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;

8(1)(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

8(1)(f) information received in confidence from foreign Government

8(1)(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

8(1)(h) information which would impede the process of investigations or apprehension or prosecution of offenders;

8(1)(i) cabinet papers including records of deliberations of the council of Ministers, Secretaries and other officers:

Provided that the decisions of the council of Ministers, the reasons therefore, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

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

8(1)(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information which cannot be denied to Parliament or a State Legislature shall not be denied to any person."

One of the guiding principles of the RTI Act is – “information which cannot be denied to Parliament or a State Legislature shall not be denied to any person.”

The Three Level Regime for Accessing Information

At the first level of the regime, every public authority has designated officers for receiving applications (also called 'information requests') from citizens.

At the second level, every public authority has designated senior officers to look into those cases where citizens' requests for information have been refused. If citizens do not get the requested information or are unsatisfied with the information they have received, under this law, they have the right to send an appeal to the Departmental Appellate Authority (DAA) designated within the concerned public authority.

At the third level, an independent State Information Commission (SIC) has been set up to look into those cases where citizens are unsatisfied with the decision of the DAA. The SIC also has the powers and responsibility to monitor compliance of public authorities to this Act and submit an annual report to the State Legislature.

Role of Courts

According to the RTI Act the decision of the SIC is binding on all parties. Courts are barred from inquiring into the decision of the SIC except by way of appeal. It must also be remembered that this law gives effect to a fundamental right of citizens. According to the Constitution, the High Courts (Art. 224) and the Supreme Court (Art. 32) have the power to look into any matter relating to the fundamental rights of citizens. Technically, a citizen has the right to approach the High Court or the Supreme Court if he/she is not satisfied with the decision of the SIC.

Role of the Public Information Officer

Under the RTI Act, Public Information Officers (PIOs) should be designated in all administrative units of every public authority in order to receive information requests from citizens. They also have the responsibility and duty to provide the requested information within 30 days. The PIO is the main point person whom citizens will contact for exercising their right to information under this law. In public authorities controlled by the State Government they are called State Public Information Officers (SPIOs).

Please remember –

- PIOs may not have access to all records in their office. They have the right to seek assistance from any other officer (senior or subordinate) if they consider it necessary for the proper discharge of their duties under this Act.***
- Any officer whose assistance is sought by a PIO has a duty to render all such assistance. If such officer refuses assistance as a result of which the PIO is***

unable to provide information to the citizen then such officer is liable for penalty and disciplinary action.

The Assistant Public Information Officer

The RTI Act requires that the State Government designate Assistant Public Information Officers at the sub-divisional or sub-district level.

Please remember –

– the Assistant Public Information Officer is not an assistant to the PIO.

In public authorities controlled by State Governments they are called State Assistant Public Information Officers (SAPIOs). Under the law the SAPIOs will act like a Post Office. Every SAPIO has the duty and responsibility to receive information requests from citizens and forward them to the PIO of the concerned public authority that is likely to have the information being sought by the applicant.

Please remember –

– It is the responsibility of the Public Information Officer to give information to the requestor. (A SAPIO is not responsible for giving information to the requestor.)

Duties and Powers of the Departmental Appellate Authorities

The RTI Act creates an appeal mechanism within every public authority to deal with grievances of citizens who are unhappy with the decision of the PIO. The State Government is required to designate Departmental Appellate Authorities (DAA) within each public authority that will look into the grievances of applicants. This is the first of the two-level appeals mechanism. The State Information Commission (SIC) represents the second level of appeal. Despite being appeal bodies there are significant differences between the powers and functions of the DAA and the SIC.

Please remember –

- under the RTI Act the State Information Commission has administrative powers to ensure and monitor compliance with the law apart from quasi-judicial powers to dispose appeals. Such powers are not given to the DAA. **For example**, based on a complaint, the SIC has the power to appoint a PIO in a public authority where none exists. **Second**, the SIC has the power to make a public authority provide access to information in the form requested by the applicant. **Third**, the SIC has the power to get the public authority to make changes to its maintenance, management and destruction of records to facilitate better implementation of this law. **Fourth**, the SIC has the power to seek a compliance report from the public authority annually. **Fifth**, the SIC has the power to seek an annual report from every public authority giving details of its compliance with the proactive- disclosure provision under Sec. 4. None of these powers are given to the DAA.
- The SIC has been given the powers of a civil court to enable it to effectively perform its role as the second appeals body under the RTI Act. This allows the SIC to even requisition records relevant to a particular case even if they are exempt under Sec. 8. These powers are not available to the DAA. (But being senior level officers within the public authority, the DAA can requisition records and documents internally while deciding upon appeals.)
- In a number of instances the aggrieved applicant can bypass the DAA and approach the SIC directly for violation his/her rights guaranteed under this law. **For example**, the SIC can look into complaints where PIOs have simply refused to accept information requests or where SAPIOS have refused to forward applications to the PIOs or appeals to the DAA. The DAA does not have the power to look into such complaints. Nor can the SIC refuse to look into a complaint simply because the appellant had not approached the DAA first.
- The SIC has the power to penalise the SAPIO and the SPIO with monetary fines ranging from Rs. 250/- per day to a maximum of Rs. 25,000/- The SIC may also recommend to the public authority disciplinary action against the erring SAPIO/SPIO. The DAA does not have the power to impose penalties on PIOs.

- The SIC has the power to order a public authority to pay compensation for any loss or detriment suffered by a citizen who sends a complaint. This power is not available to the DAA.

The DAA therefore has a limited set of duties and powers while dealing with appeals from citizens. But the role of the DAA is an important one as they have the power to resolve disputes between the aggrieved applicant and the PIO internally and thereby save PIOs from paying penalties or facing disciplinary proceedings.

Instances where appeals may arise

The DAA is likely to receive appeals from aggrieved citizens in the following cases –

- where the PIO fails to provide the requested information within thirty days in ordinary cases;
- where the PIO fails to provide the requested information within 48 hours where the requested information relates to the life and liberty of a person;
- where the citizen believes that the additional fee charged by the PIO for supplying the requested information is unreasonable (not to be confused with application fees) ;
- where the citizen believes the rejection order issued by the PIO in response to his/her information request is unjustifiable;
- where the citizen believes the decision of the PIO granting partial access to records is unjustifiable;
- where the citizen believes the PIO has knowingly provided incorrect, incomplete or misleading information;

In all such cases the burden of proof lies on the PIO to justify his/her decision. The RTI Act makes it crystal clear that the applicant is not required to give reasons for requesting information at any stage. [see Sec. 6(2) & 19(5)]

Appeals from Third Parties

The RTI Act provides the right of appeal to third parties aggrieved by the decision of a PIO. A third party may be anybody other than the applicant and the public authority to which the information request has been sent. This includes any individual, private body and any other public authority.

If the information requested by the citizen was in fact given to the public authority by a third party treating it as confidential, the PIO is required to serve a written notice to that third party inviting submissions whether such information may be disclosed to the applicant. The PIO is required to serve this notice within five days of receiving the application and the third party is required to make its submissions orally or in writing within ten days of receiving such notice. Nevertheless if the PIO decides to disclose the information the third party has the right to appeal against such decision before the DAA and if necessary with the SIC.

Manner of Receipt of Appeals

Aggrieved citizens may file appeals directly by handing them over in person or send them by post/courier. Additionally they may send the appeal letter to the SAPIO. The SAPIO is duty bound to forward such appeals to the concerned DAA.

Please remember –

- there are no fees for filing appeals. Appeals must be received, processed and disposed of without imposing any financial burden on the appellant.
- however forms for filing appeals may be prescribed [Sec. 7(3)(b) mentions forms for filing an appeal against the intimation order of PIO requiring payment of additional fee].
- Nevertheless keeping in mind the convenience of the common person living in remote areas who may not have easy access to such forms it is best to allow appeals made on plain paper as long as they contain the following details and enclosures –
 - **name of the appellant**
 - **name of the father/husband (as the case may be) of the appellant**
 - **contact details of the appellant including complete postal address, telephone numbers and email address (if any)**
 - **authority to which appeal is being sent (whether DAA or the SIC)**
 - **details of the authority against whose decision the appeal is being made (whether PIO or DAA)**
 - **nature and details of the information requested originally**
 - **copy of the information request submitted to the PIO/appeal letter sent to the DAA (whichever is applicable)**
 - **rejection letter issued by the PIO against the appellant's information request (if any) or**
 - **copy of the order of the PIO/information disclosed which is being contested including order of partial access (if any) or**

- **copy of the letter issued by the PIO intimating additional fee to be paid towards cost of providing information which is being contested by the appellant (if any)**
- **copy of the order issued by the DAA which is being contested (if any)**
- **date on which appeal is being submitted.**
- It is good practice to issue a receipt for every appeal received by the DAA and the same must be entered in a register in the format prescribed by the State Government.

Time limit for filing appeals

The RTI Act allows the following time limit for filing appeals –

- if the citizen does not receive any decision on his/her application from the PIO – **within thirty days of the expiry of the time period** (usually thirty days or 40 days if a third party's submissions have been invited).
- If the citizen is not satisfied with the information provided by the PIO or is aggrieved by the decision of the PIO where partial access has been provided - **within thirty days from the receipt of such decision**

(Please note – the time limit mentioned immediately above does not begin from the date of the issue of the PIO's order. It starts with the date on which the applicant receives the order).

- If the DAA is satisfied that there was sufficient cause that prevented the appellant from filing the appeal within the time limit he/she may admit the appeal after the expiry of the deadline.
- If a third party is aggrieved by the order of the PIO – **within thirty days from the date of such order.**

Time limit for deciding appeals

Ordinarily the DAA is required to give its decision **within 30 days of the receipt of the appeal**. This time limit is extendable but in no case should it exceed 15 days. If additional time is taken over and above the thirty-day limit the DAA is required to record its reasons for the same in writing while issuing the order on the appeal.

Please remember –

- the appellant has the right to file a second appeal with the SIC within ninety days of the expiry of the time limit prescribed for the DAA whether or not a decision has been received.

The Procedure to be Followed while deciding appeals

The RTI Act empowers the State Government to make rules relating to the procedure that will be followed by the State Information Commission while deciding on appeals. However there is no reference to the procedure that needs to be adopted by the DAA while looking into appeals cases. It is advisable for the State Government to lay down the procedure for the DAAs as well in order to ensure clarity of process and uniformity of treatment of appeals across the public authorities in the State.

It is also advisable that the procedure for deciding on appeals be made as less cumbersome to the appellant as possible. Appeals under the RTI Act do not require procedures that are adversarial in nature as the appellant is not required to give reasons for seeking information or filing an appeal under the Act. The burden of proving that rejection of the application for information was justified lies on the SPIO concerned. It is not necessary to summon the appellant in every case. The DAA can and should apply its mind to the case to decide whether the decision of the PIO was reasonable or not. The presence of the appellant is not always required to such an exercise. However if the appellant's presence is required in order to seek some clarification in his/her information request in such cases the appellant may be summoned.

Similarly even the PIO need not be summoned in many cases. The DAA need only ascertain whether the denial of the request was in good faith and whether the requested information may be disclosed in the public interest. As the DAA does not have the power to penalize the question of giving the PIO an opportunity to defend his/her decision of rejection of request need not arise.

Interpreting Exemptions and Determining Public Interest

It is worth mentioning here that a significant number of appeals will be filed by citizens against rejection orders of PIOs where Sec. 8 exemption/s have been invoked. The DAA will be called upon to interpret these exemptions in light of the public interest that may be upheld in disclosing such information. The State Government will have to draw up detailed guidelines for interpreting every category of exempt information as well as good practices to determine the primacy of public interest. If these practical guidelines are made available to the PIOs in the form of a practice manual there may be a significant decline in the number of appeals filed by citizens.

- (iii) All Public Corporations, councils, authorities, institutes, autonomous bodies and other similar bodies (whose offices may be located at different levels in the manner of Directorates);
- (iv) All local bodies in urban areas including Nagar Panchayats, Municipal Councils and Municipal Corporations.
- (v) All local bodies in rural areas such as Gram Panchayats, Kshetra Panchayats and Zilla Panchayats
- (vi) All such NGOs which are substantially financed directly or indirectly by the State Government.

3. Orders have been issued earlier requiring officers and employees of all public authorities to be apprised with a complete understanding of this Act. It has also been stated that they be provided with necessary materials about this Act and meetings and workshop be organized in order to explain the scope of the Act. This action may be undertaken at all levels within public authorities located in all Departments. Materials related to this Act have been made available at the workshop organized on 23-24 July, 2005. Copies of the relevant material may please be made available to all public authorities.

4. All public authorities mentioned in para 2 above will be required to designate officers under the following 3 grades –

- (a) Public Information Officer (PIO) – Sec. 5
- (b) Assistant Public Information Officer – Sec. 5
- (c) Departmental Appellate Authority – first appeal – Sec. 19

The following guidelines may be observed while designating these officers:-

- (i) It is the responsibility of the PIO to provide information within 30 days to a person making the request. Therefore this officer has the greatest level of importance under the *RTI Act*. While designating a PIO it may be borne in mind that such officers be designated who, to a large extent, will be able to provide the requested information at their level itself so that the need for obtaining the requested information from any other office is reduced as much as possible.
- (ii) In every public authority as many PIOs may be designated as may be required.
- (iii) Every Department may appoint as many PIOs as may be required keeping in mind, its dimensions, activities, number of offices, nature of work and the information needs of common people. PIOs may be appointed at the level of the government, the head office, the Mandal, the district, the sub-division and the Block as per the requirement.
- (iv) As far as possible PIOs should be officers who are not required to undertake a lot of field visits as part of their main responsibilities.
- (v) As far as possible PIOs may be Heads of their offices so that they are capable of providing information which is under the control of their office to the common people easily.
- (vi) There is a provision in this Act for the designation of Assistant PIOs also. According to the Act if an Asst. PIO receives an information request from an individual he is required to dispatch the request to the concerned PIO within a maximum of 5 days. A subordinate officer or employee below every PIO is required to be designated Assistant PIO. Every Department may according to its requirement designate Assistant PIOs at the level of the village, the Nyaya Panchayat, the Block and the Sub-division. The objective (of appointing an Assistant PIO) being – if the PIO is unable to contact the common people in far off

places then information may be made available to them through the Assistant PIO who is situated closest to them.

- (vii) Every public authority is required to designate a Departmental Appellate Authority (DAA) who will be senior in rank to the PIO. In order to provide easy access to the common people, the DAA may as far as possible be appointed at the same place as that of the PIO.
- (viii) PIOs, Assistant PIOs and Appellate Authorities may be designated in all NGOs which have been identified as public authorities.
- (ix) The convenience of the common people must be borne in mind while deciding upon the numbers and levels of designation of PIOs and Assistant PIOs. It should also be ensured that agents and middle men are not allowed to flourish.

5. According to the *RTI Act*, 2005 all local bodies in urban and rural areas are public authorities. Therefore PIOs, Assistant PIOs and Departmental Appellate Authorities will be required to be appointed in every Nagar Panchayat, Municipality and Municipal Corporation in urban areas and in every Gram Panchayat, Kshetra Panchayat and Zilla Panchayat in rural areas. Every such body will have to prepare a manual of information related to the 16 points mentioned in Sec. 4 of the *RTI Act*.

6. At the State level workshop organised on July 23-24 2005, the matter relating to the appointment of the Gram Pradhan as the PIO for the Gram Panchayat was discussed. As all records of the Gram Panchayat are usually available with the Pradhan and as there is a dearth of Village Panchayat Development Officers in the region it has been found appropriate to designate the Pradhan as the PIO in every Gram Panchayat. The Secretary, Panchayati Raj will examine and discuss this matter and will undertake action immediately and will undertake to make amendments to the Panchayati Raj Act if necessary.

7. A majority of the Departments have already carried out the tasks of designating the PIO, the Asst. PIO and the Departmental Appellate Authority. This may be reviewed in the light of the guiding principles given above in para 4 and information about the same in all respects may be provided in the attached proforma before August 5, 2005. (Annexure 1)

8. Under Sec. 4 of the *RTI Act*, every public authority is required to disclose information voluntarily on 16 points. The following points may be borne in mind in relation to 'proactive disclosure' of information –

- (i) Every public authority will be required to prepare 16 information related manuals.
- (ii) These manuals will have to be prepared for the following levels (of operation) keeping in mind the dimensions, activities, nature of work and the information needs of the common people in each Department –
 - a) Government level
 - b) Directorate level
 - c) Mandal level
 - d) District level

Flexibility may be observed while preparing the contents of the manual. The contents of manuals prepared for different levels are themselves likely to be varied. Some contents may be similar to manuals at all levels. Some contents may be available in the manual prepared at the district level which may not be available in the manual prepared at the level of Government or the Head Office. While

designing the contents of these manuals at different levels the probable information needs of the common people at those levels should be kept in mind.

- (iii) The main objective of Sec. 4 is that all public authorities proactively publish to the maximum extent such information that will be of interest to the common people so that the need for requesting information under this Act becomes minimal. This basic principle may be borne in mind while preparing the manual.
- (iv) As the main objective of proactive disclosure is to provide information to the common people voluntarily, every public authority may conduct an extensive study and analysis of the kinds of information that common people ordinarily seek by approaching their office.
- (v) With a view to providing information to the common people easily, categories of information other than the 16 points mentioned in Sec. 4 of the Act may be included in this manual so as to bring down to a minimum their need for seeking information through applications.
- (vi) The Accounts and Entitlements Directorate of the Government has prepared a manual on these 16 points. This manual has been appreciated by experts in the State level workshop on the *RTI Act* 2005 that was organized on July 23 & 24, 2005. A copy of this manual has been already made available to you. All Departments may use this document (as a guide) while preparing their own manuals.
- (vii) A template has been prepared for these manuals pursuant to discussions held by Tata Consultancy Services (TCS) with Principal Secretaries and Secretaries of some Departments. This has also been provided to you by now. If it is not possible to develop a common format for all public authorities, this template may be used by them while preparing their manuals. Modifications and amendments to the template may be incorporated if necessary.
- (viii) These manuals will require to be updated at regular intervals. A system regarding timelines for updating each category of information will be designed while formulating the rules under this Act.
- (ix) The information contained in these manuals will be required to be made accessible to common people through the medium of books, notice boards, Departmental libraries and the Internet and also made available for inspection in offices. Every Department will decide as to which information should be made available in which medium at which level (of operation) after taking into consideration the available resources, the nature of information concerned and the convenience of the common people.

9. The task of preparing these manuals is in progress and public authorities in some departments have completed the preparation of all or at least some of the manuals. These manuals which are under preparation may be reviewed and revised in light of the points mentioned in para 8 above.

10. It is necessary to organise one day workshops on the *RTI Act*, 2005 in every district immediately. The Uttaranchal Administrative Academy, Nainital will organize workshops in all Janpads between the 10th and the 20th of August. The Academy will contact all District Magistrates immediately to prepare the programme for these workshops.

It is necessary to provide training to PIOs and Departmental Appellate Authorities for implementing the *RTI Act*. For this purpose the Uttaranchal Administrative Academy, Nainital will prepare a programme for providing the initial training for 100 Master Trainers. This two day training programme will be held in Dehradun and Nainital between 20-25 August.

Through these Master Trainers 2-day training programmes for all PIOs and Departmental Appellate Authorities will be organized in every district. These training programmes will be organized by the District Magistrates between 1-20 September 2005 under the supervision of the Administrative Academy, Nainital.

The Administrative Academy Nainital will seek the assistance of external institutions like Commonwealth Human Rights Initiative, New Delhi, YASHADA Pune and other organisations while organizing these training programmes.

11. A separate training programme will be organized for Gram Pradhans by the Secretary, Panchayat (Department) in collaboration with other voluntary organisations. This training programme shall be completed between September 1-30, 2005.

12. The following tasks also need to be undertaken in order to prepare for the implementation of the *RTI Act*-

- (i) Constitution of the Information Commission.
- (ii) Issue of notification exempting security and Intelligence agencies from the purview of this Act.
- (iii) Framing of rules under this Act.
- (iv) Preparing a 'Practical Guide Manual' about this Act in simple language for the educating the common people and for the convenience of administrative offices.

The above tasks will be completed by the Department of Information in coordination with the concerned departments.

13. A time-table for making preparations to implement this Act has already been drawn up and dispatched. The revised time-table related to the guidelines given in this Government Order has been attached (Annexure – 2). Further action may please be taken in accordance with this time-table.

14. Action may be taken in a diligent and timely manner on all the points mentioned in this GO.

Annexures as mentioned above.

Yours truly,

(M Ramachandran)
Chief Secretary

By Order

(DK Kotia)
Secretary, Information