

RECOMMENDATIONS FOR STRENGTHENING
THE DRAFT RIGHT TO INFORMATION BILL 200---

Prepared by the Law Core Group

&

Facilitated by Manusher Jonno Foundation

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1. In August 2005, the Commonwealth Human Rights Initiative (CHRI) wrote to the Minister of Law, Justice and Parliamentary Affairs, Government of Bangladesh offering support for the Government's efforts to review the *Official Secrets Act, 1923* and enact a Right to Information Act. Since then, CHRI has also been collaborating with Manusher Jonno, to promote greater awareness amongst the public and civil society networks about the value of the access to information legislation in Bangladesh. In April 2006, the Law Ministry wrote to CHRI informing us that the Government is currently reviewing the Bangladesh Law Commission's "Working Paper on the Proposed Right to Information Act, 2002" with a view to developing a Right to Information Bill. Since the Working Paper was drafted, more countries have passed access laws which Bangladesh could draw on. Most notably, in 2005, neighbouring India passed its *Right to Information Act, 2005*, which reflects many new developments in access legislation and is widely regarded as a good model law. In 2006 CHRI submitted another set of recommendations to the Government of Bangladesh based on its experience of involvement with the implementation of the Indian access law.

2. CHRI commends the current Government for moving towards developing a right to information law for Bangladesh. The setting up of the drafting committee to craft an access legislation is a welcome move. The representation of a civil society member on this committee is laudable. CHRI has learnt that the drafting committee is also looking at the draft RTI Bill prepared by the Law Core Group and facilitated by Manusher Jonno. This draft Bill contains many positive provisions. CHRI is submitting its recommendations for strengthening this civil society Draft RTI Bill in order to assist the drafting committee in its work.

3. Even as the Government is poised to bring in information access legislation in Bangladesh, CHRI encourages the drafting committee to put its draft RTI Bill before civil society and members of the public for widespread consultation prior to its submission to the Government for enactment. Experience has shown that a participatory law-making process can be a major factor in laying a strong foundation for an effective right to information regime. Implementation is strengthened if right to information laws are 'owned' by both the government and the public.

4. In order to facilitate greater ease of navigating through CHRI's recommendations all comments and suggested changes have been appended in blue colour on the text of the Draft RTI Bill itself.

Draft Right to Information Bill 200__

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Draft Right to Information Bill 200__

An Act to establish a mechanism to secure access to information under the control of the government and public authorities in order to ensure transparency, accountability and good governance in the sphere of public authorities.

PREAMBLE

- WHEREAS the right to information is a fundamental human right which will contribute to strengthening democracy, improving governance, increasing public participation, promoting transparency and accountability and reducing corruption
- AND WHEREAS citizens in a democracy should be empowered to understand and exercise their right to information;

CHRI's comment:

If you would like to have RTI for all artificial-juridical persons and not just individuals, then all references to 'citizen' must be replaced with 'person' throughout the document.

- AND WHEREAS without access to information it is not possible to prevent corruption and lack of accountability in the administration of public authorities;
- NOW THEREFORE it is expedient to establish voluntary and mandatory obligations and procedures to secure access to information to ensure a transparent and accountable government and organizations that are affecting people's life and livelihood.

BE IT THEREFORE ENACTED by the President/ Parliament of the People's Republic of Bangladesh, as follows: -

CHAPTER I

1. Short title, extent and commencement:

- (1) This Act may be called the Right to Information Act, 200__.
- (2) It extends to the whole of Bangladesh.
- (3) It shall come into force at once save sub-sections (1) of Section 4 and sub-section 1 of section 12, which _____ shall come into force on the 180th day of the enactment of this Act.

CHRI's comment:

It is advisable not to operationalise sections 6 and 7 that relate to the procedure for seeking

information immediately. Systems need to be set up for giving access and making decisions on RTI applications. Appointment of Information Officers, appellate authorities and the Information Commission will take time. They cannot come into existence from the date of enactment automatically. So it is necessary to give a period of at least six months to start operationalisation of these provisions as also the provisions relating to appeals and complaints in sections 19 and 21.

As section 4 already allows a grace period of six months for preparing proactive disclosure documents there is no need to delay the operationalisation of this section. Similarly there is no need to delay the operationalisation of section 12(1) which relates to whistleblower protection. It must come into force immediately.

2. Definitions:

In this Act, unless the context otherwise requires,

(a) "Information" means any material *be it in any form, including any advice, circular, contracts, data, documents, e-mails, file noting, log books, materials, models, memos, opinions, orders, papers, press releases, records, reports, samples, works held in any electronic form, any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microfilm, sound recording, video tape, machine readable record,* and any other documentary material regardless of physical form or characteristics, and any copy thereof and any information relating to any private body which can be accessed by a public authority under any other law for the time being in force.

CHRI's comments:

- 1) It is advisable to use one noun number- singular or plural in the definition in order to avoid confusion. All highlighted words could be converted into plural for the sake of standardization.
- 2) It is not advisable to include the term 'work' here in the definition. Public works cannot be included in the definition of information. Only materials, plans etc. used in public works will become information. Works can be referred to in the definition of right to information. That is sufficient.

(b) "Information Officer" means the Public Relation Officer or any other officer or public servant or employee of any Public body who is designated as the officer responsible for discharging functions and responsibilities under this Act;

CHRI's comment:

It is not advisable to have the Head of the public body as the IO. Then there will be no one senior to appoint as the appellate authority.

(c) "Information Commission" means the Commission constituted under section 13 of this Act.

(d) "Public body" means any authority or body or institution established or constituted:

- (i) by or under the Constitution;
- (ii) by any other law made by Parliament;
- (iii) by notification issued or order made by the Government or any other body having the authority to issue such notification including any body owned, controlled or substantially financed directly or indirectly by the Government; and shall include any Non-government Organisation and political party having allocation of a symbol by the Election Commission; and
- (v) bodies that undertake public functions on behalf of the Government and/or under a contract with a Government body in relation to that contract; and
- (vi) private bodies where the information is necessary for the exercise or protection of a human right and information related with well being of the citizen.

CHRI's comments:

It is advisable not to include private bodies within the definition of public authorities. The term 'authority' has a specific meaning in law. It means an individual or body that can legitimately makes, laws, rules, regulations, issue orders and implement them using the power of the state. A private body cannot be said to perform such functions. Therefore it is better to explore two options –

- 1) CHRI's initial suggestion that 'private body' be removed from his definition and defined separately OR
- 2) Substitute the 'public authority with the term 'public body'. This will cover private bodies without any difficulty. Furthermore it is not correct to limit access only when human rights issues are involved in private bodies. In the South African RTI Act clause (a), sub-section (1) of section 50 explicitly provides: "A requester must be given access to any record of a private body if-- that record is required for the exercise or protection of any rights;" so access must extend to all rights that are justiciable in courts. So the last clause can read as follows-

"private bodies where the information is necessary for the exercise or protection of any right enforceable in a court of law or tribunal for the time established under any law in Bangladesh." This would obviate the need for reference to the well being of the citizen – "well being is a dangerously slippery and wide phrase that is best avoided in legal texts. It must be left for the courts to interpret.

(e) "Right to information" means the right of access to information and includes inspection of works and offices of the public body and any material described under sub-section (a), taking notes, and extracts, and obtaining photo copy or certified copies of documents or records, *taking certified samples of materials, 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 any other device* of any **Public Body**.

(f) "third party" means a person who is not under an obligation to provide or allow access to information under this Act..

CHRI's comment:

This definition is not a happy one. There is a need for protecting the legitimate interests of

organizations that may be public bodies under the Act. Therefore CHRI's earlier suggestion may be used to replace this definition:

“ "third party" means any person other than the person making a request for information and does not include a public body or a private body that is holding or controlling the information requested or any of its officers or employees.”

CHRI's comment:

Two terms have not been defined: 1) prescribed and 2) person. Please include this in the definition. Rules must be prescribed by the Government. The definition of person may be taken from the Income Tax Act or the Companies Act. This will ensure that individuals and organized groups such as organizations and companies can also access information under this law.

CHAPTER II

3. Right to information:

(1) Subject to provisions of this Act, every person shall have the right of access to information *held by or under the control of any Public Body* .

(2) Every Public body shall maintain all its records *in a manner and form which facilitates the right to information under this Act* and to make available to any citizen requesting information from it and shall not withhold any information or limit its availability.

CHRI's comments:

The last part of this sub-section will conflict with sections 8 and 9 which limit access to information legitimately even though section 8 begins with a non- obstante clause which means it will override the last part of this clause. But this will only lead to unnecessary litigation. Second, it will conflict with section 4 that talks about proactive disclosure. By reading section 4 and section 3(2) together government departments will say a formal request from a citizen is essential before he/she is given copies of information that is disclosed proactively. This unnecessary complication can be avoided by replacing this sub-section with the following:

“Every Public body shall maintain all its records *in a manner and form which facilitate the right to information under this Act.*”

(3) The Information Commission shall develop guidelines in consultation with the Government on proper record keeping and management which must be followed by all bodies subject to the Act

4. Voluntary Disclosure of Information by Public body:

(1) Every Public body shall cause to be published, *not more than six months after the Act comes into force and thereafter on a periodic basis*, not less than once every two years, publication(s) containing:

CHRI's comment:

The terms 'publish' and 'publication' have specific meaning in law. By using these terms you will be insisting that all public bodies print their proactive disclosure documents. This is not feasible for small offices, like Union Parishads, tehsil land office, and small scale NGOs. It is better to start this section by requiring them to prepare these documents and make them publicly available. So the following substitution may be used-

“ Every public body shall not later than six months after this Act comes into force prepare and disseminate:”

(a) particulars of its organization, functions and duties; the powers and responsibilities of its officers and employees; description of its decision making process and responsibilities, including channels of supervision and accountability; the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;

CHRI's comment:

The phrased 'norms guiding the functioning of the public body' is missing. It is important to disclose norms as the Caretaker Government has instructed departments to develop citizens' charters. These charters will contain norms to be observed while dealing with the public. Additionally there will be administrative norms and financial norms and several such standards laid down from time to time. All of this information should be disclosed proactively.

(b) statement of the classes and categories of documents and records in its possession;

(c) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;

(d) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;

(e) statement about the conditions upon which citizens can acquire from it any license, permit, grant, allotment, consent, approval or other benefits of any nature or upon which transactions or contracts of any category can be entered with it;

(f) a directory of its officers and employees;

- (g) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
- (h) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
- (i) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;
- (j) particulars of recipients of concessions, permits or authorisations granted by it;
- (k) statement about the facilities provided for access to information, including the working hours of a library or reading room, if maintained for public use; the name, designation and location of the *Information Officer* to whom requests for information may be addressed, and [similar information about appellate authorities designated under section 21](#);
- (l) all relevant facts in the formulation of important policy decisions and announcing decisions that affect the public;

CHRI's comment:

It is necessary to link this responsibility to a time factor. Otherwise all facts will be announced after a decision has been taken and it will be an uphill task to push the government back from that line of action if it likely to have bad effects. So this clause should read –

“all relevant facts while formulating important policies and announcing decisions that affect the public ;”

- (m) information on any new project, policy, scheme, programme or enactment of law that may be undertaken by it that may affect people or sections of people and which must be known for the sake of natural justice and promotion of democratic principles;
- (n) information relating to contracts entered into by the public body, including the objectives of the contract, the expected outcomes, benefits to accrue to the public, goods acquired or rented, the amount of money involved, the name of the contractor(s) or individuals to whom the contract has been awarded and the periods within which the contract is to be completed.
- (o) details in respect of the information, available to or held by it, reduced in an electronic form;
- (p) such other information as may be prescribed by the Information Commission.

(2) It shall be the duty of every public body to give reasons for its [administrative or quasi-judicial decisions](#) to affected persons.

CHRI's comment:

It is necessary to insulate courts from the operation of this sub-section if you expect them to comply with the RTI Act. Nowhere in the world is the judiciary subject to RTI for its judicial functions as it will impinge on its independence. That is why the above clause has been changed to leave out judicial decisions from its ambit.

(3) For the purposes of sub-section (1), every information shall be disseminated widely and in such form and manner which is easily accessible to the public, including in the form of publicly visible notices and by uploading on websites of public bodies where such websites exist and it shall be the endeavour of every public body to disclose suo motu as much information as possible so that people may have minimal cause to obtain information by making a formal request under this Act.

(4) All materials and information shall be disseminated taking into consideration the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Information Officer, available free or at such cost of the medium or the print cost price as may be prescribed.

CHRI's comment:

Experience from India shows that IOs often force citizens to file written applications for obtaining proactively disclosed information. In order to avoid this situation in Bangladesh we have proposed a reworded version as follows and provided a connecting phrase in section 6(1) to reinforce this position:

“All materials and information prepared under sub-section (1) shall be disseminated taking into consideration the most effective method of communication and the information should be easily accessible, to the extent possible in print or electronic format with the Information Officer, available at such cost of the medium or the print cost price as may be prescribed and no person seeking access to information disclosed under sub-section (1) shall be required to submit an application in writing.”

Explanation.—For the purposes of sub-sections (3) and (4), "disseminated" means making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public body.

5. Listing of public authorities

CHRI's comment:

It is necessary to place the responsibility on the Government to identify public authorities and publish a list. This will avoid confusion about who is a public body and who is not and within each department which office is a public body. So the following section may be added here-

“The Government shall within three months of the commencement of this Act cause to be published a list of all public bodies that have obligations to provide information under this Act

and thereafter continue to update the list every year.”

5A. The Appointment and Duties of Information Officers

CHRI's comment:

Before going on to the duties it is necessary to have a provision for appointment of IOs. Otherwise IOs may not be appointed under the pretext that nobody has the clear responsibility for doing so. So this section must begin with the following provision”

“Every public body shall within three months of the commencement of this Act designate as many Information Officers as may be necessary in all its offices or administrative units to provide information under this Act.”

- (1) Every Information Officer shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information.
- (2) The Information Officer may seek the assistance of any other officer as he or she considers it necessary for the proper discharge of his or her duties.
- (3) Any officer, whose assistance has been sought under sub-section (2), shall render all assistance to the Information Officer seeking his or her assistance and for the purposes of any contravention of the provisions of this Act, such other officer shall be treated as an Information Officer.

6. Procedure for Access to Information:

- (1) A citizen desiring to obtain any information from a **Public body other than that which is required to be disclosed under sub-section (1) of section (4) of this Act**, shall make a request in writing or in any other form including electronic means in English, Bangla or the local language of the area where the request is being made, to *the Information Office* specifying the particulars of the information **sought by him or her**.

CHRI's comment:

We have provided the connection to section 4(1) at the beginning of this provision. Then at the end we have simplified the details required to be given in the application. There is no need to say what mode of access is required. The definition of RTI takes care of it in section 2. If not the IO will unnecessarily create problems for the person who has not specified mode of access thereby delaying the disposal. It is best to keep it simple for now.

Provided that where such request cannot be made in writing, the Information Officer shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

- (2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him/her;

CHRI's comment:

The moment you say a private body has to give information which is necessary for the protection of a right, that private body will have the right to know which right is sought to be protected when a person seeks information from it. This is also correct as private bodies do not have a direct obligation like the State agencies have for protecting or promoting any human rights. So reasons will have to be given when information is being sought from private bodies. The provision must therefore be qualified with a proviso:

“Provided subject to sub-section (1) of section 7 it shall be legitimate for a private body defined under clause (vi) of sub-section (d) of section 2 to seek a clarification from the requester as to the right that is sought to be enforced or protected by disclosure of the requested information.”

(3) The Information Officer receiving a request for information will be required to provide a prompt and written acknowledgement of receipt of the request, including the date it was received, the name and contact details of the Information Officer and a receipt for any fees paid.

(4) Where an application is made to a public body requesting information-

(a) which is held by another public body; or

(b) the subject matter of which is more closely connected with the functions of another public body, the public body, to which such application is made shall transfer the application or such part of it as may be appropriate to that other public body and inform the applicant in writing immediately about such transfer.

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.

7. Procedure for providing information

(1) Subject to section 8, the Information Officer, on receipt of a request under sub-section (1) of section 6 shall, as expeditiously as possible, and in no case later than 30 days of the receipt of the request, either provide the information on receipt of such fees as may be prescribed or reject the request for any of the reasons specified in sections 8.

Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided as early as possible and not later than within twenty four hours of the receipt of the request.

(2) If the Information Officer fails to give a decision on the request for information within the period specified under sub-section (1), it shall be deemed that the request has been refused.

(3) The person requesting the information shall be required to pay the prescribed fee on delivery of the requested information by the Information Officer.

CHRI's comment:

This is not a good way of laying down fee payment provision. What if the person does not collect the information at all and the IO spends money to make copies hoping that the person will pay for it after he gets the information? This will be used by unscrupulous elements to harass officials. It is always proper to pay fees first and then get the information. The fees will be paid after the IO sends fee intimation letter. In light of sub-section (1) above this sub-section is redundant. Please consider deleting it. The fee related provision has been improved upon below. The new provisions are given in blue colour.

(4) Where access to the record or a part thereof is required to be provided under this Act and the person to whom access is to be provided is disabled or illiterate, the Information Officer shall provide assistance to enable access to the information, including providing such assistance as may be appropriate for the inspection.

(5) Where access to information is to be provided under this Act, the applicant shall be required to, subject to the provisions of sub-section (6), pay such fee as may be prescribed:

Provided that the fee prescribed under sub-section shall be reasonable and in no case shall exceed the actual cost of providing the information.

Provided further that the person requesting information shall not be required to pay any charges for searching, compiling or collating the requested information or any other incidental costs.

Provided further that no fee shall be charged from any person who is indigent as may be determined by the Ward Commissioner or the Chairman of the Union Parishad as may be appropriate.

CHRI's comment:

We have removed reference to printed and electronic copies and documents above as the right to information extends to inspection and taking of samples also. Merely referring to documents would limit the scope of collecting fees for other kinds of information. Fees must be collected for inspection and giving of samples as well. We have added a second proviso limiting the power of the IO to seek additional charges like search fees. This makes the wording tighter than in the previous version. The section on fee review has been wrongly clubbed with the sub-section relating to rejection of information requests. We have separated it and given it in some detail below.

5(a) Where a decision is taken to provide the information on payment of any fee, the Information officer shall send an intimation in writing to the person making the request giving,

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- (a) details of the fees representing the cost of providing information in accordance with the fee rates prescribed, together with the calculations made in order to arrive at the total amount, requesting him to deposit that fee and the period intervening between the dispatch of the said intimation and payment of fee shall be excluded for the purpose of calculating the period of thirty days referred to in sub-section (1);
- (b) information concerning his or her right with respect to review the decision as to the amount of fee charged or the form of access provided, including the particulars of the appellate authority, time limit, process and any other relevant information.

(5b) The Government shall prescribe the rates of fee payable under this section subject to the principle that that the rates shall be reasonable and shall not be set so high as to deter any person from seeking information under this Act.

CHRI's comment:

Please note, fee rates must be prescribed in the Rules which Government will make, not the regulations which the Information Commission will make. That is why we are recommending that they be brought under a separate section.

(6) Notwithstanding anything contained in sub-section (5), the person making request for the information shall be provided the information free of charge where a public body fails to comply with the time limits specified in sub-section (1).

(7) Where a request has been rejected under sub-section (1), Information Officer shall

(a) communicate to the person making the request,—

- (i) the reasons for such rejection, including the section of the Act relied upon to reject the application and any findings on any material question of fact, referring to the material on which those findings were based;
- (ii) the period within which an appeal against such rejection may be preferred; and
- (iii) the person's rights with respect to review of the decision regarding non-disclosure of the information, or form of access granted;

CHRI's comment:

We have removed the reference to seeking fee review from this sub-section. This is because the opening sentence of this sub-section says "where a request has been rejected..." If the original version is retained it will become necessary for the IO to reject every information first before the applicant can seek a fee review. This would create an absurdity which any law should consciously avoid. That is why fee review has been separated from the provision relating to rejection of the request and given above.

(b) Refund any fee that might have been paid by the person

CHRI's comment:

This sub-section is redundant as refund is covered under sub-section 6. This section implies that even if fee has been charged for delayed information the applicant is entitled to a refund. there is no need to mention it separately.

(8) Information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public body or would be detrimental to the safety or preservation of the record in question.

Provided where it is not possible to provide the information in the form in which it is sought by the citizen the Information Officer shall provide access in any other form after due consultation with the person requesting the information.

CHRI's comment:

Leaving this sub-section open ended like in the Indian RTI act will only encourage IOs to reject such requests and this will only lead to more and more appeals. Therefore we have qualified it with a proviso that requires the IO to consult the applicant first and still give access in another form.

CHAPTER III

8. Exemptions from disclosure of information:

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any person, _

(a) information, disclosure of which may prejudicially affect the sovereignty and integrity of Bangladesh, the security, strategic, scientific or economic interests of the state, or relations with a foreign state or lead to incitement of an offence;

CHRI's comment:

This exemption is taken *ad literatim* from the Indian law. Bangladesh can do better than India. The exemptions clauses are crucial because they set the limits on the range of information which can be accessed. Accordingly it is essential that they are very tightly drafted and carefully worded, to minimise the chance that they might be misused by obstructive officials. In accordance with best practice , therefore the suggestion to use the wording "serious harm" to replace wording of clause (a) of sub section (1) section 8 "prejudicially affect" should be reviewed. Consideration should be given to requiring instead that the disclosure would cause "serious harm" which is less open to broad interpretation and abuse. The wording "prejudicially affect" is arguably too ambiguous and too low a test to genuinely protect and promote the public interest.

(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;

(c) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would cause serious harm or detriment to the competitive position of the public body or a third party;

(d) information available to a person in his fiduciary relationship;

(e) information received in confidence from a foreign Government;

CHRI's comment:

Please consider deleting this clause. This paragraph can be deleted because the focus of the exemptions is purely on the fact that the information was provided in confidence, whereas the key issue for any exemption should be whether harm would be caused by disclosure. Just because information was given to the Government of Bangladesh in confidence does not mean that it should necessarily remain confidential. At the time, it was communicated it may have been sensitive, but at the time it is requested it may be harmless. Why should disclosure be prevented in such cases? As long as the more general protection which guards against disclosures that would prejudice international relations, is retained, the relevant interests will be protected. This also reduces the chances that the provision will be abused by corrupt officials who may connive with foreign officials in confidence but then seek to hide their activities using this clause. What if the confidential information that was passed on relates to a corrupt deal undertaken by a previous administration? Is it really legitimate that it be withheld? What harm will it cause the nation – in fact, will it not be of benefit in exposing corrupt dealings and making government more accountable?

(f) 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;

(g) information which would impede the process of investigation or inquiry or apprehension or prosecution of offenders;

(h) cabinet papers including records of deliberations of the Cabinet, Secretaries and other officers:

Provided that the decisions of Cabinet, the reasons thereof, 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;

(i) 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;

CHRI's comment:

The reference to third party has been removed as it should be dealt with in a separate section giving the detailed procedure. It does not fit in here. Similarly the reference to disclosure in public interest has been removed from some sub-sections because you have an overall public interest override clause in section 11.

Provided that the information which cannot be denied to the Parliament shall not be denied to any person.

CHRI's comment:

Please make sure that this principle is applicable to all exemptions. This is why the indentation of the para is important. Serious attention must be paid to get the indentation of all paras right in the final version of the Bill.

(j) disclosure of the information would be contrary to the public interest by reason that the disclosure would be reasonably likely to impair the ability of the Public body to obtain similar information in the future for the purpose of administration of a law or the administration of matters administered by the Public body.

CHRI's comment:

This is not a fair exemption. It will unnecessarily give the IO another ground to withhold information. Kindly consider deleting this provision.

(k) the person seeking the information is not a citizen of Bangladesh or the company, organization or institution not incorporated in Bangladesh.

CHRI's comment:

This is not a good idea as foreigners who visit Bangladesh or who are working here may have information needs. They must have similar rights if you accept the principle that RTI is a human rights under UDHR and ICCPR. Kindly consider deleting this exemption.

(2) Subject to the provisions of clauses (a), and (h) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened ten years before the date on which any request is made under section 6 shall be provided to any person making a request under that section:

Provided that where any question arises as to the date from which the said period of ten years has to be computed, the decision of the Government shall be final, subject to the usual appeals provided for in this Act.

9. Rejection of Information

(1) Without prejudice to the provisions of section 8, an Information Officer may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the Government;

(2) Subsection (1) of section 9 does not relieve the public authority of complying with its obligations under section 10 of this Act

10. Partial access to information: (1) Where a request for access to information is liable to be rejected on the ground that it is in relation to a record or file which is exempted from disclosure, then, notwithstanding anything contained in this Act, access may be provided to that part of the record which does not contain any information which is exempted from disclosure under this Act and which can reasonably be severed from any part that contains exempted information.

(2) Where access is granted to a part of the record under sub-section (1), the Information Officer shall give a notice to the applicant, informing—

(a) that only part of the record requested, after severance of the record containing information which is exempted from disclosure, is being provided;

(b) the reasons for the decision, including any findings on any material question of fact, referring to the material on which those findings were based;

(c) the name and designation of the person giving the decision;

(d) the details of the fees calculated by him or her and the amount of fee which the applicant is required to deposit; and

(e) his or her rights with respect to review of the decision regarding non-disclosure of part of the information, the amount of fee charged or the form of access provided, including the particulars of the senior officer specified under sub-section (1) of section 21 or the Information Commission time limit, process and any other form of access.

11. Public Interest Disclosure

Notwithstanding the provisions of this Act and any law of Bangladesh to the contrary, a Public body shall give access to an exempt document, in taking account of all the circumstances of the case, to do so is in the public interest, having regard to both any benefit and to any damage that may arise from doing so in matters such as, but not limited to:

(a) abuse of authority or neglect in the performance of official duty;

(b) injustice to an individual;

(c) danger to the health or safety of an individual or of the public; or

(d) unauthorized use of public funds.

CHRI's comment:

The current wording of the public interest clause is very ambiguous and is likely to create a mess in every case of exempt information. This can clearly be avoided. Further it treats

exemptions as class exemptions by referring to ‘exempt documents’ - this is not a good practice. Instead the following formulation may be used:

“Notwithstanding anything contained in the provisions of this Act or any law for the time being in force, a public body shall provide access to information in the larger public interest where such disclosure may reveal matters such as but not limited to:

- (a) abuse of authority or negligence in the performance of official duty;
- (b) injustice to any person;
- (c) danger to the health or safety of an individual or of the public; or
- (d) unauthorized use or misuse of public funds.”

11a Third parties: (1) Where a Information Officer intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Information Officer shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Information Officer or State intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information.

(2) Where a notice is served by the Information Officer under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make a representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Information Officer shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 21 against the decision.

CHRI’s comment:

We have provided a detailed procedure for dealing with 3rd party requests based on the Indian RTI Act. It is better not to leave it to be done in the Rules.

12. Protection for Disclosure of Wrongdoing:

(1) No one may be subject to any legal, administrative or employment-related sanction, regardless of any breach of a legal or employment obligation, for releasing information on wrongdoing, or that which would disclose a serious threat to health, safety or the environment, as long as they acted in good faith and in the reasonable belief that the information was

substantially true and disclosed evidence of wrongdoing or a serious threat to health, safety or the environment.

(2) For purposes of sub-section (1), wrongdoing includes the commission of a criminal offence, failure to comply with a legal obligation, a miscarriage of justice, corruption or dishonesty, or serious maladministration regarding a public body.

CHAPTER IV The Information Commission

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

(2) The Information Commission shall consist of—

- (a) the Chief Information Commissioner; and
- (b) such number of Information Commissioners, not exceeding four, as may be deemed necessary.

(3) The Chief Information Commissioner and Information Commissioners shall be appointed by the President on the recommendation of a committee consisting of—

- (a) a Judge of the Appellate Division, nominated by the Chief Justice, who shall be the Chairperson of the Committee;
- (b) the Chairman, Public Service Commission; and
- (c) the Chairman, University Grant Commission.

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

(5) The Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance and the appointment committee shall strive to achieve a mix of individuals with diverse professional experiences in the composition of the Information Commission. (We have removed the last three words as they are redundant)

CHRI's comment:

This recommendation is for consideration when the Rules are framed for this law:

-- It is essential that the procedure for appointing members of the Information Commission is

impartial and independent of government interference, to ensure that the Information Commission is seen as non-partisan and can act as an independent body. As such, it would be ideal if the committee's candidate was to be approved by Parliament, not just the President.

-- At present, subsection 12(3) provides a list of committee members who will be responsible for the appointment of the Information Commission. It is essential that this committee is independent as possible. Whether this is the case will depend on whether their positions are vulnerable to political influence themselves.

-- To promote public confidence in the Information Commission and to ensure that the people chosen to be on the Information Commission are carefully selected, ideally, the selection process should include some element of public participation. For example, when a list is being drawn up by the bureaucracy of possible candidates for the positions, it should be required that the relevant department also call for nominations from the public.

--At the very least, any list which is put together by the bureaucracy should also be published at least one month prior to consideration by the selection committee mentioned in subsection 12(3) and the public should be permitted to make submissions to the selection committee on this list. Notably, at a minimum, the list prepared by the bureaucracy should also include a detailed explanation of the reasons for the candidate being nominated, in accordance with agreed criteria.

(6) The Chief Information Commissioner or an Information Commissioner shall not be a Member of Parliament or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

(7) The headquarters of the Information Commission shall be at Dhaka and the Information Commission may establish offices at other places in Bangladesh.

14. Terms of Office of Chief Information Commissioner and other Commissioners :

(1) The Chief Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment:

Provided that no Chief Information Commissioner shall hold office as such after he has attained the age of sixty-seven years.

(2) Every Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-seven years, whichever is earlier, and shall not be eligible for reappointment as such Information Commissioner:

Provided that every Information Commissioner shall, on vacating his office under this subsection be eligible for appointment as the Chief Information Commissioner in the manner specified in sub-section (3) of section 13:

Provided further that where the Information Commissioner is appointed as the Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the Information Commissioner and the Chief Information Commissioner.

(3) The Chief Information Commissioner or an Information Commissioner may, at any time, by writing under his hand addressed to the President, resign from his office:

Provided that the Chief Information Commissioner or an Information Commissioner may be removed in the manner specified under section 17.

15. **Annual Budget:** (1) The Information Commission shall prepare its own annual budget and submit the same to the Government for placing before the Parliament.

(2) The allocation of fund for the Information Commission shall be made by the Parliament as an expenditure charged upon the Consolidated Fund.

16. **Salaries and Allowances:** The salaries and allowances payable to and other terms and conditions of service of —

(a) the Chief Information Commissioner shall be the same as that of a Judge of the Appellate Division;

(b) an Information Commissioner shall be the same as that of a Judge of the High Court Division of the Supreme Court of Bangladesh:

Provided that if the Chief Information Commissioner or an Information Commissioner, at the time of his appointment is, in receipt of a pension, other than a disability or wound pension, in respect of any previous service under the Government of Bangladesh, his salary in respect of the service as the Chief Information Commissioner or an Information Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity:

Provided further that if the Chief Information Commissioner or an Information Commissioner if, at the time of his appointment is, in receipt of retirement benefits in respect of any previous service rendered in a Corporation established by or under any Act or a Government company owned or controlled by the Government, his salary in respect of the service as the Chief Information Commissioner or an Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits:

Provided further that the salaries, allowances and other conditions of service of the Chief Information Commissioner and the Information Commissioners shall not be varied to their disadvantage after their appointment.

17. **Employees of Information Commission:** (1) The Commission shall have the authority to appoint such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the terms and

conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.

CHRI's comment:

The current version does not place an obligation on the Government to second staff to the Commission. It is important for the IC to have experienced government servants on its staff who know the working of government. Left to itself the Commission will hire people from the private sector who will have little knowledge of the working of the Government departments. Therefore the above section may be followed by another sub-section –

“(2) The Commission may request the Government to depute such officers and public servants as may be necessary for carrying out their operations efficiently and where such a request is received the Government shall take action as expeditiously as possible.”

18. **Removal of Information Commissioners:** (1) Subject to the provisions of sub-section (3), the Chief Information Commissioner or any Information Commissioner shall be removed from his office only by order of the President in the manner applicable in respect of a Judge of the Supreme Court as provided in Article 96 of the Constitution.

(2) The President may suspend from office, and if it is deemed necessary also prohibit from attending the office during inquiry, the Chief Information Commissioner or Information Commissioner in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.

(3) Notwithstanding anything contained in sub-section (1), the President may by order remove from office the Chief Information Commissioner or any Information Commissioner if the Chief Information Commissioner or an Information Commissioner, as the case may be,—

(a) is adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the President, involves moral turpitude; or

(c) engages during his term of office in any paid employment outside the duties of his office; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chief Information Commissioner or a Information Commissioner.

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

CHRI's comment:

In order to ensure that no post in the Commission falls vacant for too long, it is better to add this provision after sub-section (3):

“(4) It shall be the duty of the Government to fill up any vacancy, arising due to the retirement or resignation or removal of the Chief Information Commissioner or an Information Commissioner, appointed under this Act, as expeditiously as possible and in any case no later than a period of ninety days from the date on which such post fell vacant.”

CHAPTER V

Powers and functions of the Information Commissions and appeal

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

(a) who has been unable to submit a request to a Information Officer either by reason that no such officer has been appointed under this Act, or because the Public body has refused to accept his or her application for information;

(b) who has been refused access to any information requested under this Act;

(c) who has not been given a response to a request for information or access to information within the time limit specified under this Act;

(d) who has been required to pay an amount of fee which he or she considers unreasonable;

(e) who believes that he or she has been given incomplete, misleading or false information under this Act; and

(e) in respect of any other matter relating to requesting or obtaining access to records under this Act.

(2) The Information Commission shall have the power to initiate of its own accord **complaints** and inquiries, as appropriate, against any public body or Information Officer; the Information Commission's powers of complaint and investigation will extend to individual cases as well as patterns of non-compliance by any public body or Information Officer.

CHRI's comment:

While the intention behind this provision is laudable it is better to reword it for removing

ambiguity. The Commission cannot initiate its own complaint (highlighted), it can only initiate an inquiry.

“The Information Commission shall have the power to initiate of its own accord an inquiry as may be appropriate against any public body or Information Officer into any instance or pattern of non-compliance with the provisions of this Act and shall exercise all powers granted to it under this Act during the inquiry and while disposing the matter.”

(3) The Information Commission shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

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

(4) The Information Commission may by notification in the official gazette make Regulations to carry out the provisions of this Act.

Provided that, without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

- (a) the cost of the medium or print cost price of the materials to be disseminated under subsection (5) of section 7;
- (b) the salaries and allowances payable to and the terms and conditions of employment of officers and other employees under section 16;
- (c) the procedure to be adopted by the Information Commission in deciding appeals under section 21;
- (d) any other matter which is required to be, or may be, prescribed.

CHRI’s comment:

It is not proper for the Information Commission make Regulations on these topics. The Government should make Rules on these topics because they will be applicable across Government and private sector. In any democratic system of checks and balances rules must be made by the Government with Parliamentary approval and it must be implemented by other bodies. The Information Commission should have the power to make Regulations only with

regard to its own functioning. So it is better to give the rule making powers to the Government as has been done below in section 30.

20. **Examination of Record:** Notwithstanding anything inconsistent contained in any other Act the Information Commission may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public body, and no such record may be withheld from it on any grounds.

CHRI's comment:

The best practice internationally is to give Information Commissions search and seizure powers as well. This is not clearly mentioned in the Indian law but it is there in the Canadian law. So the above section may be reworded as follows based on the Canadian ATI Act:

“Search, Seizure and Examination of Information: (1) Notwithstanding anything inconsistent contained in any other law for the time being in force, the Information Commission shall during any inquiry initiated of its own accord or upon receipt of a complaint, under this Act have the power –

(a) to enter any premises occupied by any public body that is the subject of the inquiry;

(b) to conduct a search for any information that is the subject of the inquiry;

(c) to seize records, documents, files and any material defined in sub-section (a) of section (2) of this Act relating to information that are the subject of the inquiry;

(d) to examine any information seized from a public body under this section;

(e) to converse in private with any person in any premises entered pursuant to paragraph (a) and otherwise carry out therein such inquiries within the authority of the Information Commission as may be appropriate.

(2) A public body that is the subject of an inquiry under this Act shall provide all reasonable assistance to the Information Commission and any of their authorized representative to enable the smooth conduct of the inquiry and shall not withhold access to any information from the Information Commission or their authorized representative.

21. **Appeal :** (1) Every public body shall within three months of the commencement of this Act designate an officer or employee who is senior in rank to the Information Officer as the appellate authority competent to receive an appeal under this section.

(2) Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Information Officer, may within thirty days from the expiry of such period or from the date of receipt of such a decision prefer an appeal to the appellate authority designated within that public body.

CHRI's comment:

1) It is better to mention that the first appeal will lie before a designated appellate authority and also the duty to designate such officers. Therefore the changes have been made above.

2) In order to ensure that there is no confusion as to whether the Information Commission wields similar powers in appeals and inquiry related matters we have made minor additions below. This is based on the Indian experience where the RTI Act does not make this point clearly.

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) A second appeal against the decision under sub-section (1) shall lie with the Information Commission within ninety days from the date on which the decision should have been made or was actually received:

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

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

(4) In any appeal proceedings or an inquiry initiated under section 19, the onus to prove that the denial of access to information was justified shall be on the Information Officer who denied such access.

(5) An appeal under sub-section (2) or sub-section (3) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof for reasons to be recorded in writing.

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

(7) In its decision pursuant to an appeal proceeding or an inquiry initiated under section 19, the Information Commission has the power to—

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

- (i) by providing access to information, if so requested, in a particular form;
- (ii) by appointing an Information Officer;
- (iii) by publishing certain information or categories of information;
- (iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;

- (v) by enhancing the provision of training on the right to information for its officials;
 - (vi) by providing it with an annual report in compliance with sub-section (1) of section 4;
 - (vii) by requiring the public body to refund any fee already deposited with it or compensate the complainant for any loss or other detriment suffered;
- (b) impose any of the penalties provided under this Act;
- (c) reject the information request.

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

(9) The Information Commission shall decide the appeal and the complaint in accordance with such procedure as may be prescribed.

CHRI's comment:

When suo motu inquiries are launched they must have some logical outcomes. This is why a new provision is being suggested below that should follow sub-section 9:

“(10) Upon completion of an inquiry into the patterns of non-compliance in a public body the Information Commission shall submit to Parliament a report containing details of its findings and any recommendations that it may deem appropriate and furnish a copy of the said report to the public body that was the subject of the inquiry.”

CHAPTER VI

OFFENCES AND PENALTY

22. Offences and **Penalty:** (1) Where the Information Commission, at the time of deciding any complaint or appeal is of the opinion that the Information Officer has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall sentence imprisonment for a period not exceeding one month and/or impose a penalty of taka two hundred and fifty taka each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand taka:

Provided that the Information Officer shall be given a reasonable opportunity of being heard before any sentence of imprisonment pronounced or any penalty is imposed on him:

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

CHRI's comments:

There are problems with this penalty provision.

- (1) The same mistake made in India has been repeated here for the quantum of penalty which is linked only to delay in giving information. There is no link to other offences mentioned in this section. This needs to be corrected.
- (2) In India these transgressions are only contraventions, not offences. So the Information Commission being somewhat like a special tribunal can impose only a monetary penalty. However this draft Bill proposes a jail sentence as well. Imprisonment will then require a trial under CrPC. It is not proper to give powers of conducting trial to the Information Commission. This will create a parallel court system. Furthermore if the Information Commission has the power to sentence an IO to a prison term it should have a person from judicial background as Chairperson. In order to avoid all such complications it is being suggested that the Information Commission should have the power to impose only monetary penalties. It should cause a case to be filed in the appropriate court if it thinks the IO deserves a prison sentence. Prison sentence is for very serious offences. These must be listed separately in a schedule which is provided at the end of this document. So the alternative provisions suggested are as follows:

“(1) Where the Information Commission, at the time of deciding any complaint or appeal is of the opinion that the Information Officer has, without any reasonable cause, refused to receive a request for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or obstructed in any manner in furnishing the information, it shall impose a penalty of taka two hundred and fifty taka on him or her for each day of delay till the request is received or information is furnished and for other contraventions mentioned in this sub-section it shall impose a penalty up to a maximum of twenty-five thousand taka;

(2) Where the Information Commission, at the time of deciding any complaint or appeal is of the opinion that the Information Officer or any other officer or employee responsible for providing information has, without any reasonable cause persistently failed to entertain a request for information or furnish information within the time specified under sub-section (1) of section 6 or malafidely denied the request for information it shall recommend to the public body for disciplinary action against him or her under the service rules applicable.

(3) Where the Information Commission, at the time of deciding any complaint or appeal is of the opinion that the Information officer or any other officer or public servant or employee of the public body has committed one or more of the offences listed in Schedule 1 it shall cause a complaint to be filed before a court that is competent to try such offences.”

(4) The court receiving a complaint under sub-section (3) shall proceed to try the case as if it were a case initiated under the Criminal Procedure Code .”

Liability of Public body for non-disclosure and non-compliance with laws. Penalty Tk. 100000 for non-disclosure and tk. 50,000 for non-compliance.

CHRI's comment:

Although CHRI has been arguing that public bodies be penalized for non-compliance there will be problems for private bodies especially NGOs. We are not sure how much support there is for this idea in the drafting committee. If it is felt that the committee wants to retain it then the liability clause must clearly say that the Information Commission shall impose the liability at the end of any inquiry or appeals proceedings.

23. Right of legal representation:

The parties to an appeal may either appear in person or authorize one or more legal practitioners to present their cases before the Information Commission. *To the extent possible, the Commission should operate more like commissions of inquiry searching for the truth rather than promoting adversarial hearings.*

CHRI's comment:

It is better to avoid any reference to legal practitioners in keeping with the sentiment expressed in the second line. Therefore the section may be reworded in the following manner:

“The parties to an appeal or complaint proceedings may either appear in person or authorize one or more persons to represent them before the Information Commission and the Commission shall strive to conduct such proceedings in the manner of a commission of inquiry and avoid adversarial proceedings to the extent possible.”

24. Application of the Limitation Act 1908 (Act IX of 1908):

Subject to the provisions of this Act, the provisions of the Limitation Act, 1908 (Act IX of 1908) shall, as far as may be applicable, apply to an appeal filed under this Act.

CHRI's comment:

Given the limitation mentioned in section 21 this provision is redundant. There is no need for this provision at all.

25. Recovery of penalty and compensation:

Any penalty or compensation payable under this Act, if not paid, shall be recoverable *from the salary of the public official or as arrears of land revenue under the Public Demands Recovery Act, 1913.*

26. **Primacy of this Act:** The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 and any other law for the time being in force or any instrument having effect by virtue of any law other than this Act.

27. **Suit Barred:** No court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act.

28. **Annual Report by the Commission:** (1) The Information Commission shall, as soon as practicable after the end of each year, prepare a report on the implementation of the provisions of this Act during that year and forward a copy thereof to the Parliamentary Standing Committee on the Ministry of Information and make this report available for public perusal through appropriate means, including through its website, if such a website exists

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

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

(a) the number of requests made to each public body;

(b) the number of decisions where applicants were not entitled to access to the documents pursuant to the requests, the provisions of this Act under which these decisions were made and the number of times such provisions were invoked;

(c) the number of appeals referred to the Information Commission for review, the nature of the appeals and the outcome of the appeals;

(d) particulars of any disciplinary action taken against any officer in respect of the administration of this Act;

(e) the amount of charges collected by each public body under this Act;

(f) any facts which indicate an effort by the public authorities to administer and implement the spirit and intention of this Act;

(g) recommendations for reform, including recommendations in respect of the particular public authorities, for the development, improvement, modernisation, reform or amendment to this Act or other legislation or common law or any other matter relevant for operationalising the right to access information.

(h) recommendations for reform, including recommendations in respect of the particular public authorities, for the development, improvement, modernisation, reform or amendment to this Act or other legislation or common law or any other matter relevant for operationalising the right to access information.

(i) The government may, as soon as practicable after the end of each year, cause a copy of the report of the Information Commission referred to in sub-section (1) to be laid before the Parliament.

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

29. Provision on Duties of Government: The Government shall respect and protect the right to information as defined in this Act and support efforts made in good faith by civil society to achieve the objects of this Act.

CHRI's comment:

There is no reference to the duties of the government towards training of officers and public education. It is a good idea to incorporate the following provisions-

29A. Duties to educate public and train officials: (1) The Government shall allocate adequate resources for and undertake to—

(a) developing and organising educational programmes to advance the understanding of the public, in particular of disadvantaged communities as to how to exercise the rights contemplated under this Act;

(b) encouraging public bodies to participate in the development and organisation of programmes referred to in clause (a) and to undertake such programmes themselves;

(c) promoting timely and effective dissemination of accurate information by public bodies about their activities; and

(d) training Information Officers, appellate authorities and other officers, public servants and employees of public bodies and produce relevant training materials for use by the public bodies themselves.

(2) The Government shall, within twelve months from the commencement of this Act, compile in its official language a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right specified in this Act.

30. Power to make Rules and Regulations: The Government and the Commission may frame Rules and Regulation to achieve objectives of this Ordinance and to give to the provisions of this Act.

CHRI's comment:

The power to make rules and regulations should not be vested in two bodies. The power to make rules should be with government and the power to make regulations should be with the Information Commission in the context of its own work. As you have already said that the Information Commission can make its own Regulations there is no need to repeat it here. Instead this provision may be reworded as follows-

“ **30. Power to make Rules:** (1) The Government shall by notification in the Official Gazette make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters, namely: -

- (a) the cost of the medium or print cost price of the materials to be disseminated under subsection (5) of section 7;
- (b) the salaries and allowances payable to and the terms and conditions of employment of officers and other employees under section 16;
- (c) the procedure to be adopted by the Information Commission in deciding appeals under section 21 and complaints under section 19;
- (d) any other matter which is required to be, or may be, prescribed.”

(3) Every rule made by the Government under this Act shall be laid as soon as may be after it is made before Parliament while it is in session, for a total period of thirty days which may be comprised in one session or two or more successive sessions and if before the expiry of the session immediately following the session or the successive sessions aforesaid, Parliament makes any modification in the rule or resolves that any rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.”

CHRI's comment: Please add at the end of the Draft RTI Bill the following:

Schedule 1

Offences triable pursuant to sub-section (3) of section 22

- 1) Deliberately furnishing incorrect, incomplete and misleading information
- 2) Destroying information that was the subject of a request made or an inquiry initiated under the provisions of this Act.