UNIT 6 RIGHT TO INFORMATION – RIGHT TO INFORMATION ACT, 2005

Structure
6.0 Introduction
6.1 Objectives
6.2 Need for and Significance of Information
6.3 Evolution of the Right to Information
   6.3.1 Movement for the Right to Information
6.4 Right to Information Ac, 2005
   6.4.1 Meaning of Information
      6.4.1.1 What Constitutes Information?
      6.4.1.2 Exempted Information
   6.4.2 Right to Information
      6.4.2.1 Scope of Information that Can be Accessed
      6.4.2.2 Who Can Access Information?
      6.4.2.3 Third Party Information
   6.4.3 Obligations of Public Authorities
   6.4.4 Procedure for Accessing Information
      6.4.4.1 Information Officers
      6.4.4.2 Central Information Commission
      6.4.4.3 State Information Commission
      6.4.4.4 Procedure for Accessing Information
      6.4.4.5 Appeals
6.5 Some Instances/Relevant Cases
6.6 Let Us Sum Up
6.7 Answers to ‘Check Your Progress’ Questions
6.8 References

6.0 INTRODUCTION

In Unit-5, “The Constitution of India”, you have learnt about its basic framework, philosophy and salient features, among others. We are aware that information is indispensable for the functioning of a true democracy. People have to be kept informed about current affairs and broad issues – political, social and economic. Free exchange of ideas and free debate are essentially desirable for the Government of a free country. In this Age of Information, its value as a critical factor in socio-cultural, economic and political development is being increasingly felt. In a fast developing country like India, availability of information needs to be assured in the fastest and simplest form possible. This is very important because every developmental process depends on the availability of information to the concerned.

Therefore, securing right to information is essential and that is possible only through proper legislation. And, the government must do everything possible to make implementation of such law very effective to ensure the high levels of transparency in the affairs of the government and realize the true meaning of the
word democracy in governance. In view of these, in the present Unit, we will present you the need and significance of information, evolution of right to information and the Right to Information Act, 2005.

6.1 OBJECTIVES

After going through this unit, you should be able to:

- Explain the meaning and significance of the information and right to information;
- Describe evolution of right to information in a democratic country like India;
- Explain what constitutes information and what is exempted information;
- Evaluate the obligations of public authorities under the Right to Information Act, 2005;
- Elucidate the procedure provided under the Right to information Act, 2005 for accessing information; and
- Examine the composition, functions and powers of information Commissions at various levels.

6.2 NEED FOR AND SIGNIFICANCE OF INFORMATION

Lack of information denies people the opportunity to develop their potential to the fullest extent and realize the full range of their human rights. Individual personality, political and social identity, and economic capability are all shaped by the information that is available to each person and to society at large. The practice of routinely holding information away from the public creates ‘subjects’ rather that ‘citizens’ and is a violation of their rights. This was recognized by the Universal Declaration of Human Rights, 1946 when it is resolved: “Freedom of information is a fundamental human right and it is the touchstone for all freedoms.” ‘Right to information’ was first recognized in Article 19 of Universal Declaration of Human Rights and then given the status of legally binding treaty obligation in Article 19 of the International Covenant on Civil and Political Rights, 1976 which states: “everyone has the right to freedom of opinion and expression. This right includes freedom to hold opinion, without interference, and to seek, receive and impart information and ideas through any media and regardless of frontiers.” This has placed the right to access information firmly within the body of Universal Human Rights Law (Kulwant Singh, 2006, p.49).

Right to know is also closely linked with other basic rights such as freedom of speech and expression and right to education. Its independent existence as an attribute of liberty cannot be disputed. Viewed from this angle, information or knowledge becomes an important resource. An equitable access to this resource must be guaranteed. Soli Sorabjee, stressing on the need of Right to Information aimed at bringing transparency in administration and public life, says: “Lack of transparency was one of the main causes for all pervading corruption, and Right to Information would lead to openness, accountability and integrity” (www.legalservicesindia.com/articles; and http://www.nic.in/rrtd).
Empowering Laws

According to P. B. Sawant, "the barrier to information is the single most cause responsible for corruption in society. It facilitates clandestine deals, arbitrary decisions, manipulations and embezzlements. Transparency in dealings, with their every detail exposed to the public view, should go a long way in curtailing corruption in public life." (www.scribd.com/doc/49553262/RTI).

Thus, it is utmost necessary that the government must strike a balance between the official secrets and the information to be delivered to the public. Strategic sectors have to be kept outside the purview of delivering the information to the public. Now, a debate has been cropping up that there is a vast scale privatization of the public sector, there has been privatization of certain necessary services that were initially instituted for only public welfare schemes. Regarding hospitals, educational institutes and even many transportation systems being privatized, there arises the need to make them transparent. The fundamental principle of a private sector is to maximize their profits and for this many of these private players forget their business ethics and, thus, it is the public who has to suffer. Hence, it is important to make information regarding these sectors available to the public as one of the essentials of the democracy is to ensure social and public welfare.

In view of the peoples' need for information and the significance of information in their own development and of their nation, the need for Right to Information has been widely felt in all sectors of the country and this has also received judicial recognition through some landmark judgments of Indian courts.

6.3 EVOLUTION OF THE RIGHT TO INFORMATION

'Information' as a term has been derived from the Latin words 'Formation' and 'Forma' which means giving shape to something and forming a pattern, respectively. Information adds something new to our awareness and removes the vagueness of our ideas.

Constitutional aspect of the right to information: Article 19(1)(a) of the Constitution guarantees the fundamental rights to free speech and expression. The prerequisite for enjoying this right is knowledge and information. The absence of authentic information on matters of public interest will only encourage wild rumours and speculations and avoidable allegations against individuals and institutions. Therefore, the Right to Information becomes a constitutional right, being an aspect of the right to free speech and expression which includes the right to receive and collect information. This will also help the citizens perform their fundamental duties as set out in Article 51A of the Constitution. A fully informed citizen will certainly be better equipped for the performance of these duties. Thus, access to information would assist citizens in fulfilling these obligations.

6.3.1 Movement for the Right to Information

In early 1989, the then the Prime Minister Mr. V. P. Singh declared the attitude of the new Government on the Right to Information and transparent government. He said, "An open system of governance is an essential prerequisite for the fullest flowering of democracy. Free flow of information from the Government to the
people will not only create an enlightened and informed public opinion but also render those in authority accountable. In the recent past, we have witnessed many distortions in our information system. The veil of secrecy was lowered many a time not in the interest of national security, but to shield the guilty, vested interests or gross errors of judgments. Therefore, the National Front Government has decided to make the Right to Information a Fundamental Right.... A large area of information dissemination also relates to development programmes, their progress and their impact. This will need to be done at the Panchayat and Municipal levels, to encourage not only multi-level planning but also the common man in the villages” (www.legalservicesindia.com/articles).

The demand for Right to Information has taken the form of mass movement at the grass-root level. A mass-based organisation called the Mazdoor Kisan Shakti Sangathan (MKSS) took an initiative to lead the people in a very backward region of Rajasthan – Bhim Tehsil – to assert their right to information by asking for copies of bills and vouchers and names of persons who have been paid wages according to muster-rolls on the construction of schools, dispensaries, small dams and community centres. On paper, such development projects were all completed, but it was common knowledge of the villagers that there was gross misappropriation of funds with roofless school buildings, dispensaries without walls, dams left incomplete and community centres having no doors and windows (legalservicesindia.com/article).

After years of knocking at officials’ doors and despite the usual apathy of the State government, MKSS succeeded in getting photocopies of certain relevant documents. Misappropriation of funds was clearly obvious. In some cases, the muster rolls contained names of persons who either did not exist at all or died years before. This incident is more than sufficient to show the importance of the ability of information for eradicating mal-practices. With so many scandals emerging from time to time, it becomes vital for the management of public fund and survival of democracy.

MKSS organised a Jan Sunwai (People’s hearing), the first ever in the history of Rajasthan. Politicians, administrators, landless labourers, private contractors were all invited to listen, respond and, if willing, to defend themselves. Popular response was phenomenal, but village officials and politicians stayed away and remained silent, and thereby weakened their position and darkened their image. Between December 1994 and April 1995, several other public hearings were organised. People’s anger made one engineer of the State Electricity Board to return in public an amount of Rs. 15,000 he had extracted from a poor farmer. This grassroot movement began to spread to other areas of Rajasthan and to other States establishing firmly that information is power and people should have the right to official information (unpan.1.un.org/intradoc/groups/public/documents).

Drafting of the Bill: In 1996, Justice P. B. Sawant, the Chairman of the Press Council of India, drafted the bill keeping in view the dire need of the day and the observations made by eminent persons that, in a democracy, it is the people who are the masters and those utilising public resources and exercising public power are their agents. The draft Bill was submitted to the Government of India in 1996. The core of the Bill is Clause 3 which says: every citizen shall have the Right to Information from public body; it shall be the duty of the public body to maintain all records duly catalogued and indexed (www.rtigateway.org.in/OBligations).
The public body shall be under a duty to make available to the person requesting information, as it is under an obligation to obtain and furnish and shall not withhold any information or limit its availability to the public except the information specified in Clause 4, and all individuals whether citizens or not, shall have the right to such information that affects their life and liberty. The Bill defines information as any fact relating to the affairs of a public body and records relating to its affairs. Public body includes: a) state within the meaning of Article 12 of the Constitution of India, b) all public undertakings and non-statutory authorities, and c) a company, corporation, society, trust, firm or a co-operative society whether owned or controlled by the Government or by private individuals and institutions whose activities affect the public interest.

The Bill says that Right to Information is subject to restrictions on grounds in clause(s) to Article 19(1)(a) such as the security of the State. Clause (r)(1) of the Bill reproduces many of them and also adds ‘Investigation of an Offence.’ Sub-clauses (2) and (3) include personal or medical information of a private nature and trade and commercial secrets protected by the law. The Bill also enumerates the procedure for the enforcement of this right. The officer in charge will be held responsible in the event of refusal of information, and information must be furnished within 30 days of application. The officer must provide solid reason for any refusal and appeal against refusal should be made to the principal civil judge of the region.

Keeping in view the burning problem, the Govt. of India, Department of Personnel decided to set-up a Working Group on January 2, 1997 under the chairmanship of Mr. H. D. Shouri. The Working Group on the ‘Right to Information and Promotion of Open and Transparent Government’ submitted its comprehensive and detailed report and the draft Bill on Freedom of Information on 24 May 1997 (www.rrtd.nic.in).

The salient features of the Bill: i) When enacted, it will also apply to State governments, overriding State legislations to the extent they clash with the Central legislation; ii) A fee would be paid by the citizen while seeking information from Government, and the officer or the department concerned can be held responsible and taken to a Consumer Court for not providing the information within the prescribed time limit of 30 days; iii) Every Government department should appoint a Public Information Officer for this purpose; iv) Section 5 of the Official Secrets Act should be suitably amended to make it easier for a citizen to obtain official information, and information can be withheld only in respect of especially ‘exempted’ items; v) Clauses 123 and 124 of the Indian Evidence Act which inhibit public officials from submitting information to Courts, should be suitably amended, and the basis and the procedure for classification of official documents (as ‘Secret’, ‘Secret and confidential’) should be suitably amended so that availability of information to the public becomes the rule rather than the exception; vi) Not only the Central and the State Ministries, but also public sector undertakings, municipal bodies and panchayats and other bodies substantially funded by the Government, would come within the purview of the Act.

Main Points of Resolution: The Press Council of India, the Press Institute of India, the National Campaign for People’s Right to Information and the Forum for Right to Information unanimously submitted the resolution to Government of India to amend the proposed Bill.
The Right to Information should also be extended in respect of companies, NGOs and international agencies whose activities are of a public nature and have a direct bearing on public interest.

The law must contain strong, penal provisions against willful and wanton withholding or delay in supplying information or deliberately supplying misleading or inaccurate information.

The law should contain an appeal mechanism of an independent nature to provide reliable redress to any citizen dissatisfied with any decision of a public authority under this law. In the present draft Bill, all appeals are to other Government authorities.

The categories of information, which can be restricted or withheld by the Government, are too wide in the draft Bill. In particular, the restriction on disclosing internal notings and official correspondence between public officials and offices has no justification whatsoever. In a democracy, people have the right to know how and why a particular decision has been arrived at and who made what recommendations with what justification. We do not support the view that this will deter candour in the expression of views of public servants. Honest public servants expressing their opinions honestly cannot be deterred by the knowledge that their opinions will become known to the people.

Similarly, the restriction on confidential communications between the State and Centre and their agencies have no justification, unless they harm public interest.

The restriction on disclosure of the record of discussions of Secretaries and other public servants also needs to be removed.

The Freedom of Information Bill 2000: This Bill introduced in the Lok Sabha on 25th July 2000 says that:

a) Information means any material in any form relating to the administration, operations or decisions of a public authority;

b) The bill defines public authority as any authority or body established or constituted by or under the Constitution, by any law made by the appropriate Government, and includes any other body owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government.

c) Freedom of information means the right to obtain information from any public authority by means of inspection, taking of extracts and notes, certified copies of any records of such public authority and diskettes, floppies or any other electronic mode or through print-outs where such information is stored in a computer or in any other device.

It will be interesting to mention that Press Council of India prepared a draft Bill in 1996 to make a provision for securing right to information. This draft Bill was named Right to Information Bill, 1996. The Institute of Rural Development, Hyderabad also prepared a bill in 1997. Both the bills initiated a national debate on the issue of Effective and Responsive Administration. The Govt. of India appointed a working group on January 2, 1997. The terms of reference of the
Working Group included the examination of feasibility and need to introduce a full fledged Right to Information Bill. This group recommended that a legislation in this regard is not only feasible but is also vitally necessary. The Working Group recommended that the bill should be named as Freedom of Information Bill as the Right to Information has already been judicially recognised as a part of the fundamental right to free speech and expression.

*Freedom of Information Act, 2002:* Government appointed a national level working group to discuss on the passage. There was no upper limit on the charges that could be levied. There were no penalties for not complying with a request for information. The Freedom of Information Act, consequently, never came into effective force.

*State Level Laws:* The RTI Laws were first successfully enacted by the state governments of — Tamil Nadu (1997), Goa (1997), Rajasthan (2000), Karnataka (2000), Delhi (2001), Maharashtra (2002), Assam (2002), Madhya Pradesh (2003), and Jammu and Kashmir (2004). The Maharashtra and Delhi State level enactments are considered to have been the most widely used. The Delhi RTI Act is still in force. Jammu & Kashmir, has its own Right to Information Act of 2009, the successor to the repealed J&K Right to Information Act, 2004 and its 2008 amendment.

### 6.4 RIGHT TO INFORMATION ACT, 2005

The Right to Information Act, 2005 (RTI) is an Act of the Parliament of India. It is the implementation of freedom of information legislation in India on a national level “to provide for setting out the practical regime of right to information for citizens.” The Act applies to all States and Union Territories of India, except the State of Jammu and Kashmir — which is covered under a State-level law. Under the provisions of the Act, any citizen (excluding the citizens within J&K) may request information from a “public authority” (a body of Government or “instrumentality of State”) which is required to reply expeditiously or within thirty days. The Act also requires every public authority to computerize their records for wide dissemination and to proactively publish certain categories of information so that the citizens need minimum recourse to request for information formally. This law was passed by Parliament on 15 June 2005 and came fully into force on 13 October 2005. Information disclosure in India was hitherto restricted by the Official Secrets Act, 1923 and various other special laws, which the new RTI Act now relaxes.

The Right to Information Act, 2005 has been enacted by the Parliament in order to provide for setting out the practical regime of the right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority through constitution of the Central Information Commission and State Information Commission for matters connected therewith or incidental thereto.
Reflection

Have you ever thought that information is power and right to information is an integral part of democracy? Don’t you think that the Right to Information Act, 2005 is a powerful weapon in the hands of the citizens for the transparency of administration? Being a citizen of India, don’t you think that you should be aware of and use the right to information for the realization of democratic values? Don’t you thing that it is your duty to make common man know about the right to information and the legislative perspectives to have access to information in order to protect them from various forms of exploitation? Don’t you think that you should have a copy of the Right to Information Act, 2005 with you for above purposes? Just reflect upon these questions and do what you feel is right.

6.4.1 Meaning of Information

In this sub-section, we focus on the meaning of information, as to what constitutes information that can be accessed and what information is exempted from having access.

6.4.1.1 What Constitutes Information?

Section 2(f) of the Act defines Information as any material in any form. It includes records, documents, memos, e-mail, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data, material held in any electronic form relating to any private body which can be accessed by the public authority under any law for the time being in force.

Further, Central Information Commission clarified that although ‘opinion’ is indeed information, to so qualify it must be held in material form. The issue concerning the disclosure of “file noting” under the Right to Information Act first came up before this commission in the case of Suryapal v CPIO TCIL which was decided by a Division Bench. It was held that note file would be incomplete without note sheets. These recordings are generally known as “file notings”. Thus, a combined reading of Section 2(f), (i) & (j) would indicate that a citizen has the right of access to a file of which the file notings are an integral part of a file.

6.4.1.2 Exempted Information

Sub-section (1) of Section 8 and Section 9 of the Act enumerate the categories of information which are exempted from disclosure. Sub-section (2) of Section 8, however, provides that information exempted under sub-section (1) or that exempted under the Official Secrets Act, 1923 can be disclosed if public interest in disclosure outweighs the harm to the protected interest. Further, sub-section (3) of Section 8 provides that information exempted from disclosure under sub-section (1), except as provided in clauses (a), (c) and (i) thereof, would cease to be exempted after 20 years from the date of occurrence of the related event, etc.

It may be noted that Section 8(3) of the Act does not require the public authorities to retain records for indefinite period. The records should be retained as per the record retention schedule applicable to the concerned public authority. Information generated in a file may survive in the form of an OM or a letter or in any other form even after destruction of the file/record.
The Act requires furnishing of information so available after the lapse of 20 years even if such information was exempt from disclosure under sub-section (1) of Section 8. It means that the information which, in normal course, is exempt from disclosure under sub-section (1) of Section 8 of the Act, would cease to be exempted if 20 years have lapsed after occurrence of the incident to which the information relates. However, the following types of information would continue to be exempted and there would be no obligation, even after lapse of 20 years, to give any citizen:

- information disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interest of the State, relation with foreign state or lead to incitement of an offence;
- information disclosure of which would cause a breach of privilege of Parliament or State Legislature; or
- Cabinet papers including records of deliberation of the Council of Ministers, Secretaries and other Officers subject to the conditions given in proviso to clause (i) of sub-section (1) of Section 8 of the Act.

Check Your Progress

Notes: a) Space given below the question is for writing your answer.
   b) Check your answer with the one given at the end of this unit under “Answers to ‘Check Your Progress’ Questions”.

1) Explain the need and significance of information.

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2) What do you understand by the term ‘exempted information’ under the Right to Information Act, 2005?

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6.4.2 Right to Information

A citizen has a right to seek such information from a public authority which is held by the public authority or which is held under its control. This right includes inspection of work, documents and records; taking notes, extracts or certified copies of documents or records; and taking certified samples of material held by the public authority or held under the control of the public authority (Section 2(j) of Right to Information Act, 2005).

6.4.2.1 Scope of Information that Can be Accessed

The act gives the citizen a right to information at par with the Members of Parliament and the Members of State Legislatures. According to the Act, the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person. A citizen has a right to obtain an information in the form of diskettes, floppy's, tapes, video cassettes or in any other electronic mode or through print-outs, provided such information is already stored in a computer or in any other device from which the information may be transferred to diskettes, etc.

The information to the applicant should ordinarily be provided in the form in which it is sought. However, if the supply of information sought in a particular form would disproportionately divert the resources of the public authority or may cause harm to the safety or preservation of the records, supply of information in that form may be denied.

Only such information is required to be supplied under the Act which already exists and is held by the public authority or held under the control of the public authority. It is beyond the scope of the Act to create information; or to interpret information; or to solve the problems raised by the applicants; or to furnish replies to hypothetical questions.

6.4.2.2 Who Can Access Information?

The Act gives the right to information only to the citizens of India (Section 3, Right to Information Act, 2005) like ordinary citizens, patients, consumers, voters, etc. in their corresponding situations. It does not make provision for giving information to corporations, Associations, Companies, etc., which are legal entities/ persons. However, if an application is made by an employee or office bearer of any Corporation, Association, Company, NGO, etc. indicating his name and such employee/office bearer is a citizen of India; information may be supplied to him/ her. In such cases, it would be presumed that a citizen has sought information at the address of the Corporation, etc. concerned.

6.4.2.3 Third Party Information

Third Party: Section 11(1) defines 'third party' to mean a person other than the citizen making a request for information and includes a public authority. Thus, when a person makes a request for an information which is not related to himself, he is requesting for an information related to third party.

Right of Third Party: If a PIO receives a request for an information which is related to or has been supplied by a third party, then he shall within 5 days of receipt of such request, give a written notice to such third party informing him of the request and the fact that the officer intends to disclose the information on
record, or any part thereof. The third party is entitled to make a submission in
writing or orally as to whether such information be disclosed or not, within 10
days from the date of receipt of notice. And the officer shall keep in view such
submission while taking a decision in this matter.

The following shall be considered while disclosing Third Party Information:

a) Trade or commercial secrets protected by law should not be disclosed.

b) In case public interest in disclosure outweighs in importance than any possible
harm or injury to the interests of third party, then the information may be
disclosed.

The information is to be provided where a third party has been given an
opportunity to make representation under Section 11(2). The PIO shall within
40 days from the date of receipt of request, make a decision as to whether or not
to disclose the information or record or part thereof. A written notice of the
decision shall be sent to the third party, also informing him that he may prefer an
appeal under Section 19 against such a decision.

Where a PIO decides to provide the information, he shall send intimation to the
applicant, stating:

a) The details of fees, towards cost of providing the information, together with
the calculation details, and requesting him to deposit fees.

b) The applicant can seek review of the decision on fees charged by him or the
form of access provided including the particulars of the Appellate Authority,
time limit, process and any other forms.

Check Your Progress

Notes: a) Space given below the question is for writing your answer.
               b) Check your answer with the one given at the end of this unit under
                   ‘Answers to ‘Check Your Progress’ Questions’.

3) Define third party information.

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6.4.3 Obligations of Public Authorities

According to Section 2(h) of the Right to Information Act, 2005 public authority means any authority or body or institution of self-government established or constituted:

a) By or under the Constitution;
b) By any other law made by Parliament;
c) By any other law made by State Legislature;
d) By notification issued or order made by the appropriate Government, and includes any:
   i) body owned, controlled or substantially financed by appropriate Government; and
   ii) non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government;

Public authority should include private bodies performing public functions. This measure will facilitate the right to information described by Section 6(b) of the Consumer Protection Act, 1986.

The Act casts important obligation on public authorities so as to facilitate the citizens or the country to access the information held under their control. The obligations of the authority are basically the obligations of the head of the authority, which should ensure that these are met in right earnest. Reference made to public authority in this document is, in fact, a reference to the head of the public authority.

Timely Supply of Information: The Act requires that except in some special circumstances, decision on an application for information should be given within 30 days of the receipt of the request. Where the information sought for concerns the life or liberty of a person, the same should be provided within forty-eight hours of the receipt of the request. If the decision on the request for information is not given within the prescribed period, it is deemed that the request has been refused. It is pertinent to note that if a public authority fails to comply with the specified time limit, the information to the concerned applicant would have to be provided free of charge.

Maintenance and Computerisation of Records: Proper management of records is of utmost importance for effective implementation of the provisions of the Act. A public authority should, therefore, maintain all its records properly. It should ensure that the records are duly catalogued and indexed in such a manner and from that it may facilitate the right to information. The public authority should computerize all its records which are appropriate to be computerized, Record so computerized should be connected though a network on different systems so that access to such records is facilitated.

Suo Motu Disclosure: Every public authority should provide as much information suo motu to the public through various means of communications so that the public have minimum resort to the use of the Act to obtain information. Internet being one of the most effective means of communications, the information may be posted on the website.
Section 4(1)(b) of the Act, in particular, requires every public authority to publish following sixteen categories of information:

- the parliament of its organization, functions and duties;
- the powers and duties of its officers and employees;
- the procedure followed in the decision-making process, including channels of supervision and accountability;
- the norms set by it for the discharge of its functions;
- the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;
- a statement of the categories of document that are held by it or under its control;
- 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;
- a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as 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;
- directory of its officers and employees;
- the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
- the budget allocated to each of its agencies, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
- the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;
- particulars of recipients of concessions, permits or authorizations granted by it;
- details in respect of the information, available to or held by it, reduced into an electronic form;
- the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if reduced into an electronic form;
- the names, designations and other particulars of the Public Information Officers.

Besides the categories of information enumerated above, the Government may prescribe other categories of information to be published by any public authority. It need not be stressed that publication of the information as referred to above is not optional. It is a statutory requirement which every public authority is bound to meet. Another important point to note is that it is not sufficient to publish the above information once. The public authority is obliged to update such information every year. It is advisable that, as far as possible, the information should be updated as and when any development takes place. Particularly, in case of publication on the internet, the information should be kept updated all the time.
Dissemination of Information: The public authority should widely disseminate the information. Dissemination should be done in such form and manner which is easily accessible to the public. It may be done through notice boards, newspapers, public announcements, media broadcast, the internet or any other means. The public authority should take into consideration the cost-effectiveness, local language and most effective method of communication in the local area while disseminating the information.

Publication of Facts about Policies and Decision: Public authorities formulate policies and take various decisions from time to time. As provided in the Act, while formulating important policies or announcing the decisions affecting the public, the public authority should publish all relevant facts about such policies and decisions for the information of public at large.

Providing Reasons for Decisions: The public authorities take various administrative and quasi-judicial decisions which, sometimes, affect the interests of certain persons. It is mandatory for the concerned public authority to provide reasons for such decisions to the affected persons. It may be done by using appropriate mode of communication.

Acceptance of Fee: According to the Right to Information (Regulation of Fee and Cost) Rules, 2005 as amended by the Right to Information (Regulation of Fee and Cost) Rules, 2006, an applicant can make payment of fee in cash or by demand draft or bankers cheque or Indian Postal Order payable to the Accounts Officer of the public authority. The public authority should ensure that payment by any of the above modes is not denied or the applicant is not compelled to draw IPO, etc. in the name of any officer other than the Accounts Officer. If any public authority does not have any Accounts Officer, an officer may be designated as such for the purpose of receiving fee under the RTI Act or rules made thereunder.

Transfer of Applications: The Act provides that if an application is made to a public authority requesting for an information which is held by another public authority or the subject matter of which is more closely connected with the functions of another public authority, the public authority to which such application is made, shall transfer the application or relevant part of it to that other public authority within five days from the receipt of the application. The public authority should sensitise its officers about this provision of the Act lest the public authority is held responsible for delay.

Compliance with the Orders of the CIC: While deciding an appeal, the Central Information Commission, may require the concerned public authority to take such steps as may be necessary to secure compliance with the provisions of the Act. In this regard the Commission may pass an order to provide information to an applicant in a particular form; appoint a Public Information Officer; publish certain information or categories of information; make necessary changes to its practices in relation to the maintenance, management and destruction of records; enhance the provision of training for officials; provide an annual report as prepared in compliance with clause (b) of sub-section (1) of Section 4.

The Commission has power to pass orders requiring a public authority to compensate the complainant for any loss or other detriment suffered by him. It also has power to impose penalty on the Public Information Officer as provided...
in the Act. It may be noted that penalty is imposed on the Public Information Officer which is to be paid by him. However, the compensation ordered by the Commission to be paid to an applicant would have to be paid by the public authority. The decisions of the Commission are binding. The public authority should ensure that the orders passed by the Commission are implemented. If any public authority is of the view that an order of the Commission is not in consonance with the provisions of the Act, it may approach the High Court by way of a Writ petition.

**Annual Report of the CIC:** The Central Information Commission, after the end each year, is required to prepare a report on the implementation of the Provisions of the Act during that year. Each Ministry or Department is required, in relation to the public authorities within its jurisdiction, to commission for preparation of the report. The report of the Commission, inter-alia, contains the following information in respect of the year to which the report relates:

- the number of requests made to each public authority;
- the number of decisions where applicants were not entitled to access to the documents pursuant to the requests, the provisions of the Act under which these decisions were made and the number of times such provisions were invoked;
- particulars of any disciplinary action taken against any officer in respect of the administration of the Act;
- the amount of charges collected by each public authority under the Act; and
- any facts which indicate an effort by the public authorities to administer and implement the spirit and intention of the Act.

Every public authority should send necessary material to its administrative Ministry/Department soon after the end of the year so that the Ministry/Department may incorporate the same in its report.

If it appears to the Central Information Commission that a practice of the public authority in relation to the exercise of its functions under the Act does not conform with the provisions or spirit of the Act, it may give a recommendation to the authority specifying the steps ought to be taken for promoting such conformity. The concerned public authority should take necessary action to bring its practice in conformity with the Act.

**Development of Programmes:** It is expected of each public authority that it would develop and organize educational programmes to advance the understanding of the public, in particular of disadvantaged communities, as to how to exercise the rights contemplated under the Act and ensure timely and effective dissemination of accurate information about their activities. Training of the Public Information Officers and other officers of a public authority is very important for meeting these expectations and effective implementation of the provisions of the Act. The public authorities should, therefore, arrange for training of their officers designated as Public Information Officer/First Appellate Authority and other officers who are directly or indirectly involved in the implementation of the provisions of the Act.
6.4.4 Procedure for Accessing Information

In this sub-section, we deal with the procedure related to accessing of information from the public authorities or information officers including the appeals to the concerned as may be required in respect of obtaining the information. The first and foremost you can approach are the concerned information officers.

6.4.4.1 Information Officers

Section 5 of the Right to Information Act, 2005 provides for the designation of Public Information Officer. According to this section, within 100 days from the commencement of the Act all public authorities shall designate some of their officers as Central/State Public Information Officers. They shall also designate some of their officers as Central/State Assistant Public Information Officers.

Public Information Officers are officers of the whole public authority. They do not have any territorial jurisdiction or subjective jurisdiction. It is not possible to fix the Public Information Officer concerned with any one Department or section of Public Authority. That is why, the Act provided that the Public Information Officers shall seek the needed information from any source within the public authority. Public Information Officer is deemed to be repository of all the information available with public authority (Acharya, 2008, p.27).

6.4.4.2 Central Information Commission

Section 12 of the RTI Act, 2005 provides for Central Information Commission. It was constituted by the Central Government by notification in the official gazette. The Chief Information Commissioner and number of Central Information Commissioners (not exceeding 10) are appointed by the President on the recommendations of a committee consisting of:

1) Prime Minister as Chairperson;
2) Leader of the Opposition in Lok Sabha; and
3) A Union Cabinet Minister to be nominated by the Prime Minister.
The Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance. Such commissioners shall not be members of parliament or members of the state legislatures or union territories or hold any other office of profit or connected with any political party or carrying any business or profession.

6.4.4.3 State Information Commission

It is constituted by State Government by notification in official gazette under section 15 of the RTI Act, 2005. The State Commission consists of the State Chief Information Commissioner and number of State Information Commissioners (not exceeding 10). These Commissioners shall be appointed by the Governor on the recommendations of a committee consisting of:

1) The Chief Minister as the Chairperson;
2) The Leader of opposition in the Legislative Assembly; and
3) A Cabinet Minister to be nominated by the Chief Minister.

6.4.4.4 Procedure for Accessing Information

Here, we will look at some details related to accessing information.

Request for Information (Section 6): Any person, who desires to obtain any information, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made to the Central Public Information Officer or State Public Information Officer or the Assistant CPIO or PIO of the public authority concerned. The request should specify the particulars of the information sought by the applicant and should be accompanied by the requisite fee and full details of his identification, i.e. name, address, etc. There is no requisite fee for those who are residing in below poverty line.

When an applicant cannot make a request in writing, the Public Information Officer shall render all reasonable assistance to the applicant making the request orally to reduce same in writing.

The applicants need not to give any reason for requisitioning the information or any other personal details except those that may be necessary for contacting him.

Time limit for Disposal of Request: A request shall be disposed off as expeditiously as possible, subject to the maximum time limit as follows:

a) In ordinary course — 30 days;
b) If the information concerns the life or liberty of a person — 48 hours;
c) If the request is made to an Assistant Public Information Officer — Normal time + five days;
d) If the request relates to third party — 40 days;
e) If the request involves information pertaining to the allegation of human rights violation in relation to specified Intelligence and Security Organization — 45 days.
Disposal of Request: On receipt of a request for information, the PIO shall, either provide the information on payment of prescribed fee or reject the request. If the request pertains to information concerning a third party, then the representation made by the third party shall be taken into consideration by the PIO before taking decision on the request.

6.4.4.5 Appeals

We discuss below the procedure related to appeals under the RTI act.

i) First Appeal: The information sought by an applicant should either be supplied to him or his application should be rejected within the time prescribed by the Act. If additional fee need be charged for the application, communication in this regard should be sent to the applicant within the time limit prescribed for sending information. If the applicant does not receive information or decision about rejection or request or communication about payment of additional fee within the specified time, he can make an appeal to the First Appellate Authority. Appeal can also be made if the applicant is aggrieved by the decision of the CPIO regarding supply of information or the quantum of fee decided by CPIO.

Appeal in relation to Third Party Information: Third party in relation to the Act means a person other than the citizen who has made the request for information. Any public authority other than the public authority to whom the request has been made shall also be included in the definition of third party.

It may be noted that information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, is exempt from disclosure. Section 8(1)(d) requires that such information should not be disclosed unless the competent authority is satisfied that larger public interest warrants the disclosure of such information.

If an applicant seeks any information which relates to or has been supplied by a third party and that third party has treated that information as confidential, the Central Public Information Officer should consider whether the information should be disclosed or not. The guiding principle in such cases should be that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs the importance or any possible harm or injury to the interests of such third party. However, procedure as given below should be followed before disclosing such information.

It may be noted that this procedure need be followed only when the third party has treated the information as confidential. If the CPIO intends to disclose the information, he should within five days from the receipt of the application, give a written notice to the third party that the information has been sought by the applicant under the RTI Act and that he intends to disclose the information. He should request the third party to make a submission in writing or orally, regarding whether the information should be disclosed. The third party should be given a time of ten days, from the date of receipt of the notice by him, to make representation against the proposed disclosure, if any.
The Central Public Information Officer should make a decision regarding disclosure of the information keeping in view the submission of the third party. Such a decision should be taken within forty days from the date of receipt of the request for information. After taking the decision, the CPIO should give a notice of his decision to the third party in writing. The notice given to the third party should include a statement that the third party is entitled to prefer an appeal under Section 19 against the decision.

The third party can prefer an appeal to the First Appellate Authority against the decision made by the Central Public Information Officer within thirty days from the date of the receipt of notice. If not satisfied with the decision of the First Appellate Authority, the third party can prefer the second appeal to the Central Information Commission. If an appeal has been filed by the third party against the decision of the CPIO to disclose the third party information, the information should not be disclosed till the appeal is decided.

**Time Limit for Filing of First Appeal:** The first appeal may be made within 30 days from the date of expiry of the prescribed period or from the date of receipt of communication from the CPIO. If the First Appellate Authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal, the appeal may be admitted after 30 days also.

**Disposal of Appeal:** Deciding appeals under the RTI Act is a quasi-judicial function. It is, therefore, necessary that the appellate authority should see to it that the justice is not only done but it should also appear to have been done. In order to do so, the order passed by the appellate authority should be a speaking order giving justification for the decision arrived at.

**Time Limit for Disposal of Appeal:** The appeal should be disposed off within 30 days of receipt of the appeal. In exceptional cases, the Appellate Authority may take 45 days for its disposal. However, in cases where disposal of appeal takes more than 30 days, the Appellate Authority should record in writing the reasons for such delay.

If an appellate authority comes to a conclusion that the appellant should be supplied information in addition to what has been supplied to him by the CPIO, he may either: i) pass an order directing the CPIO to give such information to the appellant; or ii) himself give information to the appellant while disposing off the appeal. In the first case the appellate authority should ensure that the information ordered by him to be supplied is supplied to the appellant immediately. It would, however, be better if the appellant authority chooses the second course of action and he himself furnishes the information along with the order passed by him in the matter.

If, in any case, the CPIO does not implement the order passed by the appellant authority and the appellate authority feels that intervention of higher authority is required to get his order implemented, he should bring the matter to the notice of the officer in the public authority competent to take action against the CPIO. Such competent officer shall take necessary action so as to ensure implementation of the provisions of the RTI Act.

**ii) Second Appeal:** It is dealt with under Section 19 which is as follows.

1) 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 Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the date of receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority:

- 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) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under Section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

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

- Provided that the Central Information Commission or the State Information Commission, as the case may be, 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.

4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.

5) ... ... ...

6) ... ... ...

7) The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding.

8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to:

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

- by providing access to information, if so requested, in a particular form;
- by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;
- by publishing certain information or categories of information;
- by making necessary changes to its practices in relation to the
Empowering Laws

maintenance, management and destruction of records;
• by enhancing the provision of training on the right to information for its officials;
• by providing it with an annual report in compliance with clause (b) of sub-section (1) of Section 4;
  a) require the public authority to compensate the complainant for any loss or other detriment suffered;
  b) impose any of the penalties provided under this Act;
  c) reject the application.

9) The Central Information Commission or State Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority.

10) The Central Information Commission or State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed (Srinivas Madhav, 2008, p.145).

Bar to Jurisdiction of Courts: Section 23 of the Act provides that no court shall entertain any suit, application or other proceeding in respect of any order made under the Act and no such order shall be called in question otherwise than by way of an appeal under the Act.

Check Your Progress

Notes: a) Space given below the question is for writing your answer.
    b) Check your answer with the one given at the end of this unit under “Answers to ‘Check Your Progress’ Questions”.

5) What is the procedure for accessing information under the Right to Information Act, 2005?

6.5 SOME INSTANCES/RELEVANT CASES

In Mr. X v Hospital Z (1998, p.296), the Supreme Court held that it was open to the hospital authorities or the doctors concerned to reveal such information to the persons related to the girl whom he intended to marry as she has a right to know about the HIV positive status of the appellant.

Mr. Anil Kumar Sharma (2006/00648 Dt 04/04/07) requested for certified copy of the written statements of the Directors during survey and it was held that Information was denied u/s 8(1)(d) and also because it was third party information.
The CIC held that it has been a consistent view that result of enquiry conducted by a public authority should be given to the person making the request deleting from it the names of the informer, etc., u/s 10(1), or the info may be denied if the investigation is in progress. The CIC has steadfastly declined to disclose information of depositions, sources of information received by the public authority, statements by witnesses, etc., under Section 8(1)(g).

Mr. Rajesh Bhatia, Hyderabad (2007/00282 Dt 28/05/07) requested for details of tax evasion and it was held that the matter was still undergoing enquiry and, therefore, the information in the present shape cannot be disclosed. Whether it can be disclosed after the assessment has been finalized and the tax liability determined, is a matter which can be taken up at an appropriate time.

Mr. Jatinder Kumar Aggarwal (2007/00115 Dt 05/04/07) requested for file notings pertaining to the issue of a Notification and it was held that File noting of open files (not budget files) should be disclosed. If the respondents wish then as per provisions of section 10(1) the names and other details may be deleted.

In Union of India v Association for Democratic Reforms and another (2001, p.2112) the Supreme Court held that under our constitution, Art. 19(1) provides for freedom of speech, and expression in case of election would include casting of votes, that is to say, voter speaks out or expresses by casting vote. For this purpose, information about the candidate’s antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy. The little man may think over before making his choice of electing law-breakers as law-makers.

6.6 LET US SUM UP

We have presented you the need and significance of information to an individual in promoting transparency and accountability of public offices and the officers toward the society and the nation. We have highlighted the concept of right to information, the evolution of right to information, and important aspects of the Right to Information Act, 2005.

We believe that the knowledge and understanding you have got here will enable you, as a citizen in general and as an adult educator in particular, to play your roles in more effective manner in protecting and promoting the democratic values and transparency in administration and governance of the country.

6.7 ANSWERS TO ‘CHECK YOUR PROGRESS’ QUESTIONS

1) Information is indispensable for the functioning of a true democracy. People have to be kept informed about current affairs and broad issues related to political, social and economic development of the nation. Free exchange of ideas and free debate are essentially desirable for the Government of a free country. In this Age of Information, value of information as a critical factor in socio-cultural, economic and political development is being increasingly felt. In a fast developing country like India, availability of information needs to be assured in the fastest and simplest form possible. This is important
because every developmental process depends on the availability of information – information is power that helps in promoting transparency, democracy and development.

2) Sub-section (1) of Section 8 and Section 9 of the RTI Act enumerate the categories of information which is exempted from disclosure. Sub-section (2) of Section 8, however, provides that information exempted under sub-section (1) or that exempted under the Official Secrets Act, 1923 can be disclosed if public interest in disclosure outweighs the harm to the protected interest. Further, sub-section (3) of Section 8 provides that information exempted from disclosure under sub-section (1), except as provided in clauses (a), (c) and (i) thereof, would cease to be exempted after 20 years from the date of occurrence of the related event, etc.

It may be noted that Section 8(3) of the Act does not require the public authorities to retain records for indefinite period. The records should be retained as per the record retention schedule applicable to the concerned public authority. Information generated in a file may survive in the form of an OM or a letter or in any other event after destruction of the file/record.

The Act requires furnishing of information so available after the lapse of 20 years even if such information was exempt from disclosure under sub-section (1) of Section 8. It means that the information which, in normal course, is exempt from disclosure under sub-section (1) of Section 8 of the Act, would cease to be exempted if 20 years have lapsed after occurrence of the incident to which the information relates. However, the following types of information would continue to be exempted and there would be no obligation, even after lapse of 20 years, to give any citizen:

- information disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interest of the State, relation with foreign state or lead to incitement of an offence;
- information the disclosure of which would cause a breach of privilege of Parliament or State Legislature; or
- Cabinet papers including records of deliberation of the Council of Ministers, Secretaries and other Officers subject to the conditions given in proviso to clause (i) of sub-section (1) of Section 8 of the Act.

3) **Third Party**: Section 11(1) defines ‘third party’; to mean a person other than the citizen making a request for information and includes a public authority. Thus, when a person makes a request for an information which is not related to himself, he is requesting for an information related to third party.

**Right of Third Party**: If a PIO receives a request for an information which is related to or has been supplied by a third party, then he shall within 5 days of receipt of such request, give a written notice to such third party informing him of the request and the fact that the officer intends to disclose the information on record, or any part thereof. The third party is entitled to make a submission in writing or orally as to whether such information be disclosed or not, within 10 days from the date of receipt of notice. And the officer shall keep in view such submission while taking a decision in this matter.
4) According to Section 2(h) of the Right to Information Act, 2005 Public authority means any authority or body or institution of self-government established or constituted:

a) By or under the Constitution;

b) By any other law made by Parliament;

c) By any other law made by State Legislature;

d) By notification issued or order made by the appropriate Government, and includes any:

i) body owned, controlled or substantially financed by the appropriate Government; and

ii) non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government.

Public authority should include private bodies performing public functions. This measure will facilitate the right to information described by Sec.6(b) of the Consumer Protection Act, 1986.

5) Following is the procedure for accessing information.

Request for Information (Sec 6): Any person, who desires to obtain any information, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made to the Central Public Information Officer or State Public Information Officer or the Assistant CPIO or PIO of the public authority concerned. The request should specify the particulars of the information sought by the applicant and should be accompanied by the requisite fee and full details of his identification, i.e. name, address, etc. There is no requisite fee for those who are living below poverty line.

When an applicant cannot make a request in writing, the Public Information Officer shall render all reasonable assistance to the applicant making the request orally to reduce same to writing. The applicants need not to give any reason for requisitioning the information or any other personal details except those that may be necessary for contacting him.

6.8 REFERENCES


Anil Kumar Sharma (2006/00648 Dt 04/04/07), at www.incometaxindia.gov.in/archive/RTI.

Jatinder Kumar Aggarwal (2007/00115 Dt 05/04/07), at www.incometaxindia.gov.in.


The Right to Information Act, 2005 (Bare Act).
Empowering Laws

Cases

Mr. X v Hospital Z. 1998. Supreme Court Cases (8) 296.


Suggested Readings

