



# Commonwealth Human Rights Initiative

## ***Right to Information Act, 2005***

**A Guide for Public Authorities**

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# “Right to Information (RTI)” – what & why?

## ➤ What is RTI?

- Part of the fundamental right to life and the fundamental right to speak and express oneself freely [Constitution - Art. 19(1)(a) and Art. 21]
- Demanding information from government and getting it promptly
- No need to give reasons for asking information – because it is a right

## ➤ Why RTI?

- In a democracy government belongs to the people
- So, information held by government belongs to the people
- To inform people about what government is or was doing
- To make government and its agencies accountable to people
- To end corruption

## ➤ RTI Act describes the procedures for asking & giving information



# RTI – whose right? whose duty?

## ➤ Whose right?

- Right of all citizens – **men and women, young and old, rich and poor**
- Citizens may ask information on behalf of any association, union, club, society, trust or company
- Citizens may ask information even if it is not directly connected with their personal affairs

## ➤ Whose duty to give information?

- Entire government – President's office to panchayats, Prime Minister's office to municipal corporations, Chief Minister's office to Block Development Office, police, army, navy, air force, etc. etc. (see slide #17 also)
- All sarkari agencies: banks, companies, schools, colleges, hospitals
- Sansad, Vidhan Sabha / Parishad, all courts (except ongoing-case papers)
- Private bodies receiving substantial government funding (direct/indirect)



# what information? what rights?

## ➤ What kinds of information?

- All information “held by” public authorities in physical form:  
Records, documents, memos, emails, opinions, advice, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data or records held in electronic form &
- Information about private bodies, public authorities may collect lawfully

## ➤ What kinds of rights?

- Right to inspect records and make notes or take extracts
- Right to get photocopies or certified copies as per our choice
- Right to inspect government works and get samples & models
- Right to get information in electronic form – CDs, emails etc.
- Right to get complete and true information as contained in official records



# RTI – how to give information? - I

- **Every public authority must ensure automatic access to:**
  - **how it is organised, what are its functions and responsibilities**
  - **what the powers and duties of its officers are**
  - **how decisions are made and who supervises every decision-making process**
  - **what norms are to be followed – timelines, quality of service etc.**
  - **all rules, regulations, instructions, guidelines, circulars, manuals used**
  - **detailed budget & how much money was spent for what purpose**
  - **directory of all officials / employees and salary paid to them**
  - **systems and processes for consulting people on important matters**
  - **how subsidy programmes are implemented and details of beneficiaries**
  - **details of permits, authorisations and licenses issued to persons**
  - **categories of all records held in files and electronic form**
  - **Details of any library or reading room facilities open to the public**
  - **name and designation of Public Information Officers (PIOs)**



# RTI – how to give information? - I

## ➤ **All this information must be:**

- **prepared in the local language in simplified manner by Transparency Officer**
- **available with the PIOs and given immediately** (no need for RTI application)
- **disseminated through notice boards, newspapers, radio, TV, Internet websites or by simply allowing free inspection of the information compiled**
- **updated regularly – at least once a year**

## ➤ **Additional categories may be prescribed through Rules notification.**

## ➤ **DoPT has issued detailed guidelines for Section 4(1)(b) - April & November 2013**

## ➤ **Every public authority must also:**

- **publish important facts and details while developing policies that affect people**
- **give reasons for all decisions taken, to people affected by those decisions**
- **improve records maintenance and management, digitise, catalogue and network records to make them easily accessible under the RTI Act**



# RTI – how to give information? - II

## ➤ For all other kinds of information:

- **written application in English, Hindi or local official language must be submitted** (printed forms are not compulsory, plain paper applications are good enough. Some States like Odisha seek identity proof)
- **application fee must be paid along with RTI application**  
(fee rates may vary in States, no fee for BPL applicants if they attach proof of BPL identity)

**to the PIO or the Assistant PIO (APIO)** (no need to mention name)

## ➤ Tips for Public Authorities:

- **PIO/APIO must receive and decide action on RTI applications**
- **PIO/APIO must not insist on a particular mode of fee payment**
- **APIO is not the assistant of the PIO** (no duty on the APIO to decide on disclosure)
- **A public authority may have multiple PIOs – have a nodal PIO**
- **PIO may seek the assistance of any officer to deal with RTI applications**
- **Officer whose assistance is sought becomes deemed PIO for that case**
- **Deemed PIO is liable for penalty for contravening the RTI Act**



# RTI – how to give information? - II

## ➤ The PIO / APIO must not refuse to receive an RTI application

- If the information sought is with another public authority or relates more closely to the work of another public authority, the PIO must transfer the RTI application & inform the applicant
  - Time limit for PIO to transfer RTI application
  - Time limit for APIO to forward RTI application
- 5 days only  
(Receiving PIO gets 30 days only)

## ➤ If information is held by receiving public authority:

- PIO must give information quickly  
or
  - PIO may reject RTI application for specific reasons given in the RTI Act only
  - PIO must give information about life and liberty within 48 hours
  - Give detailed reasons for rejecting an RTI application
  - Give access in the form sought unless doing so will cause undue burden to your public authority or harm the safety of the record/documents
  - If not, give access in any other form (e.g, - inspection. Rejection not allowed)
- Either decision must be taken within 30 days



# RTI – how to give information? - II

## ➤ If the PIO decides to disclose the information requested:

- Send RTI applicant additional fee payment intimation with cost calculation (Cost of search, compilation and wages of PIO or other officers must not be included)
- Mention details of the first appellate authority (FAA) in the fee request letter. (RTI applicant may demand a fee review from the FAA)
- Time taken between sending the fee payment request and actual payment of the fee is not included in the 30-day period. Information can be sent only if the additional fee is paid (No fee for BPL applicants; do not insist on a mode of payment)
- For payment through bank draft / pay order / IPO mention drawee's designation (Accounts Officer or P&A Officer or D&D Officer or PIO or Public Authority)
- **If you miss the deadline, you must give the information free of cost**
- If requested information is missing, inform the HoD to trace the files (filing of an FIR is a must if records are untraceable despite search efforts)
- No duty to create information if a file is legitimately weeded out
- No duty to answer hypothetical questions or if information is not held in material form (opinions, advice must be given if recorded unless exemptions apply)



# RTI – what information may not be disclosed?

(exemptions to disclosure)

- **PIO may reject an RTI application:** (PIO must give detailed reasons)
  - 1) if giving information will harm sovereignty, territorial integrity, defence or security interests or scientific or economic interests of the country or relations with a foreign country**
  - 2) if the information may be used to commit any offence**
  - 3) if the information is given by a foreign government in confidence**
  - 4) if a court has ordered that the information must not be disclosed** (not merely because matter is *sub judice* or pending in a court or tribunal)
  - 5) if disclosure will harm privileges of Parliament or State Legislatures**
  - 6) if information asked is a trade secret or intellectual property like patents, copyright etc. and if disclosure will harm competitiveness of a third party or if copies of publications having private copyright are asked**
  - 7) if it is information given confidentially to fiduciaries such as lawyers, doctors, husband, wife, managers of trusts, mutual funds and orphanages**



# RTI – what information you may not get?

(exemptions to disclosure)

- **PIO may reject an RTI application:** (PIO must give detailed reasons)
  - 8) if disclosure will harm police investigation or criminal trial or prevent arrest of a person accused of committing a crime**
  - 9) if disclosure will harm life and safety of any person**
  - 10) if disclosure will invade an individual's privacy such as bank account details, income tax returns, medical records etc. (PIO may disclose in public interest)**
  - 11) if it is for Cabinet papers and records of discussions of ministers and officers connected with Cabinet papers**  
(But Cabinet decisions, their reasons and materials used, must be given after the matter is complete or over)
- **Citizens must get all information that an MP or MLA/MLC can get**
- **Even information exempted above may be given if there is strong public interest supporting its disclosure – public authority must decide**
- **Except 1, 5 & 11 above, other information can be given after 20 years**
  - **No reply from PIO for 30 days = RTI application is deemed to be rejected**



# If RTI application is rejected, what next?

- **Citizen may send 1<sup>st</sup> appeal to the First Appellate Authority (FAA):**
  - **within 30 days of receiving the rejection order** (PIO must mention the name and contact details of FAA in the rejection order)
  - **no reply from the PIO for 30 days? 1<sup>st</sup> appeal can still be made**
  - **1<sup>st</sup> appeal must be decided within 30 days. 15 days extra may be taken – reasons for delay must be recorded in writing**
  - **Some States charge nominal 1<sup>st</sup> appeal fee**
  
- **FAA may:**
  - **supply information to the appellant directly; or**
  - **order the PIO to give information within a specific time limit;**
  - **reject the appeal**
  
- **FAA must:**
  - **Follow principles of natural justice and give detailed speaking order for rejection and details of Information Commission to file 2<sup>nd</sup> appeal**
  - **not delegate the duty to decide 1<sup>st</sup> appeal to any other officer**



# If first appeal is rejected, what next?

- **Citizen may send 2<sup>nd</sup> appeal to the Information Commission:** (within 90 days)
  - against rejection order of CPIO, to Central Information Commission (CIC)
  - against rejection order of State PIO, to State Information Commission (SIC)
  - 2<sup>nd</sup> appeal can be sent even if FAA does not give any order on 1<sup>st</sup> appeal
- **No time limit for IC/SIC to decide 2<sup>nd</sup> appeal**
  - Some States charge nominal 2<sup>nd</sup> appeal fee
  - CIC/SIC usually hold hearings in appeal case – PIO/FAA must be present
  - CIC/SIC has powers of a civil court for hearing appeals and complaints
  - Complaint procedure under Section 18 cannot be invoked to order disclosure of information – only penalty order is permitted
  - No compulsion on appellant/complainant to attend a hearing
  - FAA cannot impose penalty on the PIO/ deemed PIO
  - CIC/SIC may order proactive disclosure of information or improvement to records management procedures or reject the appeal



# What rights do citizens have in an appeal?

- If the FAA or the CIC/SIC hold a hearing, they must send the appellant a notice of the date of hearing well in advance
- CIC/SIC may hold hearings through video conferencing – appellants must be informed of the date of hearing well in advance
- If appellant does not turn up it is not permitted to close the case on grounds of lack of interest, decision on appeal must still be made
- If the PIO or the FAA or the public authority oppose the appeal in writing, appellant has the right to get a copy and submit a rejoinder
- Appellant has the right to get a copy of the order of the FAA or the CIC/SIC free of cost
- **If appellant suffered any loss due to wrongful denial of information, he/she may demand compensation. CIC/SIC has the power to order compensation**  
(public authority and not the PIO or the FAA will pay the compensation)
- **CIC/SIC can impose penalty on the PIO only**
- **CIC/SIC has no power to issue orders/directions on non-RTI matters**



# When will a PIO be penalised?

➤ **CIC/SIC shall penalise PIO/deemed PIO/APIO at the rate of Rs. 250/- per day up to a maximum of Rs. 25,000/- for -**

- refusal to receive application
- not furnishing information within time limits mentioned in the RTI Act
- denying information with bad intention (*mala fide*)
- knowingly giving incorrect, incomplete or misleading information
- destroying information which the RTI applicant asked, to avoid disclosure
- creating any kind of roadblock for giving information that people have the right to get

**Without reasonable cause**

**For repeated violation of the law, CIC/SIC can recommend disciplinary action**

**PIO pays penalty out of his/her pocket – Order may be challenged in High Court**

**Appellant has no right to be present in a penalty hearing**



# Citizens' rights/burden under the RTI Act

- CIC/SIC has the power to order that information be given in the form sought by the appellant
- Burden of proving why information should not be given is on the public authority
- Citizens may file appeals if dissatisfied with the quality or quantity of information supplied. Burden of justifying dissatisfaction is on the appellant
- Burden of showing sufficient cause for urgent information requests (48 hours in life and liberty matters) is on the applicant
- A public authority may remove sensitive portions of a file and give the applicant a copy of remaining records and papers which are not covered by exemptions
- Applicants may take a friend or relative to inspect files and records upon prior intimation (proxy inspection is generally not permitted)
- If information asked for is about a third party which is to be treated as confidential, then third party must be heard at application and appeals stages [1<sup>st</sup> party = RTI applicant; 2<sup>nd</sup> party = public authority (not the PIO); 3<sup>rd</sup> party = any other individual or organisation or public authority to whom the confidential information relates]
- If the PIO gives the information very late, applicant may file a complaint with the CIC/SIC demanding imposition of penalty

➤ **CIC/SIC order may be challenged in High Court** (Art. 226 of the Constitution)



# Miscellaneous matters

- **Notified security and intelligence organisations are partially excluded**
- **but they must give information about allegations of corruption**
- **PIOs must maintain records of processed RTI applications and fees collected and submit regular reports to the Ministry/Department**
- **When in doubt, [disclosure is better in order to avoid litigation](#)**
- **There is protection for action taken in good faith – no penalty if due diligence is done**
- **PIOs must maintain a meticulous record of processing of RTI applications to avoid penalties**
- **All honest and sincere officers support RTI, because it is helping reform governance**
- **If official records contain the truth, that information cannot be used for blackmail. Disclose information publicly to all – ‘misuse’ can be prevented**
- **Please remember, after retirement you may have to use your RTI to get information from public authorities**



**For more information please contact:**

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**Please visit these websites also:**

<http://rti.gov.in> (RTI India Portal)

<http://cic.gov.in> (Central Information Commission)

<http://uic.gov.in> (Uttarakhand Information Commission)

**Thank you**