



Commonwealth Human Rights Initiative

The Right to Information Act, 2005

Understanding –

➔ *Public Interest*

➔ *Fiduciary relationship*



What is meant by public interest?

- Undefined concept – used but not defined in legislation
- Amorphous concept – not explained in legislation
- Multifaceted concept - left to the discretion of decision-makers



“The categories of public interest are not closed”

Quintin Hogg, Lord Hailsham of St. Marylebone, UK (1978)



Public interest may relate to -

- ✓ Standards of human conduct
- ✓ Functioning of government and its instrumentalities
- ✓ Protection or amelioration of environment
- ✓ Actions/decisions of a private/public body

In general public interest relates closely to -

- ✓ Good order of society
- ✓ Well being of its members



Public interest – Guiding Principles

- ✓ May vary from case to case
- ✓ Must be weighed against protected interests
- ✓ Balancing of competing public interests is necessary
- ✓ Must be decided at the micro level
- ✓ Is distinct from the interest of an individual
 - but there may be a public interest in safeguarding the interest of one individual



Public interest in transparency

- RTI Act –
 - presumption and requirement of law – openness
 - conditions of secrecy narrowly defined
 - secrecy may be waived in public interest
 - Seven of ten exemptions – time-barred – 20 yrs

Information that cannot be denied to Parliament or State Legislature cannot be denied to a citizen



What is not public interest?

□ That which –

➤ is merely of interest to the public

➤ gratifies curiosity or merely provides entertainment or amusement

❖ Exemption must not be treated as a class of information entitled to secrecy

❖ Decision to disclose/withhold must be made on a case by case basis



Who has the burden of proof?

- ❑ Under Sec. 6(2) of the RTI Act citizen need not give reasons for seeking information
- ❑ Under Sec. 19(5) of the RTI Act onus of justifying denial of access is on the PIO
 - So PIO may make a decision after considering all public interests involved
 - It helps if citizen shows the public interest in disclosure – no bar on citizen volunteering arguments based on public interest
 - PIO should give these arguments due consideration



Principles for determining public interest

✓ Is it a matter of public debate?

✓ Will it contribute to public participation in the political debate?

To help citizens understand the issue better

✓ Establishing accountability –

➤ for spending of public funds

➤ in decision making within government / public authority



Principles for determining public interest

- ✓ Will it promote / protect public health and safety?
- ✓ Securing fair protection for the legitimate interests of the individual/corporation
- ✓ Promoting the right of an individual to pursue a remedy guaranteed by law



Irrelevant for determining public interest

- ✓ The applicant / public may misunderstand or misinterpret the information
- ✓ Information requested is too technical and irrelevant to the applicant or for determining public interest
- ✓ Disclosure will embarrass government or cause loss of confidence in government



Fiduciary relationship

- ✓ It is a special kind of unequal relationship based on trust where one party is legally empowered to look after the best interests of another party

Examples –

- Board of a company and its shareholders
- Investors in mutual fund companies and fund managers
- Attorney and client / doctor and patient
- Banker and customer – esp. safe deposit vaults
- Trustees and beneficiaries of a trust
- Legal guardians and their wards



Fiduciary relationship - characteristics

'Fiduciary' and 'beneficiary' are the two involved parties

- It is an unequal power relationship – Fiduciary has enormous power and influence on the beneficiary
- The fiduciary can unilaterally exercise this power / discretion so as to affect the legal or practical interests of the beneficiary – **vulnerability**
- Fiduciary is obliged to act in the best interests of the beneficiary
- The fiduciary may charge a fee for services but cannot use his/her power to unduly profit at the cost of the beneficiary



Fiduciary relationship

- Information obtained in fiduciary relationship is confidential – privileged communication

But

- All confidential information / privileged communication is not obtained in fiduciary capacity

The strongest and most obvious fiduciary relationship in society exists between

Government and citizens