



Processing Appeals

Guidelines for the consideration

of

Appellate Authorities

under

The Right to Information Act, 2005

Introduction

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 The *Freedom of Information Act* passed by Parliament in 2002 has been repealed.

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

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

The main objectives of the RTI Act are –

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

Definition of Information

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

Definition of Record

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

The definition of a 'file' includes file notings. The CIC has in several cases decided that file notings are a class of information included within the definition of 'information' under the RTI Act. As long as the exemptions mentioned in section 8(1) of the Act do not apply, file notings must be disclosed upon request.

Definition of Right to Information

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

- inspection of work, documents, records;
- taking notes, extracts or certified copies of documents or records;
- taking certified samples of material;
- obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

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

The Three Level Regime for Accessing Information

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

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



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

Role of Courts

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

Role of the Central Public Information Officer

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

The Central Assistant Public Information Officer

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

Please remember –

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

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

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

Please remember –

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



Exemptions to RTI covered by Sec. 8 and 9

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

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

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

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

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

8(1)(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;

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

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

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

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



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

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

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

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

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

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

Duties and Powers of the Appellate Authorities

The RTI Act creates an appeal mechanism within every public authority to deal with grievances of citizens who are unhappy with the decision of the CPIO. The Central Government has written to all public authorities under its control to designate Appellate Authorities (AA) that will look into the grievances of applicants. This is the first of the two-level appeals mechanism. An officer senior in rank to the CPIO is qualified to be the Appellate Authority under the RTI Act. The Central Information Commission (CIC) represents the second level of appeal. Despite being appeal bodies there are significant differences between the powers and functions of the AA and the CIC.

Please remember –

- under the RTI Act the Central Information Commission has administrative powers to ensure and monitor compliance with the law apart from quasi-judicial powers to dispose appeals. Such powers are not given to the AA. **For example**, based on a complaint, the CIC has the power to appoint a CPIO in a public authority where none exists. **Second**, the CIC has the power to make a public authority provide access to information in the form requested by the applicant. **Third**, the CIC has the power to get the public authority to make changes to its maintenance, management and destruction of records to facilitate better



implementation of this law. **Fourth**, the CIC has the power to seek a compliance report from the public authority annually. **Fifth**, the CIC has the power to seek an annual report from every public authority giving details of its compliance with the proactive- disclosure provision under Sec. 4. None of these powers are given to the AA.

- The CIC has been given the powers of a civil court to enable it to effectively perform its role as the second appeals body under the RTI Act. This allows the CIC to even requisition records relevant to a particular case even if they are exempt under Sec. 8. These powers are not available to the AA. (But being senior level officers within the public authority, the AA can requisition records and documents internally while deciding upon appeals.)
- In a number of instances the aggrieved applicant can bypass the AA and approach the CIC directly for violation his/her rights guaranteed under this law. **For example**, the CIC can look into complaints where CPIOs have simply refused to accept information requests or where CAPIOS have refused to forward applications to the CPIOs or their appeals to the AA. The AA does not have the power to look into such complaints. Nor can the CIC refuse to look into a complaint simply because the appellant had not approached the AA first.
- The CIC has the power to penalise the CAPIO and the CPIO with monetary fines ranging from Rs. 250/- per day to a maximum of Rs. 25,000/- The CIC may also recommend to the public authority disciplinary action against the erring CAPIO/CPIO. The AA does not have the power to impose penalties on CPIOs. However the AA may initiate disciplinary proceedings or departmental action against a CPIO under the regular rules and procedures of the public authority.
- The CIC has the power to order a public authority to pay compensation for any loss or detriment suffered by a citizen who sends a complaint. This power is not available to the AA.

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

Instances where appeals may arise

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

- where the CPIO fails to provide the requested information within thirty days in ordinary cases;



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

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

Appeals from Third Parties

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

If the information requested by the citizen in fact relates to or was given to the public authority by a third party treating it as confidential, the CPIO is required to serve a written notice to that third party inviting a representation as to whether such information may be disclosed to the applicant or not. The CPIO is required to serve this notice within five days of receiving the application and the third party is required to make its representation orally or in writing within ten days of receiving such notice. If the CPIO decides to give a decision notice of disclosure as he disagrees with the objection of the third party then the third party has the right to appeal against such decision before the AA.

Manner of Receipt of Appeals



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

The Department of Posts has nominated CPIOs in all Postal Circles around the country to receive appeals from citizens for all public authorities under the control of the Central Government. They are empowered to accept the appeal letters and forward the same to the concerned AA within five days. You are required to deal with these appeals forwarded by designated CPIOs of the Department of Posts. Failure to do so might attract strictures from the Central Information Commission.



Please remember –

- there are no fees for filing appeals. Appeals must be received, processed and disposed of without imposing any financial burden on the appellant;
- The Government of India has not prescribed any form for filing appeals with the AA. Appeals may be filed on plain paper and these cannot be rejected because no format was followed.
- Appeals may contain the following details and enclosures –
 - name of the appellant
 - contact details of the appellant including complete postal address, telephone numbers and email address (if any)
 - designation of the authority to which the appeal is being sent
 - details of the authority against whose decision the appeal is being made (name designation and contact details of the CPIO)
 - nature and details of the information requested originally
 - copy of the information request submitted to the CPIO/appeal letter sent to the AA (whichever is applicable)
 - rejection letter issued by the CPIO against the appellant's information request (if any) or
 - copy of the order of the PIO/information disclosed which is being contested including order of partial access (if any) or
 - copy of the letter issued by the PIO intimating additional fee to be paid towards cost of providing information which is being contested by the appellant (if any)
 - copy of the order issued by the DAA which is being contested (if any)
 - date on which appeal is being submitted.
- It is good practice to issue an acknowledgement for every appeal received by the AA and the same must be entered in a register. The Central Government has not prescribed any format for such a register. However you may design a register for use in your public authority.

Time limit for filing appeals

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

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



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

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

Time limit for deciding appeals

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

Please remember –

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

The Procedure to be Followed while deciding appeals

The RTI Act empowers the Central Government to make rules relating to the procedure that will be followed by the Central Information Commission while deciding on appeals and complaints. However there is no reference to the procedure that needs to be adopted by the AA while looking into appeals cases. It is advisable for the AA to follow a simple procedure for hearing appeals.

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



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

Interpreting Exemptions and Determining Public Interest

It is worth mentioning here that a significant number of appeals will be filed by citizens against rejection orders of CPIOs where Sec. 8 exemptions have been invoked. The AA will be called upon to interpret these exemptions in light of the public interest that may be upheld in disclosing such information. The Central Government has not issued any guidelines in this matter. The only directions that a CPIO or an AA can depend upon are available in the decisions of the CIC. The decisions of the CIC are accessible on their website- <http://cic.gov.in> It is advisable for the public authority to maintain a dossier of all the decisions of the CIC available for ready reference for the benefit of the CPIOs and the AA.
