

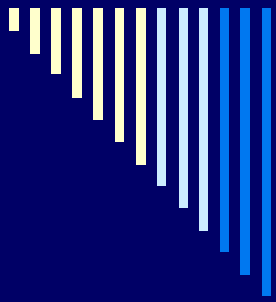

HOW TO EXERCISE RIGHT TO INFORMATION

By

Omendra Singh

Department of Law

Brahmanand College, Kanpur



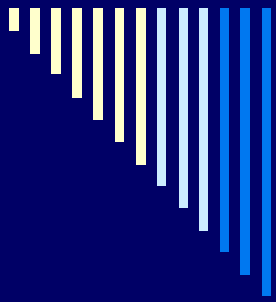
Introduction

□ *Government is a trust and officers of the government are trustees and both the trust and trustees are created for the benefit of the people.*

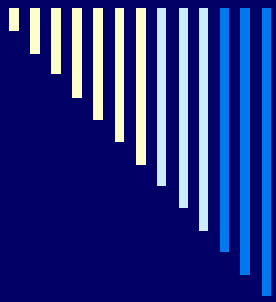
-Henry Clay

□ *A government which reveals in secrecy in the field of people's liberty not only acts against democratic decency but buries itself with its own burial.*

-Justice Krishna Iyer



- ❑ Knowledge and Information- life blood of any organization
- ❑ Free flow of information and free exchange of ideas is thought to be necessary as an effective technique to minimize administrative faults as well as to protect the rights and interests of common people at large.
- ❑ At world level- in Sweden
- ❑ During British rule, it was thought that Britishers were foreigners so they censored everything from Indians
- ❑ But even after Indian independence, mentality of government did not change

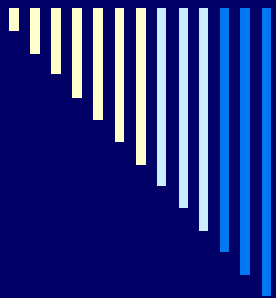


- ❑ On the name of national security, integrity, sovereignty and public interest, the information relating to governmental activities was restricted
- ❑ Official Secret Act, 1923 is till date in application
- ❑ Evolution of RTI- Single Authority i.e. Indian Judiciary
- ❑ The pride for enactment of the RTI Act would certainly go to the judiciary- Madras High Court
- ❑ Laws relating to RTI-
 - **Right to Information Act, 2005** [31 sections and 2 schedules]
 - **Right to Information Rules, 2012** [15 rules]
 - **Assam Right to Information (Regulation of Fee and Cost) Rules, 2005**



Right to Information Act, 2005

- **Purpose:** In the affairs of government-
 - Accountability
 - Transparency
 - Openness
 - Responsiveness
 - RTI is a powerful right, devised for establishing social, political and economic justice
 - To empower the citizens as an informed citizen is better equipped to keep necessary vigil on the instruments of governance and make the government more accountable to the governed
-



- To prevent abuse of discretionary power of the governmental agencies by requiring them to make public certain information about their working and work product
 - RTI is not only a right of an individual but a vital weapon to protect social interest- Madras HC
-



Who can demand?

- Only Indian citizens
 - The origin of this concept
 - Article 19 (1) (a) Constitution of India- available only to Indian citizens
 - Not absolute right- restrictive right
 - Can an office bearer of an Organization demand information?
 - Yes as held in *Hechon Sitlhou v. Executive Engineer, PHE, Hamren Division, Hamren by Assam SIC*
-



What can be demanded?

Information

Government	Records	Orders
	Documents	Logbooks
	Memos	Contracts
	E-mails	Reports
	Opinions	Papers
	Advices	Samples
	Press releases	Models
	Circulars	Data material held in any electronic form
Private body	Information relating to any private body which can be accessed by public authority	



What is not information?

- 'Why' any particular thing has been done?
 - Information held by any private body. But if that information is accessible by a public authority under any law that is within the purview of RTI Act.
 - RTI Act provides access to all information that *is/ought to be available and existing*
 - PIO is not expected to create information.
-



What is included in RTI?

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
-



Demand from whom?

Public Authority

any **authority** or **body** or **institution** of self-government established or constituted-

by or under the **Constitution**;

by any other **law made by Parliament**;

by any other **law made by State Legislature**;

by **notification** issued or order made by the appropriate Government, and includes any—

(i) body owned, controlled or substantially financed;

(ii) non-Government organisation substantially financed,

directly or indirectly by funds provided by the appropriate Government



Examples of Public Authority

- ❑ Judiciary
 - ❑ schools/colleges/institutions receiving grants-in-aid by Central or State Governments
 - ❑ Army Welfare Housing Organisation
 - ❑ Political parties
 - ❑ Krishak Bharti Co-operative Ltd. (KRIBHCO)
 - ❑ National Cooperative Consumer Federation of India Ltd. (NCCF)
 - ❑ National Agricultural Cooperative Federation of India Ltd. (NAFED)
 - ❑ **Not Public Authority-** Shri Shri Hari Mandir Nalbari, IFFCO
-



What cannot be demanded?

Partial restrictions:

- Information relating to **third party** without consent of third party but such information may be disclosed in public interest
 - Intelligence and security organisations established by Central Govt. and listed in 2nd Schedule of the Act except the allegations of **corruption** and **human rights violations**
-

1. Intelligence Bureau.
2. Research and Analysis Wing of the Cabinet Secretariat.
3. Directorate of Revenue Intelligence.
4. Central Economic Intelligence Bureau.
5. Directorate of Enforcement.
6. Narcotics Control Bureau.
7. Aviation Research Centre.

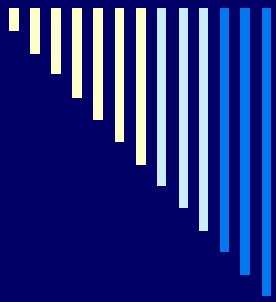
8. Special Frontier Force.
9. Border Security Force.
10. Central Reserve Police Force.
11. Indo-Tibetan Border Police.
12. Central Industrial Security Force.
13. National Security Guards.
14. Assam Rifles.
15. Sashtra Seema Bal
16. Special Branch (CID), Andaman and Nicobar.

17. The Crime Branch-C.I.D.-CB, Dadra and Nagar Haveli.
18. Special Branch, Lakshadweep Police
19. Special Protection Group.
20. Defence Research and Development Board.
21. Border Road Development Board.
22. Financial Intelligence Unit, India.



Absolute restrictions

- ❑ Sovereignty, integrity and interests of India
 - ❑ Contempt of court
 - ❑ Breach of privilege of Parliament or the State Legislature
 - ❑ Intellectual property including trade secrets
 - ❑ Information received in fiduciary relationship
 - ❑ Information received from foreign Government
 - ❑ Endanger the life or physical safety of a person
-



- Impede the process of investigation
- Cabinet papers
- Personal information
- *Kanakeswar Sinha v. Office of the Director General of Police, Assam* on 30 August 2013 the Assam SIC- the answer scripts belonging to the applicant in connection with the written test held for recruitment of SI(UB) is accessible

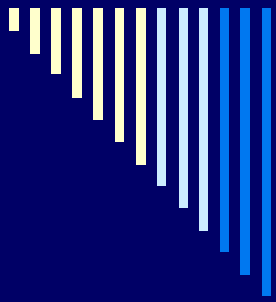


Obligations of Public Authorities

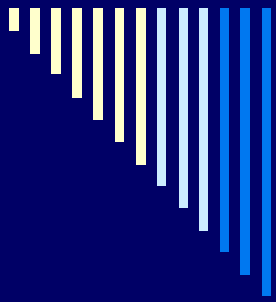
- Maintenance and Computerisation of Records
- **Suo Motu (Pro-active) Disclosure- Guidelines on *suo motu* disclosure issued on 15th April, 2013**

- Details of organisation
- About officers and employees
- Decision making process
- Norms regarding discharging of functions
- Laws and bye-laws
- Classified documents
- Formulation of policy
- Bodies (boards, councils, committees)
- Directory of employees

- Details of remuneration and compensation
- Budget allocation
- Execution of programmes
- Particulars of recipients
- Information held by public authority
- Details of facilities available to citizens
- Details of PIOs



- ❑ Dissemination of Information
 - ❑ Publication of Facts about Policies and Decisions
 - ❑ Providing Reasons for Decisions
 - ❑ Designation of PIOs and APIOs etc.
 - ❑ Designation of Appellate Authority
 - ❑ Acceptance of Fee
 - ❑ Compliance of the Orders of the Information Commission
 - ❑ Development of Programmes etc.
 - ❑ Creation of Central Point
 - ❑ Transfer of Applications
-

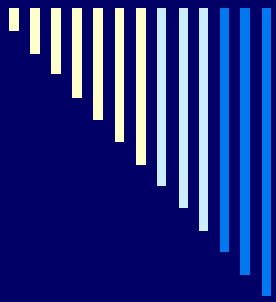


- Annual Report to the CIC
 - To provide necessary help to the information seeker
 - As per notification issued on 24th June, 2008 Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training-
 - To be courteous to the information seeker and to respect his dignity
-



Institutional Framework

	Central Information Commission	State Information Commission
Composition	Chief Information Commissioner +not more than Ten Information Commissioners	State Chief Information Commissioner +State Information Commissioners not exceeding ten
Appointed by	President of India	Governor
Tenure	5years or 65 years whichever is earlier	5years or 65 years whichever is earlier
Jurisdiction	Central Govt. Public Authority	State Govt. Public Authority

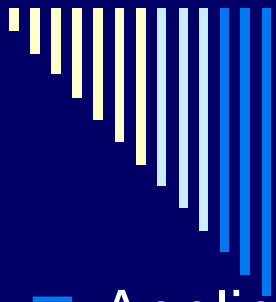


□ CIC is not appellate body of SIC.



Procedure to apply for RTI: Sec. 6

- ❑ There is no format for RTI application but full details regarding required information, applicant's [details](#) should be there.
 - ❑ Application to the PIO/APIO. If PIO/APIO is not known, the application may be sent to concerned District Magistrate.
 - ❑ In writing or through electronic means
 - in English or Hindi or in the official language of the area
 - ❑ If request is made orally, PIO will give reasonable assistance to reduce the same in writing
 - ❑ In not more than 500 words excluding annexure, address of the PIO and applicant
 - ❑ No need of reason to be mentioned in application.
-




- Application may be given by post, or through electronic means or by hand to the PIO/APIO
 - With signature of applicant
 - With prescribed fee of Rs. 10/- in any of the following manner-
 - (a) in **cash** against a proper receipt; or
 - (b) by **demand draft** or **bankers cheque** or **Indian Postal Order** payable to the Accounts Officer of the public authority; or
 - (c) by **electronic means** to the Accounts Officer of the public authority, if facility for receiving fees through electronic means (Credit/Debit cards) is available with the public authority.
 - No fee for Below Poverty Line applicant
-



Online RTI

- About all Ministries/Departments and few other Public Authorities of **Central Government**
 - Payment is made through internet banking of SBI & its associate banks and debit/credit cards of Master/Visa
 - <https://rtionline.gov.in/>
-

Text of the application may be written at the prescribed column (3000 characters only)/be uploaded as an attachment



Make Payment

For below poverty line applicant, attach a copy of the certificate

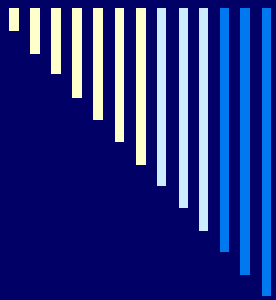


Submit application and receive unique registration number



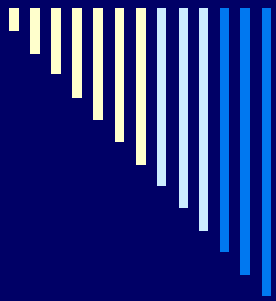
Disposal of Request

- The PIO has to-
 - **provide information** as expeditiously as possible and in any case within 30 days of the receipt of the application; or
 - **refuse** in case of exemption from the disclosure
 - **transfer** the application if the requested information is available with any other authority
 - If rejected, reason of rejection, period of appeal and details of appellate authority to be provided to applicant.
 - If the requested information is related to **life or liberty** of a person, the same shall be provided within 48 hours of the receipt of the request.
 - Providing requested information is obligation of PIO.
-



Maximum prescribed time to provide information

When the RTI application submitted to PIO	30 days
When the RTI application submitted to APIO	35 days
When the RTI application is transferred	35 days
Information relating to life & liberty	48 hours



- Information must be given to a citizen in the language which he appreciates/understands
 - Legislative mandate that 'information' must be disseminated considering 'the local language' of the area
-



Additional Fee for information

For a certified copy of any document on A-3 or smaller size paper.	Rs. 2/- per page
For certified copy on larger size paper	Actual cost per page.
For Samples or Models and printed information.	According to their actual cost.
For inspection of records for the first one hour and thereafter for every 15 minutes	Free of cost Rs. 5/-for each subsequent hour or fraction thereof
For information through diskette or floppy	Rs. 50/- per diskette or floppy
For information from any printed material	Price fixed by publisher or Rs. 2 /- per page of photocopy for extracts from the publication



First Appeal

- Where the applicant-
 - does not receive a decision within 30 days/48 hours, as the case may be, or
 - is aggrieved by the decision of PIO
 - He may prefer an appeal to the First Appellate Authority within 30 days
 - First Appellate Authority will be senior in rank to the PIO
-



Second Appeal

- To CIC/SIC, as the case may be, against First Appellate Authority within 90 days
 - Second appeal in prescribed format
-

FORMAT OF APPEAL

(See Rule 8)

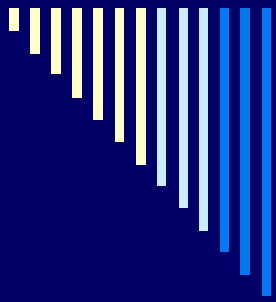
1. Name and address of the appellant
2. Name and address of the Central Public Information Officer to whom the application was addressed
3. Name and address of the Central Public Information Officer who gave reply to the Application

8

THE GAZETTE OF INDIA : EXTRAORDINARY

[PART II—SEC. 3(i)]

-
4. Name and address of the First Appellate Authority Who decided the First Appeal
 5. Particulars of the application
 6. Particulars of the order(s) including number, if any, against which the appeal is preferred
 7. Brief facts leading to the appeal
 8. Prayer or relief sought
 9. Grounds for the prayer or relief
 10. Any other information relevant to the appeal
 11. Verification/authentication by the appellant



- The appellate authority shall dispose of the appeal within a period of thirty days or in exceptional cases within 45 days of the receipt of the appeal
- Appellant-
 - shall be informed of the date at least seven clear days before the date of hearing
 - may be present in person or through his duly authorised representative or through video conferencing



Mechanism

RTI Application under Sec. 6



**First Appeal:
In same organisation where RTI application was filed**



Second Appeal: CIC/SIC

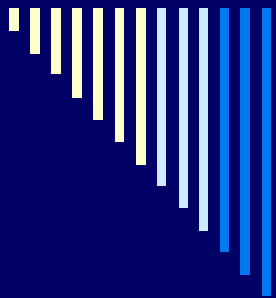


Supreme Court or High Court

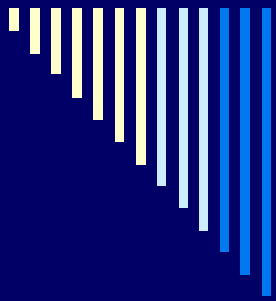


Penalties by Information Commission

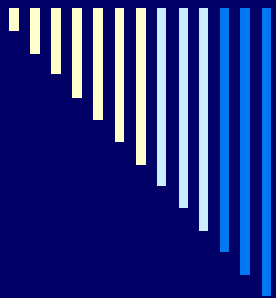
- ❑ Fine and disciplinary action
 - ❑ Fine- When PIO 'without any reasonable cause'-
 - ❑ refused to receive an application for information or
 - ❑ has not furnished information within the time specified or
 - ❑ *malafidely* denied the request for information or
 - ❑ knowingly given incorrect, incomplete or misleading information or
 - ❑ destroyed information which was the subject of the request or
 - ❑ obstructed in any manner in furnishing the information
 - ❑ @Rs. 250/- per day not exceeding Rs. 25,000/-.
-



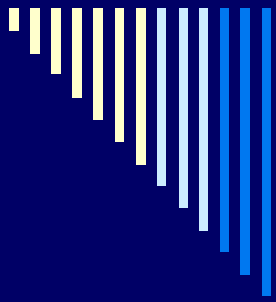
- ❑ **Disciplinary action-** The Information Commission may recommend for disciplinary action against concerned PIO.
- ❑ Before imposing penalty upon PIO, opportunity of hearing of the PIO is necessary
- ❑ Where such information is not required to be maintained under any law or the rules or regulations of the public authority, RTI Act does not cast an obligation upon the public authority, to collect such non-available information and then furnish it to an applicant
- ❑ Information seeker has no right of participation in penalty proceedings



- On February 20, 2014, Delhi High Court in *Union of India v. Praveen Gupta* set aside the order passed by the CIC whereby penalty of Rs. 25,000/- was levied on the PIO on the ground that the information was supplied after lapse of hundred days instead of prescribed period of thirty days. In the opinion of the Court, the primary duty of the officials of the Ministry of External Affairs is to maintain good diplomatic relations with different countries and to promote as well as protect the political, economic interest of the country abroad. The Court was of the opinion that if the limited manpower and resources of the Ministry of External Affairs are devoted to address such meaningless and vague queries, the office of the Ministry of External Affairs would come to a standstill.
-

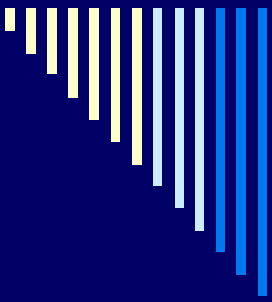


- *Is missing of files exempted under the RTI Act?*
- No. In *Pankaj Trehan v. Registrar Cooperative Societies* on 5.9.2014, CIC- if files have been missed, there should be attempts to search files. If not available, disciplinary action as per law.
- RTI Week is celebrated every year during 5th-12th October.



- The Right to Information Act is a path-breaking legislation which signals the march from darkness of secrecy to dawn of transparency. It lights up the mindset of public authorities, which is clouded by suspicion and secrecy. Openness in the exercise of public power – Executive, Legislative or Judiciary – is a culture, which needs to be nurtured, with privacy and confidentiality being an exception. The right to information will also be a powerful means for fighting corruption. The effective implementation of the Right to Information Act will create an environment of vigilance which will help promote functioning of a more participatory democracy.

-Second Administrative Reforms Commission



THANK YOU
