

# **THE RIGHT TO INFORMATION ACT, 2005: A BRIEF OVERVIEW**

*By Sri S.S. Naganand, Senior Advocate*

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### **INTRODUCTION**

Freedom of speech and expression guaranteed by the Constitution of India, like the right to equality, life and liberty, have been liberally construed by the Supreme Court of India from inception. The right of freedom of speech and expression embraces within its scope the freedom of propagation and interchange of ideas, dissemination of information which would aid in the citizen's understanding of the working of his Government and its various organs in a democracy. The importance which the framers of our Constitution attached to this freedom is evident from the fact that restrictions could be placed on that right could be placed by law only on the limited grounds specified in Article 19 (2).

The belief that access to information is a human right is reflected in Article 19 of the Universal Declaration of Human Rights proclaimed in December 1948: *"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers."* The right of citizens' access to information is an important means of achieving an accountable, transparent and participatory Government.

### **OBJECT OF THE ACT**

Pursuant to the 77<sup>th</sup> report of the Parliamentary Standing committee headed by Sri Pranab Mukherjee, the Right to Information Act, 2005 ("**the Act**") was enacted. The Act came into force on 12<sup>th</sup> October 2005. The preamble of the Act declares that the Act provides for setting out the practical regime of 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.

### **SCHEME OF THE ACT**

The Act is divided into six chapters and two schedules.

**Chapter I** : Deals with preliminary aspects, definitions, scope and extent of the Act.

**Chapter II** : Deals with the right to information and obligations of public authorities.

**Chapters III & IV:** Deals with constitution of the Central Information Commission and the State Information Commission.

**Chapter V :** Deals with appeals and penalties.

**Chapter VI :** Deals with Miscellaneous aspects.

## **RIGHT TO INFORMATION**

The Act defines “*right to information*” as the right to access information accessible under the Act which is held or under the control of a public authority [Sec. 2 (j)]. Section 3 of the Act provides that subject to the provisions of the Act, all citizens shall have the right to information. The question that then arises is against whom is this right enforceable? The right to information conferred on citizens by the Act is enforceable against public authorities. “*Public authority*” is defined in Sec.2 (h) of the Act.

“2 (h) “*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 the Parliament;*
- c) *by any other law made by the State legislature;*
- d) *by notification issued or order made by the appropriate Government, and includes any –*
  - (i) *body owned, controlled or substantially financed;*
  - (ii) *non-government organization substantially financed, directly or indirectly by funds provided by the appropriate Government.”*

Since the provisions of the Act are applicable only to public authorities as defined in Sec. 2(h), the Act imposes certain obligations (Sec. 4) on public authorities cataloging, indexation and computerization of records within a reasonable time. Public authorities are mandated by the Act to periodically publish information regarding its organization, employees, rules, regulations, remuneration received by its employees, budgetary allocations, proposed expenditures etc. The Act provides for *suo motu* provision of information to the public through various media.

## **PUBLIC INFORMATION OFFICERS (PIO)**

The Act provides for constitution of an executive wing to enforce the right to information conferred on citizens by the Act. Every public authority is required to appoint public information officers (“**PIO**”) for providing information to persons requesting information under the Act (Sec. 5). A PIO shall receive and dispose of applications seeking information in accordance with and within the time frame prescribed in Secs. 6 & 7 of the Act.

## **EXEMPTION FROM DISCLOSURE OF INFORMATION**

Sec. 8 of the Act sets out certain information that is exempt from disclosure. When a request is made to a public authority seeking information that falls within any of the following categories, Sec. 8 exempts a public authority from the obligation of disclosure:

- (a) Information that would affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation within foreign state or lead to incitement of an offence;
- (b) Information expressly forbidden by any court of law or disclosure of which may constitute contempt of court;
- (c) Information, the disclosure of which would cause breach of privilege of Parliament or state legislature;
- (d) Information including trade secrets or intellectual property, the disclosure of which would harm the competitive position of third parties;
- (e) Information available to a person in his fiduciary relationship;
- (f) Information received in confidence from a foreign Government;
- (g) Information that would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence to a law enforcement agency;
- (h) Information that would impede the process of investigation;
- (i) Information which relates to personal information the disclosure of which has no relationship to any activity or interest, or which would cause unwarranted invasion of privacy of the individual;
- (j) Where disclosure of information would involve an infringement of copyright subsisting in a person other than the State.

- A Public authority, notwithstanding the exemptions listed above, may disclose any information listed above, if public interest in disclosure outweighs the harm to the protected interest.
- A public authority can deny access to information only if the information falls within any of the categories stated in Sec.8.
- The Act does not restrict the manner in which an applicant can use information supplied by a public authority under the Act.
- **Third Party Information:**
- Where the information that is sought to be accessed from a public authority relates to or has been supplied by a third party, the PIO is required under Sec. 11 of the Act of the Act to notify such third and invite its submission. The submission of the third party shall be kept in view by the public authority while deciding on the disclosure of information. Where such disclosure relates to commercial secrets of a third party, a public authority can decline access to such information.

## **CENTRAL AND STATE INFORMATION COMMISSIONS**

Constitution: The Act envisages the constitution of Central and State Information Commissions (Sec. 12 & Sec. 15). The Central Information Commission shall be headed by a **Chief Information Commissioner** assisted by such number of Central Information Commissioners, who shall be appointed by the President of India. Similarly, the State Information Commission shall be headed by a State Chief Information Commissioner assisted by such number of State Information Commissioners, who shall be appointed by the Governor.

### **POWERS OF THE COMMISSION (SEC. 18):**

The Act casts a duty on the Information Commission to receive and inquire into complaints from any person:

- Who has been unable to submit a request for information to a public authority because a PIO has not been appointed;
- Who has been refused access to information;
- Who has received no response to his application seeking information, within the time frame specified by the Act;
- Who considers the fee charged by the public authority to divulge information, unreasonable;
- Who believes that he has been given incomplete, misleading or false information under the Act;
- In respect of any matter relating to access to records under the Act.

While an Information Commission is inquiring into any matter, it shall have the same powers as are vested in a civil court while trying a suit in the following matters:

- Summoning and enforcing the attendance of persons and compelling them to give evidence and/or produce documents;
- Requiring discovery and inspection of documents;
- Reception of evidence on affidavits;
- Requisitioning any public record or copies thereof from any court or office;
- Issuing witness summons.

During the inquiry of any complaint under the Act, the Commission shall be entitled to examine any record which is under the control of the public authority, and the public authority shall not be entitled to withhold any such record on any ground/s.

### **APPEALS (SEC. 19)**

A two-tier appeal mechanism is provided under the Act for persons who do not receive information from a PIO or who are aggrieved by a decision of the PIO.

First Appeal: A first appeal shall lie to an officer who is senior in rank to the PIO in the concerned public authority within 30 days from the expiry of the prescribed time limit or from the receipt of the decision of the PIUO.

Second Appeal: An order passed by the first appellate authority is appealable under the Act. The second appeal shall lie to the Central or the State Information Commission, as the case may be. The second appeal shall lie within 90 days from the date of decision of the first Appellate Authority.

Burden of proof: Sec. 19 (5) provides that in any appeal proceedings, the onus to prove that a denial of a request for information was justified shall be on the PIO who denied the request.

In its decision, the Information Commission is empowered to require the public authority to secure compliance of the provisions of the Act by:

- Providing access to information requested
- Appointing a PIO
- Publishing certain categories of information
- Making changes to its practices relating to maintenance, management and destruction of records
- Enhancing the provision of training of its officials on the right to information
- Directing the public authority to pay compensation to the complainant
- Impose penalties
- Reject the application

## **PENALTIES**

The Act empowers (Sec. 20) an Information Commission to impose a penalty of Rs.250/- per day (not exceeding Rs.25,000/-) in the following cases, till an application requesting information is received or till such information is accepted:

- Not accepting an application seeking information;
- Delaying disclosure of information without reasonable cause;
- *Malafide* denial of information;
- Knowingly giving incomplete, in correct or misleading information;
- Destroying information that has been requested;

- Obstructing furnishing of an information in any manner.

In addition to the imposition of penalty or errant PIOs, the Information commission is also empowered to recommend disciplinary action against the erring PIO. However, no such punishment/penalty shall be imposed without giving the PIO an opportunity of being heard.

#### **MISCELLANEOUS PROVISIONS**

- Bar of jurisdiction of Civil Courts in respect of any order made under the Act;
- The provisions of the Act are inapplicable to intelligence and security organizations specified in the Second Schedule
- Monitoring and reporting

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