

D.O. No. 3412/4/(s)/2005-Estt (B)

RTI PRIORITY/PERSONAL

SECRETARY
Tel.: 23094848

Government of India
Ministry of Personnel,
Public Grievances and Pesnsions
New Delhi - 110001

Dear Chief Secretary,

With a view to make the legislation on 'right to information' more progressive, participatory and meaningful, 'The Right to Information Bill, 2004' (RTI Bill) was introduced in the Lok Sabha on 23rd December, 2004. The Bill was subsequently passed by the House on 11th May, 2005 after adopting certain amendments. A statement listing some of its salient features, is enclosed (Annexure-I). The Bill was later passed by the Rajya Sabha on 12th May, 2005 and now awaits the assent of the president.

2. The Bill lays down that the Act would come into force on the one hundred and twentieth day of its enactment. Accordingly, it would require all public authorities under the administrative control of or those attached to, The State Government to set up the necessary infrastructure positively within 120 days so as to make the Act operational. Keeping this in view, some of the provisions of the contemplated enactment are being brought into force with immediate effect so that there is no legal infirmity in this regard. In writing the letter, it is my intention to request you to start the process of setting up the infrastructure from now itself, so that you gain some valuable lead time in complying with the mandatory provisions of the proposed RTI Act.

3. The various activities associated with the operationalisation of the Act broadly fall under **two categories**. In the **first category**, are the items which have to be attended to and completed before the date from which the Act comes into force. The **second category** would relate to items or activities which are necessarily to be carried out once the Act becomes operational. Details of these activities are given in the statement as at **Annex-II**.

4. Considering that the lead time between the date on which the Act receives the assent of the president and the date from which it comes into force is 120 days, it would be appreciated if an action plan is drawn for the above items and definite time-schedules are laid down for each specific task so that the entire infra-structure is setup within the time period stipulated in the enactment. For this purpose, I suggest **that a Committee may be set up in the State Government under your chairmanship, which could monitor the progress on day-to-day basis**.

5. As the provisions of the RTI Bill call for time-bound action, I would urge **advance preparatory action** at your end and thus prevent default. In case the State Government requires any clarification etc in the matter, the Department of Personnel and Training would provide all necessary assistance.

With regards

Yours sincerely,

Sd/
(A.N. Tiwari)

Encls: as above

**Salient Features of the Proposed
Right to Information Act, 2005**

- The Short title of the legislation has been changed from 'The Freedom of Information Act' to 'Right to Information Act'.
- Provides a very definite day for its commencement, i.e. 120 days from enactment.
- It defines "appropriate Government" as meaning, in relation to a "Public Authority" established, constituted or owned or substantially financed by funds provided directly or indirectly or controlled.
 - i. By the Central Government, the Central Government;
 - ii. By the State Government, the State Government.".
- It shall apply to "Public Authorities" which means any authority or body or institution o self government established or constituted by or under the Constitution; by any law made by the appropriate Government or, any other body owned, controlled or substantially financed directly or indirectly by the appropriate Government, and includes non-government organization, substantially financed by the government.
- The ambit covers the two Houses of Parliament, State legislatures, the Supreme Court/ High Court/ Subordinate Court including their administrative officers, Constitutional Authorities like Election Commission, Comptroller & Auditor General, Union Public Service Commission etc. Only domestic and foreign private bodies working within the country have been excluded from the purview of the Act.
- All citizens shall have the right to information, subject to the provision of the Act.
- It casts an obligation on Public Authorities to grant access to information and publish certain categories of information within 120 days of the enactment. The responsibility about suo-moto disclosure / publication by public authorities has been considerably enlarged.
- The Act lays down the machinery for the grant of access to information. The Public Authorities are required to designate Public Information Officers and Assistant Public Information Officers within 100 days of the enactment and whose responsibility it is to deal with requests for information and also to assist persons seeking information.
- Provision has been made for transfer of a request by a public authority to another public authority wherein the subject matter/information is held by the latter.
- A time limit of 30 days has been prescribed for compliance with requests for information under the Act, Which, can be extended to 40 days where third party interests are involved.
- Free to be reasonable. Also, no fee to be charged from persons who are below poverty line. Further, information to be provided free of charge where the response time limit is not adhered to.
- Certain categories of information have been exempted from disclosure under sections 8 and 9 of the Act. The categories, by way of illustration, include, information likely to affect security if the State, strategic, scientific or economic interests of the State, detection and investigation of

offences, public order, conduct of international relations and Cabinet papers. Trade or commercial secret, information the disclosure of which would cause breach of privilege of Parliament or State Legislature and personnel information which has no relationship with public activity and could cause unwarranted invasion of the privacy of any person, are also exempted from disclosure. However, exemptions provided are not absolute and withholding of information must be balanced against disclosure in the public interest. Information outweighs the harm that may be caused by disclosure.

- Subject to 3 exceptions, the Act also contains a provision reveal of information, which is otherwise, exempted from disclosure under section 8 on completion of 20 years after the completion of the event.
- The Act also incorporates the principle of severability.
- Envisages creation of an independent not judicial machinery viz., Central Information Commission and State Information Commissions comprising a Chief Information Commissioners to decide 2nd stage appeals.
- Legal frame work of exercise of powers by the Commission defined in the Act.
- The Act also provides a tow tier Appellate Forum. First appeal to departmental officer senior to the Public Information Officer. The second appeal to be made to commission.
- on a request for information being refused, the applicant can prefer an appeal to the prescribed authority within 30 days of the decision; the time limit for disposal of appeal being also 30 days extendable to 45 days.
- Fine of Rs. 250/-per day, subject to maximum of Rs. 25,000/- for delay in providing information with in the specified tile-limit, for malafidely denying the information, knowingly giving incorrect, incomplete or misleading information, etc. Departmental disciplinary action to be taken against the defaulting officer in addition.
- Specified intelligence and security agencies to be exempted from being covered wtih in the ambit of the Act. However, the exemption is not absolute; agencies shall have the obligation to provide information in matters relating to corruption and human rights violations.
- The jurisdiction of subordinate courts has been barred expressly by section 23 of the Act.
- The provisions of the proposed Act have been made over riding in character, so that the scheme is not subverted through the operation of other minor Acts.
- Monitoring and reporting-Act makes a provision to produce statistics to assess its implementation so that improvements could be effected.
- Central information commission and State Information Commissions to monitor the implementation of the Act and prepare an Annual Report to be laid before Parliament/ State Legislature.
- Central Government to prepare programmes for development of 'information' regime.
- FOI Act, 2002 to be repealed.

TASKS TO BE COMPLETED PRIOR TO COMMENCEMENT OF THE ACT**(1) Preparing Manuals.**

Clause 4(1) (b) of the RTI Bill lays down that each public authority shall compile and publish, within 120 days from the enactment of the Act, the following 17 manuals:

- I. the particulars of its organization, functions and duties;
- II. the powers and duties of its officers and employee;
- III. the procedure followed in the decision making process, including channels of supervision and accountability;
- IV. the norms set by it for the discharge of its functions;
- V. the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;
- VI. a statement of the categories of documents that are held by it or under its control;
- VII. the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy of administration thereof;
- VIII. a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advise, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;
- IX. a directory of its officers and employees;
- X. the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
- XI. the budget allocated to each of its agency indicating the amounts allocated and the details of beneficiaries of such programmes;
- XII. the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes.
- XIII. particulars of recipients of concessions, permits or authorizations granted by it;
- XIV. details in respect of the information, available to or held by it, reduced in an electronic form.
- XV. the particulars of facilities available to citizens for obtaining information, including the working hours of a library or regarding room, if maintained for public use;
- XVI. the names, designations and other particulars of the Public Information Officers;
- XVII. such other information as may be prescribed;

and thereafter update these publications every year;

Six of these publications have, in fact, been retained from the FOI Act, 2002 and these must have already been complied by the public authorities under the State Government as part of operationalization of the FOI Act. Action should be urgently initiated to have all 17 manuals in place in anticipation of the Bill being enacted in the present form.

(2) Designation of Public Information officers and Assistant Public Information Officers.

The contemplated legislation also casts an obligation on each Public authority to designate, within one hundred days of the enactment of the Act, its Public Information Officers whose duty it would be to provided information to those who ask for it **[clause 5(1)]**. Such authority is also required to designate Assistant Public Information Officers at each sub-

divisional or sub-district level to receive the applications for furnishing information or appeals under the Act and forward them to the authority or to the Government [clause 5(2)]. Since these appointments have to be made **within one hundred days of the enactment**, it may perhaps be advisable to take steps to determine now itself the number of such officers as may be required by an authority and simultaneously identify them so that these appointments are made within the contemplated statutory period.

(3) Designation of authorities to whom the first appeal lies.

Clause 19(1) provides that any person aggrieved by the decision of a State public Information Officer may prefer an appeal to such officer who is senior in rank to the State Public Information Officer in each public authority. It may perhaps be advisable to take steps to determine and identify now itself such senior officers in each public authority so that the appellate machinery is fully in position and equipped to handle the first stage appeals as and when these are made.

(4) Constitution of State Information Commission

Clause 15 of the RTI Bill lays down that every State Government shall constitute its information Commission, comprising of one Chief Information Commissioner as also Information Commissioners (Not exceeding 10 in number) who shall deal with appeals from citizens aggrieved by the decision of the State Public Information Officer/first appellate authority. The Commission shall also monitor the implementation of the Act by Public authorities under the State Government and prepare an annual report which shall be laid before the State Legislature. Clause 16(6) of the Bill lays down that the State Government shall provide the Commission with requisite number of officers and employees in order to discharge its functions. It would be appreciated if this aspect received adequate attention and Commission is set up preferably by the time the Act comes into force.

(5) Amendments to existing Acts, Rules, etc.

Clause 22 of the RTI Bill, which has provisions similar to Section 14 of The FOI Act, 2002, envisages that the contemplated Act would over-ride any other Act, Rule of Order. It is suggested that an immediate review may be made of all such Acts and instruments administered by the State Government and, amendments made thereto, wherever necessary, so that the points of conflict between the RTI Act and other Acts/ Rules/ instruction etc are restricted.

(6) Intelligence and Security Organizations

Clause 24 of the Bill provides that the Act shall not apply to such intelligence and security organization established by the State Government and which have been specified as such by the Government to a notification in the Official Gazette. Similar provisions exist in the Freedom of Information Act, 2002. The aspect may be given immediate attention so that the decision regarding exemption of an agency from the Act is taken and requisite notification issued, well before the Act comes into operation.

(7) **Framing Rules.**

Clause 27 of the Bill lays down that the State Government may make rules to carry out the provisions of the ACT. Such rules may provide for all or any of the following matters, namely:-

- a) The Costs of the medium or print cost price of the materials to be disseminated under sub-section(4) of section 4;
- b) the fee payable under sub section (1) and (5) of section 7;
- c) the fee payable under sub sections (1) and (5) of section 7;
- d) the salaries and allowances payable to and the terms and conditions for service of the officer and other employee under sub section (6) of section 13 and sub section (6) of section 16;
- e) the procedure to be adopted by the Commission in deciding the appeals under sub section (10) of section 16; and
- f) any other matter which is required to be, or may be, prescribed,

Clause 28 of the RTI Bill confers on the various competent authorities the power to make rules so as to carry out the provisions of the Act. Accordingly, the State Government may initiate action to frame rules under the above enabling provision and also bring these to the notice of all the public authorities under its control well before the Act comes into force. In case there is any public authority which is attached or administratively under the control of the State Government, and for which the competent authority, as defined in Clauses 2(b), is required to make rules for giving effect to the provisions of the RTI Act, suitable action may be initiated in this regard on priority.

(8) **Internal procedures**

There is another key operational aspect of which has to be looked in to by each public authority. Considering that the organizational set up varies from one public authority to another, it is not feasible to lay down in the enactment itself, or for that matter in the rules to be framed there under, internal procedures for processing requests as would be common to all such authorities. However, the understanding is that once the Act comes into force each public authority shall have to follow well defined procedures so that the entire process is streamlined and the decisions on requests are taken at an appropriate level. Keeping this in view, it may be desirable to examine the issue now itself so that internal procedures, which includes the channel for collecting information, creating facilities for inspection of documents taking of samples fixing levels at which a decision shall be taken on a request, preparation of a document for supply to the requester, etc. are formulated in advance. Internal procedures should, likewise, be also devised by each public authority under the State Government to process appeals as are submitted under the Act.

(9) **Annual Report of the State Information Commission**

Clause 25 of the Bill provides that the State Information Commissions shall monitor the implementation of the Act by Public authorities under the State Government and prepare an annual report which shall be laid before the State Legislature. For the purpose of compilation of the Report, the Commission would require certain statistical information from the various

public authorities under the State Government. Action may be taken to apprise the public authorities of the provisions in this clause so that action may be taken them to compile the statistics from the date the Act comes in to operation as would enable the Commission to prepare its Annual Report.

B. TASKS AS MAY BE TAKEN UP AFTER THE ACT COMES INTO FORCE.

Clause 26 of the Bill lays down that the State Government may, to the extent of availability of financial and other resources, prepare programmes for the development of the information regime. In particular, sub clause (2) lays down the with in 18 months from the commencement of the Act, the State Government shall compile in its official language a guide containing such information as would be helpful to citizens who wish to exercise any right specified in the Act. After the Act comes into force, Action may be initiated so prepare necessary programmes as also publish a guide for the users.