

DRTI/CRTI- 102

Application of Right to Information

School of Law



उत्तराखण्ड मुक्त विश्वविद्यालय

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Edition- 2018, Pre Publication copy for Limited Circulation ISBN-

Publication- Directorate of Studies and Publication, Uttarakhand Open University, Haldwani, (Nainital).

E- Mail: studies@uou.ac.in

DIPLOMA/CERTIFICATE IN RIGHT TO INFORMATION (DRTI/CRTI)

DRTI/CRTI 102- Application of Right to Information

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UNIT 1

INFORMATION EXEMPTED FROM DISCLOSURE

STRUCTURE

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1.1 INTRODUCTION

It is the fundamental right of every human to seek information. Secrecy has been the most common feature of bureaucratic culture. So far as it can, bureaucratic administration 'hides its knowledge and actions from criticism....the concept of the official secret is the specific invention of bureaucracy¹. The result has emerged as Official Secret Act, 1923. The right to information act makes citizens part of the decision-making process and makes government responsive and also strengthen the foundation of democracy. Right to freedom of expression is a fundamental right and all other rights depends upon it. But this right is not absolute and so with the right to information. These exemptions from disclosure of information should not go beyond the restriction provided under Article 19(2) of the constitution. The right to information is not absolute. Not all information that the government generates will or should not be given out to the public as if such sensitive information is released to the public they might actually some cause serious harm to more important interests.²

Section 8 and 9 in the RTI act are mainly deals with the grounds for exemption from disclosure of information. There are many exemptions to the act like the class exemptions, prejudice based exemptions and time limited exemptions and time based exemptions. These exemptions prevent the information from being received by the seeker. This unit will deal with those provisions which provides exemptions from disclosure of information.

1.2 OBJECTIVES

After reading this unit you will be able to:

- Understand the exemptions from disclosure of information
- Know the provision of Section8(1) of the RTI Act, that over-rides other provisions of the RTI Act
- Know that how the provision of section 9 of the Act able to protect the copyright infringement
- Understand the requirement of such provisions of exemption
- Know about the organizations, which are exempted from the purview of the RTI Act,2005

¹Max Weber observed

²Vasundhrasingh, comparative study of exemption under RTI Act in different countries

http://cic.gov.in/sites/default/files/Exemptions%20under%20the%20RTI%20act%20by%20vasundhara_0.pdf

1.3.1 Section 8. Exemptions from Disclosure of Information

Section 8 of Right to Information Act says³-

- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-
 - (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;
 - (b) information, has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute the contempt of court;
 - (c) information, the disclosure of which would cause a breach of privilege of parliament or state Legislation;
 - (d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of the third party, by the disclosure of the commercial confidence, trade secrets or intellectual property unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
 - (e) Information available to a person in his fiduciary relationship, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
 - (f) Information, received in confidence from any foreign Government;
 - (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;
 - (h) Information, which would impede the process of investigation or apprehension or prosecution of the offenders;
 - (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 thereof, 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;

- (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 appellate authority as the case maybe is satisfied that the larger public interest justifies the disclosure of such information:

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

³Bare Act, The Right to Information Act, 2005

- (2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in the accordance with the sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interest.
- (3) Subject to the provisions of clauses (a), (c) and (i), any information relating to any event, occurrence or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final as the subject to the usual appeals provided for in this Act.

1.3.1.1 Disclosure of Information, Prejudicially affect the Sovereignty and Integrity of India sub section (1) (a)

There are some information, which relates to nation's security, if it was released to the public, could genuinely cause harm. For example, information published during a conflict, detailing the number of soldiers defending a boundary, where they were positioned or their strategic plans. However, it would not be appropriate to use this exemption simply to keep a contract for the purchase of an air force fighter jet secret. This is common commercial information which should be made public to reduce the likelihood of corruption tainting the procurement process, and should not be withheld simply because it relates to defense⁴. Likewise the information, disclosure of which can put integrity of nation, security, strategic, scientific or economic interests of the State, in danger should keep secret. Relation with foreign state are also very important strategically and should not be exposed. Any information which lead to incitement of an offence is not to be disclosed. **For example** any information which may hurt religious sentiments of people is not to be disclosed⁵.

In the case of *Shri SC Sharma v Ministry of Home Affairs*⁶, the commission had taken the view that the matters connected with interception of telephones were governed by the provisions of Indian telegraph Act, 1885 and were distinctly related to the security of India. Any matter, except the most obvious such as the officer designated to authorities' interception of message and the organization so authorized, must therefore be construed to be security related. And such information related to security of India is covered under section 8 (1) (a) of the act. Moreover, the character of the information will not be altered if the charges subsequently brought against the person are not for violation of any security-related law but under provisions of anti-corruption law and therefore, it is held that the information as sought by the appellant relates to

⁴Right to information – user Guide;

http://www.humanrightsinitiative.org/programs/ai/rti/india/user_guide/info_not_access.htm

⁵Section 8(1)(i); RTI Act 2005

⁶Appeal No. CIC AT/A/2006/0000567;

security and strategic interest of the state, and therefore exempted from disclosure under section 8 (1) (a) of the act.

1.3.1.1 Contempt of Court; sub section (1) (b)

During an investigation there are so much information which needs to be protected, i.e. witnesses identities or the case being put together against a suspect. If released, the case could be jeopardized. Likewise, during any proceeding a case the discussions between a lawyer and their client will almost always be kept secret, even if the lawyer is the Attorney-General and the client is the Government⁷. In the case of *Rakesh Kumar Gupta v. Income Tax Appellate Tribunal (ITAT)*⁸ the appellant said that, in every judicial proceeding, everything should be transparent and open in order to curb corruption. Limited disclosure by the ITAT is potential generator of corruption. The more the transparency the less is the corruption. In the said case, the appellant has asked for a copy of the daily proceedings minutes maintained by the members of the Bench tried by the ITAT in appeal case *No.ITA 567/Del/05*. The CPIO in the instant case has replied that the daily minutes maintained by the members of the Bench are a part of the judicial proceedings and is meant only for the use of the members of the Tribunal. In this case, the respondents have drawn attention to the following observations made by Hon'ble Justice Vivian Bose: "Judges may, and often do, discuss the matter among themselves and reach a tentative conclusion. That is not their judgment. They may write and exchange drafts. Those are not the judgments either, however heavily and often they may have been signed. The final operative act is that which is formally declared in open court with the intention of making it the operative decision of the court. That is what constitutes the „judgment“ ..."⁹

Those observations, though made in a different context, highlight the status of the proceedings that take place before the actual delivery of the judgment. Such noting cannot therefore be held to be part of a record 'held' by the public authority. Any intrusion in regard to the judicial work even under the Right to Information Act is unnecessary. As a judicial body, the ITAT, have also the power to authorize disclosure or non-disclosure of a given set of information such as the information asked for by the appellant in the said appeal. It was held by the Commission that, " a judicial authority must function with total independence and freedom, should it be found that an action initiated under the RTI Act impinges upon the authority of that judicial body, the Commission will not authorize the use of the RTI Act for any such disclosure requirement. Section 8(1) (b) of the RTI Act is quite clear, which gives a total discretion to the court or the tribunal to decide as to what should be published. An information seeker should, therefore, approach the concerned court or the tribunal if he intends to have some information concerning a judicial proceeding and it is for the concerned court or the tribunal to take a decision in the matter as to whether the information requested is concerning judicial proceedings either pending before it or decided by it can be given or not."

⁷ Right to information – user Guide;

http://www.humanrightsinitiative.org/programs/ai/rti/india/user_guide/info_not_access.htm

⁸ Appeal NO.CIC/AT/A/2006/00586; Date of Decision: 18.09.2007

⁹ Surendra Singh v State of UP (AIR 1954 Supreme Court 194)

In another case, *Shri Vinod Kumar Jain v. Directorate General of Central Excise Intelligence, New Delhi*¹⁰ it was held that, 'Information cannot be disclosed till the investigations are over'.

1.3.1.3 Any Information, Discloser of which could cause a Breach of Privilege of Parliament or State Legislation; sub section (1) (c)

In order to perform their functions effectively and without any impediments and interference, certain privileges are conferred upon parliament and state legislature and their individual members under Article 105 which relates to the powers, privileges and immunities of parliament and its members and Article 194 which relates to the powers, privileges and immunities of state legislature and its members¹¹. The privileges enjoyed by the members individually are:¹²

- (i) freedom from arrest,
- (ii) exemption from attendance as **jurors** and witnesses and
- (iii) freedom of speech.

The privileges of house collectively are:

- (i) the right to publish debates and proceedings and right to restrain publication by others;
- (ii) The right to regulate the internal affairs of the house, and to decide matters arising within its walls;
- (iii) The right to punish parliamentary misbehavior;
- (iv) The right to punish members and outsiders for breach of its privileges.

1.3.1.4 Third party Information; sub section (1) (d)

Following information are included in this clause:

- (i) Commercial confidence;
- (ii) Trade secrets;
- (iii) Intellectual property.

It is already recognised in law that companies should be able to protect their trade secrets. Prior to conclusion of a contract quotations, bids and tenders can be categorized as trade secrets. Details of loan accounts, valuation reports of immovable assets and details of properties and securities of borrowers are come under the nature of commercial confidence. It is also the liability of bank to maintain the secrecy of such information. Intellectual property is the product of human mind, in which the proprietor or the owner has exclusively enjoy the right to use and prevent others from using.

¹⁰ Appeal No.CIC/AT/A/2010/000969/SS

¹¹ Article 105 and 194 of the constitution

¹² Dr.Durga Das Basu, Introduction to the Constitution of India

Disclosure of all above information would harm the competitive position of third party. However, where the public authority is satisfied that larger public interest warrants the disclosure of such information then it is not exempted¹³. In *Electronic Corporation of Tamil Nadu Limited v. Tamil Nadu Information Commission*,¹⁴ the High Court of Madras has held that information about field inspection report of water bodies, Kaiveli and Uppankazhi lands at Thiruporur and nine other villages in Chengalpattu Taluka for checking suitability of those lands for setting up information technology and other industries, cannot be denied since larger public interest warrants disclosure of such information.

1.3.1.5 Information available to a person in his fiduciary relationship; sub section (1) (e)

The term 'fiduciary' refers to a person having a duty to act for the benefit of another, showing good faith, where such other person reposes trust and special confidence in the person owing or discharging the duty. In fiduciary relationship the beneficiary places complete confidence in another person in regard of his affairs, business or transactions. For example relationship between partners and between an employer and his employee.

The purpose of exemption under is to permit screening and preservation of confidential and sensitive information made available due to fiduciary relationship. However this exemption is subject to the condition that if the competent authority is satisfied that the larger public interest warrants the disclosure of such information, the information will have to be disclosed.¹⁵

Usually all relationships have an element of trust but not all of them can classified under fiduciary relationship. In *UPSC v. R.K. Jain*¹⁶ it was held by the Delhi High Court that opinion and advises given by the public officials could not be sought for under the RTI Act, provided same had not been tendered in confidence or secrecy and in trust of concerned authority i.e. not fall under the preview of fiduciary relationship.

1.3.1.6 The information received in confidence from any foreign government; sub section (1) (f)

The public authority is not under the obligation to disclose any information received from the foreign government i.e. confidential information relation to negotiations, diplomatic correspondence etc.¹⁷. Sharing of information is based upon international or bilateral relations between the two countries. The disclosure of such information which is received from foreign country is also against the interest and welfare of that country, hence exempted under the act.

1.3.1.7 Any information which could endanger the life or physical safety of any person; sub section (1) (g)

¹³Section 8 (1)(d) of the RTI act, 2005

¹⁴(2010) 5 MLJ 402; <http://docs.manupatra.in/newslines/articles/Upload/F8FF5487-7DF0-4F0F-9A11-74F3C2585AC9.pdf>

¹⁵ Sub section 8(1)(e) of the RTI Act, 2005

¹⁶2012 (282) ELT 1661(Del.)

¹⁷Sub section8(1)(f) of the RTI Act, 2005

The information exempted from disclosure under this clause are:

- (i) Which either endanger life or physical safety of a person; or
- (ii) Which identifies the source of information or assistance given in confidence for law enforcement or security purposes

The term 'life' also appears in the Article 21 of the Constitution is much meaningful and worth living. Right to live with dignity, right to descent environment, privacy, good health, food, water, education medical care, shelter, speedy fair and open trial, to go abroad, legal aid, right against custodial violence, right to social justice and empowerment, freedom from noise pollution, reputation and even right to information is also included in the expression 'life' under Article 21 of the Constitution.¹⁸ Therefore under section 8(1)(g) of the RTI Act the expression 'life' has to be understood in somewhat similar dimensions. The term 'physical safety' would mean the assault of physical existence of a person. The identity of a whistle blower should be protected, because it may be targeted for discriminate or even violence. Section 16 of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 prevents disclosure of information relation to contents of complaints, identity and addresses of aggrieved women, respondent and witnesses, information relating to conciliation and inquiry, recommendations of the Inquiry Committee and action taken by the competent authority. However disclosure of information relating to justice secured to the victim of harassment is permitted, without disclosing the name address, identity or any other particulars which leads to the identification of the aggrieved women and witnesses.¹⁹

In the case of *Singh (AK) v. Delhi Police*,²⁰ question before CIC was that whether camera recording in the police station is exempted under the section 8(1)(g) of the RTI Act. According to Delhi Police the camera recording may contain movements of witnesses and other people, who might have visited the police offices to assist the police authorities in their investigation or for other purposes. And disclosure of such recordings would put life and physical safety of such people in danger. The Central Information Commission accepted the plea of respondents and held that cameras recording at police offices may and do contain movements of witnesses and other person who assist the police in their law enforcements functions, which if disclosed is likely to endanger the life or the physical safety of such person and therefore, such information is exempted from disclosure under the section 8 (1)(g) of the RTI Act. It was further held that the other information requested by the appellant is in the nature of personal information, with no demonstrable relation to any public activity, interest or purpose and this section exempts such information from disclosure. Hence, it was held that there is no obligation of Delhi Police to disclose the camera recording to the appellant.

¹⁸Dr.Durga Das Basu, Introduction to the Constitution of India

¹⁹ParveenSayed; <http://docs.manupatra.in/newsline/articles/Upload/F8FF5487-7DF0-4F0F-9A11-74F3C2585AC9.pdf>

²⁰No. CIC/AT/A/2006/00330

1.3.1.8 Any Information which would impede the process of investigation or apprehension or prosecution of the offenders; sub section (1) (h)

Under the code of criminal procedure, an investigation regarding any offence, involves: proceeding to the spot; finding facts and circumstances of the case; discovery and arrest of suspected offenders; collection of evidence relating to commissions of the offence; and formation of opinion that whether on the basis of material collected there is a case to put accused to trial. However under RTI Act, investigation would be interpreted more widely and liberally i.e. all action of law enforcement, disciplinary proceedings, enquires, adjudications and so on. During any investigation underway, there are information, needs to be protected until the final decision is taken.

In the case of *Sh. S.K. Agarwal v. Directorate General of Central Excise Intelligence (F. No. CIC/AT/A/2007/01455 dated 25.04.2008)*, appellant (informer) asked for information relating to the progress of the case under investigations which was denied by the CPIO and the FAA. The appellant filed appeal before Information Commission against the decision of CPIO and FAA. CIC felt that although speedy investigations in matters of revenue-evasion is salutary goal, it would be inappropriate and even injurious, to on-going investigations if informers are allowed to intrude into the investigative progress all in the name of enforcing a Right to Information. Intrusive supervision of investigation work of public authorities especially by interested parties has the effect of impeding that process, in the sense it exposes the officers to external pressures and constricts the freedom with which such investigations are to be conducted. Commission also felt that there is no reason why officers of public authorities should space their investigations to benefit informants. Intrusive interference in investigation work is not conducive to such investigations and, in that sense, impedes it.²¹

1.3.1.9 Cabinet papers and other decision making documents; sub section (1) (i)

This clause says that Cabinet papers, including records of deliberations of the Council of Ministers, Secretaries and other offices, are excluded, but when a decision is made, the reasons behind the decisions and the documents which were used to make the decision should then be disclosed to the public. This is important clause because, during the decision-making process it imposes a level of confidentiality, but once a decision is made it gives right to public to access the relevant information to understand the policy-making process. Thus a limited prohibition for a specified time is granted. But it further imposes a bar to disclose those matters, which come under the exemptions specified in this section shall not be disclosed. Thus according to this clause, cabinet papers including records of deliberations of the council of ministers, secretaries and other officers, shall be made public after the decision has been taken, and the matter is complete, or over but those matters which are otherwise exempted under clause (a) to (h) and (j)

²¹ <http://www.cbec.gov.in/resources/htdocs-cbec/info-act/cic-decisions-exemptns.pdf>

of the Section 8(1) shall not be disclosed even after the decision has been taken, and the matter is complete or over.²²

1.3.1.10 Unwarranted invasion of the privacy of the individual; sub section (1) (j)

CIC Defined “Invasion of Privacy” as *“One, who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.”*

Article 21 of the Constitution gives the ‘Right to Life’, which also included the right to privacy, requires that the government should try to protect this information from public disclosure, unless there is some overriding need for it to be disclosed. For example, my next door neighbor should not be able to access my medical records just because they are held by a government hospital. As defined in this clause, the information qualified to be personal information shall not be disclosed if the same is not for larger public interest. However, *the information, which cannot be denied to the parliament or a state legislature, shall not be denied to any person.*²³ It is noteworthy to mention that this **proviso** applies only to the Section 8(1)(j) and not to the other sub-sections of Section 8(1) of the RTI Act.

In an important case, *Siddharth Bhargava v. EPFO: CIC/BS/A/2012/001377/2985 Dated 12.07.2014*,²⁴ the question is ‘Whether PF details of an employee can be furnished to the Spouse of such employee’. Well the answer is no. 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 would fall within the exempted category, unless the authority concerned is satisfied that larger public interest justifies the disclosure of such information. It is, therefore, to be understood clearly that it is a statutory exemption which must operate as a rule and only in exceptional cases would disclosure be permitted, that too, for reasons to be recorded demonstrating satisfaction to the test of larger public interest. In another case it was held that, details of the medical facilities availed is personal information, and providing such information would undoubtedly amount to invasion of the privacy, however, total expenditure incurred for the medical treatment may be provided by the CPIO.’²⁵

1.3.1.11 A public authority may allow access to information if public interest in disclosure outweighs the harm to the protected interest; and sub section (2)

²²Section 8 (1)(i) of RTI Act, 2005

²³Section 8 (1)(j) of RTI Act, 2005

²⁴ http://rti.india.gov.in/cic_decisions/CIC_BS_A_2012_001377_2985_M_114738.pdf

²⁵Subhash Chandra Agarwal vs. The Registrar, Supreme Court of India &ors (LPA 34/2015 & C.M.No.1287/2015). Dated 17.04.2015, Delhi High Court; <http://delhicourts.nic.in/April2015/Subhash%20Chand%20Agarwal%20Vs.%20The%20Registrar.pdf>

In simple words 'public interest' means the general welfare of the public which needs recognition and protection. Sub Section (2) of the Section 8 of the RTI Act says that the information exempted by the sub-section (1) and under the Official Secret Act, 1923 may be disclosed if public interest in disclosure outweighs the harm to the protected interest. In other words, the Central RTI Act makes all of the exemption included in the section 8(1) subject to a "Public Interest Override".²⁶ It is held by Supreme Court that, 'public purpose' needs to be

interpreted in the strict sense and public interest has to be construed keeping in mind the balance between right to privacy and right to information.²⁷

1.3.1.12 Disclosure of 20 year old information; sub section (3)

Section 8(3) imposes the time limit exemption on the exemption provided under the section 8 (1)(b), (d), (e), (f), (g), (h), and (j), which are no longer valid exemption after 20 years from the date of the record and if there any dispute arises about the date from which the said period of 20 years has to be computed, the decision of the Central Government shall be final²⁸. However section 8(3) is not apply anything contained in the section 8 (1)(a), (c), and (i) , in which information would continue to be exempted and there would be no obligation, even after lapse of twenty years. It is also noteworthy to make clear that, this sub-section does not contemplate preservation of record or information for a period of 20 years. All information or records should be maintained according to the relevant rules or regulations and if any document is required to be destroyed under the relevant rules and regulation, section 8 (3) will not prevent them.

1.3.2 No imagined exemptions other than grounds available in section 8 of rti act.

In the case of *Mangla Ram Jat v.. PIO, Banaras Hindu University*²⁹, the Commission is of the view that the Commission, an adjudicating body which is a creation of the Act, has no authority to import new exemptions and in the process curtail the Fundamental Right of Information of citizens³⁰. In this case Commission explained its role, ambit and scope of exemptions and the context of Right to Information. The Commission is an adjudicating body under the Act and it cannot take upon itself the role of the legislature and import new exemptions hitherto not provided. The Commission cannot of its own impose exemptions and substitute their own views for those of Parliament. The Act leaves no such liberty with the adjudicating authorities to read law beyond what it is stated explicitly. . The act clearly says about the grounds on which the exemption are made from disclosure of information. There is absolutely no ambiguity in the Act. Any such attempt of creating new exemptions by the adjudicating authorities will go against

²⁶ Section 8(2) of the RTI Act

²⁷ Bihar Public Service Commission vs. Saiyed Hussain Abbas Rizwi; Supra-Note 22;

²⁸ Proviso of section 8(3) of the RTI Act, 2005

²⁹ Decision No. CIC / OK / A 2008 / 00860 / SG / 0809, dated 31.12.2008.

³⁰ <http://www.cbec.gov.in/resources/htdocs-cbec/info-act/cic-decisions-exemptns.pdf>

the spirit of the Act. Under this Act, providing information is the rule and denial an exception. Right to Information as part of the fundamental right of freedom of speech and expression is well established in our constitutional jurisprudence. Any restriction on the Fundamental Rights of the Citizens in a democratic polity is always looked upon with suspicion and is invariably preceded by a great deal of thought and reasoning. Even the Parliament, while constricting any fundamental rights of the citizens, is very cautious.

1.3.3 Ground for rejection to access in certain cases

Section 9 of the RTI Act says,

“Without prejudice to the provision of section 8, a Central Public Information Officer or State Public Information Officer, as the case may be may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.”

Any information which copyright not subsisting in the state, cannot be provided in any circumstances. However this rejection is not a qualified exemption but it is absolute. Primarily intention of this section is to prevent misuse of the RTI Act by the Governmental agencies, in matters of infringement of copyright and the like.

1.3.4 The organizations, exempted under right to Information Act

Section 24 of the RTI Act says,

“(1) nothing containing in this Act shall apply to the intelligence and security organizations specified in the second schedule, being organizations established by the central government or any information furnished by such organizations to the Government:

Providing that the information pertaining to the allegations of corruption and human right violations shall not be excluded under this sub section:

Provided further that in case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in section 7, such information shall be provided within forty-five days from the date of receipt of request.”

Under the second schedule of the RTI Act, following 25 organizations are exempted:

1. Intelligence Bureau
2. Research and Analysis Wing of the Cabinet Secretariat
3. Directorate of Intelligence Bureau
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. Sashastra Seema Bal
16. Directorate of Income-Tax (Investigation)
17. National technical Research Organization
18. Financial Intelligence Unit, India
19. Special Protection Group
20. Defense Research and Development Organization
21. Border Road Development Board
22. National Security Council Secretariat
23. Central Bureau of Investigation
24. National Investigation Agency
25. National Intelligence Grid

1.4 SUMMARY

The right to information is not absolute. Section 8 and 9 of the Act lays down certain exception, under which a public authority may reject a request for information. Object of the RTI Act is to harmonize conflicting public and private interest. The provisions of Act helps a person to get information regarding his/her complaints but at the same time restricts that person from getting the same information till the time the complaint has not been resolved. Similarly, privacy of other citizens regarding data or information available with CPIO also to be protected as their right of privacy. There are cases which tell us why there is a need for such provisions.

Access to public information is considered as fundamental importance for the effective functioning of democratic systems, as it enhances governments' and public officials' accountability, boosting people participation and allowing their informed participation into public life and may be concealed only on the basis of legitimate reasons which should be detailed in the law. In this unit we discussed all the grounds on the basis of which a PIO may denied to give information. Some organizations of the national interest also exempted from disclosure under the Act.

1.5 GLOSSARY

1. **ITAT:** The Commissioner of Income-Tax (Appeal) is the first appellate authority and the Income-Tax Appellate Tribunal (ITAT) is the second appellate authority. The ITAT is constituted by the Central Government and work under the Ministry of Law.
2. **CPIO:** The Central Public Information Officer (CPIO) of a public authority plays an important role in effective implementation of the provisions of the Right to Information Act.
3. **JURORS:** A member of jury.

4. **CIC:** The Central Information Commission set up under the Right to Information Act is the authorized body, established in 2005, under the Government of India to act upon complaints from those individuals who have been not able to submit information requests to a central public information officer or State public Information officer due to either the officer not have been appointed, or because the respective Central Assistant Public Information Officer or State Assistant Public Information Officer refuse to receive the application for information under the RTI Act.

1.6 SAQS

1. SHORT ANSWER QUESTIONS

- (i) Which section/sections of the RTI act are mainly deals with the grounds for exemption from disclosure of information?
- (ii) Under which section of the RTI Act, the information received in confidence from any foreign government is exempted from disclosure?
- (iii) Whether medical details of a patient can be furnished to the Spouse of such patient?

2. FILL IN THE BLANKS

- (i) '.....' means the general welfare of the public which needs recognition and protection.
- (ii) Under the Act, providing information is the rule and denial an exception.

3. TRUE AND FALSE TYPE QUESTIONS

- (i) The information about total expenditure incurred for the medical treatment of a patient may be provided by the CPIO.
(a) True, (b) False.
- (ii) Under section 8 (3) it is mandatory that all information or records should be maintained for a period of 20 years.
(a) True, (b) False.

1.7 REFERENCES

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5. Dr. Neelam Kant, 2014, published by Orient Publishing Company
6. Right to Information Law in India by N.V. Paranjape
7. Right to Information Act, 2005 by JiteshDhanrajani

1.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

1. Explain the phrase ‘life is much meaningful and worth living’, in brief.
2. What do you understand by the personal information? Is it a ground of exemption for disclosure under the Act?
3. Is the public has right to access the relevant information to understand the policy-making process? Explain.
4. Name the organizations, exempted under Right to Information Act.
5. Write an essay on the grounds under which the disclosure of information is exempted under the Act.

1.10 ANSWER

SAQS

1. (i) Section 8 & 9; Refer 1.1 (ii) Section 8 (1) (f); Refer 1.3.1.6 (iii) No; Refer 1.3.1.10
2. (i) Public interest; Refer 1.3.1.11 (ii) RTI; Refer 1.3.2
3. (i) True; Refer 1.3.1.10 (ii) False; Refer 1.3.1.10

Terminal questions and model questions

1. Refer 1.3.1.7
2. Refer 1.3.2
3. Refer 1.3.1.9
4. Refer 1.3.4

UNIT 2

PUBLIC INTEREST TEST FOR INFORMATION

STRUCTURE

2.1 INTRODUCTION

2.2 OBJECTIVES

2.3 SUBJECT

2.3.1 Meaning of ‘public interest’

2.3.2 The public interest test

2.3.3 The public interest test in other countries

2.3.3 .1 United Kingdom- the freedom of information act

2.3.3 .2 New South Wales – the government information (public access) act

2.3.3 .3 United States- The freedom of information act

2.4 SUMMARY

2.5 GLOSSARY

2.6 SAQS

2.7 REFERENCES

2.8 SUGGESTED READINGS

2.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

2.10 ANSWER SAQS

2.1 INTRODUCTION

The aim of Right To Information Act, 2005 is to promote transparency and accountability in the working of every public authority but where the revelation of information is likely to conflict with other public interest including efficient operations of the governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information i.e. the information that inversely effect the working of governing bodies in other words it may harm the larger public interest indirectly, should not be provided. There must be some criteria for public interest test for information. In the previous unit we discussed about the exemptions for disclosure of information under RTI Act, 2005. In the present unit we discuss the public interest tests flow from the requirements that restrictions on the right of access to information be proportionate and necessary.

2.2 OBJECTIVES

After reading this unit you are able to:

- Know the definition of 'public interest'
 - Understand the criteria on which public interest test for information to be decided in the purview of Right To Information Act, 2005
 - Understand the public interest test for information in other countries
-

2.3 SUBJECT

2.3.1 Meaning Of 'Public Interest'

The term "public interest" is not defined in the RTI Act. Hence Public Authorities, Appellate Authorities and Information Commissioners will need to judge each case on its merit and in light of any emerging guidance or best practice. Public interest will change over time and it will also depend on the particular circumstances of each case. Consideration of the public interest is made on a case-by-case basis.

It was also held by the Supreme Court that 'public purpose' needs to be interpreted in the strict sense and public interest has to be construed keeping in mind the balance between right to privacy and right to information.³¹In another case the Supreme Court said that, "In its common parlance, the expression "public interest", like "public purpose", is not capable of any precise definition. It does not have a rigid meaning, is elastic and takes its colour from the statute in which it occurs, the concept varying with time and state of society and its needs³².

The public interest has been described as a term embracing matters, among others, of standards of human conduct and of the functioning of government and government instrumentalities tacitly accepted and acknowledged to be for the good order of society and for the wellbeing of

³¹*Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi (2012) 13 SCC 61*

³²*State of Bihar v. Kameshwar Singh AIR 1952 SC 252*

its members. The interest is therefore the interest of the public as distinct from the interest of an individual or individuals.³³

2.3.2 The Public Interest Test

The RTI Act requires that even where an exemption provision or the Official Secrets Act applies, an official will still need to disclose the information requested "if [the] public interest in disclosure outweighs the harm to the protected interests".³⁴

When applying the public interest override in section 8(2), officials should exercise their discretion as far as possible to facilitate and promote the disclosure of information, in accordance with the objectives of the Act. In practice, officials should identify in writing all public interest considerations favoring disclosure or non-disclosure of a particular matter. Identifying public interest factors in a general way is not enough. The organisation must be satisfied that the disclosure of the particular information would lead to some harm or benefit to the particular public interest factor before it becomes relevant.

The comparative strengths/importance of the public interest issues identified, must then be weighed against each other to decide whether or not those favouring disclosure outweigh those favouring non-disclosure. The extent of the harm or benefit will influence the weight to be given to the factor. When weighing competing interests, consider any probable harm from disclosure and the fact that information generally becomes less sensitive over time. Be proactive and consider whether the exemption as applies to an official document has outlived its purpose. Consider whether all the requirements of any of the exemptions in section 8(1)³⁵ are satisfied. Identify all public interest factors for and against disclosure. It is important to evaluate weight of each factor and decide whether factors against disclosure outweigh factors for disclosure. And where an official finally decides to rely on an exemption to withhold disclosure, the Central Act requires that they must provide their reasons to the applicant. These reasons should also explain how the public interest override was considered and applied. A detailed record of decision-making processes should be kept at every step when considering exemptions, so that if the applicant requests a review or subsequently appeals to the Commissioner for a decision, there is a clear record of the arguments considered regarding the public interest test. This will also help the applicant to understand how the decision was made and to properly assess whether an application for review is justified.

Public authorities must be able to provide evidence of all of the factors that were taken into consideration when the public interest test was applied to any exemption they cited. It will not be enough simply to list all the factors they thought were contrary to the public interest.

³³The Freedom of Information Act, 1999; The Republic of Trinidad & Tobago;<http://www.foia.gov.tt/node/10>

³⁴Section 8(2) of the RTI Act, 2005

³⁵RTI Act, 2005

Instead, officials should provide all of the public interest factors, both for and against disclosure, which were taken into account in applying the test. They must be able to show that a specific detriment would occur because of the disclosure.

It is important to mention here about this test that it has a presumption in favour of disclosure. The burden is on the public authority to show that the public interest in withholding the information is greater than the public interest in disclosure. There may be factors that make the public interest in disclosing the particular information requested, for example:

- The information relates to an issue that affects a large number of people;
- It sheds light on how public funds are being spent;
- It deals with a matter that is a subject of public controversy;
- Disclosure would help individuals to make more informed choices on important matters.³⁶

According to the Supreme Court, “Section 8 is one of the most important provision of the Act as it is an exception to the general rule of obligation to furnish information. It gives the category of cases where the public authority is exempted from providing the information. To such exemptions, there are inbuilt exceptions under some of the provisions, where despite exemption; the Commission may call upon the authority to furnish the information in the larger public interest. This shows the wide scope of these provisions as intended by the framers of law. In such cases, the Information Commission has to apply its mind whether it is a case of exemption within the provisions of the said section..... The expression 'public interest' has to be understood in its true connotation so as to give complete meaning to the relevant provisions of the Act. The expression 'public interest' must be viewed in its strict sense with all its exceptions so as to justify denial of a statutory exemption in terms of the Act. In its common parlance, the expression 'public interest', like 'public purpose', is not capable of any precise definition. It does not have a rigid meaning, is elastic and takes its colour from the statute in which it occurs, the concept varying with time and state of society and its needs. [*State of Bihar v. Kameshwar Singh*(AIR 1952 SC 252)]. It also means the general welfare of the public that warrants recommendation and protection; something in which the public as a whole has a stake [Black's Law Dictionary (Eighth Edition)]³⁷

2.3.2 The Public Interest Test in Other Countries

2.3.3.1 United Kingdom- The Freedom of Information Act³⁸

³⁶The Freedom of Information Act, 1999; The Republic of Trinidad & Tobago;<http://www.foia.gov.tt/node/10>

³⁷*Bihar Public Service Commission Vs. Saiyed Hussain Abbas Rizwi & ANR*. [Civil Appeal No. 9052 of 2012 arising out of SLP (C) No.20217 of 2011]

³⁸Information commissioner's office;https://ico.org.uk/media/fororganisations/documents/1183/the_public_interest_test.pdf

The public interest here means the public good, not what is of interest to the public, and not the private interests of the requester. In carrying out the public interest test the authority should consider the circumstances at the time at which it deals with the request. If carrying out an internal review, it may consider the circumstances up to the point that review is completed. The authority must consider the balance of public interest in the circumstances of the request. Transparency will always be a core factor in the general public interest. There may also be a public interest in transparency about the issue relates to the information. The authority should consider any public interests that would be served by disclosing the information. If there is a reasonable suspicion of wrongdoing on the part of the public authority, this may create a public interest in disclosure. And even where this is not the case, there is a public interest in releasing information to provide a full picture.

Under the FOIA the timing of the request for information is a crucial factor while carrying out the public interest test:

- When carrying out the public interest test a public authority should consider the circumstances at the time at which it deals with the request. If an authority is carrying out an internal review then it may consider the circumstances up to the time the review is completed.
- In carrying out the public interest test, the authority should consider the arguments in favour of disclosing the information and those in favour of maintaining the exemption. The authority should try to do this objectively, recognising that there are always arguments to be made on both sides. It may be helpful for the authority to draw up a list showing the arguments it is considering on both sides, this will help when it comes to assessing the relative weight of the arguments.
- There may be rare cases where events after this time change the balance of the public interest test, in such a way that disclosure would be inappropriate or undesirable. If so, the Commissioner has discretion to decide what he orders the authority to do.

2.3.3.2 new South Wales - Government Information (Public Access) Act³⁹

The new right to information system in NSW aims to foster responsible and representative government that is open, accountable and fair.

Under the Government Information (Public Access) Act 2009 (GIPA Act), all government agencies must disclose or release information unless there is an overriding public interest against disclosure. When deciding whether to release information, staff must apply the public interest test. This means, they must weigh the factors in favour for disclosure against the public interest factors against disclosure.

³⁹Information and privacy commission, NSW (Australia); <https://www.ipc.nsw.gov.au/fact-sheet-what-public-interest-test>

Unless there is an overriding public interest against disclosure, agencies must provide the information. There are some limited exceptions to this general rule, for example where dealing with an application would constitute a significant and unreasonable diversion of an agency's resources.

Applying the public interest test in accordance to the Government Information (Public Access) Act 2009 (GIPA Act)

The public interest test involves three steps:

1. Identify the relevant public interest considerations in favour of disclosure;
2. Identify the relevant public interest considerations against disclosure;
3. Determine the weight of the public interest considerations in favour of and against disclosure and where the balance between those interests lies.

The GIPA Act (section 14) provides an exhaustive list of public interest considerations against disclosure. These are the only considerations against disclosure that agencies may consider in applying the public interest test.

Considerations are grouped under the following headings:

- responsible and effective government;
- law enforcement and security;
- individual rights, judicial processes and natural justice;
- business interests of agencies and other persons;
- environment, culture, economy and general matters;
- secrecy provisions
- exempt documents under interstate Freedom of Information legislation.

The GIPA Act says that in applying the public interest test, agencies are not to take into account:

- that disclosure might cause embarrassment to, or loss of confidence in, the government or an agency;
- that any information disclosed might be misinterpreted or misunderstood by any person.

In determining an application, agencies should consider any submissions made by an applicant in relation to public interest considerations in accordance with section 15(a)⁴⁰ and may consider any factors personal to the application.

The identification of one or even several public interest considerations against disclosure is not sufficient justification to refuse to provide information. Agencies will make their decision after

⁴⁰ [Of] GIPA Act

balancing the relevant considerations for and against disclosure. In each case, agencies will consider a range of factors, including:

- the nature and context of the information;
- any personal factors of the application (under section 55 of the GIPA Act);
- the relative weight of public interest considerations for and against disclosure.

Agencies should refuse to disclose information only where, on balance, there is an overriding public interest against disclosure. Where considerations on balance favour disclosure, or are evenly balanced, the presumption in favour of disclosure stands, and information should be published or released.

The 'balancing' approach to the public interest test applies in most circumstances. However, in relation to 12 categories⁴¹ of information, there is always an overriding public interest against disclosure.

2.3.3.3 United States- Freedom Of Information Act⁴²

Privacy exemptions⁴³ are the two of the most difficult exemptions of the Freedom of Information Act to work with the application of which involves a delicate balancing process. This process requires agencies to be familiar with the various protectable privacy interests to be taken into consideration on one side of the balance, as well as the types of public interest considerations which properly factor into the other side of the balance. Under the traditional Exemption 7(C)⁴⁴ analysis, once a privacy interest has been identified and its magnitude has been assessed, it is balanced against the magnitude of any recognized public interest that would be served by disclosure. There are a list of decisions made by the courts of US on this issue. Some are as follow:

Where a request seeks information that categorically implicates a privacy interest, and the requester has failed to assert a cognizable public interest, courts have upheld agencies' use of Exemption 7(C)⁴⁵ to categorically protect possibly responsive records, without the need to conduct a search.⁴⁶

Under Reporters Committee, the public interest recognized under the FOIA is specifically limited to the FOIA's "core purpose" of "shed[ding] light on an agency's performance of its statutory duties."⁴⁷ Accordingly, information that does not reveal the operations and activities of

⁴¹ Describe under the FOI Act; New South Wales (Australia)

⁴² The United States Department of Justice; <https://www.justice.gov/oip/blog/foia-update-foia-counselor-factoring-public-interest> and Department of the Justice Guide of The Freedom of Information Act; <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/exemption7c.pdf#p21>

⁴³ 6 and 7(c) of the FOIA; United States

⁴⁴ [Of] the FOIA; United States

⁴⁵ Ibid;

⁴⁶ See *Blackwell v. FBI*, 646 F.3d 37, 42 (D.C. Cir. 2011)

⁴⁷ See *Reporters Comm.*, 489 U.S. at 773

the government does not satisfy the public interest requirement.⁴⁸ As a result, courts have rarely recognized any public interest, as defined by Reporters Committee, in disclosure of information sought to assist someone in challenging their conviction.⁴⁹

A FOIA requester's private need for information in connection with litigation has been found to play no part in determining whether disclosure is warranted. The mere possibility that information may aid an individual in the pursuit of litigation does not give rise to a public interest.⁵⁰

In *NARA v. Favish*, the Supreme Court⁵¹ addressed the showing necessary to demonstrate a public interest in disclosure where government wrongdoing is alleged.⁵² If a requester fails to identify a public interest in disclosure and there is a privacy interest in the requested material, the Court of Appeals for the District of Columbia Circuit has held "[w]e need not linger over the balance; something, even a modest privacy interest, outweighs nothing every time."⁵³

Thus in the United States Privacy is a crucial factor while deciding the public interest test. According to the Supreme Court (US), "require a balancing of the individual's right of privacy against the preservation of the basic purpose of the Freedom of Information Act."⁵⁴ This process requires agencies to be familiar with the various protectable privacy interests to be taken into consideration on one side of the balance, as well as the types of public interest considerations which properly factor into the other side of the balance.

2.4 SUMMARY

In this unit we discussed the issues that should be considered during carrying out an application seeking the information including public interest test. Term 'public interest' is mentioned in Section 8(1) (j) and 8(2) of the RTI Act, 2005, in regard with right to privacy and public harm. The definition of what constitutes a public interest varies across jurisdictions and often requires a case-by-case assessment. In general terms public interest issues favouring disclosure usually involve the following:

- accountability for public funds;
- matters related to public safety;
- issues related to environment;
- issues related to health;
- information relating to grave human rights violations;

⁴⁸ *ibid*

⁴⁹ *Hawkins v. DEA*, 347 F. App'x 223, 225 (7th Cir. 2009) (finding that "a prisoner's interest in attacking his own conviction is not a public interest");

⁵⁰ *Massey*, 3 F.3d at 625;

⁵¹ [of] US

⁵² 541 U.S. 157.

⁵³ *Nat'l Ass'n of Retired Fed. Employees v. Horner*, 879 F.2d 873, 879 (D.C. Cir. 1989)

⁵⁴ *Department of the Air Force v. Rose*, 425 U.S. 352, 372

- matters related to public administration;
- matters related to education;
- matters related to employment;
- all matters relating public participation and public awareness.

The mandatory public interest override in case of information related to human rights violations or crimes against humanity is recognized under many models, including American and African system.

The CIC ruled that, merely because disclosure of information may adversely affect public confidence in defaulting institutions, it cannot be a reason for denial of information under the RTI Act. While giving the judgment on 4 November 2011, Shailesh Gandhi, the then Central Information Commissioner said, "The RBI is a regulatory authority which is responsible for *inter alia* monitoring subordinate banks and institutions. Merely because disclosure of such information may adversely affect public confidence in defaulting institutions, it cannot be a reason for denial of information under the RTI Act. If there are certain irregularities in the working and functioning of such banks and institutions, the citizens certainly have a right to know about the same. In view of the same, this Bench is of the considered opinion that even if the information sought was exempted under Section 8(1)(a) or (e) of the RTI Act, as stated by the PIO, Section 8(2) of the RTI Act would mandate disclosure of the information. The Full Bench had also concluded that there was a public interest in disclosure and I concur with its finding."⁵⁵

2.5 GLOSSARY

5. **CIC:** The Central Information Commission set up under the Right to Information Act is the authorized body, established in 2005, under the Government of India to act upon complaints from those individuals who have been not able to submit information requests to a central public information officer or State public Information officer due to either the officer not have been appointed, or because the respective Central Assistant Public Information Officer or State Assistant Public Information Officer refuse to receive the application for information under the RTI Act.
6. Section 8(2): Section 8 (2) of the RTI Act says, "*Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in the accordance with the sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interest.*"

⁵⁵RR Patel v. RBI (CIC/MA/A/2006/00406 and 00150, dated 7 December 2006)

2.6 SAQS

4. SHORT ANSWER QUESTIONS

- (i) Is term 'public interest' define in the RTI Act?
- (ii) What is the most important factor under the United States Freedom of Information Act, which make reveling of information difficult?

5. FILL IN THE BLANKS

- (i) The term "....." is not defined in the RTI Act.
- (ii) Under the Freedom of Information Act (UK) theof the request for information is a crucial factor while carrying out the public interest test.

6. TRUE AND FALSE TYPE QUESTIONS

- (i) Public interest will change over time and it will also depend on the particular circumstances of each case. (a)True, (b) False.
- (ii) The burden is on the public authority to show that the public interest in withholding the information is greater than the public interest in disclosure.
(a)True, (b) False.

2.7 REFERENCES

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4. Dr. Neelam Kant, 2014, published by Orient Publishing Company
5. Right to Information Law in India by N.V. Paranjape
6. Right to Information Act, 2005 by Jitesh Dhanrajani
- 7.

2.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

1. “Merely because disclosure of information may adversely affect public confidence in defaulting institutions, it cannot be a reason for denial of information under the RTI Act.” Explain.
2. What do you understand by public interest test?
3. Explain criteria for public interest test for information in the purview of RTI Act.
4. What are the general issues favoring in the disclosure during public interest test?

2.10 ANSWERS

SAQS

1. (i) No; Refer 2.3.1 (ii) Privacy Refer 2.3.3.4
2. (i) public interest Refer 2.3.1 (ii) timing Refer 2.3.3.1
3. (i) True; Refer 2.3.1 (ii) True; Refer 2.3.2

Terminal Questions and Model questions

1. Refer 2.3.2
2. Refer 2.3.1
3. Refer 2.3.2
4. Refer 2.3.3 and 2.4

UNIT 3

GROUNDINGS FOR PARTIAL DISCLOSURE AND THIRD PARTY INFORMATION

STRUCTURE

3.1 INTRODUCTION

3.2 OBJECTIVES

3.3 SUBJECT

3.3.1 Doctrine of Severability

3.3.2 Severability of Information Under The Rti Act

1. Section 10 of The Rti Act

2. Section 8 (1)(I) of The Rti Act

3.3.3 Grounds For Partial Disclosure

3.3.4 Definition of 'Third Party'

3.3.5 Third Party Information; Section 11

3.3.5.1 Public Information Officer Should Follow The Procedure As Given In Section 11 While Disclosing Third Party Information

3.3.5.2 Disclosure Of Third Party Information Protected By Law

3.4 SUMMARY

3.5 GLOSSARY

3.6 SAQS

3.7 REFERENCES

3.8 SUGGESTED READINGS

3.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

3.10 ANSWER SAQS

3.1 INTRODUCTION

As you know that right to information is our basic right but it is not absolute. There are some grounds on which the public authority may be denied to give the information. Besides exemption the access to the information may be provided to that part of the record which does not contain any information which is exempted from disclosure. Thus applying the doctrine of severability.

Where an applicant seeks any information which relates to or has been supplied by a third party and that third party has treated that information as confidential, in this case the Public Information Officer shall consider whether the information should be disclosed or not. The guiding principle in such cases is that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

In the present unit we discuss above two points viz. the grounds for partial disclosure and third party information under provisions of the Right to Information Act, 2005.

3.2 OBJECTIVES

After reading this unit you are able to know:

- What is 'doctrine of severability';
 - Provisions of section 10 of the RTI Act under which severability or separability of information has come;
 - Those grounds on which partial disclosure of information has to be made
 - How public interest test is applying during third party information
-

3.3 SUBJECT

3.3.1 Doctrine of Severability

Doctrine of Severability or Separability states that when a part of the [statute](#) is declared unconstitutional, then the unconstitutional part is to be removed and the remaining valid portion will continue to valid. The idea is to retain the Act or [legislation](#) in force by discarding / deleting only the [void](#) portion and retaining the rest.

If we apply the above in the reference of the RTI Act, we can say that when any information, seeking by an applicant is exempted under the said act then, that part of the record which contains unexempted information can reasonably be severed from the said record and may be provided to the applicant.

3.3.2 Severability of Information under the RTI Act

1. Section 10 of The RTI Act

Section 10 stated as:

(1) Where a request for access to information is rejected on the ground that it is in relation to information which is exempted from disclosure, then notwithstanding anything contained in this Act, access may be given to that part of the record which does not contain any information that is

exempted from disclosure under this Act and which can reasonably be severed from any part that contains exempted information.

(2) Where access is granted to a part of the record under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be shall give a notice to the applicant, informing,-

(a) that only part of the record requested, after severance of the record containing information which is exempt from disclosure, is being provided;

(b) the reasons for the decision, including any findings on any material question of fact, referring to the material on which those findings were based;

(c) the name and designation of the person giving the decision;

(d) the details of the fees calculated by him or her and the amount of fee which the applicant is required to deposit; and

(e) his or her rights with respect to review of the decision regarding non- disclosure of part of the information, the amount of fee charged or the form of access provided, including the particulars of the senior officer specified under sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be, time limit, process and any other form of access. It is noteworthy to mention here that, the sub section (1) of section 19⁵⁶ stated, if any applicant who does not receive a decision within the time specified under the Act, or is aggrieved by the decision of the public information officer, may within 30 days from the receipt of such decision prefer an appeal to senior officer in the public authority.

2. Section 8 (1)(I) Of The RTI Act

Section 8 of the said act enumerate the provisions of exemption from disclosure of information.⁵⁷ Section 8(1)(i) says that cabinet papers including records of deliberations of the council of ministers, secretaries and other officers, are exempted from the disclosure. But according to the proviso of this sub section:

“Provided that the decision of the Council of Ministers, the reason thereof, and the material on the basis of which the decision were taken shall be made public after the decision has been taken, and the matter is complete, or over.”

In other words we can say that, under the above provision the severability or separability of information is time bounded. After the decision has been taken or the matter is over, that part of information (or material that are not exempted under the act) can be made public.

3.3.3.Grounds For Partial Disclosure

⁵⁶Right to information Act, 2005

⁵⁷See unit 1

Let be discuss the provision of the above sections or in another wordsthe grounds on which partial disclosure of information has to be made. In the previous unit⁵⁸ you read about the grounds on which the disclosure of information has been exempted. On the other hand section 10 said that if any applicant seeking that exempted information, and if there is any reason is present for application of doctrine of severability, after separate the exempted and unexempted parts from the record, unexempted portion may be provided to the applicant. In this way this section preserve the soul purpose of the Right to Information Act.

In a case the Delhi High Court held, “Thus, where information can be furnished without compromising or affecting the confidentiality and identity of the fiduciary, information should be supplied and the bar under Section 8(1)(e) of the Act cannot be invoked. In some cases principle of severability can be applied and thereafter information can be furnished. A purposive interpretation to effectuate the intention of the legislation has to be applied while applying Section 8(1)(e) of the RTI Act and the prohibition should not be extended beyond what is required to be protected. In cases where it is not possible to protect the identity and confidentiality of the fiduciary, the privileged information is protected under Section 8(1)(e) of the RTI Act. In other cases, there is no jeopardy and the fiduciary relationship is not affected or can be protected by applying doctrine of severability.”⁵⁹

In an another judgement the Honorable Delhi High Court direct Commissioner of Customs (I&G), New Delhi, to apply the principle of severability u/s 10 (1) of the RTI Act by way of retaining part of the samples for the purposes of pending adjudication proceedings and supplying another part to the appellant.⁶⁰ It is said, “Access to information, under Section 3 of the Act, is the rule and exemptions under Section 8, the exception. Section 8 being a restriction on this fundamental right, must therefore is to be strictly construed. It should not be interpreted in manner as to shadow the very right itself.”⁶¹

3.3.6 Definition Of ‘Third Party’

As defined in the Right to Information Act, 2005, “third party” *means a person other than the citizen making a request for information and includes the public authority.*⁶² Here a public authority is others than the public authority to which the request has been made. In another words the term 'third party' includes anyone other than the appellant or applicant and the respondent or public information officer, who receive that application.

According to the Act, ‘public authority’ includes, *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 Parliament; (c) by any other law made by State Legislature; (d) by notification issued or order made by the appropriate Government, and includes any— (i) body owned, controlled or*

⁵⁸See unit 1. Information exempted from disclosure;

⁵⁹ Writ Petition (Civil) No. 8396/2009 (Union of India Vs CIC)

⁶⁰Bhagat Singh case. (146(2008) Delhi Law Times 385).

⁶¹Ibid

⁶²Section 2 (n) of the RTI Act, 2005

substantially financed; (ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government.

The definition of “third party” is very broad under the RTI Act. According to the act the first party is-‘requester for the information. The second party means- ‘public authority processing the request’. The third party includes- ‘a individual, company, NGO and public authority (other than public authority processing the request)’.

3.3.7 Third Party Information; Section 11

Section 11 of the Act⁶³says,

(1) Where a Central Public Information Officer or the State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision.

⁶³RTI Act 2005

Hence as stated under the section 11 of the Act, it provides the procedure of disclosure of 'third party' information. It says, if a Public Information Officer (PIO) intends to disclose an information supplied by a third party which the third party has treated as confidential, the PIO, before taking a decision to disclose the information shall invite the third party to make submission in the matter. Section 11(1) specifically requires that a PIO should be send a written notice to the third party by registered post, so that there is a record on file of when it was sent and to ensure that the notice does actually reach the third party, inviting them to make a submission. It can also be faxed. If the third party makes an oral submission at that time, the PIO should capture that response in writing, to maintain record on file of the third party's comments. This will be important in case of filing appeal against the PIO's decision. A third party has 10 days to make their submission and a PIO can accordingly take an additional 10 days to process a request and send out a decision notice.

Whether or not a response is received, where a third party has been given an opportunity to make a representation, the PIO must make a decision regarding whether or not to disclose the information within no more than 40 days.

Refusal of a third party to consent to disclosure does not automatically mean that the PIO should decide that the application should be rejected and the information should be withheld. Section 7(7) and section 11(1) of the Act only state that a PIO shall take into consideration the representations made by a third party before making a decision. However, the final decision still rests with the PIO. Even if a third party claims confidentiality, a PIO cannot reject an application for information unless an exemption under section 8 or 9 applies and the public interest does not weigh in favour of disclosure.

The third party has a right to make an appeal to the Departmental Appellate Authority against the decision of the PIO and in case, he is not satisfied with the decision of the Departmental Appellate Authority, he also has right to make a second appeal to the concerned Information Commission. The PIO cannot disclose such information unless the procedure prescribed in section 11 is completed. It is a statutory requirement, non-compliance of which may make the PIO liable to action.

3.3.7.1 Public Information Officer Should Follow The Procedure As Given In Section 11 While Disclosing Third Party Information

As stated under section 11 when he “**intends to disclose any information or record**”. “This means that the PIO has come to the conclusion that the information is not exempt as per the provisions of the RTI Act.”⁶⁴

Section 11 only gives the third party an opportunity to voice its objections to disclosing information. “It is clearly stated at Section 11 (1) that ‘submission of third party shall be kept in view while taking a decision about disclosure of information. The information ‘which relates to or has been supplied by a third party and has been treated as confidential by that third party’.

⁶⁴Anita singh v Ministry of external affairs; Appeal No. CIC/SG/A/2012/000879

Thus the procedure of Section 11 comes into effect if the PIO believes that the information exists and is not exempt, and the third party has treated it as confidential. The PIO must send a letter to the third party within 5 days of receipt of the RTI application.”⁶⁵

Section 11 does not provided any exemption for disclosure of third party information. The “PIO will keep these in mind and denial of information can only be on the basis of exemption under Section 8 (1) of the RTI act. As per Section 11 (3), the PIO has to determine the whether the information is exempt or not and inform the appellant and the third party of his decision. If the third party wishes to appeal against the decision of the PIO, he can file an appeal under Section 19 of the Act as per the provision of Section 11 (4).”⁶⁶

Section 11 does not provided third party an unrestrained veto to refuse disclosing information. “It clearly anticipates situations where the PIO will not agree with the claim for non-disclosure by a third party and provides for a appeal to be made by the third party against disclosure, which would have been unnecessary, if the third party had been given a veto against disclosure.”⁶⁷

“Thus the PIO is expected to follow the procedure of Section 11, when he intends to disclose the information but has some reason to believe that the third party treats it as confidential. If the third party sends an objection, the PIO has to determine whether the information is exempt under the provisions of the Act.”⁶⁸

3.3.7.2 Disclosure Of Third Party Information Protected By Law

Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, is exempt from disclosure. Such information should not be disclosed unless the competent authority is satisfied that larger public interest warrants the disclosure of such information.⁶⁹

3.4 SUMMARY

Partial disclosure of information allowed under the RTI Act by applying the doctrine of severability and after applying the public interest test third party disclosure may be allowed by the PIO. It is provided by the Act that the information exempted by the Act shall not be disclosed but the material on the basis of which that decision has to be taken may be disclosed. The purpose is to make aware the people about policy making process.

In this unit we discussed that Section 11 of the Act only provided the procedure that must be followed during the disclosure of third party information. It does not gives right to public authority to withhold the third party information. Section 11 of the RTI Act tells the procedure followed by the PIO while processing a request made by first party seeking information about

⁶⁵Ibid; Decision No. CIC/SG/A/2012/000879/18681

⁶⁶Ibid;

⁶⁷Ibid;

⁶⁸Ibid; Taken from decision by Shailesh Gandhi, Central Information Commissioner; 01 May 2012

⁶⁹Proviso; section 11 (1) ,RTI Act, 2005

the third party. In short following criteria must be met before processing any request under section 11:

- The PIO must be intending to disclose the information;
- The information relates to a third party viz. medical records of a person held at government hospital, copies of electricity and water bills, income tax return held by a public authority or an assessment by a government regulator of 5 a company's financial stability or the information has been provided to a public authority by a third party, for example, individual income tax returns, tender bids or complaints from whistleblowers to vigilance officials about corruption.
- The information has been treated as confidential by the third party.

The PIO is the person responsible for finally making a decision in any of the following possible ways:

- The PIO can assume that the third party has no objection to disclosure, if the third party does not make a representation despite the efforts of the PIO to contact them.
- If the third party makes a representation but says that they have no objection to disclosure, then the PIO may disclose the information.
- If the third party makes a representation against disclosure, the PIO has to consider this objection in light of the exemptions in section 8(1) and the public interest override in section 8(2) of the RTI Act. If the objections of the third party can be justified, the PIO will issue a rejection order to the requester accompanied by details of appeal rights.
- If the third party makes a representation against disclosure and the PIO nonetheless finds either that no exemption applies or an exemption applies but the public interest warrants disclosure, the PIO must give the third party a notice of his decision to disclose the information, along with details of any appeal rights. The PIO should not disclose the documents or records in question to the requester until any appeal is dealt with or the time for lodging an appeal has passed.

3.5 GLOSSARY

1. Section 19 (1): —(1) Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority: Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.
2. u/s: It means under section.

3. PIO: The Public Information Officer, to whom the request for information be made.

3.6 SAQS

1.SHORT ANSWER QUESTIONS

- (i) On which doctrine the section 10 of the Act is based?
- (ii) Is medical details of a patient held in a government hospital, considered a third party information?
- (iii) Is third party has a right to make an appeal against the decision of PIO?

1. FILL IN THE BLANKS-

- (i) Third party information protected bycannot be disclosed.
- (ii) The PIO cannot disclose such information unless the procedure prescribed in sectionis completed

2. TRUE AND FALSE TYPE QUESTIONS

- (i) Section 11 does not provided third party an unrestrained veto to refuse disclosing information.
(a)True, (b) False.
- (ii) Section 11 provided exemption for disclosure of third party information.
(a)True, (b) False.

3.7 REFERENCES

5. Bare Act, The Right to Information Act, 2005
6. http://www.humanrightsinitiative.org/publications/rti/third_parties_appl_appeals.pdf

3.8 SUGGESTED READINGS

1. Bare Act, The Right to Information Act, 2005
2. Dr. Neelam Kant, 2014, published by Orient Publishing Company
3. Right to Information Law in India by N.V. Paranjape
4. Right to Information Act, 2005 by Jitesh Dhanrajani

3.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

- 3.9.4.1 What is the doctrine of severability? How does it applied on the RTI Act?
- 3.9.4.2 What do you understand by the term 'third party'?

3.9.4.3 Medical records of person held in a government hospital cannot be provided to other person but the record of expenses occur during the treatment can be provided under the provision of RTI Act. Comment.

3.9.4.4 Explain the procedure about the disclosure of third party information.

3.10 ANSWER SAQS

3.10.4.1 (i) Doctrine of severability; Refer 3.3.2.1 (ii) Yes ;Refer 3.4 (iii) Yes;
Refer 3.3.4

3.10.4.2 (i) law; Refer 3.3.5.2 (ii) 11; Refer 3.3.5

3.10.4.3 (i) True; Refer 3.3.4.1 (ii) False; Refer 3.3.4.1

Terminal questions and Model questions

1. Refer 3.3.1 and 3.3.2
2. Refer 3.3.4
3. Refer 3.3.2 and 3.3.3
4. Refer 3.3.5 and 3.3.5.1

UNIT 4

APPEAL FOR SEEKING INFORMATION.

STRUCTURE

4.1 INTRODUCTION

4.2 OBJECTIVES

4.3 SUBJECT

4.3.1 Complaint to the Commission

4.3.2 Procedure for action by the Commission under Section (18) of the Act

4.3.3 Appeal: meaning and its scope

4.3.4 First Appeal

4.3.5 Rules for First appeal before the Departmental Appeal Officer

4.3.6 First Appeal: How to file First Appeal?

4.3.7 Second Appeal

4.3.8 Rules for Second appeal before the State Information Commission

4.3.9 Contents of Appeal

4.3.10 Documents to accompany appeal

4.4 SUMMARY

4.5 GLOSSARY

4.6 SAQS

4.7 REFERENCES

4.8 SUGGESTED READINGS

4.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

4.1 INTRODUCTION

In the previous unit you have studied about the disposal of information request in which you came to know about the process of disposal along with the fee provisions. After receiving the information from the Public Information Officer the applicant may be fully satisfied with the obtained information or he may be partially satisfied and in some cases applicant is totally dissatisfied with the information received or some cases the information is never given to the applicant and it is against the spirit of the Right to Information Act, 2005.

In The Right to Information Act, 2005 provisions of first appeal and second appeal have been given in section 19 of the Act. There are two types of appeals provided in the Act that can be preferred by the applicant. The first one is the first appeal under section 19 (1) of the Act. It is a departmental appeal that is to be filed in the concerned department and the appellate officer is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be. After feeling aggrieved from the order of the first appellate officer or in case of non compliance of its order applicant can prefer a second appeal under section 19(3) before The Central Information Commission or State Information Commission as the case may be. There is specified time limit to file first appeal or second appeal but relaxation can be given by condoning the delay by the appellate authorities.

In any legal system, appeal procedure is recognized as very important tool in the hand of aggrieved applicant. Same has been recognized and incorporated under section 19 of the RTI Act. In this unit you are going to be familiar with the process of first appeal and second appeal and also know about the complaint under section 18 of the Act. This chapter will deal with various aspects of first appeal and second appeal when the applicant prefers for seeking information but is not satisfied with any of the reason.

4.2 OBJECTIVES

After studying this unit you will be able to:-

- Know about the complaint under section 18 of the Act
- Understand first appeal and second appeal provided in the Act.
- Learn how to file first appeal.
- Learn how to file second appeal.
- Know how and when to file second appeal.
- Understand the provisions and process of the appeals.

4.3.1 Complaint to the Commission

Section 18 of the Right to Information Act, 2005 lays down the powers and functions of the Central/State Information Commission to receive complaints from the public. It shall be the

duty of the Central Information Commission or State Information Commission as the case may be, to receive and inquire into a complaint from any person,-

- (a) who has been unable to file application for information as no PIO has been appointed or the APIO refuse to accept his application or appeal to forward its senior officer.
- (b) Who has been refused access to any information requested under this Act;
- (c) Who has not been given a response to a request for information or access to information within the time limit specified under this Act;
- (d) Who has been required to pay an amount of fee which he or she consider unreasonable;
- (e) Who believes that he or she has been given incomplete, misleading or false information under this Act, and
- (f) In respect of any other matter relating to requesting or obtaining access to records under this Act.

After receiving the complaint under the Act the Central/State Commission may inquire into the matter and dispose of according to the provisions of the Act and direct the PIO further for compliance of their orders.

4.3.2 Procedure for action by the Commission under Section (18) of the Act

According to Uttarakhand Right to Information Rules, 2013 following procedure is to be adopted by the Commission into the complaint filed under section 18 of the Act.

- (a) The Commission shall enquire into the complaint filed for reasons mentioned in clause (a) to (f) of section 18 (1) of the Act.
- (b) The complainant shall clearly indicate in his complaint the ground or grounds under which clause (a) to (f) of sub section (1) of section (18), the complaint has been lodged.
- (c) The copy of the complaint shall be sent the Public Information Officer or Principal Public Authority, as the case may be, and they will be given an opportunity to present their case in writing, on the complaint.
- (d) The Commission may take evidence and call and inspect such records which are necessary for enquiring into the complaint.
- (e) The Commission may, inquire into the complaint and impose penalty to punish the Public Information Officer who contravenes the provisions of the Act, as per section 20 of the Act.
- (f) While inquiring into a complaint the Commission may recommend disciplinary action against a Public Information Officer who persistently violates the provisions of the Act.

4.3.3 Appeal: meaning and its scope

An appeal in legal parlance means the removal of cause from an inferior subordinate to a superior tribunal or forum in order to test and scrutinize the correctness of the impugned decision.

Section 19 of the Right to Information Act provides for procedure of appeal. The first appeal lies to an officer holding a superior rank to that of Central Public Information Officer or State Public Information Officer as the case may be, within 30 days from the receipt of the impugned order. The second appeal lies to Central Information Commission or State Information Commission as the case may be. The appeal time is 90 days from the date of receipt of the order from the first appellate authority.

4.3.4 First Appeal

Section 19(1), Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub section (3) of Section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may, within 30 days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or the State Public Information Officer, as the case may be, in each public authority:

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

Section 19(2), where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under Section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

4.3.5 Rules for First appeal before the Departmental Appeal Officer

Rule 8 of the Uttarakhand Right to Information Rules, 2013 provides the First appeal before the Departmental Appeal Officer as follows:

- (a) While preferring an appeal against Public Information Officer's disposal order under section 19 of the Act, the applicant shall have to enclose a copy of a request letter and the letter of disposal of request letter by Public Information Officer. The grounds of appeal shall be clearly mentioned in the Appeal.
- (b) In case of disclosure of third party information, order of Public Information Officer, information required from the third party and the statement made by the third party shall be enclosed with the appeal.
- (c) The views of the Public Information Officer, if required, shall be taken by the First Appeal Officer. The appellant may be directed to present himself, if so required, for proper disposal of appeal.
- (d) The First Appeal Officer shall decide the appeal within 30 days as far as possible and may dispose off the first appeal within a period not more than 45 days. The reason for extending the time limit shall be recorded.

- (e) The First Appeal officer, while hearing the appeal shall inquire about the refusal of the disclosure of personal information.
- (f) While considering the appeal the First Appeal Officer shall satisfy himself whether 'information' sought by the applicant can be disclosed or not.
- (g) The required information not being clearly identified the First Appeal Officer shall direct the applicant to clearly identify the required information in writing or after inspecting the concerned records of the Public Authority.
- (h) The First Appeal Officer shall record his comments on the points indicated in the above mentioned sub-rules in the decision on the appeal and shall direct the Public Information Officer to disclose the information which is not exempted from the disclosure.

4.3.6 First Appeal: How to file First Appeal?

Step 1. Find details of the First Appellate Authority:

As per section 7(8) of the Right to Information Act, 2005, PIO must provide the details of First Appellate Authority. But in case PIO didn't provide the details, the details can be obtained in following ways:

- (a) From the website of the Public Authority.
- (b) From the office of the PIO.
- (c) The first appeal may be sent to APIO, who shall forward it to the First Appeal Authority.
- (d) You can send First appeal to the PIO, who shall forward it to the First Appeal Authority. It may be addressed as "the First Appellate Authority under RTI Act, 2005"

Step 2. Check the Appeal procedure of respective Public Authority.

- (a) There is no uniform procedure that contains details and format of filing appeal among all Central Public Authorities and State Public Authorities.
- (b) Before filing appeal go through appeal procedure of Public Authorities for First appeal fee, and format of appeal (if any).

Step 3. Write First Appeal.

- (a) If you are filing the appeal with delay then pray for condoning the delay with the reason of delay.
- (b) Mention clearly what you want and how you are aggrieved from the PIO.
- (c) Write your preference for attending Personal Hearing during disposal of appeal by first appellate authority. Appellant is not bound to attend personal hearing and may authorize any other person to appear on his behalf if needed.

Step 4. Particulars of the Appellant: Following particulars of the appellant shall be provided in the memo of appeal.

(Signature of Appellant)

Name:.....

Address:.....

E-mail:.....

Contact No:.....

Step 5. Enclose self attested copies of following documents along with first appeal:

- Copy of RTI Application
- Copy of Reply from PIO (if received)
- Copy of proof of filing RTI Application.
- Any other documents supporting your grounds and pleadings in appeal.

4.3.7 Second Appeal:

Second appeal under RTI is the highest appeal under RTI Act,2005. Section 19(3) of the RTI Act provides to citizen right to Second Appeal before Central Information Commission or State Information Commission, as the case may be, against the order on First Appeal. Anybody who is dissatisfied with the decision of the First Appellate Authority can file Second Appeal to the Information Commission at the Centre or respective States. For issues related to Central Government public authorities, you need to send your appeal to the Central Information Commission and for the matters related to State Government public authorities, send your appeal to concerned State Information Commission.

Section 19(3) of the Right to Information Act, 2005 provides that a second appeal against the decision under sub-section (1) shall lie within 90 days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission:

Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause for filing the appeal in time.

Other provisions provided in the Section 19 are as follows:-

(4). If the decision of the Central Public Information officer or the State Public Information officer, as the case may be, against which the appeal is preferred relates to information of a third party, the Central Information Commission or the State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.

(5). In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information officer or State Public Information officer, as the case may be, who denied the request.

(6). An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.

(7). The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding.

(8). In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to-

- (a) Require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including-
- (i) by providing access to information, if so requested, in a particular form;
 - (ii) by appointing a Central Public Information officer or State Public Information officer, as the case may be;
 - (iii) by publishing certain information or categories of information;
 - (iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;
 - (v) by enhancing the provision of training on the right to information for its officials;
 - (vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) Section 4;
- (b) require the public authority to compensate the complainant for any loss or other detriment suffered;
- (c) impose any of the penalties provided under this Act;
- (d) reject the application.

(9). The Central Information Commission or State Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority.

(10). The Central Information Commission or State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed.

4.3.8 Rules for Second appeal before the State Information Commission

Rule 9 of the Uttarakhand Right to Information Rules, 2013 provides the rules regarding second appeal in information commission, some of the important rules are as follows:-

- (a) While preferring second appeal the appellant shall enclose copies of applicant's request letter, letter of disposal of request letter of PIO, order of disposal by First Appeal Officer along with applicant's second appeal. It is necessary to mention clearly the grounds of second appeal.
- (b) On filing the second appeal by the appellant the Commission shall adopt the following procedure:
 - (i) The concerned PIO and Departmental appeal officer as, required shall be made respondents.
 - (ii) The PIO and the first appeal officer shall be given opportunity to submit their replies in writing
 - (iii) The Commission in the Second Appeal shall inquire whether the First Appeal Officer as per provisions of the Act, directed the PIO to release information to the applicant or not, the PIO released the information in time or not.
 - (iv) The State Information Commission, while deciding an appeal may:-
 - (A) Receive oral or written evidence on oath or on affidavit from concerned or interested persons;
 - (B) Peruse or inspect documents, public records or copies thereof;
 - (C) Inquire through authorized officer further details or facts; and
 - (D) Receive evidence on affidavits from the Public Information Officer, Assistant Public Information Officer, First Appellate authority and any such other person against whom the appeal lies or the third party.

The Commission shall send first notice to the concerned person by registered post/speed post thereafter subsequent notice to concerned person shall be served in the following way:-

- (i) through the party itself;
- (ii) through the server by hand;
- (iii) by ordinary post, or
- (iv) through Head of Office or Head of the Department.
- (v) by E-mail through internet or by SMS.
- (vi) by registered post with acknowledgment due or speed post.

Following procedure shall be adopted by the Commission for hearing the appellant or the parties:-

(I) The appellant or the respondent, as the case may be, may take assistance of any person for the purpose of presenting his case in the process of Appeal.

(II) The orders of the Commission shall be delivered in open and shall be authenticated in writing by the officer or secretary authorized in this behalf.

(III) After the order of the Commission is passed it will be uploaded by the Commission on its website as early as possible.

4.3.9 Contents of Appeal

An appeal to the Commission shall contain the following information namely:-

(i) name and address of the appellant;

(ii) name and address of the Public Information Officer against the decision of whom the appeal is preferred;

(iii) particulars of the order against which the appeal is preferred;

(iv) brief facts leading to the appeal;

(v) prayer or relief sought;

(vi) grounds for the prayer or relief;

(vii) verification by the appellant;

(viii) any other information which the Commission may deem necessary for deciding the appeal.

It is important to note that the website of the Commission may be checked before filing Second Appeal in order to know the requirements of the concerned Commission.

4.3.10 Documents to accompany appeal

(i) self attested copies of the of the orders or documents against which the appeal is being preferred;

(ii) copies of documents relied upon by the appellant and referred to in the appeal; and

(iii) an index of the documents referred to in the appeal.

In some Information Commissions the memo of appeal along with the documents is to be submitted in duplicate, while some ask in triplicate.

4.4 SUMMARY

Section 18 of the Right to Information Act, 2005 lays down the powers and functions of the Central/State Information Commission to receive complaints from the public. The Commission shall enquire into the complaint filed for reasons mentioned in clause (a) to (f) of section 18 (1) of the Act. The Commission may, inquire into the complaint and impose penalty to punish the Public Information Officer who contravenes the provisions of the Act, as per section 20 of the Act.

Appeal procedure is recognized as very important tool in the hand of aggrieved applicant. Same has been recognized and incorporated under section 19 of the RTI Act. Section 19 of the Right to Information Act provides for procedure of appeal. The first appeal lies to an officer holding a superior rank to that of Central Public Information Officer or State Public Information Officer as the case may be, within 30 days from the receipt of the impugned order. The second appeal lies to Central Information Commission or State Information Commission as the case may be. The appeal time is 90 days from the date of receipt of the order from the first appellate authority. According to Section 19(1), Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub section (3) of Section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer. Section 19(3) of the Right to Information Act, 2005 provides that a second appeal against the decision under sub-section (1) shall lie within 90 days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission.

4.5 GLOSSARY

PIO- Public Information Officer as defined in the Act.

APIO- Assistant Public Information Officer.

First Departmental Appeal Officer means the officer designated under section 19(1) for disposal of first appeal filed under sub section (1) of section 19 of the Right to Information Act.

Commission means the Central Information Commission or State Information Commission, as the case may be.

4.6 SAQS

1. Short Answer Questions-

a. Where are the reasons mentioned for which complaint can be filed to the Information Commission under the Right to Information Act, 2005?

b. What is the limitation period for filing first appeal?

2 Fill in the blanks-

A. second appeal against the decision under sub-section (1) shall lie within ----- days.

B. The First Appeal Officer shall decide the appeal within ---- days as far as possible and may dispose off the first appeal within a period not more than ---- days.

3. True/False type questions

1. First appeal can be filed before the Central/State Commission. (True/False)

2. Delay in filing First/Second appeal can be condoned. (True/False)

4.7 REFERENCES

a) website of Uttarakhand State Commission.

b) uic.gov.in/howtoapply/filing.pdf

c) <https://righttoinformation.wiki/guide/applicant/second-appeal/cic>

d) <http://rtiact2005.com/second-appeal-under-rti/>

e) <https://righttoinformation.wiki/guide/applicant/first-appeal/faa>

4.8 SUGGESTED READINGS

1. Dr. Neelam Kant, 2014, published by Orient Publishing Company.

2. The Right to Information Act, 2005.

4.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

1. Describe the procedure for action by the Commission under Section 18 of the Act.

2. Write various steps of filing first appeal.

3. write the contents those are to be provided in the memo of Second Appeal.

4.10 ANSWERS

SAQS

1. (a) Refer 4.3.2 (clause a of sub section 1 of section 18),

(b) 30 days.

2. (A) 90 days, (B) 30 and 45.

3. (1) False (2) True

Terminal Questions and Answers

(1). Refer 4.3.2, (2) 4.3.6 (3) 4.3.9

UNIT 5

VARIOUS APPLICATIONS.

STRUCTURE

5.1 INTRODUCTION

5.2 OBJECTIVES

5.3 SUBJECT

- 5.3.1 The Aim and applicability of the Act
- 5.3.2 How to file RTI application ?
- 5.3.3 How to write effective RTI application?
- 5.3.4 Samples of RTI application

5.4 SUMMARY

5.5 GLOSSARY

5.6 SAQS

5.7 REFERENCES

5.8 TERMINAL QUESTIONS AND MODEL QUESTIONS

5.9 ANSWERS

5.1 INTRODUCTION

Most of us are now aware of the tool called RTI as Right to information is very effective tool of obtaining information. But how many of us have actually filed an RTI Application? It is observed that most of the people who need some significant public information are afraid to file an RTI application just because they do not know “How to start”.

We often sit down to draft an RTI application in an angry mood, we fail to think clearly about the items of information that we need and think to stop some wrongdoings, getting some officials penalized, making the authorities answerable for negligence. Instead we should ask for the desired information and do not show our eagerness or purpose to file application. No Public Information Officer can ask the reason of filing the application under RTI.

According to RTI act there is no specific format mentioned “How should an RTI application should look like or any specific format for required information’s?” Some Public Authorities have devised their own format for the applications for which the applicants may refer to web-sites of those Public Authorities. But there is no compulsion under the law to stick to such proforma. Applications cannot be rejected on the ground that they were not in the prescribed proforma. In this chapter some of the tips to write good RTI application have been illustrated along with some samples of applications but remember that you should customize the sample to suit your RTI application.

5.2 OBJECTIVES

After reading this unit you will be able to:

- Understand about the application to be filed under Right to Information Act.
- Know about the process of filing application.
- Learn from some of the samples given in the chapter.

5.3.1 The Aim and applicability of the Act

It is an Act to provide 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. The Act extends to the whole of India, except the state of Jammu and Kashmir.

5.3.2 How to file RTI application?

The Act prescribes a simple procedure to obtain information. There is no compulsion to stick to any specific format but some necessary particulars may be furnished in the application to obtain information from the public authority.

Step 1. Identify the department you want information from. Various subjects fall under the purview of different public authorities, they may be under state government or the central government.

Step 2. On a sheet of plain paper write out the application by hand or type it in English or Hindi or the official language of the area.

Step 3. Address the application to the State/ Central Public Information Officer. Write the name of the office from which you seek information, and the complete, correct address.

Step 4. State your request in the form of specific particulars and mention the period/year your request falls into. Ask for documents or extracts of documents, if required.

Step 5. Pay Rs. 10 to file the plea. This can be done according to the rules framed by the state government.

Step 6. Provide your full name and address, contact details, email address and sign the application clearly. Put the date and name of your town.

Step 7. Take a photocopy of the application and keep with you for future reference. Send your application by post or by hand it in personally to the department concerned. Don't forget to get the acknowledgment.

5.3.3 How to write effective RTI application?

Some tips are as follows for writing effective RTI application:-

1. *Point to various specific documents, it should look like a shopping-list of documents.*
2. *Name documents using words from Sec 2(f) and Sec 4(1)(b) of the RTI Act – reports, logbooks, emails, advices, rules, regulations, manuals etc. Only after exhausting these should you use other similar names e.g. quality audit reports, correspondence etc. In case this information is denied, the similarity of wordings will help you to convince appellate authorities that your requested information is “records” and “information” that must be mandatorily given.*
3. *Don't ask questions, don't demand explanations, and don't make allegations.* Don't make your application sound like a letter of complaint or a letter-to-the-editor. Don't preface it with a covering letter or an introductory paragraph. RTI applications should be emotionless and bland.
4. Be specific and name the documents that you want copied.

5.3.4 Samples of RTI application

1. SAMPLE OF APPLICATION FOR SEEKING INFORMATION UNDER THE RIGHT TO INFORMATION ACT-2005

To

The Public Information Officer/ Asstt. Public Information Officer,
Public Authority

1. Name of the Applicant : _____

2. Address _____

3. Particulars of information

(a) Concerned Office/Department : _____

(b) Particulars of information required _____

(i) Details of information required : _____

(ii) Period for which information asked for: _____

(iii) Other details _____

4. Format in which information is required:

5. Mode of delivery expected (ordinary post, speed post, by courier, by hand, through internet or e-mail, by fax etc.). Additional fee may be charged to cover the cost of delivery.

6. The information can be furnished within 30 days as prescribed under Section 6 (1)/ the information sought for concerns my life and liberty, therefore the information may be furnished to me within 48 hours (Please delete the inapplicable portion).

7. Without prejudice to my rights under the RTI Act 2005, to facilitate faster retrieval of information, I would like to state that the information could be available in.....(please indicate the name of concerned Office/Department).

8. I state that the information sought does not fall within the restrictions contained in section 8 and 9 of the Act and to the best of my knowledge it pertains to your office.

9. I also state that I am a citizen of India and I am eligible to seek information under the Right to Information Act 2005.

10. (i) A fee of Rs. _____ has been deposited in the Finance & Accounts Office of the office vide Receipt No. _____ dated _____, or (ii) A Postal Order/Bank Draft No. _____ dated _____ is enclosed, or (iii) The

applicant is not liable to pay any fee because he/she is below the poverty line (proof is attached).
(Please tick one and delete the remaining two options)

Place: Date : _____ (Name & Signature)

Postal Address: _____

E-mail address: _____

Tel No. _____

2. SAMPLE RTI APPLICATION

To,

The Public information Officer

PIN: _____

Subject: Request for Information under Right to Information Act 2005.

Sir,

I Sri / Smt /Ms. _____

Son/Daughter/wife of Shri/Smt/Ms. _____ resident
of _____, telephone
number (with STD Code) ____ - _____ and/or mobile number:
_____ wish to seek information as under -----

I hereby inform that following formalities have been completed by me:

1. That I have deposited the requisite fee of Rs. ____/- by way of Cash / banker cheque / Draft /
Postal Order/ others _____) favoring
_____ dated _____.

2. I need the photocopy of the documents and I had deposited the cost of the photocopy of Rs. ____/- for ____ (Number of Pages) or
3. I had deposited sum of Rs. ____/- for the charges of CD. (strike out which ever is not applicable)
4. That I belong to Category of below Poverty Line (BPL): Yes / No (Strike whichever is not applicable). If yes, I am attaching the valid photocopy of the certificate. Yes / No
5. That I am 'Citizen' of India and I am asking the information as 'Citizen'.
6. I assure that I shall not allow/ cause to use/ pass/share/display/ or circulate the information received in any case and under any circumstances, with any person or in any manner which would be detrimental to the Unity and Sovereignty or against the Interest of India.

Signature of the Applicant

Dated:

3. Sample for obtaining information under The Right to Information Act 2005

To:

The State Public Information Officer,

(Name of the office with address)

1. FULL NAME OF APPLICANT :

2. ADDRESS :

3. PARTICULARS OF INFORMATION REQUIRED

4. WHETHER THE APPLICANT IS BELOW POVERTY LINE : (If yes, attach a photocopy of the proof thereof) Place :

Date :
the applicant Affix Court fee stamp of Rs.10/-

Signature of

(i) Subject matter of information :

(ii) (ii) Period to which the information relates :

(iii) (iii) Description of information required : (Details may be attached on additional A4 size paper if required)

(iv) (iv) Whether information is required by post or in person:

(v) (v) In case by post (Ordinary, Registered or Speed) :

4. SAMPLE OF THE APPLICATION

To

The Public Information Officer
Name of Public Authority,
Full Address
PIN Code

Sub: Request for information under Section-6(1) of RTI Act.

Sir,

Please supply me the following information with respect to following examination appeared by me:

Details of Examination:

Employment Notice No. and date:.....
Category No.....
Name of Post:.....
Date of Exam:.....
Centre Name:.....
Roll No.....

Particulars of Information sought:

[1] certified copy of my evaluated answer sheet for theexam detailed above.

[2] Please inform me the total marks obtained by me in above Exam.

[3] Please inform me the cut off marks for General, SC, ST and OBC candidates in above exam.

[4] Please inform me the Total number of candidates qualified in Genl, SC, ST and OBC categories in Tier-I Written Test.

[5] Please inform me the Total number of candidates qualified in Genl, SC, ST & OBC categories in Tier-II Written Test

[6] Please inform me the total number of candidates called for Document verification / Interview

[7] Please inform me the Total number of candidates selected for appointment in Genl, SC, ST & OBC categories

[8] Please inform me the Cut Off marks for Genl, SC, ST & OBC category candidates finally selected and recommended for appointment.

RTI Application Fee of Rs.10/- is attached as

Please send the information to my below address by Registered post.

Yours faithfully,

Signature

Name

Full Address

PIN Code.....

Date:

5. SAMPLE OF THE APPLICATION

To

The Public Information Officer

[Name of Public Authority]

[Full Address]

[Pin Code]

Sub: Request for information under Section-6(1) of RTI Act.

Sir,

Please supply me the following information with respect to proposed construction / construction works being carried out at below mentioned property:

Details of Property/ construction:

Building name:

Plot No:

City survey No:

Ward No:

Street No:

Name of landlord:

Particulars of Information sought:

[1] Certified copy of the Sanctioned building plan with respect to the ongoing construction / proposed construction / additional construction in existing building at above detailed plot / address.

[2] Certified copy of the sanctioned building plan with respect to the ongoing construction works / proposed construction / additional construction beyond Ground+1 floor, if sanctioned by your public authority.

[3] Inform me the name, designation and office address of officers and subordinate staff who verified the parameters of the ongoing construction / proposed construction / additional construction plan, specifically with respect to permissible FSI, Floor plan and structural strength of the existing building to bear the additional load.

[4] certified copy of sanction letter and FSI permitted.

[5] certified copy of commencement letter for the construction of buildings.

[6] certified copy of sanction accorded for construction beyond G+1 (2nd floor onward).

[7] certified copy of the building bylaws or building regulations or any such other document indicating the provision to permit construction beyond 2nd floor in housing schemes falling under the area under your public authority.

[9] Certified copy of the survey map / town planning map indicating the classification of the above mentioned land, (i.e. either residential or commercial or mixed use or green built or public utility space etc.) in which sanction and permissions have been accorded by your public authority.

Application Fee: Rs.10/- towards RTI Application Fee.

Please send the information to my below address by Registered post.

Yours faithfully,

Signature

Name

Full Address

PIN Code:

Date:

6. SAMPLE OF THE APPLICATION

To The Public Information Officer
District Civil Supply Office
.....(Full address)
PIN Code.....

Sub: Request for information under Section-6(1) read with proviso below Section-7(1) of RTI Act.

Sir,

Please supply me the following information under **Life or Liberty** proviso in respect of Ration Card Application details mentioned below:

Details of Ration Card Application:

NFS Application ID/Online Citizen ID No.
Date of Application :
Name of Family Head:
Full address :

Particulars of information required:

[1] certified copy of the note sheet indicating notings by various officials and decision of

competent authority on my application dated submitted to for issue of Ration Card for my family consisting myself, my wife, children.

[2] In case no action is taken till today, please inform me the name, designation and office address of the officer(s) responsible to take action and issue Ration Card in response to the application referred in sr.no.(1) above.

[3] Certified copy of the rules/regulations/circulars/policy/notifications/ government resolution or any such document including the Citizen Charter which stipulates the time limit within which an application for issuance of Ration Card shall be required to be decided by the authority concerned.

[4] In case the Ration Card is sanctioned and endorsed to a Ration Shop, please inform me the Name and address of the Ration Shop including its registration No/Licence No., where I am able to get the Ration Card and able to draw Ration periodically.

I am attaching Application Fee Rs.10/- by way of##

Please note that as per Central Information Commission decision dated 24/03/14 (Kausalya Vs Food & Supply Dept, GNCTD, file No. CIC/AD/A/2012/ 003135-SA & Ors) information about ration card is held to be information' relating to life OR liberty as enumerated in proviso below section-7(1), and hence, **information shall be supplied within forty eight hours.**

Please send the information to my below address by Registered post.

Yours faithfully,

Signature

Name

Address

Pin Code

Date:

5.4 SUMMARY

In this chapter we came to know about the basic knowledge and tips to write an effective application under the Right to Information Act. Perhaps no format has been prescribed by the Act but you should provide details to the concerned Public Information Officer in order to obtain the desired information conveniently. It should be kept in mind that the information requested

may fall within the purview of the definition of the information provided in the Act. No justifications or explanations or interpretations may be expected from the Public Information Officer.

5.5 GLOSSARY

“Information”- The definition of the information is provided in section 2(f) of the Right to Information Act.

5.6 SAQS

Short type Question and Answers

1. Is there any prescribed format of writing application under Right to Information Act?
2. Whether justification, explanation or interpretation of the information may be asked from the Public Information Officer?

5.7 REFERENCES

1. <https://www.iitr.ac.in.in/Main/uploads/File/application.pdf>
2. <https://www.iist.ac.in/sites/default/files/rti/RTI-application-format.pdf>
3. iipsindia.org/pdf/emp_pdf/right-to-information-application-format.pdf
4. <https://righttoinformation.wiki/guide/applicant/application/sample/start>
5. www.thehindu.com/news/cities/Chennai/do-you-know-how-to-file-an-rti-plea/article6160644.ece
6. openspace.org.in/RTIrules

5.8 TERMINAL QUESTIONS AND MODEL QUESTIONS

1. Write an RTI application to the university to obtain the copies of your examination you appeared recently and the result has been declared.

2. Write an RTI application to the concerned department to provide particulars of the vehicles registered in the month of July 2017.

Answers

SAQS

1. No,
2. No.

Application is to be drafted by you according to the requirement and help of the sample can be taken.

UNIT 6

RTI RULES,2013

STRUCTURE

6.1 INTRODUCTION

6.2 OBJECTIVES

6.3 SUBJECT

6.3.1 DEFINITIONS

6.3.2 Prescribing information for self disclosure by the State Government

6.3.3 Language of Application

6.3.4 Procedure for obtaining information

6.3.5 Fees for information

6.3.6 Obligations of State Public Information Officer

6.3.7 First appeal before the Departmental Appeal Officer

6.3.8 Second Appeal in Information Commission

6.3.9 Procedure for action by the Commission under Section (18) of the Act

6.3.10 Recovery of Compensation and Penalty imposed by the Commission

6.4 SUMMARY

6.5 GLOSSARY

6.6 SAQS

6.7 REFERENCES

6.8 TERMINAL QUESTIONS AND MODEL QUESTIONS

6.1 INTRODUCTION

In the previous unit you have studied about the provisions for first appeal and second appeal and got familiar with the conditions and provisions of first appeal and second appeal. There are certain conditions in which first appeal and second appeal may be preferred by the applicant.

The Right to Information Act 2005 provides provisions of first appeal and second appeal and certain rules are framed for various purposes by the Uttarakhand Government in exercise of the powers conferred by sub-section (1) and sub section 2 of section 27 of the Right to Information Act,2005 framed the rules.

In this unit you will study the rules framed for the Right to Information Act, 2005 and these rules may be called Uttarakhand Right to Information Rules, 2013. The important rules regarding procedure for obtaining information, fees for information, obligation of State Public Information Officer and provisions of appeal are provided therein the rules.

6.2 OBJECTIVES

After studying this unit you will be able to know the following important rules in State of Uttarakhand.

- Know about the definitions provided in the rules.
- Learn about the procedure for obtaining information
- Know about the fees for information
- Understand the obligations of State Public Information officer
- Understand the provisions of Appeal
- Know about the procedure of action by the Commission
- Know about the recovery of the compensation and penalty imposed by the Commission

6.3.1 Definitions

Following definitions are given in the rules:-

2(a) “Act” means the Right to Information Act,2005.

(b) “Section” means the section of Right to Information Act, 2005.

(c) “Commission” means the Uttarakhand State Information Commission.

(d) “State Government” means the State Government of Uttarakhand.

(e) “BPL” means the person living below poverty line having an annual income of less than Rs. 12000/- (Rs. Twelve Thousand)

(f) “First Departmental Appeal Officer” means the officer designated under section 19(1) for disposal of first appeal filed under sub section (1) of section 19 of the Right to Information Act.

(g) “Information” means the records held in electronic form, document, memorandum, e-mail, opinion, advice, press note, circular, order, log book, contract, papers, sample, model, material related to data, including any information in any form, any material related to any private body which can be reached by any Public Authority under any other law in force for the time being.

(h) A “Record” includes the following:-

- (a) Any document, manuscript or file,
- (b) Any microfilm, microfiche or facsimile copy of a document,
- (c) Any reproduction of image or images embodied in such microfilm (Whether enlarged or not)
- (d) Any other material produced with the help of a computer or through any other device.

(i) “Right to Information” means the right to information accessible under the Right to Information Act, 2005 which is held by or is under the control of any Public Authority and includes the right to –

- (i) inspect any work, document, record;
- (ii) take notes, extracts or certified copies of documents or records;
- (iii) take certified samples of materials;
- (iv) obtain 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.

(j) Words and expressions used in these rules but not defined here shall have the same meaning as defined in the Right to Information Act, 2005.

6.3.2 Prescribing Information for Self Disclosure by the State Government

According to Rule 3 the State Government may, from time to time, prescribe the information to be disclosed suo moto by any public authority or public authorities and its updation by publishing it in official gazette of the State Government. The prescribed information shall be published by the Public Authority in electronic form within 60 days from the date of prescribing the information. The Public Authority shall interlink the prescribed information for suo moto disclosure in electronic form throughout the country through computer network or

internet. The Public Authority shall update the prescribed information in the form as specified by the State Government.

6.3.3 Language of Application

Application for obtaining information shall be made in Hindi Devanagari script or in English.

6.3.4 Procedure for Obtaining Information

Rule 5 prescribes the procedure for obtaining information

(a) For obtaining 'information' under sub section (1) of section (6) of the Act, an application along with prescribed application fee shall be submitted to the Public Information Officer or Assistant Public Information Officer of the Public authority.

(b) Application for 'information' from citizens other than B.P.L. category, not accompanying the amount of prescribed fee after depositing the prescribed fee the information shall be provided. The PIO shall send a notice to the applicant that the RTI application will be processed only on payment of application fee and that the 30 day time limit will commence upon payment of application fee.

(c) If any requested information is under the custody of other Public Authority and if any relating information is under his Public Authority then that information shall be provided and the application to be transferred to another Public Authority for the information under his custody.

Provided that in case the number of other Public Authorities is two or more, the application shall not be transferred, instead, after, providing the information under the custody or control of his Public Authority the applicant shall be asked to apply separately to the concerned Public Information Officers for remaining information.

(d) If it is not clear to which Public Authority's custody or control the information is available, the PIO providing information under his custody shall return the application to the applicant for remaining information and inform him of the situation.

(e) On request for information other than defined in the Act, the Public Information Officer shall inform the applicant that the information is not held.

(f) In case the 'information' requested in the application not being clearly identified within a week after receiving the application, the Public Information Officer shall inform the applicant for clearly identifying the required information by letter or by inspecting the disclosable 'information' of the Public Authority.

(g) In case of non acceptance of request for providing information the Public Information Officer shall inform the applicant the reason for non acceptance of his request mentioning the

relevant provisions of the Act and the Rules. The Pao shall provide the particulars of the first appeal officer also.

(h) The information required by the applicant shall be provided in the same form in which it has been asked unless the resources of the Public Authority are disproportionately diverted in providing the information or is detrimental to the safety or preservation of records of the required information.

6.3.5 Fees for Information

- ❖ A request for obtaining information under sub-section(1) of section 6 shall be accompanied by an application fee of rupees 10 by way of cash against proper receipt or by non judicial stamp paper or treasury challan or demand draft or bankers cheque or Indian Postal Order payable to the Public Information Officer or Assistant Public Information Officer of the concern Public Authority.
- ❖ For providing the information under sub section (3) of section 7, the fee shall be charged by way of cash against proper receipt or by non judicial stamp paper or treasury challan or demand draft or bankers cheque or Indian Postal Order payable to the Public Information Officer of the Public Authority at the following rates:-

- Rupees two for each page (in A4 or A3 size paper) created or copied; and actual charges or cost price of a copy in larger size paper;
- For inspection of records, no fee for the first hour; and a fee of rupees five for each subsequent hour (or fraction thereof) ;
- Actual cost or price for samples or models.

But no fee shall be charged from the person of below poverty line.

- ❖ For providing the information under sub-section (5) of section 7, the fee shall be charged by way of cash against proper receipt or by non judicial stamp paper or treasury challan or demand draft or bankers cheque or Indian Postal Order payable to the Public Information Officer of the Public Authority at the following rates:-
- For information provided in C.D./D.V.D. rupees twenty per C.D./D.V.D; and
- For information provided in printed form at the price fixed for such publication or rupees two per page of photocopy for extracts from the publication.

Fee for the persons of below poverty line are as following,-

- If the desired information, belong to the applicant or his family members then the information shall be provided free of cost.
- If it belongs to another person than the applicant or his family members then 50 pages (A-4 size) or if it can be prepared in Rs. 100 then it shall be

provided without any fee. If desired information is more than this limit then person of below poverty line shall be permitted to inspect records, take notes or photocopies at his own cost.

But persons of below poverty line shall have to accompany self attested copy of the BPL card along with the application.

6.3.6 Obligations of State Public Information Officer

Rule 7 provides of the obligations of the State Public Information Officer as follows:-

- (a) The applicant, as far as possible, shall be informed about the additional fees mentioned as above within a week from the date of receipt of application.
- (b) Third party information shall be provided to the applicant as per the procedure prescribed in section 11 of the Act.
- (c) The information mentioned under section 8(1) of the Act, which is exempted from disclosure shall not be provide provided that in the larger public interest Public Authority may allow access to the information.
- (d) Personal information under section 8 (1)j of the Act not related to public activities or public interest or the disclosure of which amounts to undesirable invasion of privacy of any person, shall not be disclosed, except it is satisfied that in the larger public interest the disclosure of such information is justified.

6.3.7 First appeal before the Departmental Appeal Officer

Rule 8 provides the First appeal before the Departmental Appeal Officer as follows:

- (j) While preferring an appeal against Public Information Officer's disposal order under section 19 of the Act, the applicant shall have to enclose a copy of a request letter and the letter of disposal of request letter by Public Information Officer. The grounds of appeal shall be clearly mentioned in the Appeal.
- (k) In case of disclosure of third party information, order of Public Information Officer, information required from the third party and the statement made by the third party shall be enclosed with the appeal.
- (l) The views of the Public Information Officer, if required, shall be taken by the First Appeal Officer. The appellant may be directed to present himself, if so required, for proper disposal of appeal.
- (m) The First Appeal Officer shall decide the appeal within 30 days as far as possible and may dispose off the first appeal within a period not more than 45 days. The reason for extending the time limit shall be recorded.
- (n) The First Appeal officer, while hearing the appeal shall inquire about the refusal of the disclosure of personal information.
- (o) While considering the appeal the First Appeal Officer shall satisfy himself whether 'information' sought by the applicant can be disclosed or not.

- (p) The required information not being clearly identified the First Appeal Officer shall direct the applicant to clearly identify the required information in writing or after inspecting the concerned records of the Public Authority.
- (q) The First Appeal Officer shall record his comments on the points indicated in the above mentioned sub-rules in the decision on the appeal and shall direct the Public Information Officer to disclose the information which is not exempted from the disclosure.

6.3.8 Second Appeal in Information Commission

Rule 9 provides the rules regarding second appeal in information commission, some of the important rules are as follows:-

- (c) While preferring second appeal the appellant shall enclose copies of applicant's request letter, letter of disposal of request letter of PIO, order of disposal by First Appeal Officer along with applicant's second appeal. It is necessary to mention clearly the grounds of second appeal.
 - (d) On filing the second appeal by the appellant the Commission shall adopt the following procedure:
 - (r) The concerned PIO and Departmental appeal officer as, required shall be made respondents.
 - (ii) The PIO and the first appeal officer shall be given opportunity to submit their replies in writing
 - (iii) The Commission in the Second Appeal shall inquire whether the First Appeal Officer as per provisions of the Act, directed the PIO to release information to the applicant or not, the PIO released the information in time or not.
 - (iv) The State Information Commission, while deciding an appeal may:-
 - (E) Receive oral or written evidence on oath or on affidavit from concerned or interested persons;
 - (F) Peruse or inspect documents, public records or copies thereof;
 - (G) Inquire through authorized officer further details or facts; and
 - (H) Receive evidence on affidavits from the Public Information Officer, Assistant Public Information Officer, First Appellate authority and any such other person against whom the appeal lies or the third party.
- The Commission shall send first notice to the concerned person by registered post/speed post thereafter subsequent notice to concerned person shall be served in the following way:-
- (i) through the party itself;
 - (ii) through the server by hand;

- (iii) by ordinary post, or
- (iv) through Head of Office or Head of the Department.
- (v) by E-mail through internet or by SMS.
- (vi) by registered post with acknowledgment due or speed post.

Following procedure shall be adopted by the Commission for hearing the appellant or the parties:-

(I) The appellant or the respondent, as the case may be, may take assistance of any person for the purpose of presenting his case in the process of Appeal.

(II) The orders of the Commission shall be delivered in open and shall be authenticated in writing by the officer or secretary authorized in this behalf.

(III) After the order of the Commission is passed it will be uploaded by the Commission on its website as early as possible.

6.3.9 Procedure for action by the Commission under Section (18) of the Act

Following procedure is to be adopted by the Commission into the complaint filed under section 18 of the Act.

- (g) The Commission shall enquire into the complaint filed for reasons mentioned in clause (a) to (f) of section 18 (1) of the Act.
- (h) The complainant shall clearly indicate in his complaint the ground or grounds under which clause (a) to (f) of sub section (1) of section (18), the complaint has been lodged.
- (i) The copy of the complaint shall be sent the Public Information Officer or Principal Public Authority, as the case may be, and they will be given an opportunity to present their case in writing, on the complaint.
- (j) The Commission may take evidence and call and inspect such records which are necessary for enquiring into the complaint.
- (k) The Commission may, inquire into the complaint and impose penalty to punish the Public Information Officer who contravenes the provisions of the Act, as per section 20 of the Act.
- (l) While inquiring into a complaint the Commission may recommend disciplinary action against a Public Information Officer who persistently violates the provisions of the Act.

6.3.10 Recovery of Compensation and Penalty imposed by the Commission:

In the rules the provisions of recovering penalty and the procedure therein has been provided. It has been provided that the penalty imposed or compensation imposed on PIO may be recovered on expiry of three months period from the date of the order passed.

Upon passing an order the copy of such order shall be provided by the Commission itself to the Public Authority for the purpose of the recovery who will send acknowledgement of the same to the Commission indicating that the compensation amount has been noted for the payment. After receiving the order, the responsibility of recovering the penalty or compensation shall be of Public Authority.

Rule 12 states about the power to remove difficulties if any arises in effective implementation of these rules the State Government may pass such orders as may be necessary and expedient to remove such difficulties. Rule 13 provides for the repeal and savings i.e. The Uttarakhand Right to Information Rules, 2012 are hereby repealed and notwithstanding the Uttarakhand Right to Information Rules, 2012 being repealed, any act done or document issued under the said rules, unless not inconsistent with these rules, shall be deemed to be done on issued under these rules.

6.4 SUMMARY

The State Government of Uttarakhand has framed rules for the implementation of the Right to Information Act, 2005 as provided in the Act. The rules of 2012 have been repealed and the Uttarakhand Right to Information Rules, 2013 are in existence today. The rules provide various definitions in its definition clause as enumerated above. The rules provides for prescribing information for self disclosure by the state government in rule no. 3. It is provided in the rules that language of the application for seeking information under the Act shall be in Devanagari script or in English for the State of Uttarakhand. Procedures for obtaining information as well as fees for information and exemptions have been given in the rules in detail. The rules provide for the obligations of State Public Information officer that how they have to deal with various conditions for the application received to him. Procedure for First appeal before the Department Appeal Officer, second appeal before the Information Commission along with the procedure for dealing complaint have been prescribed in the rules. The rules also provide procedure for the recovery of compensation and penalty imposed by the Commission.

6.5 GLOSSARY

PIO- Public Information Officer as defined in the Act.

APIO- Assistant Public Information Officer.

First Departmental Appeal Officer means the officer designated under section 19(1) for disposal of first appeal filed under sub section (1) of section 19 of the Right to Information Act.

Commission means the Uttarakhand State Commission.

6.6 SAQS

1. Short Answer Questions-

- a. What do you understand by the word Commission used in the Chapter?
- b. What are the charges prescribed in the rules for inspection of record under the Rules?

2 Fill in the blanks-

- C. ----- fee shall be charged from the person of below poverty line.
- D. The First Appeal Officer shall decide the appeal within ---- days as far as possible and may dispose off the first appeal within a period not more than ---- days.

6.7 REFERENCES

- a) website of Uttarakhand State Commission.
- b) The Right to Information Act, 2005.

6.8 TERMINAL QUESTIONS AND MODEL QUESTIONS

1. Describe procedure for obtaining information as prescribed under the Rules.
2. Describe in detail the procedure of first appeal before the Departmental Appeal Officer.
3. What is Procedure for action by the Commission in case of the complaint made under the Act?

Answers

SAQS

1. (a)Refer 6.3.1, (b)6.3.5
2. (A) No, (B) 30 and 45.

Terminal Questions and Answers

- (1).Refer 6.3.4, (2)6.3.7 (3) 6.3.9

UNIT 7

CONSTITUTION OF CENTRAL AND STATE INFORMATION COMMISSIONS

STRUCTURE

7.1 INTRODUCTION

7.2 OBJECTIVES

7.3 SUBJECT: CENTRAL AND STATE INFORMATION COMMISSION

7.3.1 Constitution of Central Information Commission

7.3.2 Term of Office and Conditions of Service of Chief Information Commissioner or a Central Information Commissioner

7.3.3 Removal of Chief Information Commissioner or Information Commissioner

7.3.4 Constitution of State Information Commission

7.3.5 Term of Office and Conditions of Service of State Chief Information Commissioner or an State Information Commissioner

7.3.6 Removal of State Chief Information Commissioner or State Information Commissioner

7.4 SUMMARY

7.5 GLOSSARY

7.6 SAQS

7.7 REFERENCES

7.8 SUGGESTED READINGS

7.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

7.10 ANSWERS

7.1 INTRODUCTION

In this Unit students will learn about constitution and composition of Central Information Commission and State Information Commissions. The Central Information Commission (CIC), under this Act, shall consist of *one Chief Information Commissioner, who will head the Commission, and such number of Central Information Commissioners, as may be deemed necessary, but not exceeding ten.* On 26th October 2005, Mr. *Wajahat Habibullah* became India's first Chief Information Commissioner. At present (as on 1 Jan. 2018) Shri Radha Krishna Mathur is Chief Information Commissioner.

Similarly, this Act also provides for mandatory constitution of State Information Commissions at State level as a designated authority to receive and inquire into a complaint from any person. The State Information Commission, under this Act, shall consist of *one State Chief Information Commissioner, who will head the Commission, and such number of State Information Commissioners, as may be deemed necessary, but not exceeding ten.*

7.2 OBJECTIVES

After reading this Unit you will be able to:

- (i) Know the constitution and composition of Central Information Commission (CIC) and State Information Commissions (SICs).
- (ii) Learn about term of office and conditions of service of Chief Information Commissioner/*State Chief Information Commissioner* and Central Information Commissioners/*State Information Commissioners*.
- (iii) *You will know the process of removal of Chief Information Commissioner/State Chief Information Commissioner or any Central Information Commissioner/State Information Commissioners.*

7.3 SUBJECT: CENTRAL AND STATE INFORMATION COMMISSION

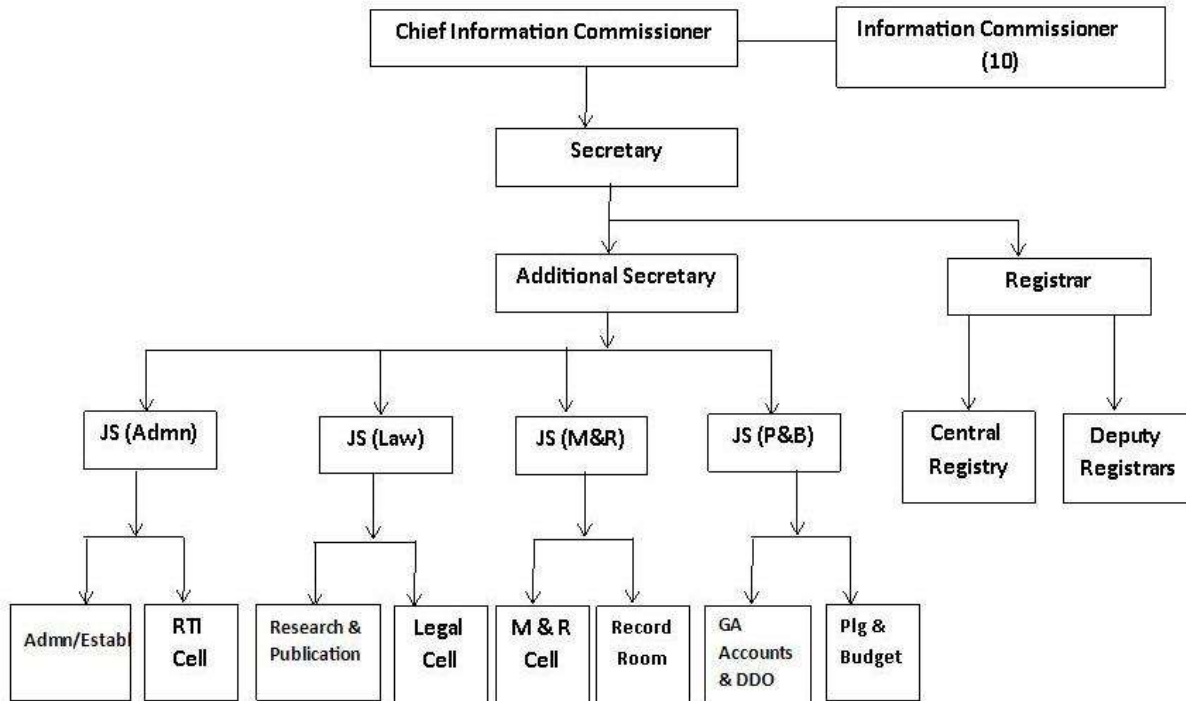
The RTI Act, 2005 provides for establishment of Central and State Chief Information Commissioner as a designated authority to receive and inquire into a complaint from any person. The Act provided for the constitution of the Central Information Commission (CIC) and State Information Commissions to be responsible for the implementation of the Act.

7.3.1 Constitution of Central Information Commission

- (1) Section 12 of the RTI Act, 2005 provides for constitution of the Central Information Commission. The Central Information Commission shall be constituted by the Central government by notification in the Official Gazette. It shall exercise the powers conferred on, and perform the functions which are assigned to it under this RTI Act.
- (2) The Central Information Commission shall consist of the Chief Information Commissioner, and such number of Central Information Commissioners not exceeding ten as may be deemed necessary.
- (3) The Chief Information Commissioner and Information Commissioners shall be appointed by the President on the recommendation of a committee consisting of:
 - (i) the Prime Minister, who shall be the Chairperson of the committee;
 - (ii) the Leader of Opposition in the Lok Sabha; and
 - (iii) a Union Cabinet Minister to be nominated by the Prime Minister
- (4) The general superintendence, direction and management of the affairs of the Central Information Commission shall vest in the Chief Information Commissioner who shall be assisted by the Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the Central Information Commission autonomously without being subjected to directions by any other authority under this Act.
- (5) The Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.
- (6) The Chief Information Commissioner or an Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

- (7) The headquarters of the Central Information Commission shall be at Delhi and the Central Information Commission may, with the previous approval of the Central Government, establish offices at other places in India.

ORGANISATIONAL CHART



Abbreviations -> M & R – Monitoring and Reporting, GA - General Administration,
P & B – Planning and Budget, DDO –Drawing and Disbursing officer

Source: <http://cic.gov.in/organizational-structure>

7.3.2 Term of Office and Conditions of Service of Chief Information Commissioner or an Central Information Commissioner

- (1) Section 13 of the RTI Act, 2005 provides for terms of office and conditions of service of Chief Information Commissioner or an Information Commissioner. The Chief Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment but no Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.
- (2) Similarly, every Central Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such Information Commissioner.

- (3) Every Information Commissioner shall, on vacating his office is eligible for appointment as the Chief Information Commissioner but his term of office shall not be more than five years in aggregate as the Information Commissioner and the Chief Information Commissioner.
- (4) The Chief Information Commissioner or an Information Commissioner shall make and subscribe an oath or affirmation before the President or some other person appointed by him in that behalf, before he enters upon his office.
- (5) The Chief Information Commissioner or an Information Commissioner may, at any time resign from his office, by writing under his hand addressed to the President.
- (6) The salaries and allowances payable to and other terms and conditions of service of the Chief Information Commissioner shall be the same as that of the Chief Election Commissioner of India.
- (7) The salaries and allowances payable to and other terms and conditions of service of an Information Commissioner shall be the same as that of an Election Commissioner of India.
- (8) The Central Government shall provide the Chief Information Commissioner and the Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act.

7.3.3 Removal of Chief Information Commissioner or Information Commissioner

- (1) Section 14 of the RTI Act, 2005 provides for removal of Chief Information Commissioner or Information Commissioner. It provides that the Chief Information Commissioner or any Information Commissioner shall be removed from his office only by order of the President of India on the ground of proved misbehavior or incapacity. But for this President will make a reference to the Supreme Court and then Supreme Court after an inquiry, will report that the Chief Information Commissioner or any Information Commissioner, as the case may be, ought to be removed on such grounds.
- (2) The President has the power to suspend the Chief Information Commissioner or Information Commissioner from their office in respect of whom a reference has been made to the Supreme Court. The President may also prohibit them from attending the office during inquiry pending before the Supreme Court.
- (3) Apart from this the President may by order remove the Chief Information Commissioner or any Information Commissioner from their office on following grounds if the Chief Information Commissioner or any Information Commissioner:
 - (a) is adjudged an insolvent; or
 - (b) has been convicted of an offence which, in the opinion of the President, involves moral turpitude; or
 - (c) engages during his term of office in any paid employment outside the duties of his office; or
 - (d) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or
 - (e) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chief Information Commissioner or a Information Commissioner.

- (4) Similarly, if the Chief Information Commissioner or an Information Commissioner is, in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of India or participates in any way in the profit thereof or in any benefit or emolument arising there from otherwise than as a member and in common with the other members of an incorporated company, he shall, be deemed to be guilty of misbehavior.

7.3.4 Constitution of State Information Commission

- (1) Section 15 of the RTI Act, 2005 provides for constitution of the State Information Commission. The State Information Commission shall be constituted by the State government by notification in the Official Gazette. It shall exercise the powers conferred on, and perform the functions which are assigned to it under this RTI Act.
- (2) The State Information Commission shall consist of the State Chief Information Commissioner; and such number of State Information Commissioners, not exceeding ten as may be deemed necessary.
- (3) The State Chief Information Commissioner and the State Information Commissioners shall be appointed by the Governor on the recommendation of a committee consisting of-
- (i) the Chief Minister, who shall be the Chairperson of the committee;
 - (ii) the Leader of Opposition in the Legislative Assembly; and
 - (iii) a Cabinet Minister to be nominated by the Chief Minister.
- (4) The general superintendence, direction and management of the affairs of the State Information Commission shall vest in the State Chief Information Commissioner who shall be assisted by the State Information Commissioners.
- (5) The State Chief Information Commissioner and the State Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.
- (6) The State Chief Information Commissioner or a State Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.
- (7) The headquarters of the State Information Commission shall be at such place in the State as the State Government may, specify by notification in the Official Gazette, and the State Information Commission may, with the previous approval of the State Government, establish offices at other places in the State.

7.3.5 Term of Office and Conditions of Service of State Chief Information Commissioner or an State Information Commissioner

- (1) Section 16 of the RTI Act, 2005 provides for terms of office and conditions of service of State Chief Information Commissioner or a State Information Commissioner. The State Chief Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment but no State Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.

- (2) Similarly, every State Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such Information Commissioner.
- (3) Every State Information Commissioner shall, on vacating his office is eligible for appointment as the State Chief Information Commissioner but his term of office shall not be more than five years in aggregate as the State Information Commissioner and the State Chief Information Commissioner.
- (4) The State Chief Information Commissioner or an State Information Commissioner shall make and subscribe an oath or affirmation before the Governor or some other person appointed by him in that behalf, before he enters upon his office.
- (5) The State Chief Information Commissioner or an State Information Commissioner may, at any time resign from his office, by writing under his hand addressed to the Governor.
- (6) The salaries and allowances payable to and other terms and conditions of service of the State Chief Information Commissioner shall be the same as that of the Election Commissioner.
- (7) The salaries and allowances payable to and other terms and conditions of service of a State Information Commissioner shall be the same as that of an Chief Secretary of State.
- (8) The State Government shall provide the State Chief Information Commissioner and the State Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act.

7.3.6 Removal of State Chief Information Commissioner or State Information Commissioner

- (1) Section 17 of the RTI Act, 2005 provides for removal of State Chief Information Commissioner or State Information Commissioner. It provides that the State Chief Information Commissioner or any State Information Commissioner shall be removed from his office only by order of the Governor on the ground of proved misbehavior or incapacity. But for this Governor will make a reference to the Supreme Court and then Supreme Court after an inquiry, will report that the State Chief Information Commissioner or any State Information Commissioner, as the case may be, ought to be removed on such grounds.
- (2) The Governor has the power to suspend the State Chief Information Commissioner or State Information Commissioner from their office in respect of whom a reference has been made to the Supreme Court. The Governor may also prohibit them from attending the office during inquiry pending before the Supreme Court.
- (3) Apart from this the Governor may by order remove the State Chief Information Commissioner or any State Information Commissioner from their office on following grounds if the State Chief Information Commissioner or any State Information Commissioner:
 - (a) is adjudged an insolvent; or
 - (b) has been convicted of an offence which, in the opinion of the Governor, involves moral turpitude; or
 - (c) engages during his term of office in any paid employment outside the duties of his office; or
 - (d) is, in the opinion of the Governor, unfit to continue in office by reason of infirmity of mind or body; or

- (e) has acquired such financial or other interest as is likely to affect prejudicially his functions as the State Chief Information Commissioner or a State Information Commissioner.
- (4) Similarly, if the State Chief Information Commissioner or an State Information Commissioner is, in any way, concerned or interested in any contract or agreement made by or on behalf of the State Government or participates in any way in the profit thereof or in any benefit or emolument arising there from otherwise than as a member and in common with the other members of an incorporated company, he shall, be deemed to be guilty of misbehavior.

7.4 SUMMARY

In this unit we have discussed the constitution of Central and State Information Commission. Central Information Commission is constituted by the Central Government and State Information Commissions are constituted by the respective state governments. It is mandatory for the state governments to constitute State Information Commission in their respective states. The Central Information Commission shall consist of the Chief Information Commissioner, and such number of Central Information Commissioners not exceeding ten as may be deemed necessary. Similarly, State Information Commission shall consist of the State Chief Information Commissioner, and such number of State Information Commissioners not exceeding ten as may be deemed necessary. Term of office of both Chief Information Commissioner and State Chief Information Commissioner is five years or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment. Both Central Information Commissioner and State Information Commissioner are eligible for appointment as the Chief Information Commissioner or State Chief Information Commissioner as the case may be upon vacating their offices. Both Chief Information Commissioner and State Chief Information Commissioner can be removed by the President of India or Governor of the State as the case may be on the grounds of proved misbehavior or incapacity but in all cases reference has to made to the Supreme Court of India which will enquire and submit its report to the President of India or Governor of the State as the case may be. Similarly, there are some additional common grounds of removal of Chief Information Commissioner/ State Chief Information Commissioner and Central Information Commissioner/State Information Commissioner. Apart from this, Chief Information Commissioner/State Chief Information Commissioner and Central Information Commissioner/State Information Commissioner may also resign from their office by submitting their resignation to the President of India or Governor as the case may be.

7.5 GLOSSARY

1. Central Information Commission: Sec. 2(b) of the Right to Information Act, 2005 provides that “Central Information Commission” means Central Information Commission constituted

under Sec. 12(1) of the Act. It is the highest body at Central level for providing information which is constituted by the Central Government.

2. State Information Commission: Sec. 2(k) of the Right to Information Act, 2005 provides that “State Information Commission” means State Information Commission constituted under Sec. 15(1) of the Act. It is the highest body at State level for providing information which is constituted by the State Government.

3. Chief Information Commissioner & Information Commissioner: Sec. 2(d) of the Right to Information Act, 2005 provides that “Chief Information Commissioner” and “Information Commissioner” mean the Chief Information Commissioner and Information Commissioner appointed under sub-section (3) of Section 12. There will be one Chief Information Commissioner and can be up to 10 Central Information Commissioners at Central level.

4. State Chief Information Commissioner & State Information Commissioner: Sec. 2(l) of the Right to Information Act, 2005 provides that “Chief State Information Commissioner” and “State Information Commissioner” mean the Chief State Information Commissioner and State Information Commissioner appointed under sub-section (3) of Section 15. There will be one Chief State Information Commissioner and can be up to 10 State Information Commissioners at State level.

5. Moral Turpitude: A phrase used in Criminal Law to describe conduct that is considered contrary to community standards of justice, honesty or good *morals*. *Moral turpitude* refers generally to conduct that shocks the public conscience.

6. Insolvent: Insolvent means a person or company who/which is unable to pay debts owed.

7.6 SAQS

1. Short Answer Questions-

- (a) Discuss the composition of Central Information Commission constituted under the RTI Act, 2005.
- (b) What is the maximum strength of State Information Commissioners of the State Information Commission as per the RTI Act, 2005?

2. Fill in the blanks-

- (a) The Chief Information Commissioner is appointed by the
- (b) The State Chief Information Commissioner is appointed by the
- (c) The term of office of Central Information Commissioner isyears.

3. True and False type questions

- (a). The State Chief Information Commissioner is appointed by the President of India.
(i)True, (ii) False.
- (b) Central Information Commissioner can be removed by the President on grounds of insolvency.
(i)True, (ii) False.

7.7 REFERENCES

- a) The Right to Information Act, 2005.
- b) <http://cic.gov.in/>

7.8 SUGGESTED READINGS

- (a) *Right to Information Law & Practice* by Dr. R.K Verma and Dr. (Mrs.) Anuradha Verma, 2nd Edition 2010, Taxmann Publishers.
- (b) *The Right to Information Act, 2005: Bare Act*
- (c) *A Practical Handbook on Right to Information Act, 2005* by S.P. Kaneja, published by The Book Line (2011).

7.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

- (a) Discuss the constitution and composition of Central Information Commission.
- (b) On which grounds State Chief Information Commissioner can be removed from its office?
- (c) Discuss the constitution and composition of State Information Commission.

7.10 ANSWERS

SAQS

- 1. (a) Refer 7.3.1, (b)10
- 2. (a) President (b) Governor (c) 5years
- 3. (a) False, (b) True

TERMINAL QUESTIONS AND ANSWERS

- (a) Refer 7.3.1, (b)7.3.6, (c) 7.3.4

UNIT 8

FUNCTIONS AND POWERS OF THE INFORMATION COMMISSIONS

STRUCTURE

8.1 INTRODUCTION

8.2 OBJECTIVES

8.3 SUBJECT: POWERS AND FUNCTIONS OF THE CENTRAL AND THE STATE INFORMATION COMMISSION

8.3.1 Powers And Functions Of Information Commission

8.3.2 Appellate Powers

8.3.3. Procedure of Appeal Before The Central Information Commission

8.3.3.1 Appeal To The Commission

8.3.3.2 Return of Appeal

8.3.3.3 Process of Appeal

8.3.3.4 Procedure for Deciding Appeals

8.3.3.5 Presence of The Appellant Before The Commission

8.3.3.6 Presentation by The Public Authority

8.3.3.7 Service of Notice By Commission

8.3.3.8 Order of The Commission

8.3.3.9 Format of Appeal

8.4 SUMMARY

8.5 GLOSSARY

8.6 SAQS

8.7 REFERENCES

8.8 SUGGESTED READINGS

8.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

8.10 ANSWERS

8.1 INTRODUCTION

In the previous Unit you learned about constitution and composition of Central Information Commission and State Information Commissions. Similarly, under this Unit students will learn about powers and functions of both Central and State Information Commission. Central Information Commission is constituted by the Central Government and State Information Commissions are constituted by the respective state governments. It is mandatory for the state governments to constitute State Information Commission in their respective states. The Right of Information Act, 2005 gives comprehensive powers to the Central Information Commission and State Information Commissions to receive and inquire into a complaint from any person who is aggrieved by the decision of Central Public Information Officer, or State Public Information Officer as the case may. Similarly, Appellate powers have also been conferred upon these bodies to redress the grievances of the persons.

8.2 OBJECTIVES

After reading this Unit you will be able to:

- (i) Know the powers and functions of the Central Information Commission (CIC) and the State Information Commissions (SICs).
- (ii) Learn about the grounds to approach before the Central Information Commission (CIC) and the State Information Commissions (SICs).
- (iii) *Students will know the process of filing Appeal before the Central Information Commission (CIC).*

8.3 SUBJECT: POWERS AND FUNCTIONS OF THE CENTRAL AND THE STATE INFORMATION COMMISSION

The RTI Act, 2005 provides for establishment of Central and State Information Commission as a designated authority to receive and inquire into a complaint from any person. The Act provided for the constitution of the Central Information Commission (CIC) and State Information Commissions to be responsible for the implementation of the Act. The Right of Information Act, 2005 gives comprehensive powers to the Central Information Commission and State Information Commissions to receive and inquire into a complaint from any person who is aggrieved by the decision of Central Public Information Officer, or State Public Information Officer as the case may.

8.3.1 Powers and Functions of Information Commission

- (1) Section 18 of the RTI Act, 2005 provides for powers and functions of both Central/State Information Commissions. It shall be the duty of the Central Information Commission or State Information Commission as the case may be to receive and inquire into a complaint from any person on following grounds:
 - (a) Who has not been able to submit an information request because a Public Information Officer (PIO) has not been appointed.
 - (b) Whose application of information is refused by PIO or whose application of Appeal is refused or not forwarded by PIO to the Central Public Information Officer or State Public

Information Officer or senior officer or the Central Information Commission or the State Information Commission, as the case may be.

- (c) Who has been refused access to any information requested under this Act
 - (d) Who has received no response to his/her information request within the specified time limits fixed by law.
 - (e) Who thinks the fees charged is unreasonable.
 - (f) Who thinks information given is incomplete or false or misleading; and
 - (g) Any other matter relating to obtaining information under this law.
- (2) Where the Central Information Commission or State Information Commission, as the case may be, is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof
- (3) The Central Information Commission or State Information Commission, as the case may be, shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—
- (a) Summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things.
 - (b) Requiring the discovery and inspection of documents.
 - (c) Receiving evidence on affidavit.
 - (d) Requisitioning any public record or copies thereof from any court or office.
 - (e) Issuing summons for examination of witnesses or documents; and
 - (f) Any other matter, which may be prescribed.
- (4) The Central Information Commission or the State Information Commission also has the power that during inquiry of any complaint under this Act, it may examine any record which is under the control of the public authority, and no such record may be withheld from it on any ground.

8.3.2 Appellate Powers

- (1) Section 19 of the RTI Act, 2005 provides provision for Appeal before various authorities. The time limit of providing information by the Central Public Information Officer or State Public Information Officer is 30 days from the receipt of request (*See* Sec. 7(1) of the RTI Act, 2005) or extended period (Sec. 7(3)(a) of the RTI Act, 2005). If information is not provided by the Central Public Information Officer or State Public Information Officer within this time limit then the aggrieved person, may after the expiry of thirty days from such request has a right to prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority.
- (2) Similarly, where a person is aggrieved by the decision of the Central Public Information Officer or State Public Information Officer, as the case may be then he may within thirty days from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority.

- (3) Such officer (to whom Appeal has been made) may admit the appeal even after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.
- (4) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under Section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.
- (5) A Second Appeal against the decision of an appeal (*i.e.* to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority) shall lie to the Central Information Commission or the State Information Commission, as the case may be. The Appeal shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission. The Central Information Commission or the State Information Commission may admit the appeal even after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.
- (6) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.
- (7) In any appeal proceeding, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request.
- (8) Time limit for disposal of First Appeal (*i.e.* which is made to the such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority) is thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.
- (9) The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding.
- (10) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to-----
 - (a) Require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—
 - (i) By providing access to information, if so requested, in a particular form.
 - (ii) By appointing a Central Public Information Officer or State Public Information Officer, as the case may be.
 - (iii) By publishing certain information or categories of information.

- (iv) By making necessary changes to its practices in relation to the maintenance, management and destruction of records.
- (v) By enhancing the provision of training on the right to information for its officials.
- (vi) By providing it with an annual report.
- (b) The Commission may require the public authority to compensate the complainant for any loss or other detriment suffered.
- (c) Impose any of the penalties provided under this Act.
- (d) Reject the application.
- (11) The Central Information Commission or State Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority.
- (12) The Central Information Commission or State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed.

8.3.3. Procedure of Appeal Before The Central Information Commission

In exercise of the powers conferred by Section 27 of the Right to Information Act, 2005 and in supersession of the Central Information Commission (Appeal Procedure) Rules, 2005 and the Right to Information (Regulation of Fee and Cost) Rules, 2005 the Central Government has framed the Right to Information Rules, 2012. These rules provide for procedure of filing Appeal before the Central Information Commission. The procedure of filing the appeal is given below:

8.3.3.1 Appeal to The Commission

Rule 8 of the Right to Information Rules, 2012 provides that any person aggrieved by an order passed by the First Appellate Authority or by non-disposal of his appeal by the First Appellate Authority, may file an appeal to the Commission in the format given in the Appendix and shall be accompanied by the following documents, duly authenticated and verified by the appellant, namely:

- (i) A copy of the application submitted to the Central Public Information Officer.
- (ii) A copy of the reply received, if any, from the Central Public Information Officer.
- (iii) A copy of the appeal made to the First Appellate Authority.
- (iv) A copy of the Order received, if any, from the First Appellate Authority.
- (v) Copies of other documents relied upon by the appellant and referred to in his appeal and;
- (vi) An index of the documents referred to in the appeal.

8.3.3.2 Return of Appeal

Rule 9 of the Right to Information Rules, 2012 provides that an appeal may be returned to the appellant, if it is not accompanied by the documents as specified in rule 8, for removing the deficiencies and filing the appeal complete in all respects.

8.3.3.3 Process of Appeal

- (1) Rule 10 of the Right to Information Rules, 2012 provides that on receipt of an appeal, if the Commission is not satisfied that it is a fit case to proceed with, it may, after giving an opportunity of being heard to the appellant and after recording its reasons, dismiss the

- appeal but no appeal shall be dismissed only on the ground that it has not been made in the specified format if it is accompanied by documents as specified in Rule 8.
- (2) The Commission shall not consider an appeal unless it is satisfied that the appellant has availed of all the remedies available to him under the Act.
 - (3) A person shall be deemed to have availed of all the remedies available to him under the Act:
 - (a) If he had filed an appeal before the First Appellate Authority and the First Appellate Authority or any other person competent to pass order on such appeal had made a final order on the appeal; or
 - (b) Where no final order has been made by the First Appellate Authority with regard to the appeal preferred and a period of forty five days from the date on which such appeal was preferred has elapsed.

8.3.3.4 Procedure for Deciding Appeals

Rule 11 of the Right to Information Rules, 2012 provides that the Commission, while deciding an appeal may—

- (i) Receive oral or written evidence on oath or on affidavit from concerned or interested person.
- (ii) Peruse or inspect documents, public records or copies thereof.
- (iii) Inquire through authorized officer further details or facts.
- (iv) Hear Central Public Information Officer, Central Assistant Public Information Officer or the First Appellate Authority, or such person against whose action the appeal is preferred, as the case may be.
- (v) Hear third party; and
- (vi) Receive evidence on affidavits from Central Public Information Officer, Central Assistant Public Information Officer, First Appellate Authority and such other person against whom the appeal lies or the third party.

8.3.3.5 Presence of the Appellant before the Commission

Rule 12 of the Right to Information Rules, 2012 provides rules for presence of the appellant before the commission. It provides:

- (1) The appellant shall be informed of the date at least seven clear days before the date of hearing.
- (2) The appellant may be present in person or through his duly authorised representative or through video conferencing, if the facility of video conferencing is available, at the time of hearing of the appeal by the Commission.
- (3) Where the Commission is satisfied that the circumstances exist due to which the appellant is unable to attend the hearing, then, the Commission may afford the appellant another opportunity.

8.3.3.6 Presentation by the Public Authority

Rule 13 of the Right to Information Rules, 2012 provides that the public authority may authorize any representative of any of its officers to present its case.

8.3.3.7 Service of Notice by Commission

Rule 14 of the Right to Information Rules, 2012 provides rules for service of notice by the commission. It provides that the Commission may issue the notice by name, which shall be served in any of the following modes, namely:—

- (i) Service by the party itself;
- (ii) By hand delivery (*dasti*) through Process Server;
- (iii) By registered post with acknowledgement due;
- (iv) By electronic mail in case electronic address is available.

8.3.3.8 Order of the Commission

Rule 15 of the Right to Information Rules, 2012 provides that the order of the Commission shall be in writing and issued under the seal of the Commission duly authenticated by the Registrar or any other officer authorized by the Commission for this purpose.

8.3.3.9 Format of Appeal

This is format of Appeal which is to be filed before the Central Information Commission. This format is given in the Appendix of the Right to Information Rules, 2012.

(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
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

8.4 SUMMARY

In this Unit we have discussed about powers and functions of Central and State Information Commission. Central Information Commission is constituted by the Central Government and State Information Commissions are constituted by the respective state governments. The RTI Act, 2005 provides for establishment of Central and State Information Commissions as a designated authority to receive and inquire into a complaint from any person. Right of Information Act, 2005 gives comprehensive powers to the Central Information Commission and State Information Commissions to receive and inquire into a complaint from any person who is aggrieved by the decision of Central Public Information Officer, or State Public Information Officer as the case may. Section 19 of the RTI Act, 2005 provides provision for Appeal before various authorities. The time limit of providing information by the Central Public Information

Officer or State Public Information Officer is 30 days from the receipt of request (*See* Sec. 7(1) of the RTI Act, 2005) or extended period (Sec. 7(3)(a) of the RTI Act, 2005). If information is not provided by the Central Public Information Officer or State Public Information Officer within this time limit then the aggrieved person, may after the expiry of thirty days from such request has a right to prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority. A Second Appeal against the decision of an appeal (*i.e.* to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority) shall lie to the Central Information Commission or the State Information Commission, as the case may be. The Appeal shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission. The Central Information Commission or the State Information Commission may admit the appeal even after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. Similarly, in exercise of the powers conferred by Section 27 of the Right to Information Act, 2005, the Central Government has framed the Right to Information Rules, 2012. These rules provide for procedure of filing Appeal before the Central Information Commission.

8.5 GLOSSARY

1. **Central Information Commission:** Sec. 2(b) of the Right to Information Act, 2005 provides that “Central Information Commission” means Central Information Commission constituted under Sec. 12(1) of the Act. It is the highest body at Central level for providing information which is constituted by the Central Government.
2. **State Information Commission:** Sec. 2(k) of the Right to Information Act, 2005 provides that “State Information Commission” means State Information Commission constituted under Sec. 15(1) of the Act. It is the highest body at State level for providing information which is constituted by the State Government.
3. **Public Authority:** It is provided in Sec. 2(h) of the Right to Information Act 2005. It means any authority or body or institution or self Government established or constituted by or under the Constitution ; by any other law made by Parliament; by any other law made by the 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 organization substantially financed, directly or indirectly by funds provided by the appropriate Government.
4. **Central Public Information Officer:** Sec. 2(c) of the Right to Information Act, 2005 provides that “Central Public Information Officer” means the Central Public Information Officer designated under sub section (1) and includes a Central Assistant Public Information Officer designated as such under sub-section (2) of section 5.

5. **State Public Information Officer:** Sec. 2(m) of the Right to Information Act, 2005 provides that “State Public Information Officer” means the State Public Information Officer designated under sub section (1) and includes a State Assistant Public Information Officer designated as such under sub-section (2) of Sec. 5.
6. **Public Information Officer:** Any Officer designated by the Public Authority to provide information to persons requesting for the information under the Right to Information Act 2005.
7. **Third Party:** It is provided in Sec. 2 (n) of the Right to Information Act, 2005. It means a person other than the citizen making a request for information and includes a public authority.
8. **Peruse:** It can suggest paying close attention to something, but it can also simply mean “to read.”
9. **Dasti:** ‘Dasti’ is a Persian word, which means ‘by hand’. Therefore, ‘Dasti Service’, in a legal context, means service of summons by the Petitioner/Plaintiff on the Respondent/Defendants, by a specific order by the Court, and not by registered post or through the process server of the Court.

8.6 SAQS

1. Short Answer Questions-

- (a) Discuss in brief any four powers and functions of Information Commissions
- (b) What is time limit for filing second Appeal before the Central/State Information Commission?

2. Fill in the blanks-

- (a) The second appeal shall lie before.....
- (b) If information is refused by State Public Information Officer then Appeal shall lie before the.....

3. True and False type questions

- (a) The time limit of providing information by the Central Public Information Officer or State Public Information Officer is 30 days from the receipt of request.
(i) True, (ii) False.
- (b) Second Appeal can be preferred to Central/ State Information Commission.
(i) True, (ii) False.

8.7 REFERENCES

- a) The Right to Information Act, 2005.
- b) <http://cic.gov.in/>

8.8 SUGGESTED READINGS

- (a) *Right to Information Law & Practice* by Dr. R.K Verma and Dr. (Mrs.) Anuradha Verma, 2nd Edition 2010, Taxmann Publishers.
- (b) *The Right to Information Act, 2005: Bare Act*

- (c) *A Practical Handbook on Right to Information Act, 2005* by S.P. Kaneja, published by The Book Line (2011).

8.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

- (a) Discuss the powers and functions of the Central Information Commission.
- (b) What sort of powers has been conferred upon the Central/State Information Commission at the time of disposal of Appeal?
- (c) Discuss the procedure of Appeal before the Central Information Commission.

8.10 ANSWERS

SAQS

1. (a) Refer 8.3.1, (b) 90 days
2. (a) Central/State Information Commission (b) State Information Commission
3. (a) True, (b) True

TERMINAL QUESTIONS AND ANSWERS

- (b) Refer 8.3.1, (b) 8.3.2, (c) 8.3.3

UNIT 9

INVESTIGATION, FINES AND PENALTIES

STRUCTURE

9.1 INTRODUCTION

9.2 OBJECTIVES

9.3 SUBJECT: INVESTIGATION, FINES AND PENALTIES

9.3.1 Penalties By Information Commission In Case Of Complaint Or Appeal

9.3.2 Recommendation For Disciplinary Action

9.3.3. Procedure At A Glance

9.4 SUMMARY

9.5 GLOSSARY

9.6 SAQS

9.7 REFERENCES

9.8 SUGGESTED READINGS

9.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

9.10 ANSWERS

9.1 INTRODUCTION

In the previous unit you learned about the powers and functions of both Central and State Information Commission and in this unit you will be able to understand the procedure of penalties, investigation and fines under the Right to Information Act, 2005. Investigation is one of the cardinal elements of the process fair trial. The investigation helps in the determination of guilt and innocence of the accused and follows the penalty procedure as well. The unit focusses on the various penalties that can be imposed.

9.2 OBJECTIVES

After reading this Unit you will be able to:

- (i) Know the penalties that can be imposed by the Information Commission in cases of complaint or appeal
- (ii) Learn about recommendations for disciplinary action
- (iii) *Students will know the hierarchies of Right to Information appellate authorities.*

9.3 SUBJECT: INVESTIGATION, FINES AND PENALTIES

The Information Commissions has the duty to investigate the matter and provide appropriate penalties to the wrong doers within the provisions of Section 20. However, it is important to note that the principles of natural justice must be strictly adhered to and any deviation from the same shall not be tolerated.

9.3.1 Penalties by Information Commission in Case of Complaint or Appeal

According to Section 20 (1) of the Right to Information Act, 2005, where the Information Commission, at the time of deciding any complaint or appeal is of the opinion that the Public Information Officer has, without any reasonable cause:

- (a) refused to receive an application for information or
- (b) has not furnished information within the time specified under section 7(1) or
- (c) malafidely denied the request for information or
- (d) knowingly given incorrect, incomplete or misleading information or
- (e) destroyed information which was the subject of the request or,
- (f) obstructed in any manner in furnishing the information,

it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees.

Reasonable Opportunity before imposing Penalty: The Act expressly provides that the Public Information Officer shall be given a reasonable opportunity of being heard before any penalty is imposed. The burden of proving that he acted reasonably and diligently lies on the PIO. However, if the PIO has not appeared before the commission or not sent any submission, for not being present, then ex-parte penalty can be imposed.

In the case of *Mr. Vinod Bharti v. Directorate of Education*⁷⁰ it was held that when the delay has been over 100 days, the commissioner should impose the maximum penalty of Rs. 25,000/- and may direct to recover the same from the salary of the PIO.

In the case of *Dr. (Mrs.) Sarla Rajput v. CIC*⁷¹ it was held that the penalty under the provisions of Sec. 20(1) can be imposed when the necessary conditions are not fulfilled and even if the appeal is allowed by Information Commissioner, the penalty is neither automatic nor mandatory.

In the case of *Lajjaram Pandey v. Madhya Pradesh State Information Commission*⁷² it was held that no order of imposing penalty could have been passed under section 20 of the RTI Act, because the question of initiating action for imposing penalty against appellate authority doesn't arise in this matter.

In the case of *Dr. (Mrs.) Sarla Rajput v. CIC*⁷³ it was held that the petitioner will appear before the CIC and it will re-examine the question as to whether any penalty should be imposed or not, without being influenced by earlier decisions.

In the case of

8.3.2 Appellate Powers

According to Section 20 (2) of the Right to Information Act, 2005 where the Information Commission at the time of deciding any complaint or appeal is of the opinion that the Public Information Officer has, without any reasonable cause and persistently,

- (a) failed to receive an application for information or
- (b) has not furnished information within the time specified under section 7(1) or
- (c) malafidely denied the request for information or
- (d) knowingly given incorrect, incomplete or misleading information or
- (e) destroyed information which was the subject of the request or obstructed in any manner in furnishing the information,

it shall recommend for disciplinary action against the Information Officer under the service rules applicable to him.

In the case of *R. K. Jain v. Chairman, Income Tax Settlement Commission*⁷⁴ it was held that the Central Information Commission has the necessary power to initiate an enquiry in respect of such complaints by virtue of section 18(2) of the RTI Act, 2005.

In the case of *Ministry of Railways v. Girish Mittal*⁷⁵ it was held that no Public Information Officer can escape his responsibility to provide information simply by saying that the queries were forwarded to other officials.

In the case of *J. K. Mittal v. CIC*⁷⁶ it was held that the commission shall exercise its power in accordance with law while considering complaint made by party in respect of certain information sought by him.

⁷⁰CIC/SG/A/2009/002597/5818 Central information Commission on 28/10/2010

⁷¹W.P. (C) 5204/2008: (Del HC on 02.07.2009)

⁷²RTIR IV (2010) 102 (MP) (29/04/2010)

⁷³W.P. (C) 5204/2008: (Del HC on 02.07.2009)

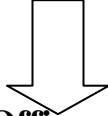
⁷⁴WP (C) 2939/2014 decided on 05.12.2014 (Delhi HC)

⁷⁵WP (C) 6088/2014 decided on 12.09.2014

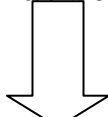
In the case of *Meghna Ruby Kachhap v. State of Jharkhand*⁷⁷ it was held that no finding as per Sec. 20(1) of the Act, before imposing any penalty, a reasonable opportunity of being heard must be provided to the petitioner.

9.3.3. Procedure at a Glance

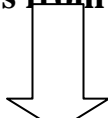
Step 1 – RTI Application + Fee (according to eligibility) to PIO/APIO



Step 2 – Replied by Public Officer within stipulated time (48 hours/30 days/35days/45 days as the case may be)



**Step 3 – First Appellate Authority under section 19(1)
(Apply within 30 days from the date of receiving order)**

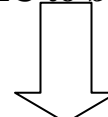


Step 4 – First Appellate Authority order within 30 days

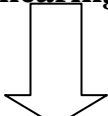


Step 5 – Second Appeal: SIC/CIC under section 19(3) [within 90 days]

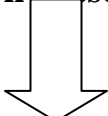
Step 6 – Date of Hearing: SIC/CIC to both parties



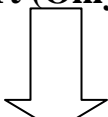
Step 7 – Hearing Held on: Final hearing (Opportunity to both parties)



Step 8 – Order of the Commission passed u/s 19 or 20 (Final Order)



Step 9 – No Appeal to High Court (Only Writ Application may be filed)



Step 10 – No Appeal to Supreme Court (Only Special Leave under Article 136)

⁷⁶ 204 (2013) DLT 689

⁷⁷ 2014 (1) AJR 292

8.4 SUMMARY

In this Unit we have discussed about various penalties under the Right to Information Act, 2005. These provisions give us an overview and guidelines about the penalties that can be invoked when the petitioner or the aggrieved party files any petition before the commission. The provisions also highlight about the fact that whenever any dispute arises who is the appellate authority and where an aggrieved party finally go for redressal of their various grievances. These provisions give us a fair idea about what are the available remedies in case of any dispute.

8.5 GLOSSARY

1. **Central Information Commission:** Sec. 2(b) of the Right to Information Act, 2005 provides that “Central Information Commission” means Central Information Commission constituted under Sec. 12(1) of the Act. It is the highest body at Central level for providing information which is constituted by the Central Government.
2. **State Information Commission:** Sec. 2(k) of the Right to Information Act, 2005 provides that “State Information Commission” means State Information Commission constituted under Sec. 15(1) of the Act. It is the highest body at State level for providing information which is constituted by the State Government.
3. **Public Authority:** It is provided in Sec. 2(h) of the Right to Information Act 2005. It means any authority or body or institution or self Government established or constituted by or under the Constitution ; by any other law made by Parliament; by any other law made by the 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 organization substantially financed, directly or indirectly by funds provided by the appropriate Government.
4. **Central Public Information Officer:** Sec. 2(c) of the Right to Information Act, 2005 provides that “Central Public Information Officer” means the Central Public Information Officer designated under sub section (1) and includes a Central Assistant Public Information Officer designated as such under sub-section (2) of section 5.
5. **State Public Information Officer:** Sec. 2(m) of the Right to Information Act, 2005 provides that “State Public Information Officer” means the State Public Information Officer designated under sub section (1) and includes a State Assistant Public Information Officer designated as such under sub-section (2) of Sec. 5.
6. **Public Information Officer:** Any Officer designated by the Public Authority to provide information to persons requesting for the information under the Right to Information Act 2005.

9.6 SAQS

1. Short Answer Questions-

- (a) Discuss in brief the penalties in case of complaint or appeal.
- (b) What are the recommendations for the disciplinary action?

2. Fill in the blanks-

- (a) The recommendation for disciplinary action is under section _____
(b) Section 7(1) talks about _____

3. True and False type questions

- (a) The penalty against any complaint is Rs. 55,000/-
(i) True, (ii) False.
(b) Daily penalty for not giving information is Rs. 250/-
(i) True, (ii) False.

9.7 REFERENCES

- a) The Right to Information Act, 2005.
b) <http://cic.gov.in/>
c) <http://rtionline.gov.in>

9.8 SUGGESTED READINGS

- (a) *Right to Information Law & Practice* by Dr. R.K Verma and Dr. (Mrs.) Anuradha Verma, 2nd Edition 2010, Taxmann Publishers.
(b) *The Right to Information Act, 2005: Bare Act*
(c) *A Practical Handbook on Right to Information Act, 2005* by S.P. Kaneja, published by The Book Line (2011).
(d) *Right to Information and Protection to Whistle Blowers* by K. P. Malik published by Allahabad Law Agency (2016)

9.9 TERMINAL QUESTIONS AND MODEL QUESTIONS

- (a) Discuss the procedure for redressal of grievances through appeal.
(b) What the various penalties under the Act.

9.10 ANSWERS

SAQS

1. (a) Refer 9.3.1, (b) 9.3.2
2. (a) Sec. 20(2) (b) duties of PIO on receipt of complaint
3. (a) False, (b) True

TERMINAL QUESTIONS AND ANSWERS

- (c) Refer 9.3.3, (b) 9.3.1,

UNIT 10

PROVISIONS REGARDING PROMOTION OF RTI

SUBJECT

10.1 INTRODUCTION

10.2 OBJECTIVES

10.3 SUBJECT :VARIOUS PROVISIONS REGARDING PROMOTION OF RTI

10.3.1 Manner of Request for Information to Promote RTI

10.3.2 Exemptions

10.3.3 Rejection of Requests

10.3.4 Private body, Institution or Organization

10.3.5 Government attempts for Promotion of RTI

10.3.6 Promotion of RTI as a watchdog

10.9 SUMMARY

10.10 GLOSSARY

10.11 SAQS

10.12 REFERENCES

10.13 SUGGESTED READINGS

10.14 TERMINAL AND MODEL QUESTIONS

10.1 INTRODUCTION

Right to Information one of the most cherished human rights is one of the most neglected rights among the democracies around the globe including India. The Right to Freedom of Information is considered as a customary international law in present scenario, which is exemplified by incorporating the right in numerous state constitutions and most importantly right is recognised by international covenants and treaties including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the European Commission on Human Rights among others.

In India to ensure information access to the citizens, Right to Information Act 2005 attempts to provide timely response to citizen requests for government information. It is an initiative taken by Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions to provide a RTI Portal Gateway to the citizens for quick search of information on the details of first Appellate Authorities, PIOs etc. amongst others, besides access to RTI related information and disclosures published on the web by various Public Authorities under the government of India as well as the State Governments.

10.2 OBJECTIVE

Study of this unit will help the students to understand that basic object behind enacting Right to Information Act is to empower the citizens as democracy requires informed citizenry which is important in its functioning. Further the most vital objective of Right to Information Act is to promote transparency and accountability in the working of the Government, and make our democracy to work in the best interest of people.

10.3 SUBJECT:VARIOUS PROVISIONSREGARDINGPROMOTION OF RTI

Scope Of Right To Seek Information Under RTI Act, 2005

RTI Act, 2005 under Section 3 provides that subject to the provisions of the Act, 2005, any citizen has got a right to have any information from any public office of the Central Government or the State Governments. Section 8 and 9 provide for certain prohibitions with regard to the furnishing of certain information. Any person, subject to the bar contained under sections 8 and 9 of the Act may seek any information from any public office by moving an application in writing to the CPIO. Section 5 of the Act mandates every public authority to appoint a CPIO in his office to provide information to the applicants under the Act, 2005. Section 22 of the Act provides that the provisions of this Act shall have overriding effect over the provisions of the Official Secrets Act, 1923 or any other contrary law for the time being in force. This means that subject to the exemptions contained in Section 8 and 9 of the RTI Act, 2005, any contrary provisions contained

in the Official Secrets Act, 1923 or in any other general or special enactment will not come in the way of furnishing information to an applicant under the provisions of the RTI Act, 2005.

Scope of definition of the term “information” under section 2(f) of the RTI Act, 2005

The information required to be supplied by a public authority to a citizen on request are not confined to the information mentioned in Section 4. That Section only casts certain obligations on public authorities for maintaining records and publishing the particulars mentioned therein. That does not amount to laying down that only those information which the public authority are required to publish under Section 4(b) alone need be supplied to the citizens on request. The information mentioned in Section 3 is not circumscribed by Section 4 at all. Obligations laid down under Section 4 are to be compulsorily performed apart from the other liability on the part of the public authority to supply information available with them as defined under the Act subject of course to the exceptions laid down in the Act. The information detailed in Section 4 has to be compulsorily published by the public authority on its own without any request from anybody. Further, there is no indication anywhere in the Act to the effect that the ‘information’ as defined in Section 2(f) is confined to those mentioned in Section 4 of the Act. Therefore, it cannot be held that only information mentioned in Section 4 need be supplied to citizens on request.

Canara Bank vs. The Central Information Commission, Delhi, 2007 (5) ALJ (NOC) 916 (Kerala)

As the Right to Information Act, 2005 makes it applicable to ‘public authorities’ as defined therein pointing towards the need to give a restricted meaning to the expression ‘public authorities’ confines the same within the four corners of the definition of ‘State’ as defined in Article 12 of the Constitution of India. The definition of ‘public authority’ has a wider meaning than that of ‘State’ defined under Article 12 of the Indian Constitution. In addition, the definition of “State” under Article 12 is mainly in relation to enforcement of fundamental rights through Courts, whereas the RTI Act is intended to achieve the object of providing an effective framework to substantiate right to information acknowledged under Article 19 of the Constitution of India.

M.P. Varghese vs. Mahatma Gandhi University, AIR 2007 Kerala 230

The scope of furnishing information under the Act is so wide that the Section 8 of the Act itself makes it clear that the information which cannot be denied to Parliament or to a state legislature, the same cannot be denied to any person as well.

10.3.1 Manner of Request for Information to Promote RTI

Method

A citizen, who desires to obtain any information under RTI Act, should make an application under Section 6 to the Public Information Officer of the concerned public authority in writing in English or Hindi or in the official language of the area in which the application is made. The application should be precise and specific. He should make payment of application fee at the time of submitting the application as prescribed in the RTI Rules, 2012. The applicant can send the application by post or through electronic means or can deliver it personally in the office of the public authority. The application can also be sent through an Assistant Public Information Officer.

Application to the concerned Public Authority

The applicant should make application to the Public Information Officer of the concerned public authority. He should make all efforts to ascertain as to which the public authority is concerned with the information. If the information sought by an applicant is related to different PIOs in a Public Authority or is related to different Public authorities, the supply of information is likely to take a lot more time than if the information sought is related to a single PIO in one Public Authority.

The applicant should not list out his grievances in the RTI application but should clearly mention which information or record he would like to seek. Further, if the drafting of the application is such that it pin points towards the specific documents required in relation to the information sought, there would be less scope of ambiguity, thereby resulting in less chances of denial of information by the Public Information Officer. For example instead of simply asking why my area is not being cleaned, cleaning schedule of the area should be asked. Similarly, instead of asking when we will get water supply, water supply planning of the area should be asked.

Fee for Seeking Information

Along with the application, the applicant should send application fee to the Public Information Officer. In case of Government of India, the prescribed application fee is Rs. 10/- which can be paid through a demand draft or a banker's cheque or an Indian Postal Order payable to the Accounts Officer of the public authority.

The payment of fee can also be made by way of cash to the public authority or to the Assistant Public Information Officer against proper receipt. In case of online applications to Central Ministries/departments, fee can be paid online through internet banking of State Bank of India or through Master/Visa credit/debit cards.

The applicant may also be required to pay further fee towards the cost of providing the information, details of which shall be intimated to the applicant by the Public Information Officer. The fee so demanded can be paid the same way as application fee.

If the applicant belongs to below poverty line (BPL) category, he is not required to pay any fee. However, he should submit a proof in support of his claim as belonging to the below poverty line category. The application not accompanied by the prescribed application fee or proof of the applicant's belonging to below poverty line category, as the case may be, shall not be a valid application under the Act.

Format of Application

There is no prescribed format of application for seeking information. The application can be made on a plain paper. The applicant should mention the address at which the information is required to be sent. The information seeker is not required to give reasons for seeking information.

10.3.2 EXEMPTIONS: - To furnish Information under the RTI Act, 2005

The exemptions and prohibitions against furnishing information under the RTI Act, 2005 are provided under sections 8 and 9 which are as under--

Section 8 - Exemptions from disclosure of information- (1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-

- (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;
- (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;
- (c) Information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
- (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;
- (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;
- (f) Information received in confidence from foreign Government;
- (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;
- (h) Information which would impede the process of investigation or apprehension or prosecution of offenders;

- (i) Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers;

Provided that the decisions of Council of Ministers, the reasons thereof, 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;

- (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 the Parliament or a State Legislature shall not be denied to any person.

(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(3) Subject to the provisions of clauses (a), (c) and (i) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under Section 6 shall be provided to any person making a request under that section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act.

10.3.3 GROUNDS FOR REJECTION: - Grounds for rejection to access information in certain cases under Section 9 –

Without prejudice to the provisions of Section 8, a Central Public Information Officer or a State Public Information Officer, as the case may be, may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.

10.3.4 PRIVATE BODY, INSTITUTION OR ORGANIZATION

A private body, institution or organization etc. financed by government are covered within the definition of “public authority” under Section 2(h) (d) (ii) of the RTI Act, 2005 –

Whenever the question arises about the nexus regarding control and finance of public authority over the activity of a private body or institution or an organization etc. the same would be covered under the provisions of Section 2(h) of the Act. The provisions of the RTI Act have to be read in connection with its objectives and reasons contained in the Act which has to be given widest amplitude in order to ensure that corrupt persons do not get benefits out of the concealment of their illegal activities and also make the unable to hide anything from the public.

The functioning of any private body owned or under control of public authority shall be responsive to the Right to Information Act, 2005. For instances any petitioner as an institution recognized under the provisions of U.P. High School and Intermediate Education Act, 1929 and receiving grant-in-aid from the State Government is therefore, covered under the aforesaid Act. Even in cases where a private or a non-Government organization college received financial grant from the State Government or is regulated by the provisions of Act such as the U.P. Intermediate Education Act, 1921 and Payment of Salaries to Teachers and Other Staff Act, 1971 it would still be covered by the definition given in Sec. 2(h) of the Right to Information Act, 2005.

Cases for references:

1. Committee of Management, Azad Memorial Poorva Madhyamik Vidyalaya Koloura vs. State of U.P., 2008 (5) ALJ 88 (All)
2. Dhara Singh Girls High School, Ghaziabad vs. State of U.P., AIR 2008 Allahabad 92
3. Principal M.D.S.D. Girls College, Ambala vs. State Information Commissioner, Haryana, AIR 2008 P & H 101 (D.B.)
4. Committee of Managemnt, Shanti Niketan Inter College, Ghazipur vs. State of U.P., 2008 (3) AWC 3027(All)
5. M.P. Varghese vs. Mahatma Gandhi University, AIR 2007 Kerala 230

10.3.5 GOVERNMENT ATTEMPTS FOR PROMOTION OF RTI

Steps to popularize the use of RTI Act

As per the Right to Information (RTI) Act, 2005, all citizens shall have the right to information. Further, RTI 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.

A number of measures have been taken by the Government to popularize the RTI Act which inter-alia includes:

1. Under the Centrally Sponsored Plan Scheme “Improving Transparency and Accountability in Government through Effective Implementation of the Right to Information Act”, the Central Government provides funds every year to various State Administrative Training Institutes (ATIs)

for promoting various awareness generation activities like mass media campaigns, publishing of handbooks, pamphlets, banners etc. on RTI and for its distribution among public etc.

2. Providing funds to State Information Commissions for celebration of RTI weeks during 5th - 12th October.

3. RTI web portal www.rtionline.gov.in was launched w.e.f. 21st August, 2013 to facilitate citizens for filing online RTI applications and first appeals with the facility of online payment of RTI fees. RTI online portal has provided the facility to citizens for filing applications and first appeals in Hindi language also.

4. Government website gives detailed information on various aspects of Right to Information Act like how to make request for information, whom to approach for information, rules, etc.

10.3.6 Promotion of RTI as a watchdog

In order to promote the RTI as a weapon to curb corruption and bring transparency in the functions of democracy the enactment of RTI is a milestone consisting of several watchdogs on multiple levels to ensure the true spirit of the legislation. This is so because the Act is capable to set up and employ proper mechanism to dispense information.

Every government organisation is needed to appoint one employee as a public information officer i.e. PIO. Once a department gets an RTI request, it is the responsibility of the PIO to furnish the information to the applicant within 30 days. Failing to do so means, a monetary fine can be imposed on the PIO. The longer a PIO makes an applicant wait, the more the penalty levied on him/her. There have been instances where PIOs have been asked to cough up amount in thousands of rupees as fine which indicates about promotion and spirit of the RTI Act.

10.9 SUMMARY

By the perusal of above provisions in this unit we have seen that a citizen, who desires to obtain any information under RTI Act, should make an application under Section 6 to the Public Information Officer of the concerned public authority in writing in English or Hindi or in the official language of the area in which the application is made. The application should be precise and specific. He should make payment of application fee at the time of submitting the application as prescribed in the RTI Rules, 2012. The applicant can send the application by post or through electronic means or can deliver it personally in the office of the public authority. The application can also be sent through an Assistant Public Information Officer.

RTI Act, 2005 under Section 3 provides that subject to the provisions of the Act, 2005, any citizen has got a right to have any information from any public office of the Central Government or the State Governments. Section 8 and 9 provide for certain prohibitions with regard to the furnishing of certain information. Any person, subject to the bar contained under sections 8 and 9 of the Act may seek any information from any public office by moving an application in writing

to the CPIO. Section 5 of the Act mandates every public authority to appoint a CPIO in his office to provide information to the applicants under the Act, 2005. Section 22 of the Act provides that the provisions of this Act shall have overriding effect over the provisions of the Official Secrets Act, 1923 or any other contrary law for the time being in force. This means that subject to the exemptions contained in Section 8 and 9 of the RTI Act, 2005, any contrary provisions contained in the Official Secrets Act, 1923 or in any other general or special enactment will not come in the way of furnishing information to an applicant under the provisions of the RTI Act, 2005.

10.10 GLOSSARY

1. Section 2(f) of RTI defines the term Information as:

- Any material in any form
- Records, documents, memos, e-mail opinions, advices, press releases, circulars orders, logbooks, contracts, reports, papers, samples
- Models, data held in any electronic form, and
- Information relating to any private body which can be accessed by a public authority under any law

2. Mode of access: Under Section 2(J) information can be accessed by:

- Inspection of works ,documents, records
- Taking notes, extracts or certified copies of documents or records;
- Taking certified samples of materials;
- Obtaining information in the form of diskettes, floppies, tapes, video cassettes or any other electronic mode or through printouts

3. Public authority: Under Section 2(h) Public Authority is defined as:

- Any authority or body or institution of self –government established under or constituted:
 - (a) by or under the constitution.
 - (b) by any law made by the Parliament/ state legislature
 - (c) Established by notification by the appropriate govt. which include any
- Body owned, controlled or substantially financed
- NGO substantially financed-- directly or indirectly by funds provided by the appropriate govt.

4. Public Information Officer- Under Section 5 (1)(4)(5) Public Information Officer means an officer:

- To be designated by the public authority within 100 days of the enactment of this Act;
- As many as the case may be;

- In all administrative units;
- To provide information to persons requesting for the information under this act
- Concept of deemed PIO

10.11 SAQS

1. Short Answer Questions:-

- a) What is the objective of Right to Information Act, 2005?
- b) How PIO is appointed?

2. Fill in the blanks:

- a) Only..... have got a right to seek any information from any public office of the Central Government or the State Governments under RTI Act, 2005.
- b) Sectiondefines the Information.

3. True and False:

- a) Section 5 of the Act mandates every public authority to appoint a CPIO.
(i) True, (ii) False
- b) Section 2(h) defines Public Authority.
(i) True, (ii) False

10.12 REFERENCES

- a) The Right to Information Act, 2005.
- b) The Right to Information Rules, 2012
- c) <http://rti.gov.in/rtiact.asp>
- d) dipp.nic.in/rti/rti-mandatory-information

10.13 SUGGESTED READINGS

Dr. Neelam Kant, 2014, published by Orient Publishing Company.

10.14 TERMINAL QUESTIONS AND MODEL QUESTIONS

- a) Explain the manner to promote Right to Information Act.
- b) What is the procedure to seeking information?
- c) How Sections 8 and 9 do not affect the promotion of Right to Information Act?

ANSWERS

SAQS

1. (a) Refer 10.2 (b) Refer Section 5 of RTI Act, 2005.
2. (a) Citizens (b) 2 (f)
3. (a) True (b) True

Answer to Terminal Questions

- (a) Refer to 10.3 (b) Refer to section 6 (c) Refer to 10.4 and 10.5

.....

UNIT-11

MONITORING OF IMPLEMENTATION OF RIGHT TO INFORMATION

11.1 INTRODUCTION

11.2 OBJECTIVES

11.3 SUBJECT

11.3.1 Monitoring

11.3.2 Structure For Implementation of Act

11.3.3 Information Supply Time Limits

11.4 SUMMARY

11.5 GLOSSARY

11.6 SAQ

11.7 REFERENCES

11.8 SUGGESTED READINGS

11.9 TERMINAL AND MODEL QUESTIONS

11.10 ANSWERS

11.1 INTRODUCTION

The right to information is implicitly guaranteed by the Constitution. However, with a view to set out a practical regime for the citizens to secure information as a matter of right, the Indian Parliament enacted the Right to Information Act, 2005. This law is very comprehensive and covers almost all matters of governance. This Law has a wide reach, being applicable to Government at all levels- Union, State and Local as well as to the recipients of substantial government funds.

The proper implementation of Right to Information Act is based on effective functioning of the concerned authorities.

As for as the applicability of the Act is concerned, it is applicable in whole of India excluding the state of J&K and Right to Information is available to the citizens only. Therefore here we will discuss about the monitoring of implementation of RTI in these concerned aspects based on its applicability.

11.2 OBJECTIVES

After reading this unit the learners will understand about the monitoring mechanism

11.3 SUBJECT

11.3.1 MONITORING

In order to ensure that RTI law is achieving its goal endorsed by the government, it is important that implementation of Act is supported by an ongoing monitoring and evaluation system. This will enable implementation efforts to be assessed reviewed, so that the best practice can be distilled and copied and areas for improvement can be identified and improve them.

For this purpose Central Act imposing a monitoring regime which requires:

1. Production of Annual Reports
2. Ongoing Collection of Statistics

1. Production of Annual Reports

The monitoring of the Act is governed by Central Act which requires annual reports for the same purpose. The Commission under section 25 prepares an Annual Report on the implementation of the provision of the RTI Act and also makes a recommendation to a public authority to take necessary steps for bringing its practice in conformity with the provisions and spirit of the RTI Act. The section 25 is given below:

Monitoring and Reporting

Section 25 (1) The Central Information Commission or State Information Commission, as the case may be, shall, as soon as practicable after the end of each year, prepare a report on the implementation of the provisions of this Act during that year and forward a copy thereof to the appropriate Government.

(2) Each Ministry or Department shall, in relation to the public authorities within their jurisdiction, collect and provide such information to the Central Information Commission or State Information Commission, as the case may be, as is required to prepare the report under this section and comply with the requirements concerning the furnishing of that information and keeping of records for the purposes of this section.

(3) Each report shall state in respect of the year to which the report relates,—

- a. the number of requests made to each public authority;
- b. the number of decisions where applicants were not entitled to access to the documents pursuant to the requests, the provisions of this Act under which these decisions were made and the number of times such provisions were invoked;
- c. the number of appeals referred to the Central Information Commission or State Information Commission, as the case may be, for review, the nature of the appeals and the outcome of the appeals;
- d. particulars of any disciplinary action taken against any officer in respect of the administration of this Act;
- e. the amount of charges collected by each public authority under this Act;
- f. any facts which indicate an effort by the public authorities to administer and implement the spirit and intention of this Act;
- g. recommendations for reform, including recommendations in respect of the particular public authorities, for the development, improvement, modernization, reform or amendment to this Act or other legislation or common law or any other matter relevant for operationalising the right to access information.

(4) The Central Government or the State Government, as the case may be, may, as soon as practicable after the end of each year, cause a copy of the report of the Central Information Commission or the State Information Commission, as the case may be, referred to in sub-section (1) to be laid before each House of Parliament or, as the case may be, before each House of the State Legislature, where there are two Houses, and where there is one House of the State Legislature before that House.

(5) If it appears to the Central Information Commission or State Information Commission, as the case may be, that the practice of a public authority in relation to the exercise of its functions under this Act does not conform with the provisions or spirit of this Act, it may give to the authority a recommendation specifying the steps which ought in its opinion to be taken for promoting such conformity.

2. Ongoing Collection of Statistics

While the Central Act makes the Information Commissions responsible for producing annual report also states that every Ministry or Department is under a duty to provide the Information Commission with whatever information they need to produce the report.

In practical terms, this means that all public authorities will need to set in place monitoring systems to collect statistical information about the processing of applications and appeals. Ideally, the nodal agency responsible for implementation will develop a monitoring system. It could be paper based, whereby all PIOs and Appellate Authorities maintain paper files and notes of how they handle cases. It could also be computer-based, whereby information is inputted into a database which can then easily be used to provide monitoring reports and statistics.

In the UK, a computer-based information data base is used to track applications and appeals. Alternatively, recognizing that at lower levels of government, computers may not be available, in India some form of computer and paper based monitoring may be the best option.

Ongoing collection and collation of statistics should be a minimum requirement for all public bodies. The annual reporting requirements in the Act require that some record is kept of all applications and appeals received and how they are dealt with. Additionally, using this information, heads of public authorities, nodal agencies and Information Commissions can regularly assess whether authorities are meeting their obligations under the Act. In doing so, they can also identify any public authorities which perhaps require additional training or systems support - for example, because statistics show that they are regularly missing deadlines for disposing of applications or appeals.

Drawing on experience in India and abroad, at a minimum, every public body should require each APIO, PIO and Appellate Authority to maintain some form of register of applications, which records:

- The total applications and appeals received, disposed of and outstanding;
- For each application and appeal received:
 1. Name of applicant;
 2. Date the application was received;
 3. Summary of information requested;
 4. Fees charged, if any;
 5. Time taken to process the request;
 6. What information was released if any;
 7. If the application was rejected, the exemption clause relied upon;

8. If the application was rejected, whether the rejection was appealed and if so, what was the result of the appeal?

At a minimum, the information should be collected from APIOs, PIOs and Appellate Authorities each month and collated and then sent to the Government Department responsible for overall implementation of the Act. This is what happened in Maharashtra under the now-repealed State RTI law. Ideally, the information collected should also be published every month on a government website, so that the public can have ongoing information on how effectively the Act is being implemented

11.3.2 Structure for Implementation of Act

Effective implementation is the essence of any good access regime. In preparing for the implementation, governments will need to take steps to establish the groundwork and infrastructure necessary to ensure the effective implementation of the access law. These preparatory steps include establishing systems and other resources.

For proper implementation of RTI the following setup has been established by the government:

Public Information Officer

Under Section 5 of the RTI Act, Public Information Officers are appointed. These are:

1. To be designated by the public authority within 100 days of the enactment of this Act;
2. As many as the case may be;
3. In all administrative units;
4. To provide information

Under Section 5 (2) another officers are appointed to assist the public information officers. These are called Assistant Public Information Officers. These are:

1. To be designated within 100 days
2. At sub-divisional /sub- district level
3. Responsibilities of APIO:
4. To receive information requests and appeals,
5. To forward it to the PIO or the appellate authority or to the CIC/SIC as the case may be
6. Where an application for information or appeal is given to a APIO a period of five days shall be added in computing the period of response.

11.3.3 INFORMATION SUPPLY TIME LIMITS

1	Provide Information in Normal Course	30 Days
2	Provide Information if the application is received through APIO	05 Days shall be added to the time period indicated
3	Provide information if it concerns with Life or Liberty of person	48 Hours
4	Transfer of application to other public authority under Section 6 (3) of the RTI Act	05 Days
5	Provide information if application or request is received after transfer from another public authority (a) In normal course (b) In case the information is concerned with Life or Liberty of a person	(a) Within 30 Days of the receipt of application by the concerned public authority (b) Within 48 hours of the receipt of application by the concerned public authority
6.	Provide information where the application is asked to pay additional fee	The period intervening between information the application about additional fee and the receipt of such fee by the public authority shall be excluded for calculation the period of reply
7.	Provide information by organizations specified in the Second Schedule (a) If Information relates to allegations of violation of human rights (after approval of Central Information Commission) (b) In case information relates to allegations of corruption	(a) 45 Days from receipt of application (b) Within 30 Days of the receipt of application

11.5 SUMMARY

By the perusal of above provisions in this unit we have seen that the proper implementation of Right to Information Act is based on effective functioning of the concerned authorities.

As far as the applicability of the Act is concerned, it is applicable in whole of India excluding the state of J&K and Right to Information is available to the citizens only. Therefore here we will discuss about the monitoring of implementation of RTI in these concerned aspects based on its applicability. In order to ensure that RTI law is achieving its goal endorsed by the government, it is important that implementation of Act is supported by an ongoing monitoring and evaluation system. This will enable implementation efforts to be assessed reviewed, so that the best practice can be distilled and copied and areas for improvement can be identified and improve them.

Central Act imposing a monitoring check which requires Production of annual Reports and ongoing Collection of Statistics. The monitoring of the Act is governed by Central Act which requires annual reports for the same purpose. The Commission under section 25 prepares an Annual Report on the implementation of the provision of the RTI Act and also makes a recommendation to a public authority to take necessary steps for bringing its practice in conformity with the provisions and spirit of the RTI Act. While the Central Act makes the Information Commissions responsible for producing annual report also states that every Ministry or Department is under a duty to provide the Information Commission with whatever information they need to produce the report.

11.6 GLOSSARY

1. Annual Report: The RTI Commission under section 25 prepares an Annual Report on the implementation of the provision of the RTI Act.

2. APIO: Means a person under Section 5(2):

- To be designated within 100 days
- At sub-divisional /sub- district level

11.7 SAQS

1. Short Answer Questions

- a) What is time limit for disposing of Application seeking information?
- b) What are the functions of APIO?

2. Fill in the blanks:

- a) The Commission under section 25 prepares an on the implementation of the provision of the RTI Act.
- b) APIO is designated withdays at sub- divisional or sub- district level.

3. True and False:

1. RTI Act is applicable in State of Jammu & Kashmir.
 - a. (a)True, (b) False

2. Information concerned with Life or Liberty of person is provided within 30 days.
 - a. (a)True, (b) False

11.8 REFERENCES

- a) The Right to Information Act, 2005.
- b) rti.gov.in/
- c) <http://pib.nic.in/newsite/PrintRelease.aspx?relid=155409>
- d) <http://www.ijtr.nic.in/webjournal/12.htm>

11.9 SUGGESTED READINGS

Dr.Neelam Kant, 2014, published by Orient Publishing Company.

11.10 TERMINAL AND MODEL QUESTIONS

- a) What is the procedure for implementation of Right to Information Act?
- b) Discuss the limit of time period for different category of information asked?

11.11 ANSWERS:

SAQ

- 1.(a) 30 days (b) Refer Section 5
- 2.(a) Refer Section 25 (b) Refer Section 5
- 3.(a) False (b) False

Answer to Terminal Questions

- (a)11.2 (b)11.4

UNIT – 12

MISCELLANEOUS PROVISIONS

12.1 INTRODUCTION

12.2 OBJECTIVES

12.3 SUBJECT

12.3.1 Protection of Action taken in Good Faith

12.3.2 Act to have Overriding Effect

12.3.3 Bar of Jurisdiction of Courts

12.3.4 Exempted Certain Organizations from the Ambit of RTI Act, 2005

12.3.5 Monitoring And Reporting

12.3..5.1 Appropriate Government to Prepare Programmes

12.3..5.2 Power to make Rules by Competent Authority

12.3..5.3 Laying of Rules

12.3..5.4 Powers to Remove Difficulties

12.4 SUMMARY

12.5 GLOSSARY

12.6 SAQS

12.7 REFERENCES

12.8 SUGGESTED READINGS

12. 9 TERMINAL AND MODEL QUESTIONS

12.10 ANSWERS

12.1 INTRODUCTION

Miscellaneous provisions contained under Chapter VI of the Right to Information Act, 2005, lays down various miscellaneous provisions, these are of utmost importance as they contain various norms for functioning and immunity of public authority. Apart from it also make a clear picture about the organisations which are out of the ambit of RTI. One of the most important aspects of this chapter is that it focus on duty of government to conduct programmes for the protection of interest of people

12.2 OBJECTIVES

After studying this unit student will easily examine the true motive behind making the machinery active to safeguard the public interest that is first requirement to ensure:

1. For setting up the practical regime of right to information for citizens.
2. To secure access to information under the control of public Authority.

12.3 SUBJECT

12.3.1 Protection of Action taken in Good Faith

According to Section 21 of the RTI Act, 2005 No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule made there under. The term good faith has not been defined in the Act. The scope of this section is very wider and it gives protection to ‘every person’ within the meaning of this Act but that act must be in good faith. Here the good faith should be read according to section 3(22) of the General Clauses Act, 1897 that defines the term good faith which means ‘a thing shall be deemed to be done in good faith where it is in fact done honestly whether it is done negligently or not’. And section 52 of the Indian Penal Code, 1860 also defines ‘good faith’ which means ‘nothing is said to be done or believed in good faith which is done or believed without due care and attention’.

12.3.2 Act to have Overriding Effect

According to section 22 of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 1923), and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

The Right to Information Act, 2005, has been given an overriding effect on the other Acts for the time being in force including the Official Secrets Act, 1923. Section 22 of the RTI Act provides that the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained

in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. These Acts have not been revoked but the same have been superseded to the extent that these Acts come into conflict with the provisions of this Act. In other words, these Acts shall remain in force in statute books but shall cease to operate to the extent to which they are inconsistent with the provisions of RTI Act.

12.3.3 Bar of Jurisdiction of Courts

According to section 23 of this Act no court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act.

The Right to Information Act, 2005, is a self-contained code. It is a special Act. It can prevail over the other provisions of laws. As per the provisions of section 23, the purpose of the Act is to:

1. Provide right to information to the citizens from the domain of public authority without the cost of litigation or with the minor cost of processing.
2. The statute deals with a particular subject and the statutory machinery provided for this purpose is supposed to have expertise in the subject.
3. Avoid delay and relief available under the act is available in a better and handy manner without resorting to the complicated procedure of civil courts.
4. Flow of legal procedure under a particular statute is not unnecessarily interrupted by the order of the civil courts.

It means all civil courts are excluded from entertaining any suit, application or other proceedings in respect of any order made under this Act and no such order shall be called in question except by way of an appeal under this Act. The mere reading of this section reflects that jurisdiction of all court has been barred which also includes the jurisdiction of Supreme Court and High Courts. However, the same contention cannot be sustained, as per the law laid down by the Hon'ble Supreme Court in *L. Chandra Kumar v. Union of India* AIR 1997 SC 1125. In this case the Seven Judges Bench of Supreme Court held that the jurisdiction of the Supreme Court under Article 32 and that of the High Courts under Article 226 of the Constitution cannot be taken away by any statute or law enacted by the legislature. Even though, these powers of judicial review are part of the basic structure of Constitution as per law laid down in *KesavanandaBharatiand Others v. State of Kerala and Another* AIR 1973 SC 1461. In this case the Hon'ble Supreme Court held that the powers of judicial review cannot be taken away by any Act of the Legislature from the Supreme Court and High Courts. Therefore, writ jurisdiction of the Supreme Court and High Court under Articles 32 and 226 of the Constitution of India cannot be excluded respectively. In other words, any decision taken under this Act can be challenged in the Supreme Court as well in the High Courts.

12.3.4 Exempted Certain Organizations from the Ambit of RTI Act, 2005

Scope of 24 of this Act: Rules laid down under this section do apply to certain organisations. This section ordains the authorities whose list has been specified in the second schedule, not to divulge the information to the public. Above exemptions are made in the interest of security of State and for the proper functioning of security of State. According to First Appellate Authority cum additional DG of Police v. Chief Information Commissioner, Haryana, AIR 2011 P&H 173, this section exempts only that organisations which is directly related to intelligence and security of India pertaining to allegation of corruption is not covered under exemption clause. According to S. Vijaylakshmi v. Union of India, AIR 2011 Mad. 275 under this section CBI is not exempted from furnishing information relating to corruption.

Following are the organisations under Second Schedule which are exempted from the ambit of RTI Act are as follows:

S.No.	ORGANISATION	S.No.	ORGANISATION
1.	Intelligence Bureau	12.	Research and Analysis Wing of the Cabinet Secretariat
2.	Directorate of Revenue Intelligence	13.	Central Economic Intelligence Bureau
3.	Directorate of Enforcement	14.	Narcotics Control Bureau
4.	Aviation Research Centre	15.	Special Frontier Force
5.	Border Security Force	16.	Central Reserve Police Force
6.	Indo-Tibetan Border Police	17.	Central Industrial Security Force

7.	National Security Guards	18.	Assam Rifles
8.	Sashastra Seem Bal	19.	Directorate General of Income Tax (Investigation)
9.	National Technical Research Organization	20.	Financial Intelligence Unit-India
10.	Special Protection Group	21.	Defence Research and Development Organization
11.	Border Road Development Board	22.	National Security Council Secretariat

12.3.5 Monitoring and Reporting

This section 25 lays down procedure for monitoring and reporting. The Central and State Information Commissions are vested with the powers of monitoring and to propose any recommendations for proper working of this Act. This enables the concerned authority to overcome to the problems in real working of this Act.

12.3.5.1 Appropriate Government to prepare Programmes

Section 26 of the RTI Act, 2005, provides that the appropriate government has to organise various educational programmes and camps to educate the public in particulars the disadvantage communities, as to how to exercise their rights contemplated under this Act. The government has educate the people by all means at its commands and also has to give training to Central and State Public Information Officers for the purpose of educating the people.

Power to make rules by appropriate Government—

According to section 27 of RTI Act,

(/) The appropriate Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the cost of the medium or print cost price of the materials to be disseminated under sub-section section 4; (4) of

(b) the payable under sub-section (1) of section 6;

(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 of service of the officers and other employees under sub-section (6) of section 13 and sub-section (6) of section 16;

(e) the procedure to be adopted by the Central Information Commission or State Information Commission, as the case may be, in deciding the appeals under sub-section (10) of section 19; and

(f) any other matter which is required to be, or may be, prescribed.

12.3.5.2 Power to make rules by Competent Authority

According to section 28 of RTI Act,

(/) The competent authority may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(i) the cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4;

(ii) the fee payable under sub-section (/) of section 6;

(iii) the fee payable under sub-section (/) of section 7; and

(iv) any other matter which is required to be, or may be, prescribed.

12.3.5.3 Laying of Rules

According to section 29 of the RTI Act the power to make rules conferred on the Central Government or State Government is a delegated power. It is settled that where a power is delegated to any authority, the delegating authority must have power to control and supervise the exercise of powers by the delegatee. Accordingly, it is common in all enactments to make a provision whereby when a delegate exercises its power by enacting rules they shall be laid before the legislature as soon as they are made.

According to section 29 of the RTI Act(/) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or

more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(2) Every rule made under this Act by a State Government shall be laid, as soon as may be after it is notified, before the State Legislature.

12.3.5.4 Powers to remove Difficulties

According to section 30 of the RTI Act-

(1) if any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removal of the difficulty: Provided that no such order shall be made after the expiry of a period of two years from the date of the commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

12.4 SUMMARY

According to Section 21 of the RTI Act, 2005 No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule made there under. The term good faith has not been defined in the Act. According to section 22 of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 1923), and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. Scope of 24 of this Act: Rules laid down under this section do apply to certain organisations This section ordains the authorities whose list has been specified in the second schedule, not to divulge the information to the public. Section 25 lays down procedure for monitoring and reporting

Section 26 of the RTI Act, 2005, provides that the appropriate government has to organise various educational programmes and camps to educate the public in particulars the disadvantage communities, as to how to exercise their rights contemplated under this Act. RTI Act the power to make rules conferred on the Central Government or State Government is a delegated power. It is settled that where a power is delegated to any authority, the delegating authority must have power to control and supervise the exercise of powers by the delegatee.

12.5 GLOSSARY

1. **EXEMPTED ORGANIZATIONS:** Organisations under Second Schedule which are exempted from the ambit of RTI Act, 2005.

2. **APPROPRIATE GOVERNMENT:** Appropriate Government means a government as defined under section 2(a) of RTI Act, 2005.

12.6 SAQS

1. SHORT ANSWER QUESTIONS:

(a) What is the bar on jurisdiction of courts under RTI Act, 2005?

(b) What do you mean by competent authority?

2. FILL IN THE BLANKS:

(a) The section 21 of RTI Act, 2005 deals with.....of actions taken in good faith.

(b) The appropriate government has to organise various.....and.....to educate the public.

3. TRUE AND FALSE

(a) Civil courts are excluded from entertaining any suit, application or other proceedings in respect of any order made under this Act

(i) True (ii) False

(b) The Right to Information Act, 2005, has no overriding effect on the other Acts for the time being in force including the Official Secrets Act, 1923.

(i) True (ii) False

12.7 REFERENCES

a) The Right to Information Act, 2005.

b) rti.gov.in/

c) shodhganga.inflibnet.ac.in

12.8 SUGGESTED READINGS

1. Dr. Neelam Kant, 2014, published by Orient Publishing Company.

12.9 TERMINAL AND MODEL QUESTIONS

(a) Who has the Rule making Power?

(b) Who has the power to deal with the difficulties while implementing RTI Act, 2005?

12.10 ANSWERS

1. (a) Refer Section 23(b) Refer Section 28

2. (a) Protection (b) Refer to Section 26
3. (a) True (b) False

ANSWERS OF TERMINAL QUESTIONS

(a) Refer Section 28 (b) Refer Section 30