

AN EXCEPTION TO THE RIGHT TO INFORMATION ACT 2005

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Eleventh of May 2005 is a memorable day of Indian legal history for passage of the bill for the Right to Information Act, 2005 which got the Assent of the President on the fifteenth of June. The Act in full came in to force on the twelfth of October 2005.

Everybody will appreciate our members of Parliament for bringing legislation like the above one which can, in strict sense, be enforceable by the people. It aims transparency in the activities and functions of Governments and their agencies. Contain corruption is the prime objective behind the enforcement of the Act. Anyone who goes through various provisions of the Act would find that the frame of it is foolproof. Still some ambiguous provisions are noticeable.

The following lines are indented to point out an ambiguity which may occur while disposing of requests by the Public Information Officers (PIOs) who are to be designated under the Act in all offices and administrative units of the Government departments and Organizations, to receive requests from the public and to provide information in a time bound manner.

It is under section 7 of the Act that the procedures to be followed by the PIOs with regard to the disposal of requests are prescribed. The request has to be disposed of within thirty days of its receipt, normally. Exemptions to this deadline include cases where confidential information related to (or supplied by) third party is to be furnished. Here third party means as per section 2 (n) *any person other than the requester including a Public Authority*. Section 11 of the Act is dealing with the procedures involved in the disposal of requests seeking information relating to or supplied by third party. Section 11(1) says when PIO intends to disclose third party's confidential information he shall, within five days of its receipt, give a written notice to that third party inviting him to make a submission in writing or orally regarding whether the information should be disclosed. Ten days time from the date of receipt of notice by the third party should be given to him to respond. Such reply or objection which may be received from the third party shall be considered while taking a decision about the disclosure of the information. In that case, subsection (3) to section 11 says that, within forty days from the date of receipt of the request the PIO shall

make a decision as to whether or not to disclose the information. This forty days period includes the ten days time to be given to the third party. After taking the decision it should firstly be informed to the third party (needless to say, inform the requester also). The third party shall also be informed that he is entitled to prefer an appeal under section 19(2) against the decision before the appellate authority.

Here the provisions of section 11 would go to show that whatever is the decision, whether in favour or against the third party, P I O shall intimate his decision to the third party along with right of appeal which is also to be mentioned in the intimation. Here the ambiguity in the Act is that it is silent as to whether the PIO should, after intimating the decision to the third party, wait for orders of the appellate authority to furnish the information?. Could the PIO ask the third party to produce a stay order from the appellate authority against the decision if the third party does not admit the decision? Can PIO inform the third party that unless PIO receives a stay order from the appellate authority within a certain period he would be furnishing the information? The provisions under section 11 should have been clear on the steps to be taken by the PIO in third party procedure. And also the Act is not clear as to whether the third party here is entitled to prefer second Appeal before the Information Commission against the decision of the Appellate Authority which upholds the decision of the P I O to furnish third party's information. Sub section(3) to section 19 provides for second appeal under the Act which says that second appeal lies against an order passed by first Appellate Authority under Section 19 (1) only which is not applicable to third parties since the first Appeal of the third party against an order under section 11 is prescribed under section 19(2).

Hence, while dealing with Section 11 the PIOs may be in an awkward situation. If they disclose the information just after intimating the decision to the third party along with notice of their right of appeal, the very purpose of the appeal right would be forfeited; the purpose of right of appeal vested with the third party against the decision of the PIO would be meaningless.

To overcome the said embarrassing situation PIO can adopt a course that he may intimate the third party to report PIO within a definite period(which may include thirty days to prefer Appeal) in case he proceeds with Appeal against the decision of the PIO.

Therefore an amendment to section 11 of the Act to the effect that ***after serving notice on the third party intimating him of the decision taken on the request to furnish the information relating to the third party, the***

PIO shall wait for a certain period which will cover the time limit to prefer an appeal and the period within which the appeal is to be disposed of. If nothing is heard either from the Appellate Authority or the third party regarding the appeal within that period the PIO can furnish the information to the requester.

Section 19 also warrants amendment to enable the third party to prefer a Second Appeal otherwise it may amount to violation of natural justice to the third party.
