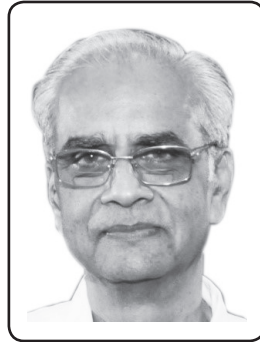


2005 RTI ACT
HANDBOOK FOR OFFICIALS



Institute of Management in Government
Thiruvananthapuram
2022



Message

The RTI ACT 2005 is a water shed in the history of Indian Democracy. A legislation however progressive, has to be operationalized and facilitated in its true spirit, to realize its potential. The benefits of the RTI Act 2005, the entitlements it confers on the public, the procedures to be followed to obtain and dispense information have to be understood in its true spirit. It is only then, that the potential of the Act could be realized.

The Institute of Management in Government has set up an RTI online Portal and runs an online certified program. This handbook seeks to complement the efforts of the Institute to propagate information on RTI.

A handwritten signature in black ink, appearing to read 'K. Jayakumar'.

25 March, 2022

K. Jayakumar
Director

A. Introduction

India has adopted democratic form of Government and is the largest democracy in the world. Democracy requires an informed citizenry and transparency of information in public space which is vital for its functioning. Lack of transparency is the primary cause of corruption. The Supreme Court of India has emphasized the importance of freedom of information and described it as a fundamental right under the facet of “Freedom of Speech and Expression” as contained in Article 14, 19(1) (a) and Article 21 of the Constitution. The Court has affirmed this in numerous occasions.

Globally, the first such legislation was enacted in 1776 by Sweden, followed by Finland (1951), US (1966), Norway (1970) and several other countries. As per the website (<http://www.access.info.org>) 125 countries have enacted Right to Information (RTI) or similar legislations.

In India, the campaign by Mazdoor Kissan Shakti Sangatan (MKSS) in Rajasthan paved the way for passing legislations, similar to RTI with features of openness and transparency in several States. The national campaign for Right to Information later received a major boost during the tenure of UPA Government, when activists like Aruna Roy, JeanDrez and others consistently pressurised the Government to pass the bill and enact a law. Accordingly, the Right to Information Bill 2004 was tabled on 23rd December 2004. This Bill was referred by Parliament to the Standing Committee on Personnel, Public Grievances, Law and Justice for consideration. Several civil society activists gave evidence before the Committee. The Report of the Committee along with the amended version of the RTI Bill was passed by the Lok Sabha on 11th May 2005 and it got the assent of the President on 15th June 2005. With

the presidential assent, the Central & State Governments had 120 days to implement the provisions of the Bill. The Act formally came into force on 12th October 2005. The Act covers the Central Government, State Governments and local bodies (except those in the State of Jammu and Kashmir).

B. Preamble and Objectives

The preamble states that “the Act provides for setting a 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, it also provides for the constitution of a Central Information Commission and State Information Commission and for matters connected or incidental thereto.”

Accordingly, citizens have access of Government transactions and can actively participate in governance. It also hold Governments and their instrumentalities accountable to the governed and helps in containing corruption. The crux behind this is to ensure that the taxpayers’ money is utilized by Government agencies effectively for welfare and development activities and for other purposes intended.

C. RTI ACT

This Act has 6 Chapters and 31 sections. Chapter 1 deals with definition of important terms used in the Act. As per Section 3, all citizens shall have the right to information.

- 1. Information:** As per Sec. 2(1)(f) any material in any form held by the Public Authority (PA) including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, log books, contracts, reports, papers, samples, models, data

available in any electronic form and information relating to any private body which can be accessed by a public authority under any other law. It may be noted that opinions and advices are those made in the note file by some other officer and the Public Information Officer is not expected to give his opinion or advice or inference on any matter in RTI related queries, other than disclosing the information held by the Public Authority (PA) in the relevant file. Moreover the Act gives an opportunity to access documents of private bodies to a certain extent, by making an application to the regulatory body of that private body.

2. **Right to Information:** Sec 2(j) means the right to information accessible under this Act which is held by or under the control of any PA. It includes
 - a. Right of inspection of work, documents, records,
 - b. Taking notes, extracts or certified copies of documents or records,
 - c. Taking certified samples of materials,
 - d. Obtaining information in the form of CD, tapes, video cassettes or any electronic mode or print outs from computer or any other device.
3. **Record (Sec 2 (i)):** This includes
 - a. Any document, manuscript and files,
 - b. Any microfilm, facsimile copy of a document,
 - c. Reproduction of image embodied in such microfilms,
 - d. Material provided by a computer or any other device.
4. **Third Party (Sec 2(n)):** This means any person other than the citizen requesting for information and

includes a PA

5. **State Public Information Officer (SPIO):** s/he is the officer (Statutory post) designated by the PA to deal with requests/petitions under RTI in State Government Departments
6. **Central Public Information Officer (CPIO):** S/he is the officer designated by the PA to deal with requests/applications under RTI in Central Government Departments.

It may be noted that PIO is the main communication link between the applicant and the PA. One Department can designate as many PIO's as required depending on the volume of transactions handled by the Department. The PA may also designate PIO's or APIO's on all its divisional / sub-divisional offices for the effective implementation of the Act.

Assistant Public Information Officers (APIOs) are not legally responsible for providing the information and s/he is expected to collect the application or appeal from the citizen, maintain a register of the details of application received and transfer it to the concerned PIO within five days.

7. Processing of RTI Application:

- a. There is no prescribed form for application. The citizen can apply to the PIO by e-mail or by post in English or Hindi or the official language of the State. The PIO shall render all reasonable assistance to the person making the request orally to reduce the same in writing (Sec 6 (1))
- b. The applicant need not give any reason for requesting information. However s/he shall provide all details regarding the particulars of

the information sought by him/her and also the details (address) for contacting him/her (Sec 6(2))

- c. While processing, if the PIO finds that the information sought is held by another PA or the subject matter is more closely connected with the functions of another PA, the PIO shall transfer it or part of it to the other PA (which possess the information) and inform the applicant about such transfer, as soon as possible and in no case later than 5 days from the date of receipt of the application (Sec 6(3))
- d. The PIO shall as expeditiously as possible and in any case within 30 days (calendar days, not working days) of the receipt of the request, provide the information after payment of such fees as prescribed by State Government or reject the application for any reason specified in Sec 8 or 9 (Sec 7) of the Act. If the information sought by the applicant relates to the life or liberty of a person, the same shall be provided within 48 hours of the receipt of the request. Here the applicant will have to substantiate that the information sought by him/her, relates to the life or liberty of the person.
- e. The prescribed fee of Rs. 10/- shall be remitted in the following modes.

for State Government Organisations

- i. Court fee stamp,
- ii. Treasury challan (0070-60-118-99),
- iii. Demand Draft/Bankers Cheque, Pay Order payable to PIO &

iv. Directly by cash in the office of PIO
for Central Government Organisations

- i. By cash
- ii. DD/Bankers Cheque/Indian Postal Order

Moreover citizens can also use the GOI, RTI Portal (rti.gov.in) for uploading applications. Here the fee can be remitted using debit card/net banking and other payment gateways.

However in the case of public authorities other than the Government Departments (Universities, Public Sector Undertakings, Autonomous Bodies) the fee shall be remitted to the account of such PA by cash or in the form of cheque or DD drawn in favor of Accounts officer of such public authority.

The PIO may provide information free of cost to persons who are below Poverty Line (BPL). Here the BPL citizen shall provide certificate issued by Grama/Block Panchayat Secretary or Municipal/ Corporation Secretary in this regard.

D. RTI Operational Part

- a. While examining an application, if the PIO finds that the information sought is held by a section of his office, by a UO note s/he may transfer it to that section stating the time limit for disposal. Once the file is received by the concerned section, the Section Officer or Assistant (who is the custodian of information) shall provide the relevant file and other records along with a draft reply, without delay to the PIO. As per Sec 5 (4), the PIO for the purpose of discharge of his/her duties, may seek the assistance of any officer (senior or junior). Such officer whose assistance has

been sought shall render all assistance to the PIO and for the purpose of any contravention of the provisions of this Act, such officer shall be treated as deemed PIO (Sec 5(5)). In short, the Act places responsibility not only on the PIO but also on every officer of the PA. It may be noted that in circumstances where the senior officer fails to provide information kept by him/her, the fact may be noted in the note file.

- b.** On deciding to provide information, the PIO shall ascertain any further fee regarding the cost of information. The details of further fee representing the cost of information together with the calculation made to arrive at the amount shall be intimated to the applicant as early as possible. Here the period intervening between the dispatch of the above intimation and payment of fee shall be excluded for the purpose of calculating the period of 30 days (Sec 7 (3)). The applicant has the right to review the decision regarding the further fee fixed by the PIO and in the intimation letter, the details of appellate authority, time limit etc. may also be stated.

c. Fee

The fee for providing information shall be charged as

- a. Rs. 3 for each page in A4 Size
- b. Actual charge or cost of the copy in larger size paper
- c. Actual cost or price for samples, map, plans etc.
- d. For inspection of records, there is no fee for the first hour and a fee of Rs. 10/- for every subsequent 30 minutes or fraction thereof

- e. Rs.75 for providing information in electronic mode
- f. In case of fees statutorily fixed by Departments like BTR (Basic Tax Register), sketch map, satellite maps, encumbrance certificate, copy of answer sheets etc. and for various services rendered by it, such fees as fixed by the PA shall be collected, even if requested under RTI Act - GO dt. 18.02.2022 (This is stayed by the Hon. high court at the moment)

d. Reply/Rejection

- a. PIO has to provide the entire information requested by any applicant free of cost, if s/he fails to give a reply (provide information or reject u/s 8 and 9) within 30 days. Interim reply stating that the 'record is being searched' is not entertained under RTI.
 - b. While rejecting the request for information from an applicant, the SPIO shall communicate to the person the following
 - c. The reason for such rejection
 - d. The period within which an appeal against such rejection is preferred
 - e. The particulars (details) of the appellate authority (Sec 8 (8))
- e.** Information shall be provided in the form in which it is sought. If the information requested is voluminous or scattered in different sections which would divert the resources of the PA (including human resources), or would be detrimental to the safety and preservation of the records, then the PIO can use any other form as stated in Sec 2(j) for divulging information. The PIO in this case may request the applicant to visit this office on a particular day/time, inspect the records and take

copies etc. if required, by paying the prescribed fee.

E. Exempted Information

As per Sec 8(1) the PIO has no obligation to give information on certain aspects. They are

- 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 could 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 to government and other Officers
- 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 Public Information Officer, the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

However, even if exempted, the PA may allow access to information, if public interest in disclosure outweighs the harm to the protected interest.

Moreover as per Sec 8(3) , any information relating to an event or matter which happened 20 years prior to the date of request shall be provided to any person initiating a request, except the exempted provisions of clauses (a) (c) and (i) of Sec 8. It is clarified that there is no time limit for retention of files, records or documents in RTI by the PA. However, the records retention schedule as per the Manual of Office Procedure(MOP) will prevail ,and if the document requested by the citizen has been legally destroyed as per MOP, the application can be rejected stating this. In addition, a PIO can reject a request for information involving infringement of copy right of a person. But this does not apply to copyright of the Government. (Sec 9)

- k. Sec.10 deals with supply of part information by severance. When a request received is partly exempted from disclosure, such part can be severed in such a way that part of the record which is not exempted, may be provided to the applicant
- l. Sec. 11 deals with third party information. If an applicant seeks information which relates to a third party and that third party has treated that information as confidential, the PIO shall within 5 days from the receipt of application, give a written notice to the 3rd party that the information has been sought under RTI Act by another person and that s/he intends to disclose it. The 3rd party may within 10 days give a submission orally or in writing, to the PIO whether the information should be disclosed or not. The PIO should take a decision within 40 days regarding disclosure keeping in view the submission of the 3rd party. After taking the decision, the PIO shall give a notice of his decision to the 3rd party in writing. The notice should include a statement that the third party is entitled to prefer an appeal to the First Appellate Authority against the decision of PIO. If an appeal has been filed by the third party against PIO's decision, the information requested need not be disclosed till the appeal is decided.

F. *Suo Moto* Disclosure

As per Sec. 4(1)(b), every PA should disclose *Suo Moto* to the public, 17 sets of information through various means of communication (including internet) so that the public has minimum need to apply for information under the Act. This information has to be updated periodically.

G. Appeals

If an applicant is not satisfied with the information furnished by PIO, or if the PIO fails to provide information within the prescribed time limit, the citizen can prefer an appeal to the First Appellate Authority (FAA) within a period of 30 days. The first appeal shall be disposed of within a period of 30 days or in exceptional cases within 45 days of the receipt of the appeal. If the FAA fails to pass an order within time or if the applicant is not satisfied with the order of FAA, s/he can prefer a second appeal with the State Information Commission (for State Government Departments) and Central Information Commission (for Central Government Departments). The Information Commission after hearing the parties shall take a decision. However, there is no time limit for this. The decisions of the Commission are binding and can be challenged only in a higher court of law. The law protects PIOs as per Sec 21, which says that no suit, prosecution or other legal proceedings shall lie against any person for anything done in good faith.

H. Powers of the Commission

The Commission may require the PA to take steps as may be necessary to secure compliance with the provisions of the Act. This includes:

- i) by providing access to information in a particular form,
- ii) by appointing a PIO, if not done,
- iii) by publishing certain information,
- iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records,

- v) by enhancing the provision for training on RTI to its officials &
- vi) by providing the powers of the Commission with an annual report in compliance with the provisions of the Act

I. Penalties

The Information Commission at the time of deciding an appeal shall impose penalty of Rs. 250/- each day of delay beyond the permissible time subject to the maximum of Rs. 25,000/- if under the following circumstances:

- 1) If the PIO refuses to receive an application for information,
- 2) If the PIO rejects an application without any reasonable cause,
- 3) Not furnishing information within the time specified,
- 4) Malafidely denying the request,
- 5) Knowingly giving incorrect, incomplete or misleading information,
- 6) Destroy information which is the subject of the request &
- 7) Obstructs in any manner, furnishing information.

If the Commission finds that the PIO persistently fails to furnish information, it shall recommend disciplinary action against the PIO. It can even require the PA to compensate the complainant for any loss or other detriment suffered in deserving cases.

J. Conclusion

To sum up, RTI is one of the progressive legislations that the Indian Parliament has enacted since our independence. It is a powerful tool vested in the hands of the citizen to fix accountability & address corruption related issues in Government. The PIO & other officers of the Public Authority have to be fully acquainted with the provisions of the Act, the recent court judgments, circulars & GO's issued by the State Government for discharge of their duties and ensure transparency for the effective implementation of the Act in its true spirit.

Reference:

1. <http://rti.img.kerala.gov.in>
2. <http://gad.kerala.gov.in/sites/files>
3. <http://www.keralasic.gov.in>
4. www.rti.gov.in
5. www.cic.gov.in

