FILES
Of
The Ministry of Personnel, Public Grievances, and Pensions
Department of Personnel and Training
Government of India

Pertaining to the evolution of the Right to Information Act and other related matters
1997

File 1
Pages 1 to 380

File 2
Pages 381 to 515

File 3
Pages 516 to 633

File 4
Pages 634 to 753

File 1

(3)

FILE 1

No.34011/1(S)/97-Estt.(B)
Government of India
Ministry of Personnel, P.G. & Pensions
Department of Personnel & Training

New Delhi, dated 2nd Jan. 1997

OFFICE MEMORANDUM

Subject: Setting up of a Working Group on Right to Information and promotion of open and transparent Government.

There is widespread agreement on the need for a clean and responsive administration based on the principles of accountability, openness, decentralisation and citizen orientation. In the context of the National Debate on Effective and Responsive Administration initiated by the Government of India, it has been decided to formulate specific measures for the introduction of greater transparency in the functioning of Government and public bodies, with reference to both their own employees, and interaction with members of the public. It is also considered necessary to ensure widespread and easy access of citizens to all information relating to operations of Government and public agencies, subject to specified exceptions. For this purpose, the possibility of the introduction of a legislation for Right to Information at the levels of Central and State Government could be examined after appropriate consultations. This would involve also the consideration of amendment to various relevant legislations including the Official Secrets Act.

2. In view of the above, it has been decided, with the approval of the Cabinet Secretary, to constitute a Working Group on "Right to Information and Transparency" under the Chairmanship of Shri H.D.Shourie, Chairman, Common Cause, New Delhi with the following composition:-

1.	Shri H.D.Shourie	Chairman
2.	Shri Soli Sorabjee	Member
3.	PIO, Ministry of Information & Broadcasting	Member
4.	A representative of the Ministry of Home Affairs	Member
5.	Additional/Joint Secretary, Department of Legal Affairs	Member
6.	A representative of the Ministry of Railways	Member
7.	A representative of the Department of Posts	Member
8.	A representative of the Department of Telecom	Member
9.	Shri Harinder Singh, Jt. Secy.,Department of Personnel and Training.	Member

2/-

3. The Terms of Reference of the Working group are as follows:-

a. To examine the feasibility and need of either a full fledged Right to Information Act or its introduction in a phased manner to meet the needs of open and responsive Government.

b. To idertify specific areas where Right to Information can be built into the working procedures and working system especially in large departmental undertakings including Railways, Telecommunications, Postal Services, Passports and Banking at the Central Government level.

c. To examine the internal working procedures with a view to introducing greater openness and transparency in handling of employee grievances and internal consultation.

d. To examine the rules framework with particular reference to the existing Conduct Rules and Manual of Office Procedure with a view to introducing greater openness and transparency in Government working including dealings with employees.

e. To examine the nature and content of training to promote greater openness and more customer responsive public dealings.

4. The Working Group will submit its report within a period of two months.

5. The expenditure on local transport and other allowances of the non-official members, as per rules applicable to Group 'A' officers of the Government of India, will be met from the budget of Department of Personnel and Training.

(Y.G.Parande)
Director
Tele. 3015589

To

Shri H.D.Shourie, A-31, Westend, New Delhi-110021.

Shri Soli Sorabjee, Sr. Advocate, 134 Sundar Nagar, New Delhi- 110003.

Secretary, Ministry of Information & Broadcasting, Shastri Bhavan, New Delhi.

Secretary, Ministry of Home Affairs, North Block, New Delhi.

Secretary, Department of Legal Affairs, Shastri Bhavan, New Delhi.

Chairman, Railway Board, Rail Bhavan, New Delhi.

3/-

Secretary, Department of Posts, Dak Bhavan, New Delhi.

Secretary, Department of Telecommunications, Sanchar Bhavan, New Delhi.

Joint Secretary(E), DOPT, North Block, New Delhi.

Copy for information to:_

1. Staff Officer to Cabinet Secretary
2. PS to Prime Minister
3. PPS to Secretary (P)
4. PS to: EO, AS(P), AS(S&V), JS(T), JS(AT & A)



3

PRESS RELEASE

As a part of Government efforts to promote a more effective and responsive administration, Govt. of India have set up a Working Group on Right to Information and promotion of open and transparent Govt. The Working Group is headed by the well-known legal activist, Shri H.D. Shourie Chairman of Common Cause and it will have representatives of various Ministries. The Working Group has been constituted in order to widen the area of easy access of information to the common man in all areas of govt. functioning except in regard to the internal security and defence etc. The Working Group will submit its recommendations within a period of two months.

2. The Working Group will examine the feasibility and need of either a full-fledged Right to Information Act or its introduction in a phased manner to meet the needs of an open and responsive government and will identify specific areas especially in large departments like Railways, Posts and Telegraphs etc. which deal with the common man. The working group has also been asked to examine the rules frame-work and existing Civil Services Conduct Rules and Manual of Office Procedure with a view to ensure greater openness and transparency in the process of decision making. The internal working procedures in handling of employees grievances and nature and content of training to promote greater openness and more customer responsive public dealings will also be examined.

3. The Working Group would welcome suggestions to ensure greater access to information and transparency. The suggestions can be sent to Shri Y.C. Parande, Director, Department of Personnel & Training, Govt. of India, North Block, NewDelhi-110001 (Tel: 3015589).

HOST IMMEDIATE

No.34011/1(s)/97-Estt.(S)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

.....

- 7 JAN 1997

New Delhi, dated 7th Jan., 1997.

Subject:Working Group on Right to Information and promotion of open and transparent Government.

A copy of the Note on "Transparency in Government" by Mrs. Kiran Aggarwal, Secretary, Department of Supply, together with a copy each of the United States "Freedom of Information Act" and "British Official Secrets Act 1989", are enclosed for consideration/reference of the Working Group.

2. As already intimated, the first meeting of the Working Group will be held on January 10,1997 at 11.00 A.M. in Conference Room (Room No. 515, 5th floor), Sardar Patel Bhavan, Sansad Marg, New Delhi. Kindly make it convenient to attend.

(Y.G.PARANDE)
DIRECTOR

1.Shri H.D.Shourie, A-31, Westend, New Delhi- 110 021.

2.Shri Soli Sorabjee,Sr.Advocate, 134 Sundar Nagar, New Delhi- 110003.

3.Shri Shashi Prakash, Joint Secretary, Ministry of Home Affairs, New Delhi.

4.Shri A.K.Sinha, Joint Secretary, Department of Legal Affairs,Room No.417-A, Shastri Bhavan,New Delhi.

5.Shri R.N.Verma, Executive Director,Traffic Transportation (F), Railway Board, Rail Bhavan, New Delhi.

6.Shri S.P.Ojha, Sr.Deputy Director General (Vig.), Department of Posts, Dak Bhavan, New Delhi.

7.Shri Ashok Kumar, Joint Secretary, Department of Telecommunications,Room No. 301, Sanchar Bhavan, New Delhi.

8.Shri S.Narendra, Principal Information Officer, Ministry of Information & Broadcasting, New Delhi.

9.Shri Harinder Singh, Joint Secretary, Department of Personnel & Training, New Delhi.

c.c. to Dr. P.S.A. Sundaram, Additional Secretary (AR&T), Department of Administrative Reforms

Receipt & Issue Section

TRANSPARENCY IN GOVERNMENT

——*Kiran Aggarwal*

Our entire system of governance is shrouded in mystery and secrecy. The procedures, forms and rules are so complicated that the ordinary citizen requires a lawyer or agent to assist him in filling up forms or replying to queries from government/semi-government organisations. Once the forms are filled and submitted, their journey through the dusty maze of government offices is like a journey through the unknown. If a person wants to know the fate of his application for a pass-port or a ration card, the reply will not even be an instant or simple one. *It is under process, and you will be informed shortly*, is the standard reply which one will get which leaves one ignorant, confused and angry. With all the money being spent on computerisation in government offices in India, why can one not go to the reception of an office and access information from the computer at the reception counter? Why do the citizens have to visit offices, wait endlessly in queues to come back dejected with unsatisfactory responses from the man at the counter? The man at the counter is either absent, or busy having a cuppa with his colleagues or just too lazy to stir himself to give the required information to the man on the other side of the counter. One day, the same man, on retirement, will be on the other side of the counter himself and then he will realise his mistake, but too late.

The government functioning needs two immediate changes, more openness, and a system of clear accountability. The two actually go together - if there is more openness, the easier it is to fix accountability on the erring officials. The citizen has a right to know about schemes and programmes that affect him as also his rights and records. If he is denied the information, he should have a right of appeal or some

other form of redressal. And if he has suffered harm in any way, he should have a right to know who is responsible for causing him that harm.

The mystification that surrounds all government functioning is not limited to excluding the working from the eyes of the common man, it also effects those who are part of the system. Take the case of even an I.A.S. officer. An officer starts his career with a system of cadre allotment which mystifies him. Further down the road, his performance appraisal is kept under wraps, unless it is adverse, in which case it is conveyed to him. Later, when he is to be empaneled as Joint Secretary or as Addl. Secretary - the process is again kept a closely guarded secret. Then, in his day to day working, he has to handle any number of files and communications that are marked *Secret, Top Secret, Confidential*. Communications received under cover, sealed cover and double sealed covers, more often than not contain days old information that has already figured in the dailies - e.g. that a certain minister's resignation has been accepted. It is also noteworthy that such communications are invariably delivered after office hours at the residence. Most of these can wait till the next working day' but I suppose some body wishes to make over-time. The time and effort spent in communicating such so called *Secret* documents seems pointless in most cases. Besides, with the ever alert media as also the ever increasing use of photocopiers, the sealed covers become meaningless in many cases.

The above leads one to the conclusion that instead of the Official Secrets Act, we need to have a Right To Information Act as there really is no need to have this veil of secrecy around government functioning. Apart from a list indicating areas where secrecy is necessary, the rest of the working of government should be transparent and open to the public.

A study of the system in some countries reveals that there is growing openness and transparency in government working across the globe. It is time that we, in India, follow suit. The more open the system, the less likelihood of officials using the veil of secrecy to indulge in corrupt practices.

New Zealand

New Zealand has one of the most open systems of government in the world. The citizens are able to get information about all but the most sensitive government processes, and they have review mechanisms available if they are at first denied access to information. The Official Information Act 1982 has established a liberal environment and the public service has responded positively and generally makes information available rather than attempt to conceal or protect it from public scrutiny. The benefit of this open system is that it has made officials conscious that their deliberations and decisions are always soon likely to be in the public domain. This leads to a better system of accountability.

Government service in New Zealand has been compared to the McDonald's i.e., as soon as you enter a McDonald's outlet, you can see the board showing what services are being offered and at what price. After a visit there, you know whether you are getting good value for your money. Besides, the services are being provided at most competitive rates in New Zealand by allowing open competition between State Owned Enterprises and private organisations to provide the services.

In New Zealand, the Official Information Act 1982 and the Privacy Act 1993 provide mechanisms which allow the public to have access, both to data held concerning themselves as individuals, and to information relating to the processes of

government. The Official Information Act was introduced to involve the public of New Zealand in the processes of government and was founded on the premise that well informed people make well informed decisions. Section IV of the Act spells out the three purposes of this legislation:

- "increase..... the availability of official information to the people of New Zealand in order to :
  - enable their more effective participation in the making and administration of laws and policies and
  - to promote the accountability of Ministers of the Crown and officials and thereby to enhance respect for the law and to promote good government of New Zealand;
- Provide for proper access by each person to official information relating to that person; and
- protect official information to the extent consistent with the public interest and the preservation of personal privacy."

Any individual, company or corporate or unincorporated body can make a request for information under the Act. It is well used by political parties, sectoral interest groups and lobbyists, as well as ordinary citizens The Act contains two Sections that relate to withholding official information. The reasons for non-disclosure include:

9

- if the release would prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand;

- if the release would prejudice the maintenance of the law;

- if the release would seriously damage the economy of New Zealand by disclosing prematurely decisions to change or continue Government economic or financial policies relating to exchange rates or taxation for example;

- to protect the privacy of natural persons, alive or dead;

- to avoid prejudice to measures protecting the health or safety of members of the public;

- to maintain the constitutional conventions for the time being;

- to maintain the effective conduct of public affairs; and

- to maintain legal professional privilege.

Anyone whose request for release of information is denied can appeal to the office of the Ombudsman for judgement regarding the decision. A department or organisation must have a watertight case for non-disclosure.

Constitutional conventions and the effective conduct of public affairs are the most frequent justifications for non-disclosure. The section concerning *constitutional conventions* involves protection of the confidentiality of communications by or with

the Sovereign or her representative, the convention of collective and individual Ministerial responsibility, the political neutrality of officials and the confidentiality of advice tendered by either Ministers of the Crown or officials. *Maintenance of the effective conduct of public affairs* concerns the free and frank expression of opinions by or between or to Ministers of the Crown or officers and employees of any department or organisation and the protection of such Ministers, officers and employees from improper pressure or harassment.

Confidentiality of Ministerial and official advice is a common basis for withholding information. It is clearly essential that policy development takes place in an environment in which advice and information can be freely and frankly exchanged, and this would obviously be jeopardised if potentially controversial advice was likely to be made public before the issue had been decided. Most of this sort of information does, nevertheless, become discoverable under the Act once it has ceased to be current.

Privacy Act 1993

The principles of the Privacy Act relate to how and why information is collected, information sources, correction and storage of personal information and the limits on disclosure and usage of that information. The Privacy Act has removed personal information from the domain of the Official Information Act.

The Privacy Act concerns only personal information about an individual - a natural person as opposed to an organisation. Such information may be held by either public or private sector organisations. The Act affects information such as personnel files, job applications, curriculum vitae and so on.

Canada

The Access to Information Act gives Canadian citizens, as well as people and corporations present in Canada, the right to have access to federal government records that are not of personal nature. Subject to legal and policy constraints, all information within the government can be accessed by those who require it. The President of the Treasury Board sponsors government-wide information and communications policies. A comprehensive Communications Policy advocates the principles of "duty to inform" and "service to the public". The management of government information holding policy, the security policy and the federal identity programme policy govern the treatment of information during its life cycle from collection and creation through its use and disposal while ensuring an appropriate level of protection and promoting a strong federal image.

Formal applications may be made under the Access to Information Act. However, some information may be exempt or excluded in the Act. Certain types of information that could harm if released, e.g. information on national security, law enforcement, trade secrets, etc. are protected under the exemption clause.

The Act does not apply to information that is already available publicly, such as publications or material in libraries and museums.

The Privacy Act in Canada states how and when the government can collect store and dispose off personal information. It also covers specifically why and how the information can be used or given out, as well as who could use or receive it. The government can disclose personal information about a third party only if it has that party's permission or if it is according to a court order. This Act gives Canadian

Citizens the right to have access to information that is held about them by the federal government. It also protects against unauthorised disclosure of personal information

United Kingdom

In the United Kingdom, the government has been given a customer orientation through the Citizen's Charter launched in July 1991. This is a ten-year programme of radical reform to raise the standards of public service and make them more responsive to their users. There are six principles which the government believes should underlie all public services. These are:-

(i) Standards;
(ii) Choice and consultation;
(iii) Courtesy and helpfulness;
(iv) Value for money;
(v) Putting things right; and
(vi) Information and openness.

So far as information and openness are concerned, it is laid down that full, accurate information should be readily available to the public in plain language about how services are run, what they cost, how well they perform and who is in charge Along with this, under the principle of *putting things right*, if things go wrong, an apology or full explanation and a swift and effective remedy is to be given. Well publicised and easy to use complaint procedure are to be laid down by each department and this should be open to an independent review wherever possible.

13

Although the Citizen's Charter is a ten-year programme, till now United Kingdom has published 38 individual Charters, covering some of the main public services so far. In areas like Patient's Charter, Tax Payer's Charter, British Rail Passenger's Charter, Job Seeker's Charter, etc. the public now has published standards of service, information on performance, complaints procedure and ways to obtain redress. Through these Charters, the citizen can increasingly put pressure on those responsible for providing services, to deliver them to the promised standard. Public services accept that their performance is under scrutiny and all services are now expected to strive to achieve standards of excellence.

Malaysia

In its efforts to upgrade the Civil Services, the Malaysian Government introduced the Civil Service Link (CSL) as an on-line information data based system in June 1994. With the CSL, companies and individuals will be able to access information on government services at the touch of a button. The CSL is an information center that will be responsible for acquiring, organising and making available on request information pertaining to various aspects of public sector administration. The public can readily obtain information on how to deal with the public sector with regard to procedures like obtaining business licenses, taxation rates, etc.

The CSL will act as a clearing house for applications and requests for government information. It will provide users with facilities to access information, either on-line or of-line. The CSL will contribute towards making the Malaysian public service a more open civil service and one that is more accommodating to the requirements of the public. Initially the CSL database will cover only information

related to government organisations responsible for issuing licenses, permits and approvals. Information to be provided includes:

a) objectives, functions and organisation structure;
b) services offered;
c) address, telephone and facsimile numbers;
d) activities which require licenses and approvals;
e) fees and methods of payment;
f) acts/regulations/guidelines concerned;
g) time taken to process applications; and
h) list of publications.

Other types of information in great demand by the private sector and dynamic enough to ensure a high level of usage of the CSL will also be kept. Such information includes that related to tenders; economic data/major economic indicators; trade statistics - import and export; classification and rates of custom duties; information from the Statistics Department; population census; labour market and employment status; information from the Registrar of Companies and Registrar of Businesses; and business community information, such as creditworthiness of companies

For information not available in the CSL, referral services will be provided to link users with organisations or persons who can be contacted to obtain the desired information. Users who have computer facilities will be able to request information via electronic mail, or normal mail, facsimile and other means. The CSL was expected to be fully implemented by January, 1995.

15

The Malaysian Government has as its objective an era of paperless bureaucracy. The public service network that is being established as a facility would enable government agencies to offer their counter services on-line to the public using the computer and network facilities of the post offices. This public service network will provide a one-stop non-stop service to the public.

U.S.A.,

In USA, the Freedom of Information Act allows requests for information by the members of the public from any government agency. The areas exempted are (i) national defence, (ii) law enforcement, (iii) financial records, (iv) confidential personnel matters. But in all other matters, a citizen can, on payment, request for information and the civil servant is bound to provide it within three days or give a written undertaking for providing it at a specified later date.

In certain States in the USA, there is a system of having certain meetings held in the open where public can be present. The Open Records Statute of Georgia State is a statute which is in line with the Federal Freedom of Information Act and provides for these open meeting. The basic objective is that government working should be effective, efficient, honest and open.

From the experiences of the different countries as enumerated above, the lesson for India is that we need to have more openness in the working of our government organisations. Providing information on the financial and managerial performance of departments will enable the public to understand and where necessary, criticise or support what the public service is trying to achieve.

In India, we have gone ahead in a big way in computerisation of government offices but a recent study conducted in selected Ministries revealed that although the computer network system has been installed, yet the use of the system is minimal. Therefore, for us to look for a paperless bureaucracy as is being envisaged in Malaysia, is a distant dream. However, a beginning should be made in Ministries/ Departments dealing directly with the public to work towards a more open and customer-friendly system. The customer, whether he is a tax payer or not, has a right to know where he stands and it is the duty of the civil service to provide him information about the various services which the citizen requires. Some excellent work has been done in some organisations in this regard already. The Office of the Chief Pay & Accounts Officer provides detailed information on the computer terminal to every pensioner within seconds. Why similar systems cannot be put in place for applicants for passports, licenses, etc. is difficult to understand.

Therefore, the remedy seems to lie in providing this right to the citizen through a statute. A Right to Information Act based on the experience of similar statutes of other countries can be drafted. It can be ensured that it does not conflict with the Official Secrets Act by denying access to information relating to defence, security, confidential personnel matters, financial reforms, etc. Eventually, this openness will lead to better accountability as the civil servant will know that his actions are open to scrutiny not only by the courts, as at present, but by any member of the public.

REFERENCES

1. *Government Reform in New Zealand - Graham C Scott.*

2. *From Problem to Solution - Commonwealth Secretariat.*

3. *Current Good Practices and New Developments in Public Service Management - The Public Service Country Profile Series: No.5 - Commonwealth Secretariat.*

4. *Working for Government - Corporate Profile - Mahere Pakihi.*

5. *Future Directions in Public Management in New Zealand - Towards Strategic Management - Howard Fancy and Alex Matheson, Nov. 1995.*

6. *Chief Executive - Performance Agreement - Proforma and Guidelines, 1996-97 - State Services Commission, New Zealand.*

7. *Leading Reforms in Public Service - Graham C Scott.*

8. *Public Service and the Public Servant Essays by John Martin.*

9. *New Zealand Public Service - Chief Executives' Competencies - State Service Commission, Oct. 1994.*

10. *Change and Management Innovation at the Organisation Level - Roger Blakely, Secretary for Internal Affairs, Local Government, etc.*

11. *Paper prepared by LBSNAA, Mussoorie on Civil Services Reform.*

18

United States Department of State

Department Notice



All Employees • State • IDCA • USIA • ACDA • November 6, 1995

Introducing E.O. 12958
Classified National Security Information

This message introduces Executive Order 12958, "Classified National Security Information." As the Department implements this Order over the next few months, we will all be concerned with new requirements regarding the marking of classified information, the handling of foreign government information, safeguarding, classification and declassification procedures. What E.O. 12958 basically requires us to do, however, is to think about classified information in a new way. The classified information we create is a product which passes through several stages during its life cycle, and at each stage the Department incurs a cost related to its dissemination, use, and protection. Also, sooner or later, that information will have to be reviewed and considered for public release. The steady generation and accumulation of classified information has resource implications which the Department can no longer ignore. Cost is not the only concern in re-thinking our need for and use of classified information. We are moving into an era where the most useful property of information may be the ability to share it and where the ability to share information is driving economic and political change. Under SMI, priority is being given to the modernization of the Department's information systems, operations and policies. It will be useful to think of E.O. 12958 as part of that modernization program.

On October 14, Executive Order 12356 was superseded by Executive Order 12958. The new Order is aimed at effecting broad change in the way federal agencies manage classified national security information. Specifically, E.O. 12958 is intended to reduce the amount of information that is classified, the length of time it remains classified, and to facilitate the declassification of information, including information classified under previous executive orders. . .

Implementation of E.O. 12958 will require substantive change in the way the Department classifies, safeguards and declassifies information. Greater emphasis is being placed on the responsibility of individuals who have original classification authority to make informed decisions on what should be classified and when material will no longer require protection, and to document those decisions in the classification marking of documents.

Implementation will take place over several months and will affect information management policies, structures and operations. Executive branch agencies are being provided E.O. 12958 implementing directives issued by the Information Security Oversight Office (ISOO), which address classification management, and by the Security Policy Board (SPB), which address safeguarding. The ISOO directives were issued on October 13, and the SPB directives are expected to be available in early 1996. Department policies will be changed in accordance with the E.O. and its implementing directives, and Department personnel will be notified of changes in successive messages and FAM revisions.

Office of Origin: A / IMS

19

Please turn the page for more information

Although most Department personnel will probably be primarily concerned with the new requirements for classification marking, everyone who creates, uses, or handles classified information needs to have a general understanding of the objectives and basic requirements of the new Order. This message provides an overview of E.O. 12958 and highlights its most significant requirements.

E.O. 12958, Part One, Original Classification.

a) Key Definitions:

"Original classification" means the initial determination that information requires protection against unauthorized disclosure in the interest of national security;
"National security" means the national defense or foreign relations of the United States;
"Classified national security information" means information that has been determined to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form;
"Foreign government information" means information provided to the USG by a foreign government or an international organization with the expectation that the information or its source or both are to be held in confidence.

b) Summary: This section covers classification standards, classification levels, classification authority, classification categories, duration of classification, identification and markings, classification prohibitions and limitations, and classification challenges.

c) Key Requirements:

--If there is significant doubt about the need to classify information, it shall not be classified.

--If the classification level is in doubt, the lower level of classification shall be used.

--Information may be classified as "Confidential," "Secret," or "Top Secret" if its unauthorized disclosure would cause damage to the national security which the classifier is able to identify or describe

--There is no presumption that any category of information may be automatically classified. Information considered for classification must concern one of the classification categories established in Section 1.5 of the Order. They are:

(a) military plans, operations;
(b) foreign government information;
(c) intelligence activities;
(d) foreign relations, including confidential sources;
(e) scientific, economic, technological matters relating to national security;
(f) USG programs for safeguarding nuclear materials or facilities;
(g) national security plans and systems.

--Subject to the exceptions established in Section 1.6 of the Order, the duration of classification for most newly classified information is limited to 10 years. Those exceptions apply to information concerning:

(1) intelligence;
(2) weapons of mass destruction;
(3) U.S. weapons systems;
(4) U.S. military plans;

20

(5) foreign government information;
(6) damage to U.S. foreign relations or ongoing diplomatic activities;
(7) protection of President, Vice President, and other officials for whom protection is authorized;
(8) violation of a statute, treaty, or international agreement.

The classification level, the reason for classification, the duration of classification, and the name and osition of the classifier must appear on the face of each classified document.

Separate elements of a document (title, paragraphs, tables) must be marked to show the applicable lassification level.

Training and accountability are required for original classification authorities.

The classification status of information may be challenged by authorized holders of the information.

.0. 12958, Part Two, Derivative Classification.

) Key Definitions:

"Derivative information" means incorporating, restating, or generating in new form information iat is already classified. Duplication or reproduction of existing classified information is not deriva- ve classification.

) Summary: This section covers the use of derivative classification and classification guides.

) Key Requirements:

-When incorporating information that is already classified into new material, the newly developed iaterial must be marked consistently with the classification markings of the source information.

Agencies with original classification authority shall prepare classification guides to facilitate the roper and uniform derivative classification of information.

.0. 12958, Part Three, Declassification and Downgrading.

a) Key Definitions:

"Declassification" means the authorized change in the status of information from classified to un- assified. As a general rule, only the agency that originally classified the information can declassify

"Downgrading" means the authorized change in the status of information from a higher to a lower vel of classification .

"Automatic declassification" means the declassification of information based solely on the occur- nce of a specific date or event or the expiration of a maximum time for classification as established nder the Order.

21

(b) Summary: This section covers authority for declassification, declassification of transferred information, automatic declassification, systematic declassification review, mandatory declassification review, processing requests and reviews, and a government-wide declassification database.

(c) Key Requirements:

–Within 5 years, all classified information in records that are 25 years old and have been determined to have permanent historical value under Title 44, United States Code, shall be declassified, unless one of the exemptions in Section 3.4 (b) is determined to apply.

--Subsequently, all records of permanent historical value shall be declassified at 25 years unless one of the exemptions in Section 3.4 (b) of the Order is determined to apply. Section 3.4 (b) exemptions concern the following:

(1) confidential source;
(2) weapons of mass destruction;
(3) cryptologic systems or activities;
(4) state of art technology in U.S. weapons systems;
(5) U.S. military war plans in effect;
(6) information that would seriously and demonstrably impair relations between the U.S. and a foreign government, or seriously and demonstrably undermine ongoing diplomatic activities of the U.S.;
(7) protection of the President, Vice President, and other officials for whom protection is authorized;
(8) current national security emergency preparedness plans;
(9) violation of a statute, treaty or international agreement.

–The Secretary of State shall determine when to begin negotiations with a foreign government or international organization to modify any treaty or agreement that requires classification of information for longer than 25 years from the date of its creation.

E.O. 12958, Part Four, Safeguarding.

(a) Key Definitions:

–"Safeguarding" means measures and controls prescribed to protect classified information.

–"Need-to-know" means a determination by an authorized holder of classified information that a prospective recipient requires access to specific classified information in order to perform an authorized function.

(b) Summary: This section covers general restrictions on access, distribution controls, special access programs, and access by historical researchers and former presidential appointees.

(c) Key Requirements:

–Access to classified information requires a favorable determination of eligibility to access, a signed non-disclosure agreement and a need to know.

–Classified information shall remain under the control of the originating agency or a successor. An

22

agency shall not disclose information originally classified by another agency without its authorization.

--An official or employee leaving agency service may not remove classified information from the agency's control.

--Classified information may not be removed from official premises without proper authorization.

--An agency shall safeguard foreign government information under standards that provide protection at least equivalent to that furnished by the government or international organization that provided the information.

--The establishment of special access programs are limited and must be revalidated annually; internal and external control over these programs is strengthened.

--Agencies shall establish uniform procedures and controls to ensure that automated information systems, including networks and telecommunications systems, prevent access by unauthorized persons and protect the integrity of information.

E.O. 12958, Part Five, Implementation and Review.

(a) Key Definitions:

--"Violation" means a knowing, willful or negligent action that could reasonably be expected to result in an unauthorized disclosure of classified information or continues the classification of information contrary to the requirements of this Order.

(b) Summary: This section covers program direction, general responsibilities, and sanctions.

(c) Key Requirements:

--Agencies shall ensure that the performance contract or other rating system includes the management of classified information as a critical element or item to be evaluated in personnel whose duties significantly involve the creation or handling of classified information.

--Officials and employees may be subject to sanctions if they classify or continue the classification of information in violation of this Order (by, for example, classifying information that does not meet the requirements of the Order, or classifying it at too high a level), including reprimand, suspension without pay, removal, termination of classification authority, or denial of access to classified information.

--Costs associated with security classification programs must be accounted for and reported.

--Establishes the responsibility of both the Information Security Oversight Office and the Security Policy Board to issue implementing directives.

--Establishes an Interagency Security Classification Appeals Panel and an Information Security Advisory Council.

Both DS and A/IM have responsibilities for implementation of this Order and are developing briefing and educational material in a variety of forms for DOS personnel. In the meantime, questions related to E.O. 12958 should be addressed to DS/ISP/APB, 663-0072, or A/IM/IS/FPC, 647-7740.

THE FREEDOM OF INFORMATION ACT

5 U.S.C. § 552

As Amended

§ 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public--

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available for public inspection and copying--

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and

(C) administrative staff manuals and instructions to staff that affect a member of the public;

(Copied from abstract in Freedom of Information Act Guide & Privacy Act Overview, U.S. Department of Justice, September 1992 Edition.)

24

C

unless the materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. However, in each case the justification for the deletion shall be explained fully in writing. Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if—

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, upon any request for records which (A) reasonably describes such records and (B) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

(ii) Such agency regulations shall provide that —

(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public

25

interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section —

(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(II) for any request described in clause (ii)(II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.

(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo, provided that the court's review of the matter shall be limited to the record before the agency.

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action.

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause shown.

(D) [Except as to cases the court considers of greater importance, proceedings before the district court, as authorized by this subsection, and appeals therefrom, take precedence on the docket over all cases and shall be assigned for hearing and trial or for argument at the earliest

26

practicable date and expedited in every way.] Repealed. Pub. L. 98-620, Title IV, 402(2), Nov. 8, 1984, 98 Stat. 3335, 3357.

(E) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(F) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall--

(i) determine within ten days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

(B) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days. As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular request—

27

(e) On or before March 1 of each calendar year, each agency shall submit a report covering the preceding calendar year to the Speaker of the House of Representatives and President of the Senate for referral to the appropriate committees of the Congress. The report shall include—

(1) the number of determinations made by such agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

(2) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information;

(3) the names and titles or positions of each person responsible for the denial of records requested under this section, and the number of instances of participation for each;

(4) the results of each proceeding conducted pursuant to subsection (a)(4)(F), including a report of the disciplinary action taken against the officer or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(5) a copy of every rule made by such agency regarding this section;

(6) a copy of the fee schedule and the total amount of fees collected by the agency for making records available under this section; and

(7) such other information as indicates efforts to administer fully this section.

The Attorney General shall submit an annual report on or before March 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subsections (a)(4)(E), (F), and (G). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(f) For purposes of this section, the term "agency" as defined in section 551(1) of this title includes any Executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

* * * * *

Section 1804. Effective Dates [not to be codified].

(a) The amendments made by section 1802 [the modification of Exemption 7 and the addition of the new subsection (c)] shall be effective on the date of enactment of this Act [October 27, 1986], and shall apply with respect to any requests for records, whether or not the request was made prior to such date, and shall apply to any civil action pending on such date.

28

(i) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(C) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

(b) This section does not apply to matters that are—

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion

of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection.

(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and --

(A) the investigation or proceeding involves a possible violation of criminal law; and

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings,

the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

(d) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

(b)(1) The amendments made by section 1803 (the new fee and fee waiver provisions) shall be effective 180 days after the date of the enactment of this Act (April 25, 1987), except that regulations to implement such amendments shall be promulgated by such 180th day.

(2) The amendments made by section 1803 shall apply with respect to any requests for records, whether or not the request was made prior to such date, and shall apply to any civil action pending on such date, except that review charges applicable to records requested for commercial use shall not be applied by an agency to requests made before the effective date specified in paragraph (1) of this subsection or before the agency has finally issued its regulations.

31

Official Secrets Act 1989

CHAPTER 6

ARRANGEMENT OF SECTIONS

Section

1. Security and intelligence.
2. Defence.
3. International relations.
4. Crime and special investigation powers.
5. Information resulting from unauthorised disclosures or entrusted in confidence.
6. Information entrusted in confidence to other States or international organisations.
7. Authorised disclosures.
8. Safeguarding of information.
9. Prosecutions.
10. Penalties.
11. Arrest, search and trial.
12. "Crown servant" and "government contractor".
13. Other interpretation provisions.
14. Orders.
15. Acts done abroad and extent.
16. Short title, citation, consequential amendments, repeals, revocation and commencement.

SCHEDULES:

Schedule 1—Consequential Amendments.
Schedule 2—Repeals and Revocation.

32



Official Secrets Act 1989

1989 CHAPTER 6

An Act to replace section 2 of the Official Secrets Act 1911 by provisions protecting more limited classes of official information. [11th May 1989]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Security and intelligence.

1.—(1) A person who is or has been—

(a) a member of the security and intelligence services; or

(b) a person notified that he is subject to the provisions of this subsection,

is guilty of an offence if without lawful authority he discloses any information, document or other article relating to security or intelligence which is or has been in his possession by virtue of his position as a member of any of those services or in the course of his work while the notification is or was in force.

(2) The reference in subsection (1) above to disclosing information relating to security or intelligence includes a reference to making any statement which purports to be a disclosure of such information or is intended to be taken by those to whom it is addressed as being such a disclosure.

(3) A person who is or has been a Crown servant or government contractor is guilty of an offence if without lawful authority he makes a damaging disclosure of any information, document or other article relating to security or intelligence which is or has been in his possession by virtue of his position as such but otherwise than as mentioned in subsection (1) above.

(4) For the purposes of subsection (3) above a disclosure is damaging if—

(a) it causes damage to the work of, or of any part of, the security and intelligence services; or

37

(b) it is of information or a document or other article which is such that its unauthorised disclosure would be likely to cause such damage or which falls within a class or description of information, documents or articles the unauthorised disclosure of which would be likely to have that effect.

(5) It is a defence for a person charged with an offence under this section to prove that at the time of the alleged offence he did not know, and had no reasonable cause to believe, that the information, document or article in question related to security or intelligence or, in the case of an offence under subsection (3), that the disclosure would be damaging within the meaning of that subsection.

(6) Notification that a person is subject to subsection (1) above shall be effected by a notice in writing served on him by a Minister of the Crown; and such a notice may be served if, in the Minister's opinion, the work undertaken by the person in question is or includes work connected with the security and intelligence services and its nature is such that the interests of national security require that he should be subject to the provisions of that subsection.

(7) Subject to subsection (8) below, a notification for the purposes of subsection (1) above shall be in force for the period of five years beginning with the day on which it is served but may be renewed by further notices under subsection (6) above for periods of five years at a time.

(8) A notification for the purposes of subsection (1) above may at any time be revoked by a further notice in writing served by the Minister on the person concerned; and the Minister shall serve such a further notice as soon as, in his opinion, the work undertaken by that person ceases to be such as is mentioned in subsection (6) above.

(9) In this section "security or intelligence" means the work of, or in support of, the security and intelligence services or any part of them, and references to information relating to security or intelligence include references to information held or transmitted by those services or by persons in support of, or of any part of, them.

Defence.

2.—(1) A person who is or has been a Crown servant or government contractor is guilty of an offence if without lawful authority he makes a damaging disclosure of any information, document or other article relating to defence which is or has been in his possession by virtue of his position as such.

(2) For the purposes of subsection (1) above a disclosure is damaging if—

(a) it damages the capability of, or of any part of, the armed forces of the Crown to carry out their tasks or leads to loss of life or injury to members of those forces or serious damage to the equipment or installations of those forces; or

(b) otherwise than as mentioned in paragraph (a) above, it endangers the interests of the United Kingdom abroad, seriously obstructs the promotion or protection by the United Kingdom of those interests or endangers the safety of British citizens abroad; or

(c) it is of information or of a document or article which is such that its unauthorised disclosure would be likely to have any of those effects.

34

(3) It is a defence for a person charged with an offence under this section to prove that at the time of the alleged offence he did not know, and had no reasonable cause to believe, that the information, document or article in question related to defence or that its disclosure would be damaging within the meaning of subsection (1) above.

(4) In this section "defence" means—

(a) the size, shape, organisation, logistics, order of battle, deployment, operations, state of readiness and training of the armed forces of the Crown;

(b) the weapons, stores or other equipment of those forces and the invention, development, production and operation of such equipment and research relating to it;

(c) defence policy and strategy and military planning and intelligence;

(d) plans and measures for the maintenance of essential supplies and services that are or would be needed in time of war.

International relations.

3.— (1) A person who is or has been a Crown servant or government contractor is guilty of an offence if without lawful authority he makes a damaging disclosure of—

(a) any information, document or other article relating to international relations; or

(b) any confidential information, document or other article which was obtained from a State other than the United Kingdom or an international organisation,

being information or a document or article which is or has been in his possession by virtue of his position as a Crown servant or government contractor.

(2) For the purposes of subsection (1) above a disclosure is damaging if—

(a) it endangers the interests of the United Kingdom abroad, seriously obstructs the promotion or protection by the United Kingdom of those interests or endangers the safety of British citizens abroad; or

(b) it is of information or of a document or article which is such that its unauthorised disclosure would be likely to have any of those effects.

(3) In the case of information or a document or article within subsection (1)(b) above—

(a) the fact that it is confidential, or

(b) its nature or contents,

may be sufficient to establish for the purposes of subsection (2)(b) above that the information, document or article is such that its unauthorised disclosure would be likely to have any of the effects there mentioned.

(4) It is a defence for a person charged with an offence under this section to prove that at the time of the alleged offence he did not know, and had no reasonable cause to believe, that the information, document or article in question was such as is mentioned in subsection (1) above or that its disclosure would be damaging within the meaning of that subsection.

35

(5) In this section "international relations" means the relations between States, between international organisations or between one or more States and one or more such organisations and includes any matter relating to a State other than the United Kingdom or to an international organisation which is capable of affecting the relations of the United Kingdom with another State or with an international organisation.

(6) For the purposes of this section any information, document or article obtained from a State or organisation is confidential at any time while the terms on which it was obtained require it to be held in confidence or while the circumstances in which it was obtained make it reasonable for the State or organisation to expect that it would be so held.

Crime and special investigation powers.

4.—(1) A person who is or has been a Crown servant or government contractor is guilty of an offence if without lawful authority he discloses any information, document or other article to which this section applies and which is or has been in his possession by virtue of his position as such.

(2) This section applies to any information, document or other article—

(a) the disclosure of which—

(i) results in the commission of an offence; or

(ii) facilitates an escape from legal custody or the doing of any other act prejudicial to the safekeeping of persons in legal custody; or

(iii) impedes the prevention or detection of offences or the apprehension or prosecution of suspected offenders; or

(b) which is such that its unauthorised disclosure would be likely to have any of those effects.

(3) This section also applies to—

(a) any information obtained by reason of the interception of any communication in obedience to a warrant issued under section 2 of the Interception of Communications Act 1985, any information relating to the obtaining of information by reason of any such interception and any document or other article which is or has been used or held for use in, or has been obtained by reason of, any such interception; and

1985 c. 56.

(b) any information obtained by reason of action authorised by a warrant issued under section 3 of the Security Service Act 1989, any information relating to the obtaining of information by reason of any such action and any document or other article which is or has been used or held for use in, or has been obtained by reason of, any such action.

1989 c. 5.

(4) It is a defence for a person charged with an offence under this section in respect of a disclosure falling within subsection (2)(a) above to prove that at the time of the alleged offence he did not know, and had no reasonable cause to believe, that the disclosure would have any of the effects there mentioned.

(5) It is a defence for a person charged with an offence under this section in respect of any other disclosure to prove that at the time of the alleged offence he did not know, and had no reasonable cause to believe, that the information, document or article in question was information or a document or article to which this section applies.

36

(6) In this section "legal custody" includes detention in pursuance of any enactment or any instrument made under an enactment.

Information resulting from unauthorised disclosures or entrusted in confidence.

5.—(1) Subsection (2) below applies where—

(a) any information, document or other article protected against disclosure by the foregoing provisions of this Act has come into a person's possession as a result of having been—

(i) disclosed (whether to him or another) by a Crown servant or government contractor without lawful authority; or

(ii) entrusted to him by a Crown servant or government contractor on terms requiring it to be held in confidence or in circumstances in which the Crown servant or government contractor could reasonably expect that it would be so held; or

(iii) disclosed (whether to him or another) without lawful authority by a person to whom it was entrusted as mentioned in sub-paragraph (ii) above; and

(b) the disclosure without lawful authority of the information, document or article by the person into whose possession it has come is not an offence under any of those provisions.

(2) Subject to subsections (3) and (4) below, the person into whose possession the information, document or article has come is guilty of an offence if he discloses it without lawful authority knowing, or having reasonable cause to believe, that it is protected against disclosure by the foregoing provisions of this Act and that it has come into his possession as mentioned in subsection (1) above.

(3) In the case of information or a document or article protected against disclosure by sections 1 to 3 above, a person does not commit an offence under subsection (2) above unless—

(a) the disclosure by him is damaging; and

(b) he makes it knowing, or having reasonable cause to believe, that it would be damaging;

and the question whether a disclosure is damaging shall be determined for the purposes of this subsection as it would be in relation to a disclosure of that information, document or article by a Crown servant in contravention of section 1(3), 2(1) or 3(1) above.

(4) A person does not commit an offence under subsection (2) above in respect of information or a document or other article which has come into his possession as a result of having been disclosed—

(a) as mentioned in subsection (1)(a)(i) above by a government contractor; or

(b) as mentioned in subsection (1)(a)(iii) above,

unless that disclosure was by a British citizen or took place in the United Kingdom, in any of the Channel Islands or in the Isle of Man or a colony

(5) For the purposes of this section information or a document or article is protected against disclosure by the foregoing provisions of this Act if—

37

(a) it relates to security or intelligence, defence or international relations within the meaning of section 1, 2 or 3 above or is such as is mentioned in section 3(1)(b) above; or

(b) it is information or a document or article to which section 4 above applies;

and information or a document or article is protected against disclosure by sections 1 to 3 above if it falls within paragraph (a) above.

(6) A person is guilty of an offence if without lawful authority he discloses any information, document or other article which he knows, or has reasonable cause to believe, to have come into his possession as a result of a contravention of section 1 of the Official Secrets Act 1911.

1911 c. 28.

Information entrusted in confidence to other States or international organisations.

6.—(1) This section applies where—

(a) any information, document or other article which—

(i) relates to security or intelligence, defence or international relations; and

(ii) has been communicated in confidence by or on behalf of the United Kingdom to another State or to an international organisation,

has come into a person's possession as a result of having been disclosed (whether to him or another) without the authority of that State or organisation or, in the case of an organisation, of a member of it; and

(b) the disclosure without lawful authority of the information, document or article by the person into whose possession it has come is not an offence under any of the foregoing provisions of this Act.

(2) Subject to subsection (3) below, the person into whose possession the information, document or article has come is guilty of an offence if he makes a damaging disclosure of it knowing, or having reasonable cause to believe, that it is such as is mentioned in subsection (1) above, that it has come into his possession as there mentioned and that its disclosure would be damaging.

(3) A person does not commit an offence under subsection (2) above if the information, document or article is disclosed by him with lawful authority or has previously been made available to the public with the authority of the State or organisation concerned or, in the case of an organisation, of a member of it.

(4) For the purposes of this section "security or intelligence", "defence" and "international relations" have the same meaning as in sections 1, 2 and 3 above and the question whether a disclosure is damaging shall be determined as it would be in relation to a disclosure of the information, document or article in question by a Crown servant in contravention of section 1(3), 2(1) and 3(1) above.

(5) For the purposes of this section information or a document or article is communicated in confidence if it is communicated on terms requiring it to be held in confidence or in circumstances in which the person communicating it could reasonably expect that it would be so held.

38

Authorised disclosures.

7.—(1) For the purposes of this Act a disclosure by—

(a) a Crown servant; or

(b) a person, not being a Crown servant or government contractor, in whose case a notification for the purposes of section 1(1) above is in force,

is made with lawful authority if, and only if, it is made in accordance with his official duty.

(2) For the purposes of this Act a disclosure by a government contractor is made with lawful authority if, and only if, it is made—

(a) in accordance with an official authorisation; or

(b) for the purposes of the functions by virtue of which he is a government contractor and without contravening an official restriction.

(3) For the purposes of this Act a disclosure made by any other person is made with lawful authority if, and only if, it is made—

(a) to a Crown servant for the purposes of his functions as such; or

(b) in accordance with an official authorisation.

(4) It is a defence for a person charged with an offence under any of the foregoing provisions of this Act to prove that at the time of the alleged offence he believed that he had lawful authority to make the disclosure in question and had no reasonable cause to believe otherwise.

(5) In this section "official authorisation" and "official restriction" mean, subject to subsection (6) below, an authorisation or restriction duly given or imposed by a Crown servant or government contractor or by or on behalf of a prescribed body or a body of a prescribed class.

(6) In relation to section 6 above "official authorisation" includes an authorisation duly given by or on behalf of the State or organisation concerned or, in the case of an organisation, a member of it.

Safeguarding of information.

8.—(1) Where a Crown servant or government contractor, by virtue of his position as such, has in his possession or under his control any document or other article which it would be an offence under any of the foregoing provisions of this Act for him to disclose without lawful authority he is guilty of an offence if—

(a) being a Crown servant, he retains the document or article contrary to his official duty; or

(b) being a government contractor, he fails to comply with an official direction for the return or disposal of the document or article,

or if he fails to take such care to prevent the unauthorised disclosure of the document or article as a person in his position may reasonably be expected to take.

(2) It is a defence for a Crown servant charged with an offence under subsection (1)(a) above to prove that at the time of the alleged offence he believed that he was acting in accordance with his official duty and had no reasonable cause to believe otherwise.

39

(3) In subsections (1) and (2) above references to a Crown servant include any person, not being a Crown servant or government contractor, in whose case a notification for the purposes of section 1(1) above is in force.

(4) Where a person has in his possession or under his control any document or other article which it would be an offence under section 5 above for him to disclose without lawful authority, he is guilty of an offence if—

(a) he fails to comply with an official direction for its return or disposal; or

(b) where he obtained it from a Crown servant or government contractor on terms requiring it to be held in confidence or in circumstances in which that servant or contractor could reasonably expect that it would be so held, he fails to take such care to prevent its unauthorised disclosure as a person in his position may reasonably be expected to take.

(5) Where a person has in his possession or under his control any document or other article which it would be an offence under section 6 above for him to disclose without lawful authority, he is guilty of an offence if he fails to comply with an official direction for its return or disposal.

(6) A person is guilty of an offence if he discloses any official information, document or other article which can be used for the purpose of obtaining access to any information, document or other article protected against disclosure by the foregoing provisions of this Act and the circumstances in which it is disclosed are such that it would be reasonable to expect that it might be used for that purpose without authority.

(7) For the purposes of subsection (6) above a person discloses information or a document or article which is official if—

(a) he has or has had it in his possession by virtue of his position as a Crown servant or government contractor; or

(b) he knows or has reasonable cause to believe that a Crown servant or government contractor has or has had it in his possession by virtue of his position as such.

(8) Subsection (5) of section 5 above applies for the purposes of subsection (6) above as it applies for the purposes of that section.

(9) In this section "official direction" means a direction duly given by a Crown servant or government contractor or by or on behalf of a prescribed body or a body of a prescribed class.

Prosecutions.

9.—(1) Subject to subsection (2) below, no prosecution for an offence under this Act shall be instituted in England and Wales or in Northern Ireland except by or with the consent of the Attorney General or, as the case may be, the Attorney General for Northern Ireland.

(2) Subsection (1) above does not apply to an offence in respect of any such information, document or article as is mentioned in section 4(2) above but no prosecution for such an offence shall be instituted in England and Wales or in Northern Ireland except by or with the consent of the Director of Public Prosecutions or, as the case may be, the Director of Public Prosecutions for Northern Ireland.

Penalties.

10.—(1) A person guilty of an offence under any provision of this Act other than section 8(1), (4) or (5) shall be liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum or both.

(2) A person guilty of an offence under section 8(1), (4) or (5) above shall be liable on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale or both.

Arrest, search and trial 1984 c. 60.

11.—(1) In section 24(2) of the Police and Criminal Evidence Act 1984 (arrestable offences) in paragraph (b) for the words "the Official Secrets Acts 1911 and 1920" there shall be substituted the words "the Official Secrets Act 1920" and after that paragraph there shall be inserted—

"(bb) offences under any provision of the Official Secrets Act 1989 except section 8(1), (4) or (5);".

(2) Offences under any provision of this Act other than section 8(1), (4) or (5) and attempts to commit them shall be arrestable offences within the meaning of section 2 of the Criminal Law Act (Northern Ireland) 1967. 1967 c. 18 (N.I.).

(3) Section 9(1) of the Official Secrets Act 1911 (search warrants) shall have effect as if references to offences under that Act included references to offences under any provision of this Act other than section 8(1), (4) or (5); and the following provisions of the Police and Criminal Evidence Act 1984, that is to say— 1911 c. 28.

(a) section 9(2) (which excludes items subject to legal privilege and certain other material from powers of search conferred by previous enactments); and

(b) paragraph 3(b) of Schedule 1 (which prescribes access conditions for the special procedure laid down in that Schedule),

shall apply to section 9(1) of the said Act of 1911 as extended by this subsection as they apply to that section as originally enacted.

(4) Section 8(4) of the Official Secrets Act 1920 (exclusion of public from hearing on grounds of national safety) shall have effect as if references to offences under that Act included references to offences under any provision of this Act other than section 8(1), (4) or (5). 1920 c. 75.

(5) Proceedings for an offence under this Act may be taken in any place in the United Kingdom.

"Crown servant" and "government contractor".

12.—(1) In this Act "Crown servant" means—

(a) a Minister of the Crown;

(b) a person appointed under section 8 of the Northern Ireland Constitution Act 1973 (the Northern Ireland Executive etc.); 1973 c. 36.

(c) any person employed in the civil service of the Crown, including Her Majesty's Diplomatic Service, Her Majesty's Overseas Civil Service, the civil service of Northern Ireland and the Northern Ireland Court Service;

41

(d) any member of the naval, military or air forces of the Crown, including any person employed by an association established for the purposes of the Reserve Forces Act 1980; 1980 c. 9.

(e) any constable and any other person employed or appointed in or for the purposes of any police force (including a police force within the meaning of the Police Act (Northern Ireland) 1970); 1970 c. 9 (N.I.).

(f) any person who is a member or employee of a prescribed body or a body of a prescribed class and either is prescribed for the purposes of this paragraph or belongs to a prescribed class of members or employees of any such body;

(g) any person who is the holder of a prescribed office or who is an employee of such a holder and either is prescribed for the purposes of this paragraph or belongs to a prescribed class of such employees.

(2) In this Act "government contractor" means, subject to subsection (3) below, any person who is not a Crown servant but who provides, or is employed in the provision of, goods or services—

(a) for the purposes of any Minister or person mentioned in paragraph (a) or (b) of subsection (1) above, of any of the services, forces or bodies mentioned in that subsection or of the holder of any office prescribed under that subsection; or

(b) under an agreement or arrangement certified by the Secretary of State as being one to which the government of a State other than the United Kingdom or an international organisation is a party or which is subordinate to, or made for the purposes of implementing, any such agreement or arrangement.

(3) Where an employee or class of employees of any body, or of any holder of an office, is prescribed by an order made for the purposes of subsection (1) above—

(a) any employee of that body, or of the holder of that office, who is not prescribed or is not within the prescribed class; and

(b) any person who does not provide, or is not employed in the provision of, goods or services for the purposes of the performance of those functions of the body or the holder of the office in connection with which the employee or prescribed class of employees is engaged,

shall not be a government contractor for the purposes of this Act.

Other interpretation provisions.

13.—(1) In this Act—

"disclose" and "disclosure", in relation to a document or other article, include parting with possession of it;

"international organisation" means, subject to subsections (2) and (3) below, an organisation of which only States are members and includes a reference to any organ of such an organisation;

"prescribed" means prescribed by an order made by the Secretary of State;

"State" includes the government of a State and any organ of its government and references to a State other than the United Kingdom include references to any territory outside the United Kingdom.

42

(2) In section 12(2)(b) above the reference to an international organisation includes a reference to any such organisation whether or not one of which only States are members and includes a commercial organisation.

(3) In determining for the purposes of subsection (1) above whether only States are members of an organisation, any member which is itself an organisation of which only States are members, or which is an organ of such an organisation, shall be treated as a State.

Orders.

14.—(1) Any power of the Secretary of State under this Act to make orders shall be exercisable by statutory instrument.

(2) No order shall be made by him for the purposes of section 7(5), 8(9) or 12 above unless a draft of it has been laid before, and approved by a resolution of, each House of Parliament.

(3) If, apart from the provisions of this subsection, the draft of an order under any of the provisions mentioned in subsection (2) above would be treated for the purposes of the Standing Orders of either House of Parliament as a hybrid instrument it shall proceed in that House as if it were not such an instrument.

Acts done abroad and extent.

15.—(1) Any act—

(a) done by a British citizen or Crown servant; or

(b) done by any person in any of the Channel Islands or the Isle of Man or any colony,

shall, if it would be an offence by that person under any provision of this Act other than section 8(1), (4) or (5) when done by him in the United Kingdom, be an offence under that provision.

(2) This Act extends to Northern Ireland.

(3) Her Majesty may by Order in Council provide that any provision of this Act shall extend, with such exceptions, adaptations and modifications as may be specified in the Order, to any of the Channel Islands or the Isle of Man or any colony.

Short title, citation, consequential amendments, repeals, revocation and commencement.

16.—(1) This Act may be cited as the Official Secrets Act 1989.

(2) This Act and the Official Secrets Acts 1911 to 1939 may be cited together as the Official Secrets Acts 1911 to 1989.

(3) Schedule 1 to this Act shall have effect for making amendments consequential on the provisions of this Act.

(4) The enactments and Order mentioned in Schedule 2 to this Act are hereby repealed or revoked to the extent specified in the third column of that Schedule.

(5) Subject to any Order under subsection (3) of section 15 above the repeals in the Official Secrets Act 1911 and the Official Secrets Act 1920 do not extend to any of the territories mentioned in that subsection.

(6) This Act shall come into force on such day as the Secretary of State may by order appoint.

43

SCHEDULES

Section 16(3).

SCHEDULE 1

CONSEQUENTIAL AMENDMENTS

1. In each of the following provisions—

1967 c. 13. (a) section 11(2)(b) of the Parliamentary Commissioner Act 1967;

1969 c. 10. (N.I.). (b) section 11(2)(b) of the Parliamentary Commissioner Act (Northern Ireland) 1969;

1969 c. 25. (N.I.). (c) section 12(2)(b) of the Commissioner for Complaints Act (Northern Ireland) 1969;

1973 c. 38. (d) paragraph 16(4)(b)(ii) of Schedule 16 to the Social Security Act 1973;

1974 c. 7. (e) section 32(2)(b) of the Local Government Act 1974;

1975 c. 30. (f) section 30(2)(b) of the Local Government (Scotland) Act 1975;

S.I. 1975/1503 (N.I. 15). (g) paragraph 16(4)(b)(ii) of Schedule 3 to the Social Security Pensions (Northern Ireland) Order 1975;

1977 c. 49. (h) paragraph 16(b) of Schedule 13 to the National Health Service Act 1977;

S.I. 1984/380 (j) regulation 35(2)(a)(ii) of the Occupational Pension Schemes (Contracting out) Regulations 1984;

S.R. 1985 No. 259. (k) regulation 32(2)(a)(ii) of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1985,

for the words "the Official Secrets Acts 1911 to 1939" there shall be substituted the words "the Official Secrets Acts 1911 to 1989".

1978 c. 5. 2. In section 22(6) of the Northern Ireland (Emergency Provisions) Act 1978 for the words "the Official Secrets Acts 1911 and 1920" there shall be substituted the words "the Official Secrets Acts 1911 to 1989".

1985 c. 56. 3. In paragraph (b) of section 9(4) of the Interception of Communications Act 1985 the words "or 2" shall be omitted and after that paragraph there shall be inserted—

"(bb) an offence under section 4 of the Official Secrets Act 1989 relating to any such information, document or article as is mentioned in subsection (3)(a) of that section;".

4. Any provision in a public service pension scheme (within the meaning of the Social Security Act 1973 or the Social Security Pensions (Northern Ireland) Order 1975) which has effect in relation to conviction of an offence under the Official Secrets Acts 1911 to 1939 shall be construed as if the reference to such an offence included a reference to an offence under this Act.

44

SCHEDULE 2

Section 16(4).

REPEALS AND REVOCATION

Chapter	Short title	Extent of repeal
1911 c. 28.	The Official Secrets Act 1911.	Section 2. In section 12, in the paragraph beginning "Expressions referring", the words "or receiving" (in both places where they occur) and "or received".
1920 c. 75.	The Official Secrets Act 1920.	Section 9(1). In Schedule 1, the amendments of section 2 of the Official Secrets Act 1911.
1946 c. 27.	The Bank of England Act 1946.	Section 4(4) and (5).
1954 c. 32.	The Atomic Energy Authority Act 1954.	In Schedule 3, the words from "For the purposes of section 2 of the Official Secrets Act 1911" to "shall be deemed to be a contract with Her Majesty".
1965 c. 57.	The Nuclear Installations Act 1965.	In Schedule 1, paragraph 2.
1967 c. 13.	The Parliamentary Commissioner Act 1967.	Section 11(1).
1969 c. 48.	The Post Office Act 1969.	In Schedule 4, in paragraph 21(1), the words from the beginning to "Her Majesty; and".
1969 c. 10 (N.I.).	The Parliamentary Commissioner Act (Northern Ireland) 1969.	Section 11(1).
1969 c. 25 (N.I.).	The Commissioner for Complaints Act (Northern Ireland) 1969.	Section 12(1).
1970 c. 46.	The Radiological Protection Act 1970.	Sections 2(8) and 4(7).
1971 c. 11.	The Atomic Energy Authority Act 1971.	In section 19(1) the words "2 and". In the Schedule, paragraph 2.
1977 c. 49.	The National Health Service Act 1977.	In Schedule 13, paragraph 15.
1982 c. 16.	The Civil Aviation Act 1982.	Section 18(1).
1983 c. 44.	The National Audit Act 1983.	In section 3(5) the words "Except for the purposes of section 2 of the Official Secrets Act 1911 (wrongful communication of information)".
1984 c. 12.	The Telecommunications Act 1984.	In Schedule 4, paragraph 12(1).

Sch. 2

Chapter	Short title	Extent of repeal
1984 c. 35.	The Data Protection Act 1984.	Section 17(2) and (3). In Schedule 2, in paragraph 1(2) the words "Except as provided in section 17(2) of this Act".
1985 c. 56.	The Interception of Communications Act 1985.	In section 9(4)(b) the words "or 2".

Number	Title	Extent of revocation
S.I. 1987/460 (N.I. 5).	The Audit (Northern Ireland) Order 1987.	In Schedule 1, in paragraph 3(3) the words "Except for the purposes of section 2 of the Official Secrets Act 1911 (wrongful communication of information)".

PRINTED IN THE UNITED KINGDOM BY PAUL FREEMAN
Controller and Chief Executive of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

LONDON: PUBLISHED BY HER MAJESTY'S STATIONERY OFFICE
£2.80 net
ISBN 0 10 540639 9

PROCEEDINGS OF THE FIRST MEETING OF THE WORKING GROUP ON RIGHT TO INFORMATION AND PROMOTION OF OPEN AND TRANSPARENT GOVERNMENT

*****

The first meeting of the Working Group took place on 10th January, 1996 at 11.00 A.M. Shri H.D. Shourie was in the Chair.

Shri Shourie began with the point that the right to have access to information about the workings of the organs of the State was fundamental to a democratic set up. It was a part of carrying people with the Government. Transparency was a necessary concommitant of the Rule of Law and was a vital requiremnt for accountability. Of the three wings of the State, the Legislatures and Judiciary functioned in a manner that was generally open to public scrutiny. However, to the ordinary citizen, the functioning of the Executive remained shrouded in secrecy. While certain aspects of the functioning of the executive, such as matters impinging on the security of the country, friendly relations with foreign countries etc. had necessarily to be kept secret, in practice huge parts of ordinary functioning of the Government also lay under a cover of mystery since the existing legislation did not lay down any cogent yardsticks for withholding of information. S.5 of Offical Secrets Act inhibited disclosure of information on the one hand and facilitated officials to keep thing secret on the other. Similarly the Conduct Rules applicable to Government servants disabled them from disclosure of information even though such disclosure might be in public interest. It was denial of access to information, which should ordinarily be available, that forced citizens to seek legal redress.

Shri Shourie also suggested that instead of speaking of "Right to Information", it would be more approporiate to speak of "freedom of information" or

So

"access to information". "Right" has conotations which might make legislation susceptible to avoidable litigation. Freedom of Information would be a broader and a more positive concept.

Dr. Sundaram, Additional Secretary (AR) mentioned that the Government itself had been deeply concerned about the issue and had taken initiatives to make administration responsive and transparent. Some State Governments, particularly Gujarat and Goa, had taken concrete steps towards greater openness. He mentioned that it would be worthwhile bringing out a White Paper on transparency. The Government was also considering a phased introduction of a Citizen Charter. He also suggested that while legislative changes etc. may take time, the Group should try and see whatever was immediately possible and implementable to make for openness and transparency.

Shri Sashi Prakash, Joint Secretary, Ministry of Home Affairs, stated briefly the background that led to the setting up of the Study Group to review in the first instance the Official Secrets Act and their recommendation to do away with the "catch-all" nature of S.5 of the Act. He also mentioned briefly the recommendations that the Inter-Ministerial Group in MHA was about to finalise. According to him, Ministry of Home Affairs had felt that the Right to Information Bill, prepared by Justice Sawant presented certain difficulties in implementation. Shri Sivasailam, Deputy Secretary, Department of Personnel & Training, also pointed out the resource constraints. He mentioned that in the field offices there were shortages of financial and material resources which created difficulties. The financial cost involved in making information available to public should be recognised.

51

Shri N.S. Madhavan, Joint Secretary, Ministry of Information & Broadcasting, felt that Justice Sawant's Bill was an excellent starting point for the Working Group. The difficulties anticipated in implementation had primarily to do with our current mindset which, in any case, must change. The broad principle, which the Bill sought to incorporate into legislation, that whatever could not be withheld from Parliament must be open to the public, could be the "benchmark" the Working Group could adopt for its recommendation.

Shri Verma, Executive Director, Railway Board, raised the question as to what extent the internal workings of organisations, not directly affecting the users should be opened up to public scrutiny. It was possible that such a course may lead to generation of fruitless administrative work in which energies of officials might be frittered away. The general feeling among the group, however, was that, within reasonable bounds, this was one of the areas where transparency was needed most.

Shri Harinder Singh, Joint Secretary, Department of Personnel & Training, pointed out that lack of transparency facilitated corruption, nepotism and abuse of authority at all levels of the Government. It led to situations in which the consumers' interest was completely ignored.

Shri Shourie then summed up the discussions. He emphasized that inhibition in the administration regarding openness must be removed. Time was opportune for taking

S2

R&L
Issue at once by hand/dak/ might duly.
16/1.

MOST IMMEDIATE

No.34011/1(s)/97-Estt.(B)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training
.....

16 JAN 97

New Delhi, dated 16th Jan., 1997.

Subject:Working Group on Right to Information and promotion of open and transparent Government.

A copy of the proceedings of the first meeting of the Working Group on "Right to information and promotion of open and transparent Government" held on 10th January,1997, together with a copy each of

(i) an article under the caption "Official Secrets Act -Celebrating yet another centenary" by Shri Rajeev Dhavan;

(ii)an article under the caption "The Right to Know" by Shri A.G.Noorani;

(iii)an article under the caption " A study on the access to Information in U.S., Canada and U.K." [Parts I, II and III] by Prof. Manubhai Shah and Ms. Pritee Shah;

(iv)a draft Bill on "Access to information" by Consumer Education and Research Centre; and

(v) a draft "Freedom of Information Bill,1997" proposed by Shri H.D.Shourie, based on the "Right to Information Bill, 1996."prepared by Justice P.B.Sawant, with a few modifications,

is enclosed for information/reference of the Working Group.

2. As already intimated, the second meeting of the Working Group will be held on January 18,1997 at 11.00 A.M. in Conference Room (Room No. 515, 5th floor) Sardar Patel Bhavan, Sansad Marg, New Delhi. Kindly make it convenient to attend.

(Y.G.PARANDE)
DIRECTOR
9/c

To:1.Shri H.D.Shourie, A-31, Westend, New Delhi - 110 021.

2.Shri Soli Sorabjee,Sr.Advocate, 134 Sundar Nagar, New Delhi- 110003.

3.Shri Shashi Prabhakar, Joint Secretary, Ministry of

5.Shri R.N.Verma, Executive Director,Traffic Transportation (F), Railway Board, Rail Bhavan, New Delhi.

6.Shri S.P.Ojha, Sr.Deputy Director General (Vig.), Department of Posts, Dak Bhavan, New Delhi.

7.Shri Ashok Kumar, Joint Secretary, Department of Telecommunications,Room No. 301, Sanchar Bhavan, New Delhi.

8.Shri S.Narendra, Principal Information Officer, Ministry of Information & Broadcasting, New Delhi.

9.Shri N.S. Madhavan, Joint Secretary, Ministry of Information & Broadcasting, Shastri Bhavan, New Delhi.

10.Shri Harinder Singh, Joint Secretary, Department of Personnel & Training, New Delhi.

c.c. to Dr. P.S.A. Sundaram, Additional Secretary (AR&T), Department of Administrative Reforms and Public Grievances, Sardar Patel Bhavan, New Delhi.

54

Department of Personnel & Training
Estt.(B) Section

Subject: Working Group on Right to Information and promotion of open and transparent Government.

A "Press Release" to be issued on 9th January,1997 for publication on 10th January,1997. is enclosed. Kindly arrange its publication.

(RAKESH MALHOTRA)
DESK OFFICER
8.1.97

Shri A.K.Sharma, Dy. P.I.O
Deptt. of Personnel & Trg. I.D.No. 34011/1(s)/97-Estt.(B) dt. 8.1.97

Copy to:

Dr. P.S.A. Sundaram, Additional Secretary (AR & T), Department of Administrative Reforms and Public Grievances, Sardar Paatel Bhavan, New Delhi.

9/01/97

PRESS RELEASE

As a part of Government efforts to promote a more effective and responsive administration, Government of India have set up a Working Group on Right to Information and promotion of open and transparent Government. The Working Group is headed by the well-known legal activist, Shri H.D.Shourie, Chairman of Common Cause and it will have the benefit of advice of former Attorney General Shri Soli Sorabjee and will have representatives of various Ministries. The Working Group has been constituted in order to widen the area of easy access of information to the common man in all areas of government functioning except in regard to the internal security and defence etc. The Working Group will submit its recommendations within a period of two months.

2. The Working Group will examine the feasibility and need of either a full-fledged Right to Information Act or its introduction in a phased manner to meet the needs of an open and responsive government and will identify specific areas especially in large departments like Railways, Posts and Telegraphs etc. which deal with the common man. The Working Group has also been asked to examine the rules frame-work and existing Civil Services Conduct Rules and Manual of Office Procedure with a view to ensure greater openness and transparency in the process of decision making. The internal working procedures in handling of employees grievances and nature and content of training to pro-

mote greater openness and more customer responsive public dealings will also be examined.

3. The Working Group would welcome suggestions to ensure greater access to information and transparency. The suggestions can be sent to Shri Y.G.Parande, Director, Department of Personnel & Training, Government of India, North Block, New Delhi- 110001 (Tel: 3015589). FAX: 011-3012432

011-3013142

49

Official Secrets Act

Celebrating yet another centenary

By Rajeev Dhavan

OUR government is in a celebratory mood. The very first Official Secrets Act was passed in 1889. The government has chosen a novel way to celebrate its centenary. What was an embarrassment to our rulers of the Raj like becoming the central motif of the defence of the Republic. In 1889, official secrets were considered a necessary evil. In 1989, they are projected as a public virtue.

If the British operated the imperial principle that people have a duty to be ruled not to ask questions, the present government seems to protect the imperious necessity that it knows best and insists that those who feed information to the democratic process are criminals. The government has discovered a new allegiance to the rule of law even at the risk of the democracy that creates it becoming uninformed.

Yet the Official Secrets law that it has sworn to uphold has a history that neither inspires pride nor displays a respectable pedigree. The 1889 legislation simply aped British legislation which had become necessary because the Maquis (1870) and Anderson (1888) affairs revealed that those who "borrowed" or "copied" official documents had committed no offence known to the law because they had no intention to permanently deprive the government of its property. Amendments in 1900 brought "attempts" within the catchment of the law and broached a wider public interest. In defence of which official secrecy was claimed. But our present legislation – the Official Secrets Act, 1923 – is modelled on the British Official Secrets Act of 1911. The circumstances under which the 1911 British Act was passed are, at least, startling. It was passed in one day, following a solemn assurance that it was a "temporary" enactment. That temporary enactment has not just remained on the statute book of the United Kingdom, but remains the cornerstone of the Indian government's wide-ranging and arbitrary power to tell – or not to tell – the people what is going on.

'Slavish'

Let us go back to 1922 when a Select Committee of the Indian legislature was charged to "assimilate the law of British India relating to official secrets to the law in force in the United Kingdom". But, the law in force in England was the infamous 1911 Act. The then Home Secretary of State for India, Sir William Vincent, pretended that the 1923 Act was "more than three-fourths ... a purely consolidating measure". The government congratulated "the very representative Select Committee ... (for) performing its labour most conscientiously". But, this did not satisfy the Indian legislators. Dr Gour thought it was a slavish imitation of the English statute. An attempt to recommit the Bill to the Select Committee failed. Attempts to soften the Act to limit it to wilful transgressions of the law failed. The leading Indian legislators protested against the "exceptional and despotic character of the Act".

More teeth

Yet independent India has clung on to Official Secrets Act, 1923. The Press Laws Enquiry Committee, 1948, defended the width of its provisions. The First Press Commission (1952-54) was convinced it was being used in a "reasonable" manner. The Law Commission's Forty-Third Report (1971) thought the "wide" Section 5 was badly drafted, but was content to plead for a lenient prosecution policy. Ironically, the Report of an Inter-Departmental Committee which considered the subject of official secrecy in 1977 has itself remained a secret. When the 1923 Act was amended in 1967, the main point of the Bill was to increase the threshold of punishment and increase the investigating power of the State. During the debate, Mr L. Sondhi wished against everything being kept a secret. Ten years later, the Janata government demurred that the 1923 Act was concerned "with national security" and "not prohibiting legitimate access to official documents".

The only real silver lining in the official discourse was the Second Press Commission Report which had no doubt that Section 5 "as it stands can prevent any information about any affair of government being disclosed to the public and there is widespread public opinion that the section has to be modified or repealed or substituted by a more liberal one". The Government which claims to have assiduously followed the advice of the Second Press Commission in bringing in the Defamation Bill and the Press Registration Bill seems to have overlooked the Commission's unequivocal recommendation that the Official Secrets Act should be radically altered to give people the right to information about government. Powerful support for this view was given by the late S. N. Jain in his Report to the Press Council which, in turn, endorsed the need for control. Yet India's Official Secrets Act has survived; and, is being brandished about as an offensive weapon in the hands of the government.

But, let us turn to the provisions themselves. They are well and truly "catch all". They cover every aspect of government activity. Both the *Blitz* case (1970) where a forfeiture was deposited because people were exhorted to reveal government secrets for democratic consumption and the Leaking of the Budget case (1985) in India make it clear that Section 5 is not limited to espionage, but is so framed as to prevent the police, permit the recording of unauthorised confessions and afford little protection to the accused in official secrecy prosecutions. In England, the Franks Committee (1971) examined the corresponding English provision on which our Section 5 is based and echoed the advice of an English judge that the section ought to be "pensioned off". And to it should. But, pending that the government should not strike "precaution, look-tough" postures, but limit its prosecutorial discretion to cases concerning espionage, national security and strictly defined areas.

But, let us visualise what would happen if the government goes to the other extreme of enforcing the Official Secrets Act strictly and consistently. More than half – if not all – of the government will be in jail. They would be denied bail if the law took its course. Administrators would be afraid to talk to friends and family "for fear that the very stones of their office past (sic) of their whereabouts". People would wreak vengeance on their adversaries by claiming to be recipients of official information from the latter. Enterprising but wiser journalists would become rebels with a cause. And, "investigative" Journalism would, for the most part, become a criminal activity. Indian democracy would, then, depend exclusively for its facts, intuitions and judgments on government handouts and the official media agencies – Doordarshan (TV) and *Akashvani* (radio) – over which the government enjoys a total monopoly. All this is not conjecture. It is the awful truth of what logically flows from Section 5 of the Act: for, as things stand, the Act literally covers virtually every communication we have with a government official other than one that was duly authorised.

Need for change

That the Official Secrets Act must be "pensioned off" goes without saying. It must be replaced with a clear cut law which charges the government to reveal all information to the people except certain matters within a narrowly defined area. Anything else will simply short change democracy. But what do we do meanwhile? The government cannot be allowed to abuse the official secrets law. In the 1930s, the British government threatened to prosecute journalists who leaked its plans in relation to Gandhi (1931). Later in 1938, an MP, Duncan Sandys, was threatened with prosecution because he revealed information showing the weakness of British defences against Hitler. There was a storm of protest. Journalists and MPs cannot be silenced by an irresponsible official secrets law. In 1939, the British parliament introduced changes in their Official Secrets law reposing prosecutorial discretion in the Attorney-General. A similar recommendation has also been belatedly made by our Press Council. But this, by itself, is not enough for India, even more so because the Attorney-General refused to answer in parliament for the advice he gave on the publication of the Thakkar Commission Report. What the government must do is to immediately table a statement delineating the circumstances under which it will use this power. A small committee of parliament (including an equal representation of Opposition MPs) should monitor this discretion.

Fight for right

The government cannot enforce the Act with any consistency. To do so would entail prosecuting virtually the entire cabinet including the Prime Minister for any all-the-record statement that they might have made unwittingly. It cannot preach official secrecy and simultaneously "inspire" leaks and release information from "informed" sources. How can MPs perform their pivotal function of making government accountable if they have no information? The ugly tragedy of Indian democracy is that both the people and their representatives in parliament have to struggle and fight for even information which is rightly theirs. This tragedy is compounded many times over because Indian government processes have been so infiltrated with private influences, deals and corruption that there is a need for a continuous revelation of what is going on. The government cannot have it both ways: refuse to reveal information and threaten with punishment those who service democracy.

What we need is a continuous campaign – even *satyagraha* – for further and better particulars about how, and in what way, we are governed, and about all those who exercise private and public power over us. If the government threatens wayward prosecutions under the Official Secrets Act, Indian democracy would have no other choice but to violate it. Without any safeguards and the rule of law pleasure (which is arbitrary and discriminatory on the face of it), the Act is a blot in the side of the Constitution. No one is denying India its defence secrets, the need to protect its security or even a temporary cover for the operational efficiency of its bureaucratic processes. But, we cannot exaggerate the conflict between the defence of the realm and the defence of democracy; nor can we compress all government processes within the greedy and amorphous cubicle of official secrecy. Secrecy is inimical to democracy. An uninformed democracy is a contradiction in terms. So far, the contradiction has been precariously resolved by the government planning and showing forebearance. That is no longer enough. Rethinking official secrecy has to be viewed as a long

THE RIGHT to Know

by A.G. Noorani

Thelma Martin seemed no different from any of the other members of Jehovah's Witnesses who went about zealously distributing the sect's literature in the city of Struthers, Ohio. But she proved to be much tougher. She made legal history. The city authorities promulgated an ordinance which made it unlawful for anyone distributing literature to ring a doorbell or otherwise summon the inmates of a residence to receive such literature. Undeterred, Thelma Martin knocked at the door of a home in order to deliver a leaflet advertising a meeting. She was duly prosecuted and convicted in the Mayor's court, which sentenced her to pay a fine of $ 10. She challenged the conviction and took the fight right up to the U.S. Supreme Court.

By 1943, when the court heard her case it had built up an impressive body of precedents on the First Amendment's guarantee of freedom of speech (see SPAN, May 1992). In this case it upheld not only that right - Thelma Martin's right to impart - but emphasized the right of others to receive her literature - the right to know :

"The right to freedom of speech and press has broad scope... This freedom embraces the right to distribute literature and necessarily protects the right to receive it." (Italics are mine, throughout this article.)

The right to know was thus acknowledged by the highest court in the land to be an integral part of the right to speak. As in all cases of judicial creativity, it was elaborated upon and refined in successive rulings. Finally, the U.S. Congress sat

- 1st

up and legislated to provide statutory remedies for its enforcement - the Freedom of Information Act of 1966 (FOI). The act was amended in 1974 to make it more effective in the light of experience. The amendment went into force on February 1, 1975. In the same spirit, two other statutes were also enacted. One was the Privacy Act, 1974, which protects individual privacy against the misuse of federal records while granting persons access to records concerning them which are maintained by federal agencies. The other was the Government in the Sunshine Act of 1976, which provides that sessions of Government agencies shall be open to the public.

When passing Suzi of the FOI Act, it is the amended law that they have in mind. A decade's experience has proved its worth. But in evaluating the terms of the statute and the experience of its working, one must not for a moment ignore the constitutional underpinning - the right to know as an aspect of the First Amendment's guarantee of the right to speak. In 1965 the Supreme Court went a step further. It struck down as void a federal law which required a person wishing to receive"Communist political propaganda" from abroad to sign a reply card for the Post Office. Justice Brennan noted, "it is true that the First Amendment contains no specific guarantee of access to publications. However, the protection of the Bill of Rights goes beyond the specific guarantees to protect from congressional abridgement those equally fundamental personal rights necessary to make the express guarantees fully meaningful.... I think the right to receive publications is such a fundamental right".

61

When a man was arrested for possessing films that the police regarded as obscene, the Court ruled that mere possession of

such material cannot be made an offense without violating the First Amendment. Significantly, the Court added, "It is now well established that the Constitution protects the right to receive information and ideas. .... This right to receive information and ideas, regardless of their social worth, is fundamental to our free society".

About the same time, in 1969, the Supreme Court in the historic case on broadcasting, Red Lion Broadcasting Co. vs. Federal Communications Commission (FCC), emphasized that "it is the right of the public to receive suitable access to social, political, aesthetic, moral and other ideas and experiences which is crucial here. That right may not be constitutionally abridged either by the Congress or by the FCC".

The Supreme Court was split evenly on the issue of the journalist's right to protect his sources in Branzburg vs. Hayes (1972). But there was absolutely no disagreement on the principle that news gathering does "qualify for First Amendment protection: without some protection for seeking out the news, freedom of the press could be eviscerated".

Gradually, the Supreme Court accepted the role of the media as a surrogate of the public in the exercise of its right to be informed of current events - of its right to know.

Public TV station, KQED, which had exposed abuses in prisons in the San Francisco Bay area, demanded unfettered access to Santa Rita jail but secured only a limited right of access. Three justices, led by Chief Justice Burger, flatly rejected KQED's claim, while an equal number upheld it. A fine balance was struck in the governing judgment of Justice Potter Stewart. He

62

went alone with the Chief Justice on the general proposition that the press has no right superior to that of the public generally. But what he proceeded to say is particularly apt and relevant :

"We part company, however, in applying these abstractions to the facts of this case. Whereas he (the Chief Justice) appears to view equal access as meaning access that is identical in all respects, I believe that the concept of equal access must be accorded more flexibility in order to accommodate the practical distinctions between the press and the general public. When on assignment, a journalist does not tour a jail simply for his own edification. He is there to gather information to be passed on to others, and his mission is protected by the Constitution for very specific reasons".

Thus, "a person touring Santa Rita Jail can gauge its reality with his own eyes and ears. But if a television reporter is to convey the jail's sights and sounds to those who cannot personally visit the place, he must use camera and sound equipment. In short, terms of access that are reasonably imposed on individual members of the public may, if they impede effective reporting without sufficient justification, be unreasonable as applied to journalists who are there to convey to the general public what the visitors see".

In 1980 in the famous Richmond Newspapers case a near-unanimous Supreme Court upheld the Stewart logic. Chief Justice Burger said :"Instead of acquiring information about trials by firsthand observation or by word of mouth from those who attended, people now acquire it chiefly through the print and electronic media. In a sense, this validates the media claim of functioning as surrogates for the public. While media

63

representatives enjoy the same right of access as the public. they often are provided special seating and priority of entry so that they may report what people in attendance have seen and heard". He went further and said that "certain unarticulated rights are implicit in enumerated guarantees"; the press right to access to news follows implicitly from its right to freedom of speech and expression.

By then the FOI Act was well set on its course. It lays down both the procedure for enforcing the right to know and the limits within which the right can be exercised. The act was conceived in a libertarian climate which was created by the Supreme Court's educative rulings but even more so by the press. The excesses in the name of the Official Secrets Acts in other countries were tellingly cited in support of an FOI Act.

In 1955 the House of Representatives had established a Subcommittee on Government Information. Its chairman, Representative John E. Moss (Democrat of California), has been acclaimed as "the main motivating influence behind the passage of the Freedom of Information Act of 1966". His efforts in hammering out the legislation received powerful support from the press.

In signing his assent to the act on July 4, 1966, President Lyndon B. Johnson exclaimed, with pardonable exaggeration that it entitled Americans to "all the information that the security of the Nation permits". The Attorney General, Ramsey Clark, summarized the policies behind the act in a few propositions - "that disclosure be the general rule, not the exception; that all individuals have equal rights of access; that the burden be on the Government to justify the withholding of a document, not

the person who requests it: that individuals legitimately seeking access to documents have a right to seek injunctive relief in the courts: that there be a change in Government public attitude".

Initially, the draft contained an omnibus exception - "to the extent that there is involved a function of the United States requiring secrecy in the public interest". The expression, "the public interest", is a notorious source of arbitrary power. It was replaced in the final draft by a list of nine specific exceptions such as national defense, foreign policy, etc.

Even so the list proved to be somewhat widely worded. In 1973 the Supreme Court ruled in the case of Environmental Protection Agency vs. Mink that the courts may not question the denial of FOI Act requests for reasons of national security. The ruling reinforced the demands which were building up, as the details of the Watergate burglary were being revealed gradually, that the law should be further tightened up against official secrecy. In 1973 Representative William Moorhead (Democrat of Pennsylvania), chairman of the House Government Information and Foreign Operations Committee, proposed certain amendments to the seven-year old statute. They required the federal bureaucracy to respond to reasonable requests for information and proceeded to lay down time limits refusal (20 days). On November 20 and 21, 1974, the House and the Senate, respectively, adopted the amendments for the second time by a two-thirds vote and thus overrode President Gerald Ford's veto of the amended act on October 17, 1974.

Certain aspects of public administration in the United States

must be borne in mind while analysing the provisions of the FOI Act. Many federal agencies such as the Food and Drug Administration or the Environmental Protection Agency have a high degree of autonomy. They are vested with considerable powers affecting the rights of citizens. But they are all subject to judicial surveillance and are bound to observe the basic rules of natural justice while deciding any matter which would affect a citizen's rights. The Administrative Procedures Act of 1946 was designed to provide detailed safeguards for ensuring fair play.

The FOI Act builds on this foundation and is, indeed, itself an amendment to the Administrative Procedures Act. It begins by providing three types of access to agency records depending on their nature and importance. One is by publishing them in the Federal Register for public guidance. Rules of procedure, descriptions of the agency's organisations and the like fall in this category. Another method of disclosure is to place the records properly indexed in an agency reading room for public inspection and copying. This would cover records of agency adjudications, statements of policy and staff manuals. The last form of access is the most important : making available records on request.

The specific document need not be mentioned. It is enough for the request to "reasonably describe such records". It is also sufficient to request all the documents on a specified matter. The documents can be had for inspection. A search fee of $7.50 is payable although this is waived by some agencies if the request is for disclosure in the public interest rather than for personal reasons. Photo copies can be had for a fee.

66

usually at the rate of 10 cents per page.

There are nine categories or matters which are exempted from the duty to disclose. They are, first, matters which are specified by the President, in an Order, "to be kept secret in the interest of national defense or foreign policy." The court can however examine the records for itself, in camera if necessary, to ensure that the refusal does not exceed the terms of the Presidential Order. On this point the court can also require considerable preliminary disclosure to the lawyer for the applicant.

The eight other exempted categories relate to matters concerning internal personnel rules, interagency memoranda, personal and medical files, trade secrets, certain records compiled for law enforcement purposes, records of agencies responsible for supervision of financial institutions, geological and geophysical data concerning wells, and matters specifically exempted from disclosure by other statutes.

The act confers jurisdiction on the Federal District Court to hear complaints against refusals of disclosure. "In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in" the act. However, "the burden is on the agency to sustain its action."

The court is empowered to award costs against the Federal Government if the complainant succeeds "substantially". Should the court find, however, that a federal official has "acted arbitrarily or capriciously" with respect to the withholding of a requested record, the Office of Personnel Management is

67

enjoined by the Act to initiate proceedings to determine if disciplinary action against him is called for. The Attorney General is required to submit an annual report on how the act is working.

Several states have enacted their own FOI statutes. The federal act has own international notice and has been cited as a model for emulation in official studies elsewhere. It has given rise to litigation, predictably, and created (also predictably) such elation at disclosures and some frustration at reversals. On balance: the law has proved a blow for freedom.

Consider an early case : In 1955 the Veterans Administration (VA) initiated a testing program to evaluate hearing aids for procurement and distribution to veterans. But, as a matter of policy, it would disclose the test results to no one outside the Government. Consumers Union sought the results and when the VA refused to reveal them, it brought a court action under the FOI Act. The court ruled in favour of the Union and observed that the whole purpose of the act "was to reverse the self-protective attitude of the agencies".

This was in 1969, before the law was amended and made more effective. The architect of the 1974 amendment, Representative William Moorhead, was surprised to discover that "the reporters, editors and broadcasters whose job it is to inform the American people have made little use of Freedom of Information Act of 1966. They were the major supporters of those in Congress who created the law". They did not do much better after the amendment either.

68

initially, corporations were the major users. They sought to gather information to evaluate new products and potential markets; to get information about their rivals; to frustrate official investigations by discovering information held by the agencies, and to enjoy the fruits of research studies carried out at public expense.

James T. O'Reilly, author of the textbook Federal Information Disclosure, noted in June 1983 that the majority of the 70,000 requests each year are commercially motivated. Under the act, the Government is under no "legal obligation" to inform the owner that the Government's copy of its industrial process flow sheets have been requested by its competitor. "To prevent disclosure a company must establish in court that "substantial harm to its competitive position" would be caused.

Foreign interests also take advantage of the act. Suzuki Motors of Japan filed requests for information about a competitor. Toyota, and routinely obtained test results from the Environmental Protection Agency on new Toyota cars imported into the United States.

But writers have been in earnest to take advantage of the [illegible] Act. Diverse books on sensitive topics can be written [illegible] because of information that outlines : Perjury : The Hiss-Chambers Case by Allen Weinstein; the Fourth Man by Anthony Blunt As a [illegible] Soviet Spy, and Sideshow by William Shawcross, a searing criticism of Richard Nixon and Henry Kissinger's policy toward Cambodia. Shawcross called the FOI Act "a tribute to the self-confidence of American society".

There is every reason to believe that with the passage of time

69

the potentialities of the Act will be further explored. Students, for instance, are beginning to take interest. The society of professional journalists, Sigma Delta Chi, has student chapters as well. For the last six years the student chapter at Ohio State University has been writing, editing and distributing the FOI/Ohio Newsletter.

The Sigma Delta Chi itself has done a lot to promote awareness of FOI rights. Its 1984-85 Report on "Freedom of Information" shows how the awareness is spreading all over the United States. It has published a sample for a request letter under the Act that any law citizen can follow.

The Act was amended last year specifically to exempt the "operational" files of the CIA from disclosure. The amendment will, however, give the courts more latitude in reviewing decisions not to disclose and was supported by the American Civil Liberties Union as well as by Sigma Delta Chi.

A decade after the Freedom of Information Act was endowed with teeth, the statute's bite has been felt by administrative agencies. Its potential is enormous. Its impact has already been considerable. It reflected a certain climate and has, in turn, created an impetus for openness in government. It is a standing acknowledgment of the citizen's right to know.

About the Author: P.G. Nugent, a Dayton based lawyer and constitutional expert, is a regular contributor to SPAN

70

A STUDY ON THE ACCESS TO INFORMATION

In U.S., Canada & U.K.
(Part-I)

Prof. Manubhai Shah
Ms. Pritee Shah

How would you feel if you ask for a government's report with respect to a drug and you get it and that too, promptly? Or ask for an inquiry report of a major dam disaster and in less than no time, you have it in your hand? Well, that's too much of wishful thinking, too much of airy hopes, isn't it ?

For all you know of is unsavoury experiences where the government turns a deaf ear to your pleas, sometimes with decorum and politeness but more often without it. Yes, you have gone to courts also, but not much success there, too. Ultimately after going through enough to provoke even a saint, you decide to do without the information. Very familiar experience, isn't it? Is there no solution to this? No way out? Since independence we have been sounding the trumpet that India is a democratic country where the government is by the people, of the people and for the people. Well, if it's really for the people, then why don't they give us what we ask for fairly? Yes, it is a question that arises time and again in the mind of every citizen and frustrates every social action group activist.

INTRODUCTION :

Secrecy in Indian government has indeed a long history - longer than in many other countries. As early as August 30, 1843 the central government of India issued a notification asking its personnel not to communicate to the outside world any paper or information in their possession. Independent India's inheritance of the colonial legacy included, among other things, the Official Secrets Act,1923. As a result the government operates under thick and sprawling secrecy. Today blanket secrecy pervades every nook and cranny of public administration in India, and its application defies logic.

Secrecy in Indian government has indeed a long history - longer than in many other countries. As early as August 30, 1843, the central government of India issued a notification asking its personnel not to communicate to the outside world any paper or information in their possesion. Independent India's inheritance of the colonial legacy included, among other things, the Official Secrets Act,1923. As a result the government operates under thick and sprawling secrecy.

Countries like Canada, New Zealand, Australia, United States, operate on the principle that access to information is a constitutional right. In India, however, the anachronisms continue. While the Indian Press has not claimed the right to publish sensitive material during times of war or emergency, it does not accept the other extreme where most circulars or public interest documents are in principle, marked 'secret' or 'confidential'. While large establishments can develop an extensive network to collect information and pay the price if the need arises, it is the smaller press that suffers.

The extent to which the access to information is limited to the press, there is a likelihood of a credibility gap between the government and the press and consequently the public.

Take the case of Machu Dam disaster where 1,500 human lives were lost. The government had ordered an investigation into the matter. The Rajkot Collector's report submitted to the government was refused to the Judicial Inquiry Commission appointed by the government of Gujarat and also to CERC. The Commission ruled against the government claiming privilege to the document in public interest. It was an extraordinary stand taken by the government not to disclose the report to CERC and so also to the Commission appointed by it to ascertain the



That's what I like about AIR news bulletins - no news is good news !

truth. In fact, the judge was asked not to take judicial notice of the report. Certainly a glaring illustration of the extremity of the situation!

Studies by institutions funded by government grants and public money and of direct relevance to consumers are 'sure'y confidential'. Public institutions like NIOH (National Institute of Occupational Health), ATIRA, (Ahmedabad Textile Industry Research Association), Toxicological Institute of India, National Chemical Laboratory, Pune owe it to themselves and to the public to make readily available information that is Non-Consultancy in nature.

Even issues affecting the common man like 'fare increases' cannot be meaningfully discussed since annual reports of public sector companies and government bodies like Road Transport Corporation, Indian Airlines, State Electricity Board, Insurance Corporations, etc. are unavailable except on the basis of influence or personal contact. It is also in spite of the fact that such public documents are placed before Parliament of India and State Legislatures as the case may be. Communities around industry are not aware of emergency measures in case of mishaps. The Bhopal disaster is a point in case of the appalling ignorance of surrounding communities about industrial activity, toxic chemicals and global organisation of the chemical industry.

For active social action groups in India, like CERC, access to information is extremely important as well as useful because meaningful representations, discussions on policy decisions and intervention in court action can only be based on knowledge of government policies and discussions, reports of working committees etc. Non-attainability of such reports on the administrative and social issues seriously limits the effectiveness of social action groups and proves to be a major handicap in its functioning.

For active social action groups in India, like CERC, access to information is extremely important as well as useful because meaningful representations, discussion of policy decisions and intervention in court acuon can only be based on knowledge of government policies [illegible] reports of working committees etc. Non-attainability of such reports on [illegible] and social issues [illegible] effectiveness of social action groups and proves to be a major handicap in its functioning.

It is in the light of the above background that CERC proposed to take up a detailed study of the access to information, particularly social action groups, the public and small press. Proper classification of documents, bearing in mind the real needs of the government in protecting national interests, while at the same time, making available information that rightfully belongs to the public in keeping a healthy democratic balance,has to be made. Two staff members of CERC decided to tread around few countries and find out how the other governments function in this respect.

The Managing Trustee, Prof. Manubhai Shah and Dy. Manager, Education and Research, Ms. Pritee Shah travelled through U.S., Canada, and U.K. and made a comparative study of these countries, on the subject of Right to Information. Since one of the objectives of the project was to undertake a comparative study of those countries where access to information is a constitutional or statutory right, and of those countries where the Official Secrets Act is enforced to a large degree, these countries were selected: because U.S. and Canada have a legislation on Freedom of Information whereas in U.K. the Official Secrets Act is enforced to a large degree. We owe our thanks to the International

Development Research Centre, Canada for funding this trip.

One of the objectives of this project is to examine the current Indian draft bill on Access to Information and to address issues relating to right to information as they affect the work of voluntary agencies, the press and individual rights. The design of the project is such that even before starting the actual research on the subject, a pre-research workshop will be organised to develop a model for the research study. This will be followed by actual research study which will take around eight months. The findings of the study will be presented at a post research workshop where a strategy for an action plan will be debated and formulated. Also coalitions of the like minded groups will be formed to mount campaigns for mobilizing public opinion on the subject. A public conference will be held at the end of the workshop.

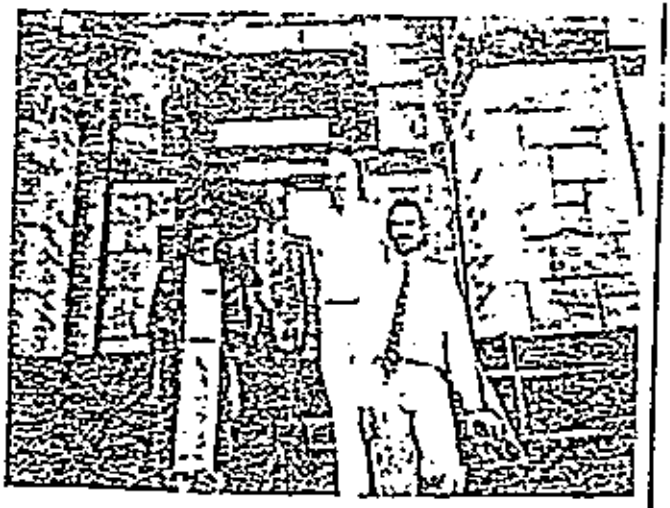
During our several meetings with the concerned people in all the three countries, we not only got answers to our various queries but actually got a first hand feel of the subject.

This report will cover in brief the information gathered on the history, practices and problems of Freedom of Information Act.1966 (FOIA) in the United States. We tried to meet people from a varied background. We met social action group activists, government officials, academicians and people in business. There was a tremendous feeling of excitement and wonder, wherever we went, whoever we met in these countries. People were amazed that in a country like India, with its tradition of secrecy, an attempt is being made by a Public Interest Group to take steps towards a more open government. What follows now is a brief account of our impressions on peoples' experiences with FOIA in the U.S. (Part II will appear in our next issue and will focus on the prevalent practices in Canada and U.K.)

The chief inspiration of FOIA is believed to have come from Sweden which has the longest unbroken history of openness with regard to its governmental functioning. Its' 'Freedom of Press Act' dates back to the year 1766. This only proves that legitimate national interests can as well be safeguarded under conditions of administrative openness.

Origin of FOIA in the U.S. :

When we visited Public Citizen's Group, Washington, and asked Ms. Patti Goldman and Ms. Theresa Amato about FOIA's origin in the U.S., they told us that legislation on FOIA was a democratic initiative. Mr. Ralph Nader collected information and showed that with the power of information it is possible to change government policy. He did this with his publication, 'Unsafe at any speed?'. Further, Congress members themselves brought out cases to show the abuse by the government of their discretionary power. Menus of receptions held for royalty were publicised to show the exorbitant expenditure made by the government.



L to R : Ms. Pritee Shah, Prof. Manubhai Shah, Dr.Fred Millar, Director, Friends of the Earth's Toxic Chemicals Safety and Health Project, Washington D.C.(who co-ordinated the group's meetings in Washington D.C.) and Mr. Vikram Chowdhry

Mr. Daniel Metcalf, Office of Information & Privacy, Department of Justice, has another impression regarding the origin of FOIA in the U.S. He told us that President Kennedy & President Johnson were the ones who opened the doors to freedom of information. When President Eisenhower was in power, the administration did allow the government to give information but it was on discretion. President Kennedy's and President Johnson's terms were an era of congressional hearings and emerging social movement and this brought out the legislation in 1966.

Mr. Richard Horner, Consultant, The Workplace Health Fund, Washington enlightened us with another view of FOIA's origin in the U.S.. He said that FOIA is the culmination of the people's uproar against the 'too many scandals' and against the 'too many falsehoods' of their trusted government. People

[illegible] forward to them. They wanted to know why nuclear weapons and bombs which were published to be a development project were misused in World War II? The government promise was expired. Everything became a secret. Mr. Human said it was a challenge to social morality.

These events coupled with the basic American attitude towards openness of government which is reflected in the fact that it publishes more data and reports on a broader variety of subjects than most of the rest of the world's governments' put together had set the scene for the legislation on FOIA. Mr. Thomas Susman, Advocate, Ropes and Gray, Washington and former aide to senator Kennedy feels that opposition too played a key role in pushing the FOIA and in laying down its foundation in the 50's.

Thus the original FOIA was enacted in 1966 and it went into effect in 1967.

What is FOIA ?

The basic concept of the FOIA is that all records of agencies of the Federal government must be accessible to the public unless specifically exempt from this requirement. 'Any person' may make a FOIA request which includes foreign countries, corporations and governments.

The Act establishes requirements

[illegible]

- [illegible]
- [illegible]
- [illegible]

According to the Public Citizen [illegible] Washington D.C. the Act's phenomenal [illegible] can be judged from the illustrations given in the Box. Its prospects is attributed to its following four fundamental aspects :-

1. It creates a presumption in favour of public access to government information and against government secrecy.
2. [illegible] clearly defines the categories of information that can be withheld from the public, and thus it places strict limits on the government's discretion to keep information secret.
3. [illegible]es for independent judicial review of an agency's refusal to release information.
4. It is so designed that it can be easily used by the general public.
5. Requesters can seek judicial review where the Agency takes more than 10 working days to render a determination on the initial request or more than 20 working days to act on an appeal, except when an agency demonstrates the need for extension of time.

How is FOIA used ?

Some Illustrations :-

- FOIA was used to get information on 249 workplaces in the U.S. where the government had identified increased risks of Cancer, Heart disease a[illegible] publicised both the [illegible] workplaces and the fact that the government had not warned the affected workers. It used the information to lobby for legislation and administrative standards that would require employers to notify workers about such increased workplace risks.
- Initially, the Reagan administration argued strenuously that acid rain is not a problem. Obviously, Canadian and United States environmental groups held a different view. Through the Freedom of Information Act, a journalist obtained a government report that found that acid rain environmental harm. The report linked sulphur dioxide discharges from utilities and industries in the Midwestern United States and Canada. The journalist published this information in a science journal, which gave environmental groups ammunition with which to fight the Administration's rhetoric.
- The Act has also been critical in keeping the public informed about health and safety hazards. For example, a journalist recently used the Act to uncover a startling fact about the space shuttle mission that had been scheduled to follow the fatal space shuttle accident. The very next shuttle flight would have carried 47.6 pounds (21.56 kg) of plutonium. He published several articles detailing the tremendous destruction that would have flowed from the dispersement of plutonium in a space shuttle accident.
- A grass root environmental group made efforts to learn about the government's use of herbicides in the national forests. The Forest Service had vigorously denied that it had sprayed the herbicides. However, under FOIA, the results of health tests of Forest Service employees which confirmed high concentrations of herbicides in the national forests were obtained. The environmental group used the documents to force the government to stop this practice.

- Public Citizen Washington, D.C.

As any rule has exceptions to it, so does FOIA. It has nine exemptions which permit an agency to withhold access to records.

No country likes to reveal anything that might prove instrumental in harming itself. Hence FOIA's exemption that it does not apply to matters that are in the interest of national defence is well justified. But in order to withhold information under this exemption of the FOIA, the government must demonstrate that the information is in fact properly classified. The information to be classified include military plans, weapons, installations, foreign government information, foreign relations, programmes for safeguarding nuclear materials, facilities etc. Same is the case with the trader for whom trade secret gives an advantage over competitors who do not know it. FOIA's exemption applies to such matters also. Mr. Thomas Susman does not whole heartedly approve of this exemption. According to him, small companies would prefer disclosure but big companies like non disclosure of their commercial or financial information.

When we posed this issue before Mr. Daniel Metcalf, his reaction was that the most unanticipated use of FOIA is by business, which has made information very expensive. Business use it for 'tit-for-tat' over competitors. It also creates a burden on agencies especially like FDA and government contract related agency. Whatever information is not confidential should be automatically made available to public. Mr. Metcalf favours a special format to be used for providing business information.

A FOIA exemption which requires a great deal of balancing between individual privacy and the public's right to information is the one where personnel and medical files are not disclosed. Here is an illustration of an interesting case not falling under this exemption. As reported in a newspaper article the U.S. government has now agreed to release thousands of pages of information on the whereabouts of former American soldiers stationed in England during World War II to a group of British subjects who believe that the men may be their long lost biological fathers. The settlement, marks the end of a four-year-old lawsuit filed by WAR BABES, a 500 member British organisation made up of the offsprings of wartime liaisons between American soldiers and English women. The U.S. government had witheld the information on the grounds that releasing it might invade the privacy of U.S. citizens. Ms. Shirley McGlade who founded WAR BABES advocated that her experience showed that many of the veterans now in their sixties and seventies were as eager to find their offsprings as their children were to find them. This proved that the information was asked in the interest of the public. Hence this exemption did not apply in this case and the information was released under FOIA.



Ms. Pritee Shah with Mr. Richard Horner, Consultant, The Workplace Health Fund, Washington. Mr. Horner believes that FOIA' emerged as a result of the people's uproar against their governments' scandalous behaviour.

FOIA also does not apply to matters that are records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information could reasonably be expected to interfere with enforcement proceedings or would deprive a person of a right to a fair trial or could reasonably be expected to endanger the life or physical safety of any individual. But this exemption did not help Environment Protection Agency to substantiate claim that disclosure of identities of corporations and individuals who are potentially responsible for the clean up of hazardous wastes would "interfere with law enforcement proceedings" by reducing the co-operation of such parties in voluntary cleanup programmes.

One of the FOIA's exemptions provides security and integrity to financial institutions. But this exemption has been broadly

interpreted as blocking disclosure, even when an institution's financial condition is not at issue or the information sought does not reflect upon its financial soundness. This exemption hinders disclosure even in the cases where the requested records pertain to a bank which has failed and whose financial soundness can thus no longer be harmed. Most of the people we met from the voluntary sector, expressed strong reservations against this exemption. Campaigns are being undertaken to amend this exemption.

FOIA's least invoked and least litigated exemption is the one that concerns the geological and geophysical information and data.

An interesting statement came out during the discussion about the history and justification for various exemptions introduced in the law from the operation of Freedom of Information Act. President Lindon B. Johnson who came from Texas was concerned about the secrecy in relation to oil and petro[illegible] resources since Texas is rich in these resources. Looking back over a period of last couple of decades, there has not been a single request for information on oil and other resources in Texas!

In a case between Army Time Publishing Co. and Dept. of Army, the court rejected the latter's application for exemption and granted the former's request for the names, addresses, grade levels, and [illegible] locations of all active duty army [illegible] in the U.S. The Department of army did not want to disclose its information [illegible] a FOIA exemption that is related to the internal personnel rules and practices of an agency. The army asserted that the databases of personnel names and stations have the exclusive purpose of "supporting and facilitating internal personnel activities". The court however rejected this "struggle to squeeze this case into this exemption's mould not pervasive".

To protect against premature disclosure of proposed policies before they are finally adopted, FOIA does not apply to inter and intra-agency memoranda. Besides, FOIA also does not apply to matters that are specifically exempted by other statutes.

Fee and Fee Waivers :

Valu[illegible] so does valuable inform[illegible]

Therefore FOIA requesters [illegible] be charged three types of fees : either the direct cost to the agency to search for documents responsive to the request or the direct cost for the agency to review documents it locates to determine what portions may be released or the duplication costs.

Agencies are required to provide free of charge the first two hours of search time and the first hundred pages of duplication to all non-commercial requesters. At present there is a considerable debate going on in the U.S. regarding this matter.

On one hand, commercial entities, which comprise approximately 60% of the users of the Acts (as informed by Ms. Theresa Amato, Public Citizens, Group, Washington D.C.) may be charged all three types of fees, while on the other hand, individuals seeking personal records about themselves, can only be charged copying costs, presumably because they are considered to have a right to see such records. Similarly, journalists, scholars, and scientists may only be charged copying costs. And agencies must waive all fees for requests that seek information that will increase public understanding of government operations or activities. These last two provisions are intended to promote the democratic type uses of the Act. They are designed to prevent an agency from charging fees as a means of keeping information out of the public domain.

However, in practice, agencies still are reluctant to grant fee waivers and often try to



Well, if it isn't your CIA then, why now of all times these agitations against economic deterioration, unemployment and so on ?

us. fees at least initially to discourage requesters who seek to uncover embarrassing information. For example, one agency required a journalist, who had the experience of twenty years to submit a resume and a writing sample before it would grant him a fee waiver. Another agency refused to grant a fee waiver to a women's group that was seeking records about sex discrimination because it claimed that the group represented only a segment of the public. When the case was assigned to a woman judge, the government granted the fee waiver. Over the next couple of years, this will be a key area of advocacy in order to ensure that journalists, scholars, and public interest organizations receive the full fee waivers to which they are entitled without having first to ensure administrative delays and harassment.

The Department of Justice has issued guidelines to agencies for cases of fee waivers. These are advisory and do not support the statutory waivers standard. The objectives of these guidelines are to foster disclosure of non-exempt agency records which will primarily benefit the general public and to preserve publ[illegible]rds where there will be insufficient [illegible] derived from disclosure.



Mr. Thomas Susman, Advocate, Ropes and Gray, Washington D.C. and a former aide to senator Kennedy [illegible] Privacy Act should not be limited [illegible] are [illegible] Photo: Courtesy Mr. Prince Shah.

[illegible] that [illegible] statutes inserted [illegible] Congress with respect to the

The FOIA 1966 was very general and very toothless. There were no provisions for enforcement of law records, no time limits and no safeguards. Lot of inadequacies surfaced and the weaknesses of the Act became more prominent.

statutory "public interest" fee waiver standard by improperly stressing that "agencies are obligated to safeguard the public treasury."

As reported by Public Citizens Group, Washington, D.C. a refund of over $1,300 paid by the Multinational Monitor to the U.S. Coast Guard to obtain access to that agency's records concerning oil spills in the 14 years preceding the Exxon Valdez oil spill in Alaska was successful. By agreeing to pay back the money, the agency in essence conceded that it had wrongfully denied the fee waiver requested by the magazine.

The administrative process specifies that 'Any person' may make a FOIA request including foreign citizens, corporations, and governments but it is required that the request 'reasonably describes' the records sought.

In general, the Act requires release of all material not exempted by provisions: it does not permit the agency to consider the requester's need in determining whether to disclose. A statement of need is relevant, however, in certain specific circumstances:

(1) To justify a fee waiver. (2) To justify requiring an overburdened agency to answer a FOIA request out of turn.

The FOIA 1966 was very general and very toothless. There were no provisions for enforcement of law records, no time limits and no safeguards. Lot of inadequacies surfaced and the weaknesses of the Act became more prominent. Mr. Daniel Metcalf informed that it was very broad, there were no time limits and therefore it was initially not used very much. It was going through a transition phase. At the same time events like the 'Watergate scandal' occurred. Public outcry against such events coupled with effective campaigns mounted by citizens groups, progressive politicians, all led to the amendments of FOIA in 1974. These amendments made the Act tighter, stronger, and therefore more effective. Access to information became a reality for the first time, various policies and proposals of the government were open to public scrutiny. But

during Reagen's regime between 1979-1987 FOIA's progress not only came to a screeching halt but took steps backwards. It's budget was cut down drastically. This seriously affected its activities and ultimately its effectiveness. Since then, the fate of the Act has been swinging like a pendulum back and forth.

The administrative process specifies that 'Any person' may make a FOIA request including foreign citizens, corporations, and governments but it is required that the request 'reasonably describes' the records sought.

Obstacles put forth :

FOIA has revolutionized public access to information in the U.S. At the same time the law establishes an elaborate bureaucracy for processing requests that is subject to abuse by an Administration that wants to keep the Sunshine Act.

In 1981 Mr. Reagen's administration proposed amendments which took the FOIA backwards. But Congress did not agree to this. Therefore, the administration took advantage of its control over the bureaucratic machinery of the FOIA to impede public access. It instructed agencies to refer to grant fee waivers, stretched exemptions beyond recognition; and made the system so delay ridden that information released was outdated.

From 1977-89 Justice Department policy was to defend the agency only when the information requested clearly affecting national security would cause demonstrable harm to the government. But Reagen administration introduced a new policy to defend all the FOIA cases against the government unless the agency refusal is based on frivolous arguments. However, Mr. Daniel Metcalf added that if the Department does not agree then they can refuse to litigate and defend the agency. It also can pressurize the agency to disclose information if it does not agree with it.

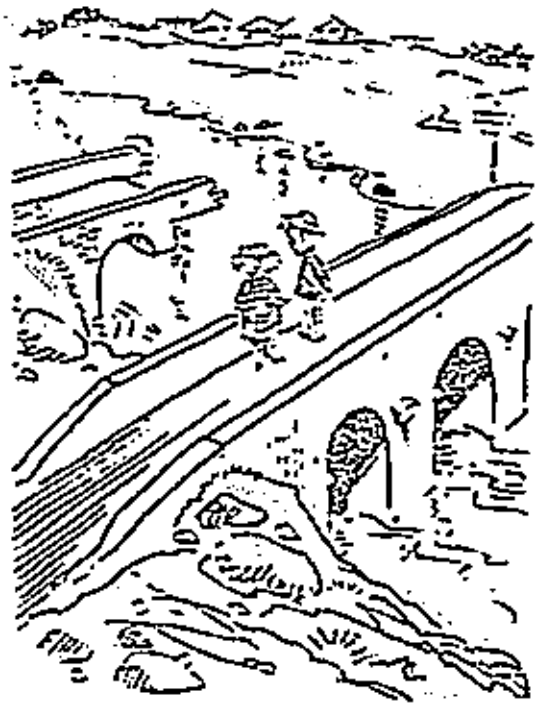
Public Citizen opined that Justice Department has adopted litigation strategies that derail FOIA litigation for months and often years before the parties can present and the courts can review the merits of the case. Here is a case where a journalist who had asked for certain documents from Navy was given the same after two and a half years. These years of litigation simply delayed the release of information that the Navy could find no real reason for withholding.

There are limitations in the Act's coverage. The U.S. Act applies only to agencies in the executive branch of government. Thus, Congress is free to choose whether to keep its records secret, or not. Court records are controlled by the Constitution, the common law, and court rules, which generally require court records to be available to the public. In addition, the Act does not fully cover government contractors and presidential advisers who are not part of an agency.

Weaknesses in FOIA

1. There are limitations in the Act's coverage. The U.S. Act applies only to agencies in the executive branch of government. Thus, Congress is free to choose whether to keep its records secret, or not. Court records are controlled by the Constitution, the common law, and court rules, which generally require court records to be available to the public. In addition, the Act does not fully cover government contractors and presidential advisers who are not part of an agency.

2 Experience has shown that the agencies use broad or vague terms in an exemption to



We had to build this one because the inquiry into the misappropriation of funds allotted to that one is still in progress.

18



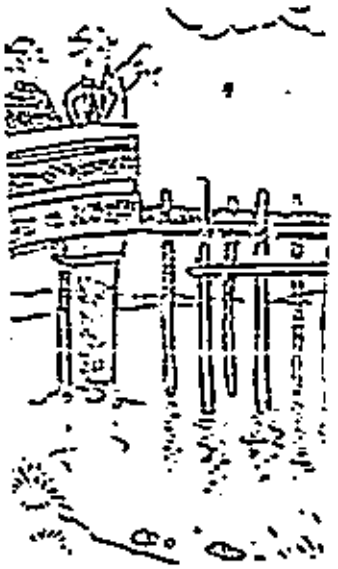
It's all a lie ! I admit I celebrated it in a grand extravagant style. But I swear I did not spend any money !

expand secrecy beyond the purpose the exemption is meant to serve. Over time, Congress has amended three exemptions to include more precise standards and to give the courts greater powers to review agency decisions. And the courts have also read certain limitations into other fairly broad exemptions.

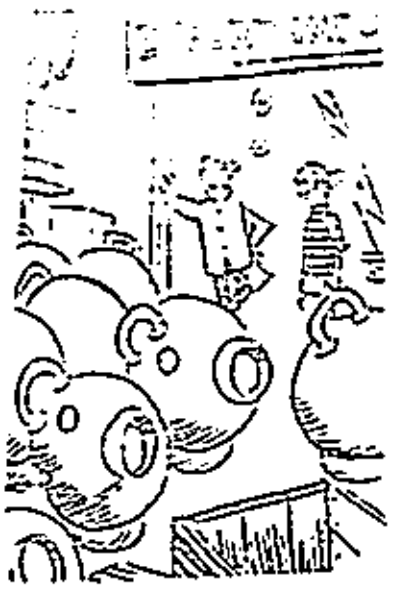
3. There are barriers to full utilization of the Act by requesters. First, agencies have charged requesters exorbitant fees; second, agencies have routinely violated the Act's provisions, especially in the early years; and third, the administration of the Act has been plagued by what often seems to be interminable delays. Mr. Daniel Metcalf made some suggestions to make FOIA work better. According to him realistic time limits should be set to avoid backlogs. It could be set up on the basis of the number and type of requests received by agencies. The budget and performance of each agency should also be considered in fixing time limits for each agency. Furthermore,more funds should be diverted to FOIA activities.

Even with its shortcomings, the Act has vastly changed the informational landscape in the United States. While there may still be improper claims of withholding on the margins, the agencies tend to make most clearly non-exempt information routinely available upon demand, and the Act has permanently changed public perceptions about the availability of government informa...on. The past years have been a true test of the Act's strengths. The Reagen administration has been ideologically opposed to access rights and it embarked on a campaign to weaken the Act. As part of the anti-drug campaign, there has been lobbying for a stronger law enforcement exemption. The spy scandals led to a push for stronger intelligence protections and the business community has sought greater protection for information submitted to the government by businesses. These forces have led to relatively minor changes in the Act. The Act has survived and has continued to be a valuable tool for the public by opening the door to a vast range of information that has been vital to meaningful public debate and advocacy. The enactment of FOIA proved to be instrumental in the emergence of few other related Acts. These include Federal Advisory Committee Act (1972), Government in the Sunshine Act (1976), The Emergency Planning and Community Right-to-know Act (1986) and The Computer Matching and Privacy Protection Act (1988).

Even with its shortcomings, the Act has vastly changed the informational landscape in the United States. While there may still be improper claims of withholding on the margins, the agencies tend to make most clearly non-exempt information routinely available upon demand, and the Act has permanently changed public perceptions about the availability of government information.



At this point we discovered a appropriation of funds and finished the job with what was left.



Nobody knows what these are ! The agreement with the foreign country is that we export what it wants, and in return it gives us what we don't have. We certainly don't have these !

Privacy Act (PA) :

Hardly had the FOIA settled down comfortably, its foe was born in the name of 'Privacy Act'.

It was enacted in 1974 and it established a system of access which is not unlike the access granted by the FOIA, although for a different purpose. There is substantial uncertainty concerning the relationship of the two systems of access and exemption.

The Act provides restrictions on disclosure, and redisclosure of personally identifiable records and also a system for access by individuals to records about themselves, with exceptions. PA defines "individual" as "a citizen of the U.S. or an alien lawfully admitted for permanent residence". This means foreign nationals and resident aliens have no rights under the Act and that their records are not protected by the Act. Corporations are also not covered by the Act.

There are two kinds of exemptions in the Act. The general exemptions and specific exemptions. Both are of a different nature and have different consequences.

What both these PA exemptions have in common is that they are discretionary on the part of the agency and are not effective until they are invoked by publication in the Federal Register.

[illegible] feels that PA was [illegible] poor fit to FOIA. Though [illegible] amendment of FOIA in 1974 [illegible] time, they do not co-ordinate well. He favours the integration of these two Acts. Mr. Thomas Susman is of the opinion that FOIA and PA should not be linked because different stake holders are involved. Most of the people advised us to look into the FOIA models existing in Canada, New Zealand and Australia when developing the Indian Fo[illegible]e are differe[illegible] have come later, plugging quite a few inadequacies in the U.S. model.

[illegible] Information Act has unquestionably played an influential role in enabling the public to learn the environmental hazards, to participate in public debate, and to petition the government to take prudent actions in the U.S.

[To be concluded]

A STUDY ON THE ACCESS TO INFORMATION

In U.S., Canada & U.K.

Part II

Prof. Manubhai Shah
Ms. Pritee Shah

(Part I in our Sept-Oct issue gave a detailed report on the information gathered on the history, practice and problems of the 'Freedom of Information Act' in the U.S.A. Part II focusses on access to information in Canada.)

CANADA

We discussed the history, the highlights and drawbacks of FOIA in the U.S. in Part I. It is obvious from this, that for FOIA to have happened and succeeded in the U.S., could its neighbouring countries stay far behind? The idea in the U.S. was novel but its impact proved that it was very much needed. Canada, a country almost running all across the northern border of North America, could not keep away from the winds of change in the U.S. Ripples for a demand for FOIA started being felt in Canada: Canada ultimately had to enact a legislation in 1982.

For our study, in the evolution and impact of the laws on Access to Information, Canada therefore was the next step in the journey. Ms. Pritee Shah spent five days in Canada visiting various organisations in Toronto and Ottawa.

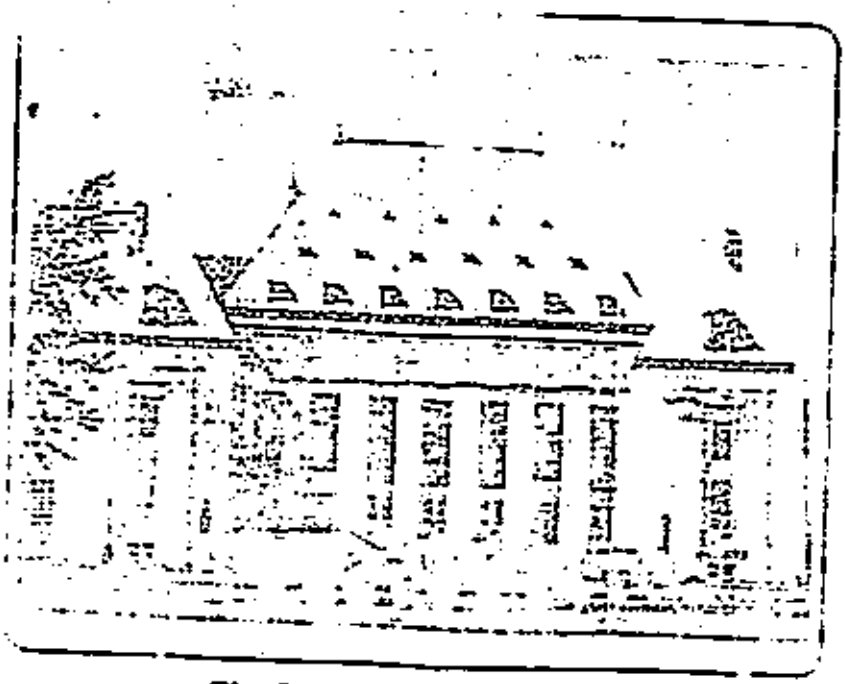
The meetings in Canada were meticulously and effectively planned and organised by Ms. Gisele Labatut, Information Science Division of IDRC, Ottawa which made the visit very fruitful. The arrangements for stay and board were excellent. Our thanks to Ms. Tavinder Nijhawan (IDRC) who also helped coordinate the visit in Canada.

Visits to important organisations like Ontario Human Rights Commission, Information and Privacy Commission, Government of Ontario, Toronto and Public Interest Advocacy Centre, Ottawa etc. formed a part of the tour in Canada. Experts gave a thorough insight into the access to information movement in Canada.

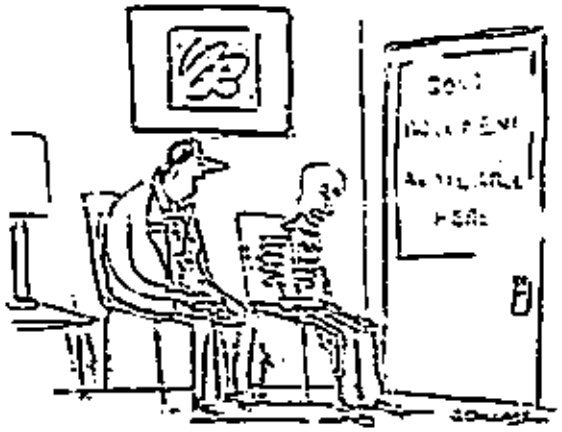
History

Secrecy was a sacred cow in Canada till 1970, when the concept that freedom of the Government information at State and Central level would inhibit the ministers and bureaucrats from frank and free deliberations. But the onslaught of the waves of freedom of information (particularly from their neighbours - U.S.A) had its final toll. Accessibility to Government information started flowing freely to seekers, blessed by legislations.

Mr. John McCamus, Board Member, Canadian Civil Liberties As-



The Supreme Court of Canada



"Have you been waiting long ?"
- Adapted from Span

sociation, in his book "Freedom of Information : Canadian Perspectives", published in 1981, said, "Government secrecy had become a political issue of major proportions in Canada. Since the late nineteen-sixties, members of the opposition parties, both federal and provincial, together with members of the press, no doubt influenced by the enactment of the American Freedom of Information Act in 1966, had drawn attention with increasing regularity to the alleged need for freedom of information laws, or more often, to minor scandals - real or imagined - resulting from or involving the refusal of ministers of the Crown or of governmental agencies to disclose information pertaining to public affairs. Public interest in the subject was intensified by a lengthy series of public hearings conducted in 1971 and 1975 by a committee of the federal Parliament, the Joint Committee on Statutory and Other Instruments. It was not until 1977, however, that significant initiatives were taken by the federal and provincial governments".

"The Watergate Scandal in the United States boosted the already blossoming movement against government's secrecy" said Mr. John Eichmanis, Manager, Strategic Planning and Policy Department, Government of Ontario while discussing the history of freedom of information in Canada. The Freedom of Information movement gradually took faltered steps forward in Canada, though there was considerable resistance from the bureaucrats, he added. The debate was more on the need for greater accountability of those engaged in the public's business and for increased public participation in various decision-making processes of government. Opponents of access pointed to the negative impact that it would have on law enforcement, international relations and the like.

Before 1970 there was acceptance as well as opposition to the movement; the stage was set, but till 1970 nothing happened. It was, as if everyone was waiting for somebody to take the lead which was finally provided by Mr. Gerald Baldwin, a Conservative MP. He began a campaign to introduce freedom of information at the federal level. In 1977 he told the House of Commons [illegible] by a workable freedom of information law will have very definite advantages for this parliament and for the public of Canada. Canadians are entitled to know what the government is doing to or for them, what it is costing them, and who will receive the benefits of the proposals which are made. This parliament will then be a better place". By late 1970s Mr. Baldwin had thus succeeded in convincing his own party of the need for such legislation and pressed the Liberals to follow suit when they returned to power in 1980. In 1982, the Liberals passed the Federal Access to Information Act (AIA). To quote Mr. John Grace, Information Commissioner, Ottawa, "It was the power of that one man which started a new chapter in Canada's legal history".

"Open government by a workable freedom of information law will have very definite advantages for this parliament and for the public of Canada. Canadians are entitled to know what the government is doing to or for them, what it is costing them, and who will receive the benefits of the proposals which are made. This parliament will then be a better place".

The Act gave Canadians the broad legal right to information recorded in any form and controlled by most federal government agencies. However, the cautious federal parliament passed two parallel acts, one dealing with access and the other with privacy, both using the same legislative design. Mr. J. Grace informed, that Canada's Human Rights Act had some of the provisions of the Privacy Act (P.A.), but privacy did not have its own identity. With this new Act the chimes of change [illegible]

Simultaneously at the provincial level too, people felt the need for such an Act.

Provincial Legislation

In Ontario, the conservative minority government of 1977 was pressurized by the Liberals and NDP to set up the Williams Commission to study not only access to information but also protection of privacy. While its report was issued in 1980, not until the Liberals formed a minority government in 1985 was the Freedom of Information (FOI) and Protection of Privacy Act (PA) passed. This was a much improved legislation. In an unique manner it had integrated freedom of information and protection of privacy principles within one piece of legislation.

Highlights of the Federal Access to Information Act and Privacy Act

The AIA allows access, subject to various exceptions, to any documentary or computer record under the control of government. On the other hand the PA allows individuals to gain access to information or opinions recorded about themselves and to request that errors be corrected. One of the main departures in Canada's AIA & PA has been the creation of an Office of Information Commissioner and Privacy Commissioner. Rather than requiring a complainant to resort immediately and exclusively to the courts, as in the United States, both Acts have wisely provided for Commissioners to be appointed.

An interesting feature of this legislation vis-a-vis U.S.A. is that its user can expect a response within 30 days. U.S.A's FOIA has an unrealistic response time of 10 days. Regulations under the access Act stipulate that an application fee of $ 5.00 be paid as a "toll" in order to utilize the Act. Other fees may be charged, such as $ 10.00 for each hour in excess of five hours taken to search for and prepare the record for disclosure or examination. There are various fees for photocopying, microfiche copies etc. No fees are charged for time incurred in considering whether exemptions from access should apply. Fees may be waived, although the Act gives no indication of the circumstances in which a "fee waiver" should be granted.

An interesting feature of this legislation vis-a-vis U.S.A. is that its user can expect a response within 30 days.

One of the main departures in Canada's AIA & PA has been the creation of an Office of Information Commissioner and Privacy Commissioner. Rather than requiring a complainant to resort immediately and exclusively to the courts, as in the United States, both Acts have wisely provided for Commissioners to be appointed.

Penalties for Contravention of Act

Yet another unique feature of this legisaltion (both at the federal level and in Ontario) is the nature and content of the penalties decided for the contravention of the Act.

The AIA (federal level) provides that every person who obstructs the performance of the Commissioner's duties and functions is liable to a fine of $1000, whereas the Ontario legislation states that in such circumstances those guilty of an offence are liable to a fine of $ 5000.

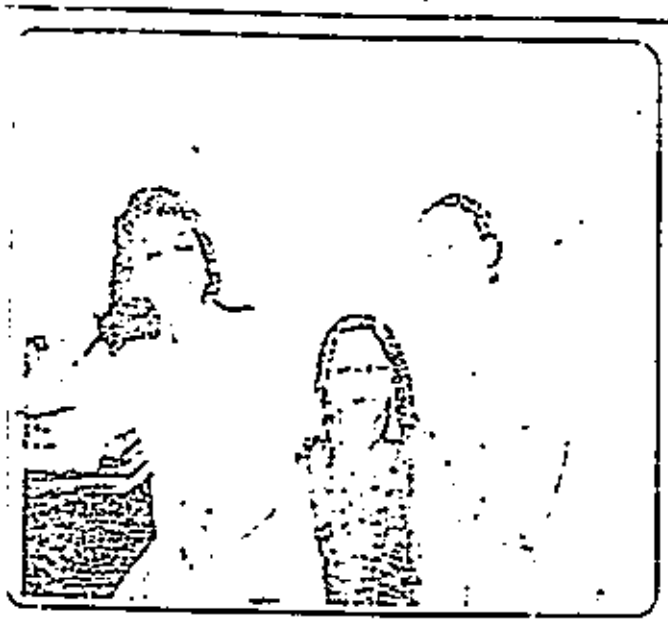
But if we look at the FOIA of the U.S., the Act provides that when the court issues a written finding that the circumstances 1514 Dounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to withholding, disciplinary action may be warranted against the officer or employee primarily responsible.



I checked ! The opposition charges about shocking delays in certain plan executions are true. Now where do they get their information from ?

R. K. Laxman

83



Ms. Tavinder Nijhawan (IDRC), Ms. Pritee Shah & Ms. Gisele Labatut (IDRC) sharing informal moments at the IDRC office.

The Information Commissioner and his role as ONBUDSMAN

Mr. John Grace gave a very interesting definition of Freedom of Information as "The citizens right to 'know' or the government's right to 'no'. (Annual Report 90-91)

If a requester believes that access to a record is being unfairly denied, a complaint may be filed with the Information Commissioner. Complaints may be made to the Information Commissioner about denials of access to records under the AIA, and also about delays, fees, extensions of time to provide access, language of the record provided or about any other matter related to requesting or obtaining access under the Act. An unique feature of the Canadian legislation is its appointment of the Information Commissioner as an 'Ombudsman'. Though the Information Commissioner conducts an investigation and has the power to examine any records except cabinet records, he makes a non-binding recommendation to the government institution. The Commissioner acts, much like a classical ombudsman, that is, he makes recommendation to the government entity proposing a resolution of the dispute but he has no power to order a complaint to be resolved in a particular way. *The Commissioner is only empowered to make recommendations.* If the government institution continues to withhold the requested records, the

"The bias of the ombudsman should be on the side of upholding the law, not a bias either for the complainant or the bureaucrat."

An unique feature of the Canadian legislation is its appointment of the Information Commissioner as an 'Ombudsman'. Though the Information Commissioner conducts an investigation and has the power to examine any records except cabinet records, he makes a non-binding recommendation to the government institution.

applicant may appeal to the federal court, whose decision is then final. Not only the applicant but also the Information Commissioner may apply for judicial review if he believes that the individual has been improperly denied access.

Mr. Grace, has defined the role of the Ombudsman and his own perception of this, very vividly in his speech to Canadian Access and Privacy Association (CPPA) on April 21, 1991. He said "... Being an ombudsman does not mean, and should not mean, being either passive or a patsy". He [illegible] One is the traditional role as a citizens mediator with the bureaucracy-the complaint-investigating function. Here the ombudsman is neither an advocate of the special interest of individuals who believe they have been denied a right nor of the government department which has denied access to records. He presumes neither innocence nor guilt. The Commissioner is an advocate of the legislation itself, the independent person whose purpose is to ensure that complainants receive all their rights to which he, she or it, (in the case of a corporation) are entitled".

"... Being an ombudsman does not mean, and should not mean, being either passive or a patsy".

He further continued, "the bias of the ombudsman should be on the side of upholding the law, not a bias either for the complainant or the bureaucrat. When the commissioner believes the complainant is right, he pushes hard for his client. When he believes that the government is right, he says so. When the legal arguments on both sides seem about equal and the decision could go either way, the commissioner will also push hard for release of the disputed records. ... The whole thrust of the law is, after all, to release information. That's our bias".

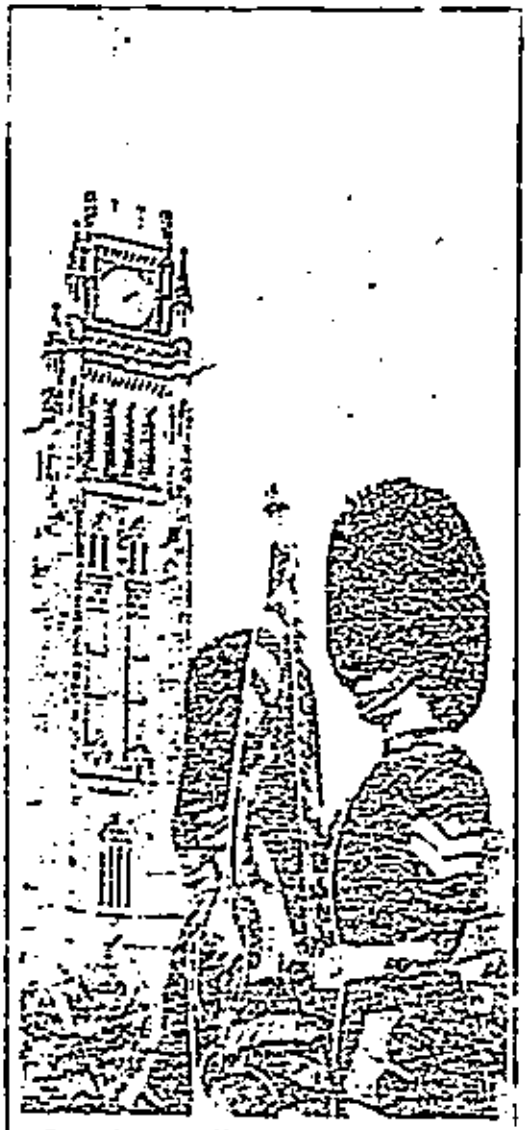
"He said to try to defend the indefensible, merely to be seen to be on the side of the little guy, might make an ombudsman a hero in some places. *In my view it would make him an unsuccessful ombudsman. He would be seen as a doctrinaire access advocate.*

rather than an advocate for access legislation. The difference is important. The access authority has a built-in bias ... once such a bias were perceived by the "other side", negotiations would become confrontations which would be devastating to the ombudsman's effectiveness".

There is another important role which Mr. Grace envisages for the Commissioner's Office, if less directly for the commissioner. He hopes that the Information Commissioner's office can be a lightening rod for emerging access issues and can take a lead role in achieving a more open government. The legislation, after all, is about much more than complaints and disputes. It is nothing less than a declaration of public information rights, a declaration which says implicitly that a free society must also be an open society, that public information is owned by the public, held in trust by the government and, unless explicitly restricted by law, is available to the public.

Role of the Privacy Commissioner

One of the main roles of the Privacy Commissioner is to monitor government programs and legislation for impact on privacy. The wise use of Social Insurance Number (SIN), has been a particular concern to the federal Privacy Commissioner.



Guards guarding the Parliament Hill (and information too ?)

... who sees its use as opening the door to potentially privacy abuses.

Complaints may be made to the Privacy Commissioner by individuals about allegedly improper disclosure of personal information about themselves to other, denials of their request to correct information on their file or of the right to annotate it, delays and problems with the Personal Information Bank index etc.

Exemptions:

Although a clause of the AIA states that exemptions should be "limited and specific", there are over 490 reasons for which a civil servant may refuse to supply information. Information which may be withheld includes most commercial, financial, and technical data; information originally obtained from a foreign government or international organisation; information that could harm national security and records related to the operation of federal cabinet. *Article 19 on the 'Freedom of Information and Expression in Canada'*

Some of the cases, where both the federal and provincial laws have been effectively used are illustrated in separate boxes.

The Information Commissioner and the Privacy Commissioner are advocates of the legislation itself. Each Commissioner has the duty to bal-

Search Fees Divided

In response to an access request for all records containing references to the International Fund for Animal Welfare (IFAW), Fisheries and Oceans levied and was paid a fee of $2,503. However, the requestor complained that the department had spent 231 hours to produce only 211 pages of documents.

On investigation it was found that the department had indeed spent 231 hours on this request but this search had served other purposes: two individuals had filed Privacy Act requests asking the department for any records that related to their involvement with the IFAW.

Therefore the Information Commissioner held that the complainant should pay only one third of the search costs. The complainant was refunded $1,732.25 which included a refund for two thirds of the search time and an adjustment for excessive photocopy fees.

Source : Annual Report (1987-88), Ottawa

...ance values which may sometimes be in conflict. When the balance is right, then the public interest is the winner.

Access advocate of Canada — Ken Rubin

Well, its not that only the Commissioners play a key role in access to information. There are people like Ken Rubin, a soft spoken, unimposing man who drives bureaucrats and politicians crazy. Rubin, 46, has dedicated more than 20 years to public advocacy, fighting for civil rights and protecting consumers and the environment. In an interview published in a newspaper, 'Citizen' on 12th March '90, Rubin has been described as a man who wields the AIA like a chisel, patiently chipping away to expose the secrets that government departments and agencies seek to keep private. It was indeed a great pleasure to meet Rubin in Ottawa.



"I am no Ralph Nader but someone has to do it," Rubin says. "Canada doesn't have a strong tradition of activism in public issues. I wish there were more active people. I feel like I am becoming an institution ... but I don't feel like a martyr because I don't make much money. I have fun doing it".

Because of his efforts the public learned that the Canadian government was pressing the United States to reduce acid-rain causing emissions while lobbying in Washington to block a bill to ban asbestos; Ontario Hydro's nuclear generating stations had serious failures and inadequacies; toys banned in the U.S. as unsafe were still being sold in Canada; and the National Capital Commission was planning to charge user fees for Gatineau Park.



Have you finish... ...annual report ?

R. E. Leeman

...formation & Protection of Privacy Act legislation at the provincial level (Ontario)

This Act came into effect in January, 1988 and applies to provincial ministries, agencies, boards and corporations community colleges and district health councils.

The Act gives two legal rights : (1) The right to access to government information, including most general records and personal information about oneself. (2) The right to protection of privacy of personal information which exists in government records.

Similar to its counterpart at the federal level, this legislation has kept 30 days response time. For all requests it provides 2 hours of free search and then it charges for search, retrieving processing, copying etc. Fees may be waived also.

The Role of the Information and Privacy Commissioner

The most interesting aspect of Ontario legislation is that it provides for a Joint Commissioner, called the Information and Privacy Commissioner, but instead of only having the power to make recommendations, the Ontario Commissioner has the power to make a binding order, much like a court does. The Commissioner is appointed by the Ontario Legislature, which means he is not part of any political party or the government of the day. The independence

The most interesting aspect of Ontario legislation is that it provides for a Joint Commissioner, called the Information and Privacy Commissioner, but instead of only having the power to make recommendations, the Ontario Commissioner has the power to make a binding order, much like a court does.

from government allows the Commissioner to be impartial when carrying out his duties under the Act.

This power to make a binding order represents a major innovation in freedom of information legislation. Ordinarily only the courts have the power to determine issues that involve the release of government information. This order cannot be challenged except on matters affecting the interpretation of the law. To understand the role of the Commissioner, the meeting with Mr. Tom Wright, the present Information and Privacy Commissioner of Ontario was indeed very rewarding.

Mr. Wright, with so much power and status was found to be a very modest, patient and humble person. In fact, although the appointment was with Mr. John Eichmanis, Director, Policy Decision, Information and Privacy Commission, Govt. of Ontario, on a special request Mr. Wright immediately granted time for discussion. He explained the reason for this. He

AIR INDIA CRASH

A journalist researching the June 1985 crash of Air India flight 182 was denied access to records held by the Canadian Aviation Safety Board (CASB) on the ground that they contained information obtained in confidence from a foreign state. CASB held that in accordance with the International Civil Aviation Organization Convention (ICAO), the Govt of India was considered as the country having the authority to conduct the inquiry into the Air India crash and Canada was granted 'observer' and 'accredited representative' status.

The journalist was not satisfied with that response and wrote back to CASB. Shortly afterwards, CASB released to her records which had been under their control from the outset explaining that all of the information in their possession had just been tabled at a public inquiry in India and automatically became public knowledge. Explaining further, the disclosure of the records, they said, in the course of their transactions with the Govt. of India, the latter had requested Canada to treat all the information collected, in accordance with the requirement of ICAO Annex 13 and thus in total confidentiality. Therefore CASB relied on Sec 13(1)(a) of the AIA which provides a clear statutory prohibition to disclosure of such information.

Although the journalist had obtained the records, she remained dissatisfied with the way CASB had treated her access request and lodged a complaint with the Information Commissioner's Office. She argued that, 'Though CASB says they could not release the report because of section 13(1)(a), relating to records containing information obtained in confidence from a foreign state or institution, their report is exactly the opposite i.e. a document prepared in Canada by Canadian investigations, based on Canadian analyses, for a foreign government or institution. While I realize nothing can be done to rectify this case, I would appreciate your investigating the CASB's use of and/or interpretation of section 13(1)(a) of the AIA so that it is not used to block otherwise available information in the future'.

The Information Commissioner's office agreed completely with the journalist's analysis of the exemption. After looking into CASB's contentions, the office doubted whether the ICAO was intended to so severely limit the freedom of action of state participating in an investigation that Canada cannot disclose records prepared in Canada to a Canadian. The instrument of ratification or adherence to an international convention to which Canada is a part is not an Act of Parliament and consequently does not have the force of law within Canada. If there is a conflict between the obligations under Section 4 of the AIA and article 5.15 of the ICAO convention, the obligation of CASB under the AIA must prevail. (Section 4 of AIA states that any person has a right to any record under the control of a government institution.)

The CASB reiterated its stand and stressed that it will stand by the same position to oppose similar access requests in the future.

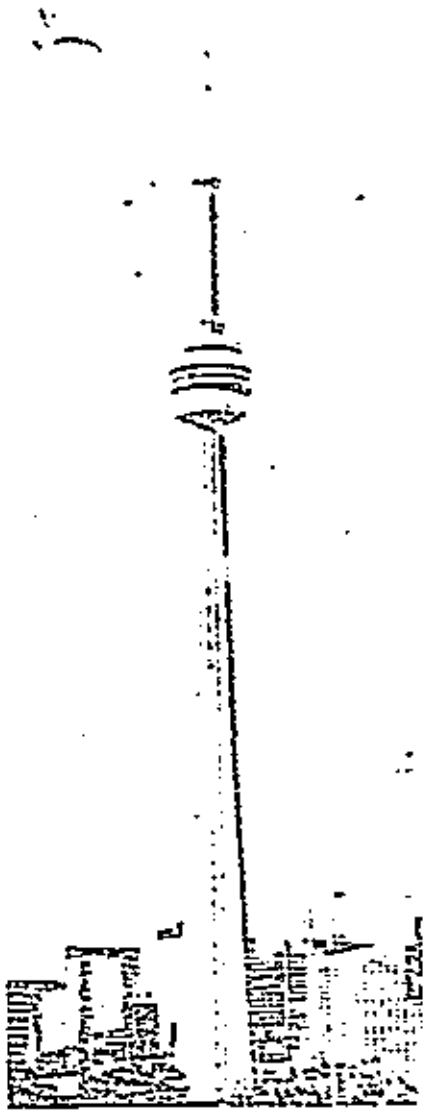
In their final letter to the journalist, the office told her that if the CASB had not disclosed these records, they would have most assuredly offered to take this case to the Federal Court for judicial review of their refusal to disclose.

Source : Annual Report 1987-88, Ottawa

[illegible] that in a country like India, with its tradition of secrecy, the movement is showing signs of germinating. During the discussion, Mr. Wright pointed out the highlights of the legislation and described in detail the appeal mechanism. Though Mr. Wright lauded the Act, he was candid enough to state that the Act is not insensitive to political implications.

The Appeal Mechanism

The requester has 30 days after notice of the decision is given by the head, to file a written notice of appeal with the Commissioner. It is the Commissioner's practice to attempt to mediate all appeals, although in exceptional circumstances an appeal may proceed directly to an inquiry. An Appeals Officer is assigned to the case. Where access to a particular record is in dispute, the Appeals Officer prepares a report which sets out the facts and issues arising from the appeal. A formal Notice of Inquiry is sent to all parties (who are connected with the appeal case), together with a copy of the Appeals Officers Report. The parties are advised of their right to make representation to the Commissioner with respect to the issues arising from the appeal. Thereafter the



C.N. Tower in Toronto... the world's tallest freestanding structure (1815 feet 5 inches).

[illegible] under the Freedom of Information and Protection of Privacy Act and the Municipal Freedom of Information and Protection of Privacy Act are respected. One of the challenges facing the Information and Privacy Commissioner is to uphold these separate values and to strike the proper balance, when necessary, between the public's right to know and an [illegible] to confidential information. Mr. [illegible] chmanis, said that the legislation is very useful and cheap as lawyers are avoided. Another interesting fact pointed out by Mr. Wright was that newspapers and media don't use it very much since investigative journalism is not popular in Canada. Less than 5% of requests come from media. Most of the requests come from public interest researchers.

Mr. [illegible] Ontario Human Rights Commission, while briefing on the activities of the Commission said that a number of requests come from the public to them. These include violation of the Ontario Human Rights Code on the grounds of discrimination on areas like (1) Housing (2) [illegible] employment [illegible]

Hair Tonics

The complainant sought access to Health and Welfare Canada records relating to a hair tonic, indicating that before he tried the product he was interested in knowing about complaints and the department's follow-up on them.

The Information Commissioner was satisfied that, if released, these letters could reasonably be expected to prejudice the competitive position of the third party manufacturer. Thus, the exemption was mandatory. (While the Access to Information Act permits disclosure of product or environmental testing records, that exception was not applicable in this case because it applies only to results of testing, not letters of complaint.)

As a result of the investigator's representations, exempted information which had previously been disclosed in a clinical study was released, including ages (but not names) of individuals involved in the study.

Source : Annual Report (1984-85), Ottawa

Gasoline spillage trouble

An appellant applied to the Ministry of the Environment requesting access to on-site reports, summaries, analysis and any other documents relating to a gasoline spill on the Six Nation Reserve near Brantford. The Ministry denied the appellant access of Information and Protection of Privacy Act, 1987, as amended (the Act). The appellant appealed this decision of non-disclosure.

The appeals officer instituted settlement discussions between the Ministry and the appellant. The appellant indicated to the appeals officer that he did understand that the Ministry did not want to jeopardize legal proceedings that were being commenced against the individual who had been charged in relation to the gasoline spill. However, the appellant was of the opinion that the Ministry could provide certain undisputed information such as, the time of the spill, its size, the danger it posed, efforts to clean it up and the cost of the clean-up.

The appeals officer reviewed the records in question and discussed the appellant's suggestions for settlement with the Ministry. The Ministry agreed to review the record once again. The Ministry then agreed to provide copies of a substantial proportion of the record of the appellant. However, the Ministry continued to withhold certain records from disclosure. After the appellant reviewed the disclosed documents, the appeal was settled.

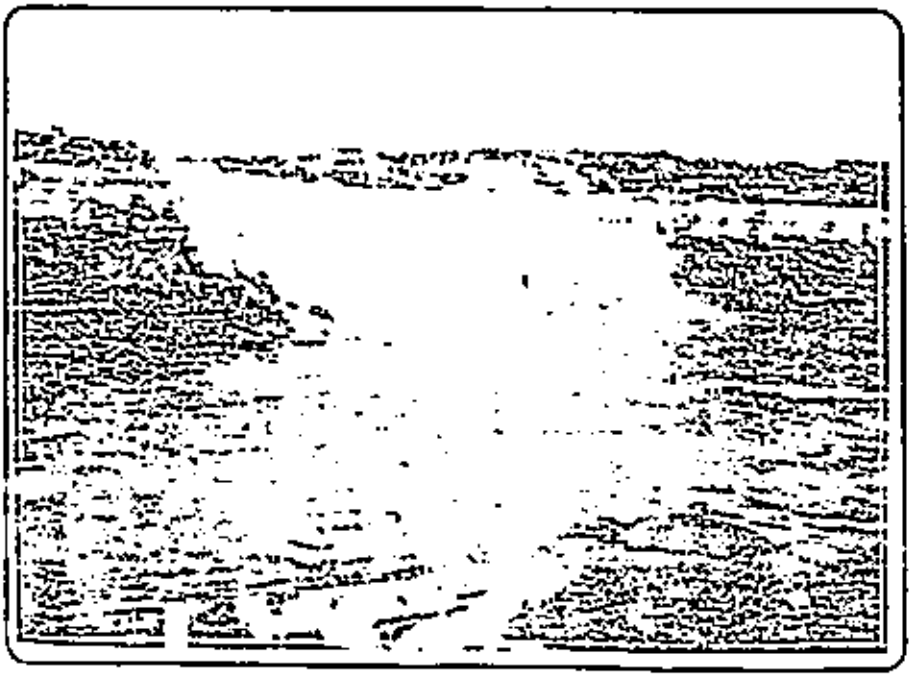
Source : Summaries of appeals (1988-89), Toronto

...investigations of such complaints are carried out by them and then they in turn appeal to the Information and Privacy Commissioner to review, who plays the role of a mediator. If still the matter is not settled then a public inquiry is ordered which leads to a hearing and trial.

Though Mr. Palacio was all praises for the Ontario Legislation, he did point to some of its weaknesses. He felt that "The law is bureaucratic. Earlier it was a practice to publicize the case but now the practice is reviewed due to the fear of infringment of privacy. Moreover the process of accessing information and releasing is more rigid which is not what it should be". On the other hand he said that a very important advantage of this legislation is that it increases the government ...keep their records. Mr. ...ean D. McCannus, especially pointed out that under the Ontario Legislation, even those records that are under exemption can be disclosed if they are of public interest. He further added that, even the American model does not have (provisions for) it.

The trip to Canada ended with a tour of the IDRC office in Ottawa. Meeting with Ms. Pauline Bradely (responsible for access to information at IDRC) was interesting. She related several cases that IDRC was involved with. IDRC had organised a conference on AIDS, the contract of which was given to a firm called CBC. A journalist wanted the details of the contract, amount spent on course material, food, staff salaries etc. envisaged in the contract. IDRC will be discussing the case with the commissioner and CBC. However, if IDRC disagrees with CBC, then CBC will go to the court. In another case there was a request for the travel details of the President of IDRC, in the last five years. Although there was no such record, IDRC created a document for the requester. Ms. Bradely, commenting on the impact of the Act said she felt that there were two areas that needed immediate attention (1) Detailed documentation of previous decisions and (2) Guidelines for proper administration of the Act.

Broad exemptions, private sector not covered, delays in processing requests, classification of records being



The spectacular Niagra Falls !

89

[illegible] Ms. Mariane Pelletier, [illegible] for Canadian Rights and Liberties Federation and Mr. Pierrot Péladeau, Vice President of the Board, which had the echoes of the problems encountered in the American legislation.

There is a general feeling in Canada that the Ontario Legislation is much better than the legislation at the federal level since here the right to information and privacy lies in the hands of a single agency. Though there are few creases in these Canadian Acts that need to be ironed out, they are still considered to be very effective when compared to their counterparts in other countries.

The freedom of information movement is gradually gaining momentum in Canada. The people are still not all that 'information conscious' as can be seen in the Annual Report submitted by the Information Commissioner in 1987-88. It says that people have the impression that they are an information agency. Therefore callers enquiring, 'How many cups are there in a pint?' are quite common.

It is perhaps apt to end this article quoting Mr. John Grace, "Yes, we have miles to go before we sleep. But perhaps the last word here should not be Robert Frost's. We should be more positive. Let me return again to Winston Churchill's words, today, we are at "the end of the begining". The begining has not been easy. The challenges remain daunting. But the venture in open government is full of promise and great rewards. Let's move ahead in confidence and, yes, even enthusiasm. I know I will".

(To be concluded)

CASE [illegible] CONSU[illegible] ACT

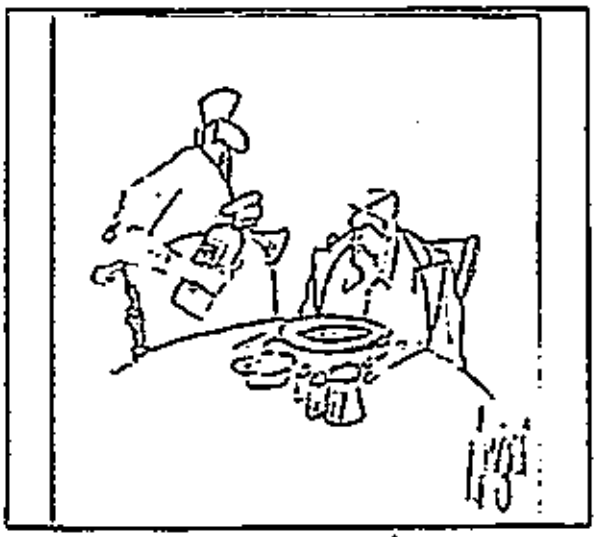
An applicant applied to the Ministry of the Solicitor General requesting access to the post mortem reports and coroner's investigation of her boyfriend.

The Ministry decided to grant access to a portion of the records while the balance of the records, consisting of medical information and information contained in a police report, pertaining to the appellant's boyfriend, was withheld under subsections 14(2) and 21(1) of the Freedom of Information and Protection of Privacy Act, 1987. The appellant appealed the Ministry's decision.

Prior to this, the appellant had attempted to obtain the requested records under the Coroner's Act, which provides that information of the nature requested by the appellant shall be available to the spouse of the deceased. The appellant had [illegible] to the Coroner [illegible] of Affidavit attesting [illegible], however, the Coroner and the Ministry had not accepted the appellant's claim.

While the appellant was still pursuing her appeal under the Act, the appellant's efforts to persuade the Coroner were successful. The appellant was found by the Coroner to be a 'spouse' for the purposes of the Coroner's finding, the Ministry decided to disclose the following records to the appellant: (1) Coroner's Investigation Statement; (2) Post Mortem Examination report; 3) Morgue Death Report; and (4) Toxicology Report. The Police report and correspondence relating to the appellant's boyfriend were not released.

Source : Summaries of appeals (1988-89), Toronto



"You the guy with the fly in his soup ?"
Courtesy : Span

A STUDY ON THE ACCESS TO INFORMATION

In U.S., Canada & U.K.

Concluding Part

Prof. Manubhai Shah
Ms. Pritee Shah

(Part I & Part II in our earlier issues gave a detailed report on the information gathered on the history, practice and problems of the Freedom of Information movement in U.S.A. and Canada. This concluding part focusses on United Kingdom)

UNITED KINGDOM

Our sojourn through the U.S.A. and Canada, in pursuit of access to information campaign, was both thoroughly informative and educative. Our next obvious destination was United Kingdom, which would be a veritable contrast in this area of government sanctity of secretiveness. Even the Indian Official Secrets Act has its direct genesis in the U.K's framework of this act. It may appear strange, that a country like Britain, which is usually affected by waves of political changes in U.S.A. could manage to remain unscathed by the freedom of information movement altogether. Stranger it is, that Britain perhaps, is the only democratic country which is probably the most secretive.

The United Kingdom has no written constitution, only a series of constitutional principles and conventions, the most fundamental of which is the sovereignty of Parliament. There is no constitutionally significant protection of freedom of expression or of access to information. The need for freedom of information (FOI) laws was highlighted when, under the 30-year rule records, released for the year 1957, disclosed that the then Prime Minister, Harold Macmillan had ordered the suppression of information on an accident at the Windscale Nuclear Plant. The release of radioactivity reached levels 600 times those of the Three Mile Island accident in the United States, making it the worst known nuclear accident before Chernobyl. These facts had been suppressed until the release of government paper in January, 1988.

U.K. has no general freedom of information legislation, and its secrecy code, the Official Secrets Act is widely regarded as too extensive.

1988 was dominated by the book Spycatcher and the worldwide efforts of the British Government to suppress it, but then ironically 1989 was also dominated by the novel "The Satanic Verses", published in September, 1989. After initial hesitation, the U.K. authorities acted in defense of the author and the right to freedom of expression while acknowledging that the novel offended Muslims.

We spent a week in London visiting various organisations viz. Consumers' Association, Institute of Policy Studies, Campaign for freedom of Information, National Council of Civil Liberties and Article 19, The International Centre Against Censorship.

Access to Information

OPEN government, if politicians are to be believed, has become almost a religion cult in British public life. Ministers and leaders of all parties worship at its altar, and their bureaucratic acolytes intone its liturgy. Yet when the reality is separated from the ritual, it is the old religion which is often practised.

U.K. has no general freedom of information legislation, and its secrecy code, the Official Secrets Act is widely regarded as too extensive.

Throughout the country, campaign for FOI is going on at different levels.

Our visit to Consumers' Association (CA) helped us get some very interesting information. Ms. Laura Simon, their Senior Campaigning Officer told us that CA offers its services, resources and at times finances too to the agencies who campaign for FOI. It also offers its services in terms of research in finding loopholes in the laws. At CA we also met Mr. Colin

91

[illegible] the hands of the ministers in U.K. and under the Public Records Act 1967. Government papers are made accessible after a 30 year period. However, this period can be extended for upto 100 years for materials considered sensitive, including those related to intelligence matters, national security or records which may embarrass living members of the royal family.

Brown, Research Manager, PIRG and Ms. Stella Yarrow, Senior Project Officer. They opined that safety issues should be given priority. It may be either related to goods and services or health. The efforts of CA has been partially rewarded. The Food Safety Act is now amended so that the Food Inspectors can now disclose to the public the information collected by them.

Article 19, The International Centre Against Censorship, London campaigns on behalf of the victims of censorship by using UN Human Rights Commission. Ms. Anne Naughton their Program Co-ordinator briefed us about the activities of Article 19. It prepares reports for the Commission for different countries and strives to change related international and national laws. Its clients include newspapers and political leaders.



Article 19, The International Centre Against Censorship, London, campaigns in favour of open government by using UN Human Rights Commission. Their Program Co-ordinator Ms. Anne Naughton (right) gave detailed information on access to information in various countries to Mr. Pritee Shah.

[illegible] Office Secrets

[illegible] queue at your [illegible]
The answer is an official secret.

The Post Office regularly [illegible] how many customers have to wait to be served [illegible] of the 1,400 directly managed Crown [illegible] offices. Its target is to serve 95% of customers within 5 minutes. But it refuses to say which are failing to meet the standards.

Post Office Counters Ltd. claims this secrecy is necessary for 'commercial reasons'. By this they mean that some of their services face competition from banks, building societies or parcel services, and these bodies must say how long their customers have to queue either.

After years of pressure the Post Office recently agreed to show its data to the Post Office Users National Council - the body representing consumers - and to local consumer advisory committees. But they have been told that they must keep the information secret as well. If they publish it, or give the press access to [illegible] which the figures are discussed, the Post Office will withhold the information.

All of which means that the Post Office has succeeded in protecting itself from the one thing that is most likely to lead to improvements in service - informed public criticism.

Source : Secrets, Newspaper [illegible] Campaign for Freedom of Information [illegible] U.S. Nov '89.

The release of any govt. information lies in the hands of the ministers in U.K. and under the Public Records Act 1967. Government papers are made accessible after a 30 year period. However, this period can be extended for upto 100 years for materials considered sensitive, including those related to intelligence matters, national security or records which may embarrass living members of the royal family.

Several attempts have been made to introduce FOI legislation in Britain, recently by Mr. David Steel, MP in 1985. His Bill was considered to be poorly drafted and open to ministerial abuse, but it did provide at least a framework for progress.

For more than a decade, the Campaign for Freedom of Information, a broad alliance of groups and individuals, has sought new legislation to open up government. We had the privilege of meeting Mr. Maurice Frankel from this group. Mr. Frankel is well known in U.K. for his serious efforts for FOI. He believes that the Right to Know should not depend upon the majority in the Parliament because the Parliament is always on the side of the Government as they have their vested interests. People have lost faith in the [illegible]



Mr. Maurice Frankel (centre), Director, Campaign for Freedom of Information, London, is well known for advocating a legislation on FOI.

informed us that FOI bill was prepared by Freedom of Information Clearing House (FOICH) Liberal Party in 1984. FOICH also gives awards to political leaders. FOICH makes them put forward a commitment and when they come into power they remind them of their promises. Mr. Frankel gave us few suggestions. Ministers in opposition should be the people that we should concentrate upon, he said. Expressing his dissatisfaction on the way the U.K. press is pursuing the movement, he said, [illegible] information is made available by the government, it is not reported. The evening news which cover national news, rely on the Press Agency. There has been no formal stand by the periodicals or journals on FOI.

"Various governments have presented their objections in constitutional terms but the real reason is their fear that FOI would weaken the government's ability to conceal its mistakes or defend policies when the evidence shows they don't work"

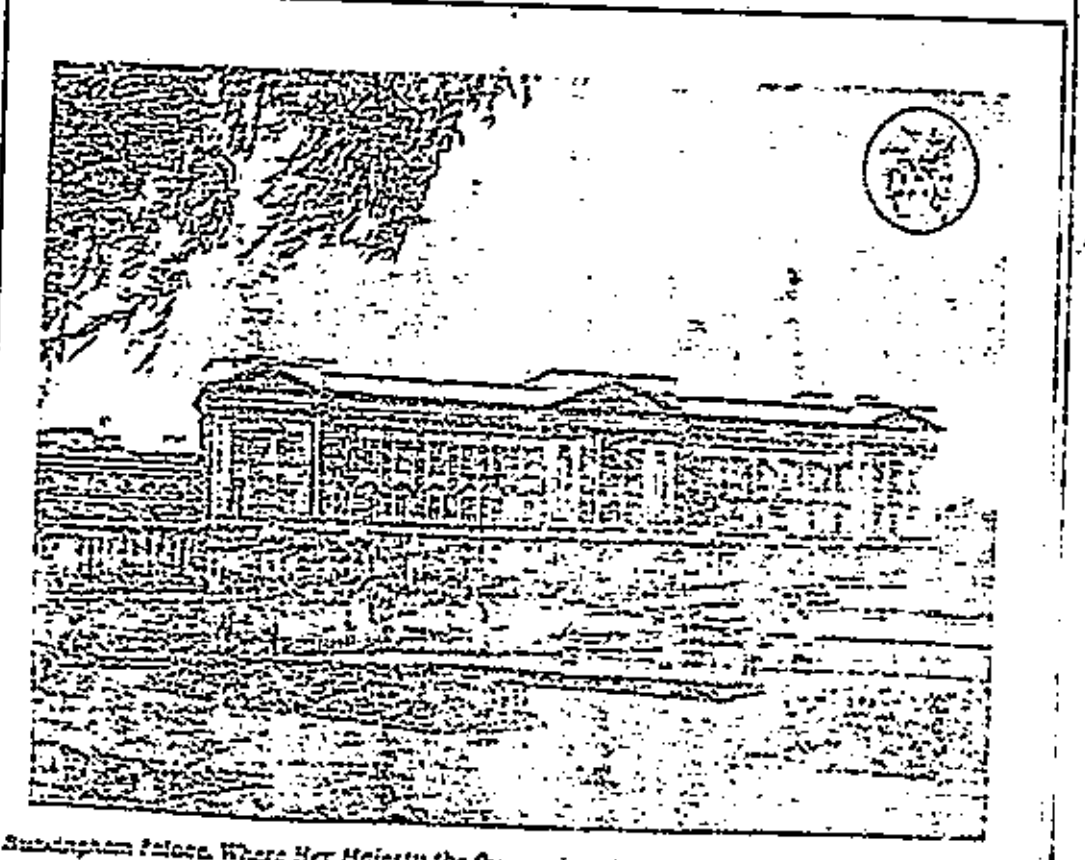
- Maurice Frankel, FOICH.

The various governments have presented their objections in constitutional terms but Mr. Frankel opines that the real reason is their fear that FOI would weaken the government's ability to conceal its mistakes or defend policies when the evidence shows they don't work.

Local Govt. (Access to Information) Act, 1985

The authors of the Local Government (Access to Information) Act 1985, sought to ensure more open local government with the public and Press receiving full agendas and documents relating not only to meetings of country, district and metropolitan councils but to all their committees and subcommittees.

In practice some authorities take evasive action, particularly over what should or should not be classed as 'exempt information'. The Act



Buckingham Palace. Where Her Majesty the Queen signed the Official Secret's Act in 1889.

Government forced to ban flammable foams

More recently, the government was forced to drop its opposition to a ban on flammable foam filled furniture partly as a result of the leaking of a previously secret document. The government had proposed to phase out the foams, which burn to produce highly toxic fumes, over a three-year period. But they would have been replaced by an equally toxic alternative which merely took two minutes longer to ignite. In January 1988 a highly critical memorandum by the government purchasing agency, the Crown Suppliers, was leaked. The document pointed out that a substantially safer foam existed and was used in furniture bought for ministers' offices. It described the government's proposals as 'window dressing' adding that they 'cannot be the correct approach if safety is the paramount consideration'. The leak contributed to the growing pressure on the government, and within days the government scrapped its original proposals and announced a total ban on the dangerous foams.

Source : 'The Right to Know' by Maurice Frankel in 'Glasnost in Britain'

habits [illegible] is obvious [illegible] some councils [illegible] invariably on the [illegible] of officers - still [illegible] is their prerogative to decide what and how much the public should know. This is completely at variance with the spirit of the 1985 Act.

... David Newell of ... Guild of British Newspaper Editors, told ... that this act ... coun... meeti... and re... ports, therefore the local newspapers do not have any problems. Unlike the Indian local newspapers, U.K.'s local newspapers coverage of national news is low.

Seminar at Policy Studies Institute, London

We were invited to a seminar organised by Policy Studies Institute, London. A comparison of Access to Information legislations in U.S.A., Canada, New Zealand and Australia was presented. A lively discussion on the merits and demerits of courts, ombudsmen and tribunal, was the essence of the seminar. It was opined that govts. prefer ombudsmen as it is less threatening and cheaper but tribunals were considered better for the development of case law.

It was also felt that the general public is not really very interested in information but the media were the more keen users of the Act. A lot of 'good' has happened in all these countries as a result of the Acts. Police records and prisoners reports have become more accurate, and access to personal information has also improved a lot. Agencies have become more frank. Increase in litigation has been seen. In America MP's too have started using it and manuals listing the information available were brought out by the respective agencies. Democracy has been brought more into practice. An interesting incident recently occurred in Canada owing to the increased access to information. The Environment Minister had to ...

... habits [illegible] ... is obvious ... some councils ... invariably on the ... of officers ... still ...

In several areas, planning and housing functions have been taken over by corporate bodies appointed by the govt. Again there are no rights of access, either to information or to meetings. Even some of the previously constituted bureaucracies - local council and health authorities - still seek to keep their business under wraps, devising their own codes to defeat the unwary.



The Houses of Parliament and Big Ben. Big Ben chimes but ironically the M.P.'s sitting so close are not in tune with the times.

sign when it came to public knowledge that he had spent five days in France for a one hour meeting !

The speaker at the seminar felt that fees were necessary to avoid abuse of the access to information Act. He said in Ottawa, Canada, it has been observed that lot of journalists go on a fishing expedition (no specific requests) which costs the govt. a great deal of money. To discourage this the speaker advocated fees for answering FOIA requests. Prof. Manubhai Shah argued against it. He said that for public interest, fees should be waived, as otherwise the fees would become a deterrent in the effective use of FOIA.

The speaker was optimistic on the course of direction the access to information movement is taking all over the world. He said, a lot needs to be done but for that a constructive beginning has already taken place.

Recent Developments

Some limited advances in the area of access to information have been made in U.K. and some acts now contain a relevant clause. The Access to Health Records Act 1990, which came into force in November, 1991 allows people to see and copy information recorded on their health records after that date. The Access to personal Files Act, 1987 allows access to personal information held by the local authorities of housing and social security departments. The Data Protection Act, 1984 applies privacy principles to computerised databases holding personal information. The Act imposes obligations including registration of those who hold personal information about others on computers and gives a right of access to such personal data to the individual concerned. Data relating to national security and certain other categories are exempt. The Environment and Safety Information Act, 1988 provides some public access to information about suspected breaches of environmental standards by means of a register. However, there is a right of appeal against inclusion on the register and, where there is a risk of disclosure of a trade secret, the matter may be referred to a minister. Additionally, environmental hazards affecting people at work are excluded, as are all breaches notified before April, 1989.

Other Public Authorities and Secrecy

In several areas, planning and housing functions have been taken over by corporate bodies appointed by the govt. Again there are no rights of access, either to information or to meetings. Even some of the previously constituted bureaucracies - local council and health authorities-still seek to keep their business under wraps, devising their own codes to defeat the unwary.

Without an effective Press presence, and in the absence of open discussion, there is little check on the activities of these new bodies which

Suspect Pesticides in U.K. being sold without warnings

The government has always refused to identify those pesticides cleared for use in the UK with data from a US commercial laboratory now known to have carried out worthless and in some cases deliberately falsified safety studies. From American data it seemed likely that at least 10 pesticides which relied at least in part on this data were on sale in the UK in 1983. The Ministry of Agriculture investigated but refused to disclose its findings. Several years after the problem was discovered (in the late 1970s) the Ministry announced that reliable alternative studies had finally been provided in all suspect cases. But it has refused to identify the pesticides implicated and failed to give warning of any kind to users of the suspect products.

Source : The Right to Know' by Maurice Frankel, In 'Glasnost in Britain'

Costly data

studies on the safety of most food additives remain secret. Following enormous criticism, the Ministry of Agriculture agreed to make data public - though only for new additives approved after 1986 and not the hundred already in use. A copy of such safety data is lodged with the Reading Division of the British Library. But when Dr Erik Millstone of Sussex University tried to borrow data for a single study on a widely used food dye know as 'Red E123' he was told it was not available on loan. He could have it only if he paid for photocopies which came to a total of £ 90. He estimates that to obtain the full data on this one additive alone would cost him over U.K. £ 5000.

Source : 'The Right to Know' by Maurice Frankel. In 'Glasnost In Britain'

decide how people will run their lives. It is bad enough that newspapers should have to battle with recalcitrant authorities trying to infringe their rights.

Many years after the 1972 Local Government Act gave rights of access to council committees some authorities still try to skirt the law by going into secret session for dubious reasons. They set up "working parties" to defeat the provisions of the 1985 Local Government (Access to Information) Act which extended the right to sub-committees. Documents are produced at the last minute, if at all, and Agenda are incomplete.

In fact, reports from local government Ombudsmen are no more likely to encourage the sort of publicity thought necessary to improve the performance of some council officers. They reach newspapers without the names either of the complainant or the complained about. Unless the cases can be identified from files, they are irrelevant to local readers and are unlikely to be reported prominently or even at all.

It was the catch-all Section 2 which for the first time in English law embodied the principle that all government information, from Cabinet minute to the contents of the typing pool teapot, was a State secret.

This conspires to defeat the stated objectives [illegible] encouraging complaints from the aggrieved, [illegible] public understanding for the [illegible] and resulting maladministration

Official Secrecy

Official Secrets Act 1989

Secrecy is the enemy of rational decision making and the friend of political prejudice. It allows govts. to cover up errors, suppress dissenting views, and conceal the fact that their policies may not be working or may even be having the opposite effects to those intended. The New Official Secrets Act, 1989, which replaced the Section 2 of the 1911 Official Secrets Act, came into force in March 1990. The earlier 1911 Act was passed in a single afternoon in a wave of fear at the activities of the Kaiser's spies. *Kaiser, Dictator of Germany during that period, was sending spies to U.K. to know about their military plans.* The U.K. government caught them with their secrets but they could not punish them for the simple reason that, they did not have any laws for it. And therefore in desperate haste, the government formulated the infamous Official Secrets Act in 1911, replacing the Official Secrets Act, 1889. But its most far-reaching feature was not that which dealt with espionage. It was the catch-all Section 2 which for the first time in English law embodied the principle that all government information, from Cabinet minute to the contents of the typing pool teapot, was a State secret.

Secrecy is the enemy of rational decision making and the friend of political prejudice. It allows govts. to cover up errors, suppress dissenting views, and conceal the fact that their policies may not be working or may even be having the opposite effects to those intended.

Inevitably, over the years the Act became oppressive and discredited. However, even though it was mostly honoured only in the breach, it remained a guiding principle for bu-



"Not much effort is put into investigative journalism [illegible] journalists in U.K.," says Mr. David [illegible] The [illegible] British Newspaper Editors, London. See [illegible] Shah.

[illegible] study on the Access to Information



10, Downing Street, the address that addresses U.K's govt.

Government hides Chief Medical Officer's letter

Sometimes it is only the fact that the government can stop the public learning what it knows that allows an unjustified policy to be sustained. The leaking in March 1982 of a confidential letter by Sir Henry Yellowlees, then Chief Medical Officer at the Department of Health and Social Security, changed the whole basis of the debate on lead in petrol. The letter acknowledged what the government had constantly denied, that : there is a strong likelihood that lead in petrol is permanently reducing the IQ of many of our children and that 'hundreds of thousands of children' were at risk. The letter had been in existence for over a year before it was leaked, during which time the government was able to dismiss concerns about lead pollution as 'exaggerated and emotive'.

Source : The Right to Know' by Maurice Frankel. In 'Glasnost in Britain'

reaucrats, and a stand-by shield or weapon for their political masters.

The Guild of British Newspaper Editors at London has always campaigned against Section 2. But in 1966, it went further. The Guild decided that it was not enough to fight institutionalised secrecy; we should be demanding a law that would institutionalise government openness. Effectively, this meant a Freedom of Information Act along the lines of those already operating with success in the United States, Canada, Australia and New Zealand. The common feature of all is that while they protect legitimate state secrets, they introduce into the law a presumption of freedom to publish across the rest of the governmental spectrum.

Traditionally, the Tories have favoured reform of the Official Secrets Act, but have seen freedom of information as a separate entity.

So in June 1988, prompted by a brave but abortive solo effort by Tory rebel Richard Shepherd, Home Secretary Mr. Douglas Hurd introduced the Government's White Paper proposing reform of the Official Secrets Act. It was widely canvassed in advance as being a Draconian tightening of the regulations and when published it took some critics off guard.

...though juries were to decide what harm disclosure would do the public interest, there was to be no public interest defence. The jury could decide what harm might be done... but not what good might flow from publication.

It appeared to have several liberalising features. It abolished the catch-all Section 2, and narrowed down the areas to be protected by the Act into six categories. It introduced the principle that to secure a conviction, the prosecution would have to prove not merely disclosure but the likely harm it would cause. Most importantly, it ruled that such harm would be decided not by a Minister but by a jury. It would no longer be an offence to receive secrets, but only to publish them. And there was to be a defence of accidental leaking for those who disclosed information without knowing it would be harmful.

So far, so good. But built into the White Paper was a series of intricate checks and balances which acted as a counterweight to these liberalising features.

Although juries were to decide what harm disclosure would do the public interest, there was to be no public interest defence. The jury could decide what harm might be done... but not what good might flow from publication.

There was no automatic defence of prior publication. It would not necessarily be enough to demonstrate that information disclosed in Britain had already appeared in French

The six areas designated for protection were : Defence; security and intelligence; foreign relations; information provided in

...ough jurors were deciding what harm disclosure would do the public interest, their was to be no public interest defence. The jury could decide what harm might be done... but not what good might flow from publication.

...

But ... the ... proved ... public interest was dropped.

So as the proposals from the ... rated, the minuses added up. ... Section 2 was largely the ... deadwood. The right of the jury ... actual harm to the State was ... by blanket bans on disclosure ... only British secrets were to be ... foreign ... too, however, ...

... for Mr. Hurd's claim ... sals would lead to "an earthquake ... hall."

The danger, as the Guild sees ... White Paper's gains are largely ... or spurious, and that if it ever reaches ... ute book the proposed legislation ... continue the status quo and at worst contribute to greater public secrecy.

Not only do the proposals fail to move towards a freedom of information act, but ... also fail to ... to the White Paper's own claims that ... sponsible ... reporting ... not be ... The Government is entrusting the safeguarding of the public interest to the jury".

Hectares of routinely confidential information from the Common Market is just as routinely leaked - but such disclosures would be banned under legislation that puts press freedom in the dock to ... the world's ... dential ... claim ...

Contaminated Tap Water

Under the Water Act 1989 water companies are obliged to notify the local authority as soon as possible about a pollution incident which threatens people's health. The authority has the right to require further information. There is, however, no obligation to inform the public of such an occurence, as a recent incident in Tyne and Wear and County Durham illustrates.

In December 1989 half a million people in these two areas received contaminated water after phenol leaked into the River Tyne. Although consumers complained that their tap water tasted of antiseptic the three water companies involved assured them that supplies were safe.

On 6th February 1990 Northumbrian Water, one of the three water companies, met with Sedgefield District Council to discuss the incident. The meeting was closed to the public under the Local Government (Access to Information) Act 1985. An official from Northumbrian Water told the Campaign that the company had understood that the meeting would be in private and had only agreed to it out of "the goodness of their hearts". The Darlington and Stockton Times quoted Dr Wright, the chief operations scientist at Northumbrian Water as saying "I do not think it's proper that there should be a lot of Press publicity on this. It will all come out once the Department of Environment (DoE) has thought about it and discussed it."

The other two companies, Sunderland & South Shields and Newcastle & Gateshead also submitted reports to the DoE's Drinking Water Inspectorate. None of the reports are available to the public. The Drinking Water Inspectorate will submit the results of its own investigation to the Secretary of State. It envisages that only a summary of the report will be made publicly available.

Source : Secrets, Newspaper of the Campaign for Freedom of Information No.20, May '90.

says minister



How does a minister explain to his constituents why he has opposed FOI Bill which most of them would probably support ? Tim Renton, the Civil Service Minister, had a go in his local newspaper, the Mid Sussex Times. On February 7 he wrote :

"Last Friday, wearing my hat as Minister for the Civil Service, I replied on behalf of the government to a Freedom of Information Bill ... It would provide access to all Public Authority records, subject to a very few exceptions in the public interest. It... would mean that, for example, Saddam Hussein could apply to see the Cabinet Minutes on any Thursday afternoon after a Cabinet Meeting."

Oddly, Mr. Renton made no mention of this devastating flaw in the bill in his Commons speech - perhaps because he knew it was untrue.

At least four different exemptions in the bill would prevent such disclosures. Two exemptions cover information likely to cause significant damage to defense or international relations. Information likely to endanger safety or life is covered by a third. And cabinet minutes themselves are protected under a "policy advice" exemption.

Source : Secrets, Newspaper of the Campaign for Freedom of Information, April 92.

information which a crown servant learns in the course of his duty is "official" for the purposes of Section 2, whatever its nature, whatever its importance, whatever its original source. A blanket is thrown over everything; nothing escapes." Ms. Anne Naughton, opined that this new Act reduced the number of information that was classified but for important areas there is no public interest defense.

Public Interest Defence :

The government continues to reject any form of public interest defence. Such a defence would allow someone who had published protected information to argue that the disclosure was justified because it revealed evidence of exceptional wrongdoing or gross abuse of authority.

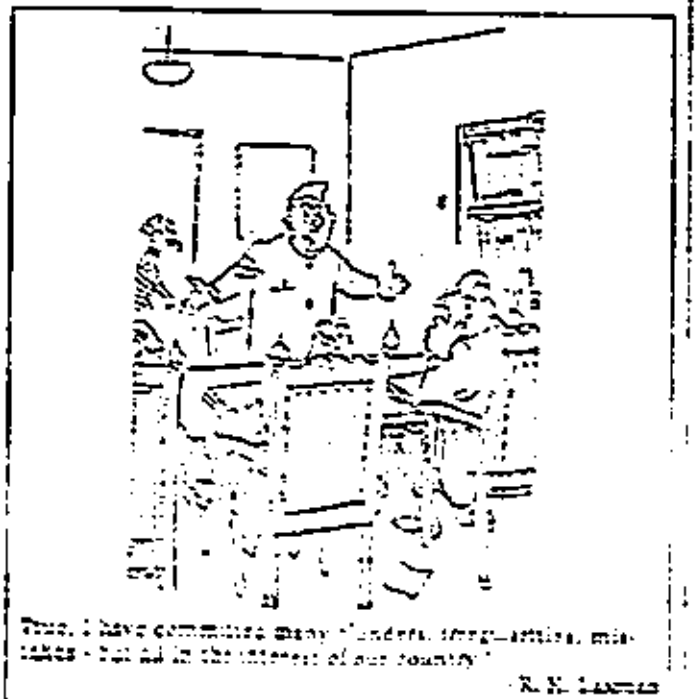
The government continues to reject any form of public interest defence. Such a defence would allow someone who had published protected information to argue that the disclosure was justified because it revealed evidence of exceptional wrongdoing or gross abuse of authority.

The government has done much to muddy the waters on this issue implying that a jury can take the public interest into account. For example, the

Even a weekly paper's disclosure of inadequate policing in a local crimespot could be construed as useful to a criminal and thus illegal.

The Official Secrets Act, 1989 does not provide for any form of public interest-defense, for unauthorized disclosure of information where the existence of crime, abuse of authority, or other misconduct, are revealed. And it is no defense that material is already in the public domain. The Act is based on a presumption of secrecy in favour of the government and there is no provision for freedom of information. The Act created four absolutely protected categories of information: information that the government considers damaging to defense; information entrusted in confidence by other states or international organizations; information concerning the activities of the security and intelligence services; and information on international relations.

Section 2 of this Act, in the words of the 1972 report of a Committee of Inquiry under Lord Franks, "catches all official documents and in-



Then, I have sometimes made blunders, irregularities, mistakes - but all in the interest of our country."

R. M. Laurence

its the public interest" [illegible] Hurd has said that:

"the prosecution would have to satisfy a test of harm to the public interest. It would be for the jury to decide....

Under these proposals, where there is a harm test the defendant could argue that the disclosure caused good not harm to the public interest. It would be for the jury to decide."

[Press release. 30.11.88]

In fact the words 'public interest' appear nowhere in the bill. The jury will not be invited to consider the public interest, still less to balance up whether a disclosure did more benefit to it than harm. If the prosecution shows that a disclosure was likely to cause a particular type of harm the jury will have no option but to convict. It will [give] no opportunity to consider whether some other much greater harm was prevented as a result.

For example, the Navy does not discuss the movements of British nuclear submarines, and no doubt would regard any leak of information about them as "likely to prejudice the capability of ... an offence under clause 2[2Ka] of the bill. If such prejudice was established, a disclosure would be an offence, regardless of the circumstances.

However, there are growing allegations that fishing boats have been sunk, and lives lost, in the Irish Sea because submarines have become entangled in their nets.

[Independent, 4.11.88]

A journalist who acquired Royal Navy information confirming that this was happening, could be convicted and imprisoned for publishing it. The prosecution would only have to show that the disclosure 'prejudiced' its capability. Presumably, it would maintain that [illegible] disclosure of the location of its submarines while patrolling does so. The defendant would be able to argue that the disclosure was justified because it revealed that safety procedures were disregarded, that officers were negligent in their duty, or that nothing was being done to stop the continuing loss of life. Without a public interest [illegible] such a defence would [illegible] possibly unreasonable in extent.

[illegible] points out that this replacement [illegible] Secrets Act is theoretically [illegible] but regional press opposed the new Act. Because of the risk of breach of the Act, press is now more reluctant to publish than before.



It has proved surprisingly popular! That's the new section I've opened in this library!

-R. M. Taxman

A life-long duty of confidentiality is imposed on all present and former Crown Servants who include members of the security and intelligence services. This obligation may be extended to others by written notice.

Journalists who [illegible] publish such prohibited information are also criminally liable. Further, they must take reasonable care to ensure that any material which comes into their possession is not disclosed and must give it up when requested to do so. A life-long duty of confidentiality is imposed on all present and former Crown Servants, who include members of the security and intelligence services. This obligation may be extended to others by written notice. An injunction for breach of confidence was used [illegible] in the case of retired wartime intelligence employee, Joan Miller, whose memoirs, 'One Girl's War', were subject to an injunction. All the information they contained dated from [illegible] 1945 but the court held that there was an arguable case that a breach of confidence had taken place, since the author owed a lifelong duty of confidence to the security services and the revelations could [illegible] be damaging to national security. The memoirs were subsequently published in full.

The Irish Government [illegible] internal security [illegible] for the first time [illegible] Home Secretary to issue a notice [illegible] or interference with, [illegible] official information on the grounds of national security.

100

RECOMMENDATIONS

Amend Official Secrecy Legislation

- amend the Official Secrets Act to require Government withholding of information to be strictly limited and in conformity with the international standards protecting access to information;
- review the breach of confidentiality offence in the Official Secrets Act and enact a public interest defence for the publication of classified information;
- enact legislation which would bring the activities of both MI5 and MI6 under public scrutiny, especially in view of allegations of illegal activities by both organizations;

Allow Access to Information

- enact a Freedom of Information Act which contains a presumption in favour of public access to information held by Government authorities. Any refusal of a request for information should be demonstrated to be necessary to an independent body;

amend the Immigration Act to allow access to information on reasons for detentions and deportations under the Act so that defendants may know the evidence against them;

ensure that restrictions on information during wartime are limited to matters relating to operational security and the safety of troops and review present practices, especially the "pool" reporting system, to ensure that access to information and the public's right to be informed is not inhibited.

Source : Article 19, The International Centre Against Censorship

tion. You get only information. Ms. McElderee expressed her impressions over the Thatcher government. She said, it led to decline in civil liberties. Review done by NCCL before and after '89 reveals that the situation has worsened with no public interest defense. Life long duty of confidentiality of crown servants has improved only in trivial matters like the menus, that can be disclosed. But no serious matter can be disclosed.

Mr. David Newell informed us that the traditional view of the British Press since last 10 years was confused. Therefore Official Secrets Act had no impact on them. Media was divided. There was no consensus. But in the last few years they are in favour of FOI. But there is a general feeling that not much effort is put into investigative journalism. National Newspapers are more interested in leaks, therefore most journalists are not part of the cycle. Mr. Newell wondered, even if information is made available under FOI, will the journalists use them or will it stay in archives ? He said there has been no formal stands by the periodicals, journals on FOI. The evening news which cover national news rely mostly on the Press Agencies.

This report demonstrates that the right to freedom of expression and information, in the UK has been steadily eroded in recent years and, is urgently in need of protection. In addition to a positive guarantee of freedom of expression, the U.K. vitally needs, as an antidote to excessive secrecy, new legislation guaranteering a defence of disclosure in the public interest and recognizing a right to access to official information.

(Concluded)

Note : The above article has been compiled from published material received from (1) Article-19, the International Centre Against Censorship (2) The Guild of British Newspaper Editors (3) The Campaign for Freedom of Information and Personal interviews.

ook the opportunity to visit National Coun-
r Civil Liberties (NCCL). We had a discus-
with Ms. Fiona McElderee, Campaigns Offi-
on wide ranging issues related to access.
s of security services don't come out, she
They use 'National Security' for detaining
e. She revealed that, during Gulf war, Ira-
cents studying in U.K. were classified as
ters of war, even though they had been
ing in U.K. for five years. They were re-
l weeks after cease-fire. There is media
n interviews with Northern Ireland groups
DF. She added, there is lack of informa-
with the police also and moreover people
o right to see police records. Tradition in
untry is 'You have no Right to Informa-

DRAFT BILL

ON

ACCESS TO INFORMATION

102

Chapter I — Page No.

Preliminary

1. Short title, extent and commencement 7
2. Definitions 7
3. Scope of the Act 14
4. Access to Information not to be denied 14

Chapter II

Publication and Availability of Records

5. Maintenance and indexing of records 15
6. Publication and availability of records 15
7. Computerisation of records 16

Chapter III

Access To Information

8. Duty to assist requestors 17
9. To whom the right extends 17
10. How to make a request 17
11. Transfer of request 18
12. Responding to request for information 19
13. Extension of time-limit for responding to request 20
14. Form in which access is to be given 20
15. Fees 23
16. Access to and Correction of Personal records 24

Chapter IV

Exempt Information

17. Information exempt from disclosure 28
18. Advice of Cabinet 29
19. Defence 29
20. Security 29
21. International relations 29

24. Economic and commercial affairs 31

25. Third party interest 33

26. Information of Voluntary Organisations 34

27. Giving of notice to third parties 34

Chapter V

Review of Decisions

28. Request for internal review 38

29 Review by the public body 38

Chapter VI

Council for Access to Information

30. Central Council for Access to Information 40

31. Procedure of the Central Council 40

32. Objects of the Central Council 40

33. The State Council for Access to Information 41

34. Objects of the State Council 42

Chapter VII

Office and Powers of Chief Information Commissioner & Information Commissioners.

35. Appointment of Information Commissioner 43

36. Qualifications of Chief Information Commissioner 43

37. Jurisdiction 43

38. Functions 43

39. Powers of Chief Information Commissioner 44

40. Appointment of Information Commissioner 46

41. Qualifications for appointment of Information Commissioner 46

42. Power of Information Commissioner 46

43. Jurisdiction 46

44. Limitation 46

104

45. Procedure or receipt of a complaint 47

46. Findings of the Information Commissioner 47

47. Burden of proof 49

48. Decisions of the Information commissioner 49

49. Finality of orders of Chief Information Commissioner and Information Commissioner 50

50. Enforcement of order of Chief Information Commission Commissioner and Information Commissioner 50

51. Terms and conditions of service 50

52. Vacancy 51

53. Resignation and Removal 51

54. Salaries and other terms of service 52

55. Staff of Office of Chief Information Commissioner and Information Commissioner 52

56. Dismissal of frivolous vexatious or malicious complaint 53

Chapter VIII

Tribunal

57. Establishment of State Information Tribunal 54

58. Composition of Tribunals 54

59. Qualifications for appointment of Chairman Vice-Chairman and other members. 54

60. Appointment of Chairman, Vice Chairman and Members of State Information Tribunal 55

61. Jurisdiction of State Information Tribunal 55

62. Power of State Information Tribunal 56

63. Limitation for Appeal 56

64. Terms and conditions of service 56

65. Resignation and Removal 57

66. Vice-Chairman to act as Chairman or to discharge his function in certain circumstances 58

67. Finality of order of State Information Tribunal 58

68. Enforcement of order of State Information Tribunal 58

105

69. Penalties 58

70. Lawyers not to appear before Chief Information Commissioners and Tribunals 60

71. Exclusion of writ jurisdiction of the High Court 60

Chaper IX

Miscellaneous

72. Immunity to Chief Information Commissioner and members of Tribunal and their staffs for Acts done in good faith 61

73. Immunity to public interest groups for acts done in good faith 61

74. Power to remover difficulties 61

75. Constitution of a Central Data Bank 62

76. Repeal of Official Secrets Act 1923 62

77. Power to make Rules 62

78. Laying of Rules 62

Chaper X

Community Right to Know

79. Duty of industry to disclose 64

106

ACCESS TO INFORMATION

BILL

To provide for the maintenance and publication of records of public bodies and to provide for right to availability and speedy access to these records, and for the establishment of councils and quasi-judicial authorities for promoting and achieving the objects of this Act.

Whereas Article 19(2) of the International Covenant on Civil And Political Rights 1976 mandates each State which is party to the Covenant to recognise the right of individuals to receive information;

And whereas India is a party to the said Covenant and whereas it is considered expedient to implement Article 19(2) of the Covenant which provides for freedom to seek, receive and impart information.

And whereas it is considered necessary to model and enact a new law for this purpose and in order to interpret and implement the fundamental rights guaranteed under the Constitution of India.

Be it enacted by the Parliament in the Forty Seventh year of the Republic of India as follows:-

—.

107

CHAPTER - I

PRELIMINARY

1. Short Title, Extent, and Commencement

(1) This Act may be called the Access to Information Act 1996.

(2) It extends to whole of India except Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification, appoint; and different dates may be appointed for different States, and for different chapters of the Act. However, Chapter II shall come into force immediately while the other chapters of the Act shall come into force within the one year of enactment, or if so extended, within two years from the date of enactment.

2. Definitions

In this Act, unless the content otherwise requires

(a) "Chief Information Commissioner" means, Chief Information Commissioner appointed under Section 35 of Chapter VII of this Act;

(b) "Commercial information" of a person's business includes a formula, pattern, compilation, programme, device, product, method, technique or process that

(i) is used or may be used in business or any commercial advantage;

(ii) derives independent economic value, actual or potential, from persons who can obtain economic value from its disclosure or use;

(iii) is the subject of reasonable efforts to prevent it from becoming generally known;

(iv) the disclosure of which would result in harm or improper benefit to any other person;

(c) "Complainant" means

i) a requestor, or

ii) any person acting for and on behalf of requestor, or

iii) a third party, or

iv) any voluntary public interest group registered under any law for the time being inforce, or

v) one or more requestors, where there are numerous requestors having the same interest.

Explanation : Voluntary public interest group referred in (iv) above has independent locus standi on a complainant to file a complaint on behalf of one or more requestors whether or not a requestor is a party to the complaint.

(d) "Complaint" means any allegation in writing made by a complainant that –

i) where he is a requestor access to record has been wrongfully denied to him by a public body;

ii) where he is a requestor that access to and/or correction of his personal information has been wrongfully denied to him by a public body having the custody or control of the record.

iii) where he is a third party that personal information or commercial information about himself/itself has been or will be wrongfully disclosed to a requestor by a public body having custody or control of such information;

iv) where he is a requestor that the information requested by him has been unduly delayed by a public body;

v) where he is a requestor that the public body has charged unreasonable fees for giving the information or has not waived the fees in accordance with the provisions of this Act.

(e) "Employee" in relation to a public body is a person retained under contract of employment to render services to the public body whether permanently or temporarily;

(f) "Environment" includes water, air and land and the interrelationship which exists among and between water, air and land, and human beings, other living creatures, plants, microorganisms and property;

(g) "Hazardous substance" includes any substance or preparation which by reason of its chemical or physio-chemical properties or handling is liable to cause harm to human beings, other living creatures, plants, microorganisms property or the environment;

(h) "Hospital" includes a nursing home, clinic medical centre, medical or teaching institution for therapeutic purposes and other like institution.

110

(i) Industry means any building plant, factory or structure wherein hazardous substance including those notified by Government (Central or State) is produced, transported, processed, stored, or handled and includes any operation or processes whether inside a building plant, factory or structure or otherwise;

(j) "Information Commissioner" means, Information Commissioner appointed under Section 41 of Chapter VII.

(k) "Law enforcement" includes

(i) policing, including intelligence operations;

(ii) investigations that lead or could lead to the imposition of a penalty or sanction; and

(iii) proceedings that lead or could lead to the imposition of a penalty or sanction;

(l) "Member" includes the Chairman, Vice-Chairman and other members of the Tribunal;

(m) "Offence" means an act or omission made punishable by any law for the time being in force in India.

(n) "Person" includes –

i. an individual

ii. a company registered under the Companies Act, 1956;

iii. a firm whether registered or not;

iv. a Hindu undivided family

v. a co-operative society

vi. every other association or persons whether registered under the Societies Registration Act, 1860 or not;

(o) "Personal information" means information about an

identifiable individual, including

i) the individual's name, home or business address or home or business telephone number;

ii) the individual's race, caste, tribe, religious beliefs, gender, age, ancestry or place of origin;

iii) an identifying number, symbol or other particulars assigned to the individual;

iv) the individual's fingerprints, blood type or inheritable characteristics;

v) information about the individual's health and health care history, including information about a physical or mental disability, as well as medical and hospital records;

vi) information about the individual's educational, financial, criminal or employment history;

vii) the individual's personal opinions, except if they are about someone else;

(p) "Prescribed" means prescribed by the rules made under this Act;

(q) "Public body" includes -

i) Houses of Parliament, Committees constituted by the Parliament;

ii) Central Government, any ministry department or office or agencies of that Government;

iii) State Legislature, committees constituted by the

112

Legislature;

iv) State Government, any ministry department or office or agencies of that Government;

v) Union Territory Administration, any department or office of that Administration;

vi) Statutory bodies or incorporated company, whether wholly or partly controlled or financed by Central or State Government or Union Territory Administration;

vii) Local authorities and their agencies;

viii) Courts and Tribunals;

ix) Constitutional authorities;

x) Commissions of Enquiry under the Commission of Enquiry Act or otherwise;

xi) Any other body which provides public services such as but not limited to energy, transport, communication; banking, insurance, finance health, medical, and the like;

(r) "Public interest group" means group of individuals working for protection and promotion of interest of disadvantaged groups of people such as but not limited backward classes, handicapped persons, women, children or the elderly persons and includes public interest groups working for consumer and environment protection, human rights and civil liberties.

(s) "record" means information recorded in any form whether

means or otherwise and includes any document, map, diagram, photograph, microfig, microfile, videotape, sound recording or machine readable record or any record which is capable of being produced from machine, readable records by means of equipment or a programme (or a combination of both) which is used for that purpose by the public body which holds record.

Explanation I : For the purpose of this Act any order, proceedings, opinions, documents, files, notices, correspondence, reports, minutes, resolutions, manuals, debates of voting records of House of Parliament, State Legislative Assemblies, local self Government, Municipal Corporation, Union Territory Administration including increasing legislative enactments, subordinate legislation such as rules, regulations, notifications, by laws are deemed to be record under Section 2(s) of this Act.

Explanation II : Record includes public record and a part of a record.

(t) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, boring, drilling or disposing into the environment of any hazardous substances.

(u) "Requestor" means any person who has the right to information under this Act and has made such a request under Section 10.

(v) "State Information Tribunal" means the tribunal

established under Section 57 of the Act.

(w) "Third party" means a person whose personal or commercial record is sought by the requestor from a public body.

(x) "Welfare Scheme" is any scheme introduced by a Public body which concerns the welfare or well-being, or growth or development and affects the interest of public in the whole of the India or a part thereof.

3. Scope of the Act

This Act is in addition to the other laws for the time being in force and it shall supersede the provisions of other laws.

4. Access to information not to be denied

Notwithstanding anything contained in any other Act for the time being in force, and subject to the provisions of this Act, no requestor shall be denied access to any record other than exceptions as provided in Chapter IV of this Act.

115

5. Maintenance and indexing of records

Subject to provision of this Act and in accordance with the rules that may be prescribed each public body shall ensure that all records covered under section 2(c) of this act for public access to information are properly maintained catalogued, indexed and preserved without destroying, deleting, obscuring or otherwise tampering with any information contained in them and update it regularly and from time to time.

Provision- Each public body shall maintain a directory of records available with it so as to provide all persons as regards the nature of records available with it.

6. Publication and availability of records

1 The Acts, and sub-ordinate legislation such as ordinance, notifications, rules and regulations bye-laws, orders having the force of law in the territory of India shall be published by Central Government, State Government or Union Territory Administration and made available at a reasonable price at adequate number of outlets as provided in Appendix I.

2 The Welfare Schemes, guidelines, directives, circulars resolutions of Central Government, State Government and Union Territory Administration, shall be published and made available at reasonable price at adequate number of outlets as provided in Appendix II.

3 Not with standing anything provided in Copy Right Act 1957 publication under sub-section (1) and (2) will not contravene

the Copy Right Act 1957 and provisions of any other law for the time being in force whether it is a priced publication or not.

4 Welfare Schemes of Central Government, State Government and union territory Administration shall be publicised through print and electronic media

7 Computerisation of records

Each public body shall ensure with reasonable despatch that all records are computerised and connected through an effective network all over the country on different systems so that authorised access to such records is facilitated.

117

Chapter III

ACCESS TO INFORMATION

8. Duty to assist requestors

1. A public body shall take reasonable steps to assist any person who :

a. Wishes to make a request to it under Section 10.

b. has made a request to it which does not comply with the requirements of that section ;

c. Wishes to make a request for access to and / or correction of personal records under Section 16.

2. A public body shall take reasonable steps to assist any person in the exercise of any other right under this Act.

3. A public body shall designate a person as officer to whom request is to be made.

9. To whom the right extends

This right extends to every person, not being an alien enemy.

10. How to make a request

1. A request for access to a record under the Act shall be made in writing to the public body that the requestor believes has custody or control of the record and shall provide* sufficient details to enable an employee of the public body to identify the record with a reasonable effort.

2. A request under this Act for access to a record must specify in which of the manners described in Section 14 the requestor wishes to be given access.

Proviso* : The public body may furnish a form of request in English and regional language to the requestor or to

facilitate request in proper format.

11. Transfer of request

1. Within 5 days after a request for access to a record is received by a public body which does not have the particular record, such a public body may transfer the request to appropriate public body under whose control the particular record is available, after giving written of the transfer to the requestor, and the public body to whom the request has been so transferred shall respond within the time-limit specified in Section 12 (3).

2. Where a public body receives a request under Section 10 for access to a record which it holds but which was created by another public body and is more closel. related to the work of that other public body, it may, if such other public body so agrees, transfer the request to the concerned public body, within 5 days of the receipt of the request.

3. Where a request is transferred to another public body in accordance with Subsection (2), it shall be deemed to be a request made to such other public body and the public body to whom the request has been so transferred shall respond within the time-limit specified in Section 12(3).

4. Where a request to a public body is made for access to records.

   a) Some of which are held by that public body and
   b) Others of which are records which are required to, or may, be transferred to another public body under Subsections (1) or (2).

119

the request may be transferred only in respect of records which relate to the work of such other public body.

12. Responding to request for information

1. Where access to a record is requested under this Act, the public body to whom the request is made, shall, subject to provisions of this Act. Within the period specified in Sub-Section 3, give written notice to the person who made the request as to whether or not access to the record will be given : and

A) if access is to given, give the requester access to the record, or

B) if access is not given, the provision of this Act under which access is refused should be mentioned in the notice.

Provided that, where the requester is a public interest group, journalist or a newspaper, such period shall be reduced to 3 days.

2. Where a public body fails to give access to a record in response to a request under this Act within the time limit specified under the provisions of Subsection 3, it shall be deemed to have refused to give access without reasons.

3. For the purpose of Subsections (1) and (2) the specified period.

A) in any case where notice is not required to be given under the provisions of Section 27 is 10 days from the

day on which the request was received by the public body; and

B) in any case where notice is required to be given under Section 27, is 15 days from the day on which the request was received by the public body.

13. Extension of time-limit for responding to request

A public body may extend the time-limit for responding to a request,only in case of extraordinary and exceptional circumstances to be determined by the facts of the case, not exceeding in any event an extension by a period of 7 days,after giving reasons in writing to the requestor.

14. Form in which access is to be given

(1) Where a record to which access is required to be given under the provisions of this Act is held by a public body in printed or written form, the public body shall give access to it by supplying a copy of it to the requestor or, if the requestor so requests, making it available to the requestor for inspection.

(2) Where a record to which access is required to be given the Act is held by a public body other than in printed or written form, the public body shall, if the requestor so requests, give access to it by supplying a copy of it to the requestor, or

a) in the case of a record from which visual images or printed representations of those images are capable of being produced by means of equipment which is ordinarily available to the public body, by making arrangements for the requestor to view those images, if the requestor so requests, be supplied with copies

121

or representations of them;

b) in the case of a record in which words or information are recorded in a manner in which they are capable of being reproduced in the form of sound by equipment which is ordinarily available to the public body,

1) by making arrangements for the requestor to hear those sounds, or, if the requestor so requests,

2) where the public body is capable of producing a printed or written transcript of those sounds by the use of equipment which is ordinarily available to it, by supplying such a transcript to the requestor;

c) in the case of a record which is held on a computer, or in electronic or machine readable form, and from which the public body is capable of producing a printed copy of the record of part of it, or of information derived from it-

i) by the use of equipment which is ordinarily available to it; or

ii) by processing the data in the record by use of a programme which is ordinarily available to it; or

iii) both, by supplying such a copy to the requestor, if the requestor so requests.

122

(3) If a requestor has, in accordance with the provisions of Subsection (2), specified the manner in which the requestor wishes to be given access to a record, the

public body shall give access in that manner unless to do so would interfere unreasonably with the work of the public body, in which case access shall be given in another manner,provided that, it shall be for the public body to establish that giving access to a record in the form requested would interfere unreasonably with its work.

(4) Where a requestor has in accordance with the provisions of Subsection (2), specified the manner in which the requestor wishes to be given access and access has been given in some other manner, the requestor shall not be required to pay a fee under Section 15 in respect of the giving of the access that is greater than the fee that the requestor would have been required to pay had access been given in the manner specified.

(5) Where a requestor with a visual or auditory disability is prevented by that disability from reading, viewing or listening to a record in the form in which it is held by the public body, the concerned public body shall, if the requestor so requests, take responsible steps to make the information contained in the record available to the requestor in a form in which it is capable of being read, viewed or heard by the requestor.

(6) Where information is made available to a requestor in accordance with the provisions of Subsection (5), the requestor shall not be required to pay a fee under the provisions of Section 15, which is greater than the fee which the requestor would otherwise have been required to pay.

123

(7) Where a record is made available under this Act to any person for inspection, hearing or viewing, that person may make copies of, or record extracts from the record using equipment which he has brought with him for that purpose provided that to do so does not interfere unreasonably with the work of the public body, provided that it shall be for the concerned public body to establish that such recording by the requestor will interfere unreasonably with its work.

Where a record is required by this Act to be supplied to any person, it shall, on request of that person, be supplied by posting it to that person.

15. Fees

1) No fees may be charged by a public body for giving to a record under Act except -

a) Where the requestor is supplied with copies of a record, such reasonable fees as may be prescribed by rules.

Provided that such fees may be waived, wholly or in part, where the requestor is a public interest group, a journalist, or a newspaper and the request is not for any commercial purpose.

b) Where, in accordance with the provisions of Sub-Section C the requestor is supplied with a copy of record other than in printed or written form, then fee not exceeding the cost of any blank tape, disc film or other material on to which the record has been copied may be charged, not exceeding in any cas

124

the fees which the requestor would have been required to pay, had the record been given in a printed or written form.

c) Where, in accordance with Section 14 Sub-Section (a) or (b) (ii) the requestor is supplied with a transcript of a record, no fees may be charged to cover the costs of making the transcripts but only such fees shall be payable as would have been payable by the requestor, had the records been in a printed or written form.

d) Where any of the foregoing are supplied by post then the costs of postage may also be charged.

16. Access to and Correction of Personal records

1) A public body shall, on request, provide a requester with personal information about the requester himself, which may be in the custody, or under the control, of such a public body

2) Where a record (whether or not it is one to which access has been under the Act) contains information, relating to any person, which is inaccurate, the public body which holds the record shall, on the request of that person, correct the information.

3) A request under the Subsection (2) shall be made in writing to the public body which holds the record and shall-

a) identify the record which contains the information which the requestor regards as inaccurate:

b) Specify the respect in which the requestor regards

125

the information as inaccurate; and

c) Specify by which of the means described in Subsection (8), the requestor wishes the correction to be made.

4) A public body to which a request under Subsection (2) is made, shall, without charge, and within 10 days of receiving the request, determine whether the information identified in the request is inaccurate and, if it so finds-

a) correct the information and supply a copy of the part of the record containing the correction to the requestor without charge;

b) determine, so far as practicable, whether the inaccurate information is held by it in any record other than that identified in the request and, if it is, make the same correction to the information in such other record;

c) determine, so far as is practicable, whether the information has been supplied by it to any other person and notify any such person of the correction which it has made ; and

d) supply to the requestor without charge, a copy of every notification which it has made under paragraph (c)

126

5) A person who has been notified under paragraph (c) of Subsection (4) that he or she has been supplied with inaccurate information, shall, within 10 days of being so notified, correct that information , and inform the person to whom the information relates, in writing, that

the correction has been made.

6) Where a public body determines that information referred to, in request under the provisions of Subsection (1) is not inaccurate , it shall, without charge, and within 10 days of receiving the request-

a) make a note in the record as near as possible to the point where the information appears, that the accuracy of the information is disputed b. the requestor and attach the request to the record;

b) supply a copy of the note to the requestor without charge:

c) notify the requestor of the name and position of the person who had determined that the information is not inaccurate; and

d) notify the requestor of the procedure for applying for internal review of the decision in accordance with the provisions of Section 28 and for making a complaint to the Information Commissioner in accordance with the provisions of Section 43 of the Act.

7) In this section,"inaccurate" means incorrect, incomplete, misleading or not relevant to the purpose for which the record is held.

8) For the purposes of this section, information may be corrected by amending, supplementing or subject to the provisions of Subsection (9), by deleting it.

127

9) A public body shall not delete information in response to a request under this section unless it has supplied to the Chief Information Commissioner a copy of the part of the record containing the information which it proposes to delete; and any such copy shall be retained by the Chief Information Commissioner.

128

CHAPTER IV

EXEMPT INFORMATION

17. Information exempt from disclosure

1. Subject to the provisions of this Act, a public body shall not be required to disclose exempt information.

2. A public body shall not refuse to give exempt information where this can be done by giving access to a copy of the record from which the exempt information has been deleted or by other means.

3. Where a record is withheld in accordance with this section, the concerned public body shall, within the time-limit specified under the provisions of Section 12 notify the requestor specifying.

(a) the provisions of this Act under which the withheld information is considered to be exempt,

(b) the reason why the provision is considered to be applied to the information.

(c) the name and position of the person responsible for the decision that the record contains exempt information.

(d) the procedure for requesting for internal review of the decision in accordance with Section 28.

(e) the procedure for making a complaint to the Information Commissioner in accordance with Section 43 of the Act.

4. In the interpretation and enforcement of this chapter, the provisions shall be construed strictly in favour of the requestor's right of access to information relating to affairs of the public body.

18. Advice of Cabinet

A public body may refuse to any requestor information as to the aid and advise given by council of Ministers at the centre to the President and council of Ministers at the states to the Governor.

19. Defence

Information may be exempt if its disclosure would be likely to cause grave and significant damage to the defence of India or any of its States or territories.

20. Security

Information may be exempt if its disclosure would be likely to cause grave and significant damage to the lawful activities of the security or intelligence services.

21. International relations

(1) Information may be exempt if its disclosure would be likely to cause grave and significant damage to the interests of India in the conduct of international relations.

(2) In this Section, "international relations" means relations between the Government of India and -

(a) the Government of any other friendly foreign State; or

(b) an organisation of which out. States are members.

22. Disclosure harmful to law enforcement

Information may be exempt if its disclosure is likely to

(a) result in the commission of an offence;

130

(b) harm the detection, prevention or suppression of law enforcement information in a grave and significant manner;

(c) reveal the identity of a confidential source of law enforcement information;

(d) facilitate an escape from legal custody;

(e) prejudice the fair trial of any person against whom proceedings have been brought;

(f) harm the security of any property or system, including a building, a vehicle, a computer system or a communications system in a grave and significant manner.

25. Privacy and Personal Information

(1) Information is exempt if its disclosure under this Act would involve the invasion of the privacy an identifiable individual (including a deceased individual) other than the requestor.

(2) Information is not exempt under Subsection (1) if it relates to an individual who has consented to its disclosure to the requestor.

(3) Information is not exempt under Subsection (1) if it relates to an individual who is deceased and -

(a) its disclosure is in the public interest insofar as it tends to indicate that the actions of, or failure to act by, a public body contributed to that individual's death; or

(b) the requestor is, or is requesting with the consent of, the individual's next of kin.

(4) The provisions of Subsection 3(b) shall not apply to information relating to the health of the individual

which is contained in a record held by or on behalf of a registered medical practitioner who was responsible for the care of the individual unless the information is relevant to any claim which may arise out of the patient's death.

(5) Information is not exempt under Subsection (1) if it relates to an individual acting in that individual's capacity as an officer or employee of a public body except insofar as it consists of -

(a) a record relating to the health of the individual;

(b) information held by the public body for the purpose of personnel management.

24. Economic and commercial affairs

(1) Information is exempt if and so long as its disclosure

(a) would be likely to cause grave and significant damage to the economy as a result of the premature disclosure of the proposed introduction, abolition or variation of any tax, duty, interest rate, exchange rate or instrument of economic management;

(b) would be likely to cause significant damage to the financial interests of the public body by giving an unreasonable advantage to any person in relation to a contract which that person is seeking to enter into with the public body for the acquisition or disposal of property or the supply of goods or services, or

(c) by revealing information to a competitor of the public body, would be likely to cause significant damage to the lawful commercial activities of the

132

public body.

(2) Information which has been compiled by a public body for the purpose of negotiations with its employees or their representatives in relation to their pay or conditions of employment, is exempt if and so long as its disclosure would be likely to cause significant damage to the position to be adopted by the public body in those negotiations.

(3) Information is not exempt under Subsection (1)(c) if -

(a) it relates to the quality, suitability or safety of the goods or services supplied by the public body and the damage referred to in Subsection (1) (c) would be likely to result from the exercise of more informed choice by persons seeking to acquire those goods or services ; or

(b) it consists of the results of any investigation carried out by, or any information supplied to, the public body, concerning a public safety hazard.

(4) For the purposes of Subsection (3)(b) -

"public safety hazard" includes the hazard or potential hazard to the public associated with any product which is offered for sale or otherwise available to the public; or with any service provided by a public body; or with any substance which is released into the environment or work place or is present in food intended for human consumption, or with any form of public transport; or with any installation or manufacturing process or substance used therein, and "the public" includes persons in their place of work.

25. Third party interest

(1) Information is exempt -

(a) if it relates to commercial information which has been obtained by the public body from a third party, who has consistently treated it as confidential; and

(b) if and so long as its disclosure would, by revealing information to a competitor of the third party, be likely to cause significant damage to the lawful commercial or professional activities of the third party.

(c) if it relates to organisational information of a voluntary organisation working for public interest.

(2) Information is not exempt under Subsection (1) if -

(a) it relates to the quality, suitability or safety of the goods or services supplied by the third party and the damage referred to in Subsection (1) (b) would be likely to result from the exercise of more informed choice by persons seeking to acquire those goods or services; or

(b) it consists of the results of any investigation carried out by, or any information supplied to, the public body concerning a public safety hazard.

(3) In this Section, "public safety hazard" has the same meaning as in Section 24(3)b.

(4) Information is not exempt under this Section if the third party has consented to its disclosure to the requestor.

(5) Notwithstanding anything contained in this Section, a public body shall not refuse to disclose information

174

which consists of the result of any investigation carried out by a public body where such information is used for promotional or advertisement purposes by the third party or by the public body itself.

26. Information of Voluntary Organisations

Information of voluntary organisations is exempt if it pertains to research activity of the organisation disclosure of which will jeopardise the functioning of the organisation or the cause which it is pursuing or will cause grave and significant damage to another person.

27. Giving of notice to third parties

(1) Where, in response to a request under Section 10,

(a) a public body is considering giving access to a record containing personal information or commercial information of a third party, and

(b) it is reasonable practicable for it to determine the identity and address of the concerned third party, it shall, as soon as is practicable and in any case not more than 4 days after receiving the request, give notice to such a third party in writing by fastest means of communication.

(2) A public body shall not be required to give notice under Subsection (b) where -

(a) the aforesaid third party is the requestor or has consented to the disclosure of the information to the requestor; or

(b) the information has previously been made public.

135

(3) A notice under Subsection (1) shall

(a) state that the public body is considering giving access to a record containing the information in question and describe that information;

(b) in the case of information relating to the personal affairs of the said third party, describe the provisions of Section 23.

(c) in the case of information relating to the commercial or professional activities of the concerned third party describe the provisions of Section 24.

(d) in case of information of voluntary organisation describe the provisions of section 26;

(e) inform the concerned third party that it may, within 5 days of receipt of the notice, in writing, consent to the disclosure or may make written representations to the public body explaining why the information in the record is exempt.

(4) Within 6 days of the end of the period for making representations referred to in Subsection (3)(d) the public body must decide whether or not to give access to the record or to part of the record, and give written notice of the decision to

(a) the requestor, and

(b) the third party concerned.

(5) (a) If the public body decides to give access to the record, the notice must include a description of third party concerned.

(b) within 20 days of the day on which notice was given but not earlier than 11 days of the date of notice,

136

the public body concerned must give the requestor access to the record containing the information unless, before the end of that period, the third party has complained to the Information Commissioner that the public body has decided to disclose information relating to his personal affairs or commercial activities.

(6) Where a complaint has been made to the Information Commissioner under Subsection 5(b), the concerned third party shall notify the concerned public body in writing within 10 days of the day on which the notice under Subsection (4) is given, that such a complaint has been made, and the said public body shall not give access to such information until such time, as the Information Commissioner has notified it of the outcome of the complaint.

(7) Where a public body -

(a) has not been able to determine the identity and address of the relevant third party and, as a result, has not given a notice referred to in Subsection (1), and

(b) is of the opinion that personal information or information relating to such third party's commercial activities is not exempt under the provisions of Section 25 1(a) or Section 25 1(b), it shall notify the Chief Information Commissioner accordingly, within 4 days of the date of request and shall not give access to the record containing the information without the consent of the Commissioner.

137

(8) In this Section, "the concerned third party" means the person from whom the information was obtained and/or to whom the information relates'.

[illegible]

CHAPTER V

REVIEW OF DECISIONS

28. Request for internal review

1) A Requestor who has made a request to a public body under Section 10 may request such a body for effective internal review of any decision of the body.

a) a failure by the public body to comply with any provision of this Act, or

b) unreasonable behaviour by the public body in the exercise of any discretion under this Act.

2) A request under Subsection (1) shall-

a) be made in writing to the concerned public body,

b) specify the decision in respect of which internal review is sought; and

c) be made within 60 days of the day on which the person making the request first had notice of the decision.

3) Notwithstanding anything contained in this chapter, no person shall be denied the right to approach the Information Commissioner directly with respect to any complaint under this Act.

29. Review by the public body

1) A public body to whom a request for internal review under the provisions of Section 28 has been made shall review the decision to which the request relates and shall, within 14 days of such a request-

a) confirm that decision or substitute a new decision for it;

138

b) notify the requestor accordingly, stating its reasons; and

c) notify the requestor of the procedure for complaining to the Information Commissioner under Section 18 of the Act.

2) For the purposes of this section "decision" includes any act of, or any failure to act by, the public body.

3) The requestor will have a right to be heard by public body to whom request for internal review is made.

4) The official of the public body to whom request is made under Section 18 shall not review the decision.

139

CHAPTER VI

COUNCIL FOR ACCESS TO INFORMATION

30. Central Council for Access to information

1) The Central Government may, by notification, establish with effect from such date as it may specify in such notification, a council to be known as Central Council for Access to information (hereinafter referred to as the Central Council).

2) The Central Council shall consists of the following members, namely:

a) the minister in charge of the Home Ministry of the Central Government , who shall be its chairman, and

b) such number of other official or non-official members representing such interests as may be prescribed in the rules.

31. Procedure of the Central Council

1) The Central Council shall meet as and when necessary,but at least two meetings of the council shall be held every year.

2) The Central Council shall meet at such time and place as the chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed in the rules.

32. Objects of the Central Council

The objects of the Central Council shall be promote and protect the rights of persons such as:

140

a) right to be assured that every request for access to a public record shall be respected;

b) right to be assured that no such request shall be wrongfully denied by a public body;

c) right to be assured that accurate, reliable and authentic records shall be available;

d) right to have access to and correction of one's personal records;

e) right to be assured that one's personal record or records relating one's commercial activities or information of voluntary organisation shall not be disclosed to others, except as otherwise provided in this Act;

f) right to be heard and to be assured that every person's interest will receive due consideration at the Tribunal;

g) right to seek redressal against wrongful withholding of records by a public body or the wrongful disclosure of personal records;

h) right to be educated about health and environmental hazards so as to protect and promote human rights and environmental interests;

i) right to be informed about various schemes for the uplift of the disadvantaged class of people.

33. The State Council for Access to information

1) The State Government may, by notification, establish with effect from such date as it may specify in such notification, a Council to be known as Council for Access to information (hereinafter referred to as the State Council).

141

2) The State Council shall consists of the following members,namely;

a) the Minister in charge of the Home Ministry in the State Government who shall be its chairman;

b) such number of other official or non-official members representing such interests as may be prescribed in the rules.

3) The State Council shall meet as and when necessary but not less than three meetings shall be held every year.

4) The State Council shall meet at such time and place as the chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed in the rules.

34. Objects of the State Council

The objects of every State Council shall be to promote and protect within the concerned State the rights of persons laid down in subclauses (a) to (i) of Section 32.

142

CHAPTER VII

Office and Powers of Chief Information Commissioner and Information Commissioners

35. Appointment of Chief Information Commissioner –

The Chief Information Commissioner shall be appointed by State Government on the recommendation of Selection Committee referred in Section 60 of this Act.

36. Qualifications for appointment of Chief Information Commissioner –

A person shall not be qualified for appointment as Chief Information Commissioner unless he –

1. is or has been a District Judge or
2. has for at least 2 years held office of Information Commissioner or
3. has for atleast 5 years held the post of a secretary in legal department Government of India or any State Government.

37. Jurisdiction –

The Chief Information Commissioner shall have jurisdiction over the functioning of Information Commissioners in the State and administrative and supervisory functions.

38. Functions –

The Chief Information Commissioner shall discharge the functions enumerated here under –

1. to facilitate publication of records as provided in Appendix I and II,

143

2. to ensure availability of records as provided in Appendix I and II at reasonable cost,
3. to ensure proper maintenance and indexing of records,
4. to frame rules for the functioning of Information Commissioner,
5. to submit annual report of its working to the legislature,
6. to recommend changes that it may deem necessary for its proper functioning,
7. to lay before the State Legislature such reports that may be demanded of it.
8. to perform such other function as to give effect to provision of this Act.

39. Powers of Chief Information Commissioner -

The Chief Information Commissioner shall have -

1. Original Powers of Information Commissioner to dispose of the complaint under section 43 of this Act,

   Explanation :- If any vacancy arises in the office of the Information Commissioner for any reason what so ever the Chief Information Commissioner shall dispose of such complaints till the vacancy is filled.

2. Supervisory and administrative control over all the Information Commissioner in the State in the following matters namely :

   i. calling for periodical returns regarding the institution, disposal, pending of cases.

   ii. issuance of instruction regarding adoption of uniform procedure in the hearing of matters furnishing of documents filed before information

Commissioner to parties in English or regional languages speedily as requested by parties,

iii. generally over seeing the functioning of the Information Commissioner to ensure that the objects and purposes of the Act are best served without any way interfering with their quasi judicial freedom.

3. to transfer a complaint filed before one Information Commissioner to another Information Commissioner if :-

i. the Information Commissioner does not have the jurisdiction to dispose of the complaint or

ii. if the Information Commissioner has interest in the subject matter of the complaint.

4. the same powers as are vested in a civil court under the Code of Civil Procedure (1908) while trying a suit in respect of the following matters

i. the summoning and enforcing attendance of any defendant or witness and examining the witness to all.

ii. the discovery and production of any document or other material object producible as evidence:

iii. the reception of evidence on affidavits ;

iv. issuing of any Commissioner for the examination of any witness ;

v. any other matter which may be prescribed.

145

40. Appointment of Information Commissioner:-

The State Commissioner shall appoint atleast one Information Commissionnr in any district on the recommendations of Selection Committee referred in Section 60 of this Act.

Proviso

More than one Information Commissioner may be appointed, if one Information Commissioner in a district is inadequate to discharge the duties conferred under this Act.

41. Qualifications for appointment of Information Commissioner

A peruon shall not be qualified for appointment as Information Commissioner unless he -

(i) is or has been or is eligible to be a District Judge or

(ii) has for at least three years experience as a deputy collector or

(iii) has for at least three years hold the post of a secretary in Legal Department of Government of India or any State Government.

42. Jurisdiction:-

The Information Commissioner shall have jurisdiction to entertain complaints filed against public body situated within the limits of the district.

43. Power of Information Commissioner -

The Information Commissioner shall in the disposal of any proceedings before it have the powers of Civil Court as specified in submection 4 of section 39.

44. Limitation -

Complaint under section 43 should be filed within one year from

146

the date on which request made to a public body under section 10, section 15 or section 16 is denied. Provided where a request is made under section 28 for internal review the period of one year shall commence from the date on which the order of the public body reviewing the request is passed.

45. Procedure or receipt of a complaint:-

1. The Information Commissioner on receipt of a complaint shall refer a copy of the complaint to the public body mentioned in the complaint, directing it to give its version of the case within a period of 10 days or such extended period not exceeding 15 days as may be granted by the Information Commissioner;

2. Where the concerned public body on receipt of a complaint referred to it under section 1 denies or disputes the allegations contained in the complaint or omits or fails to take any action to represent its case within the time given by the Information Commissioner. The Information Commissioner shall proceed to settle the complaint in the manner it deems fit.

3. In exercising its power under sub-section 2 the Information Commission shall take into consideration the decision of the internal review committee, referred in section 29 if the matter has first been referred to the Review Committee.

46. Findings of the Information Commissioner

1. If the Information Commissioner determines that, under this Act, the concerned public body is required to give access to a record or a part of it, the Information Commissioner must ask such a public body to give the requestor access to the

record or the part of it, subject to any conditions the Information Commissioner considers appropriate.

2. If the Information Commissioner determines that under this Act, the concerned public body is required to refuse access to a record or part of it, it must order such a public body not to give access to the record or the part of it.

3. If the Information Commissioner determines that under this Act, the concerned public body is required to correct the personal records or a part of it, it must order such a public body to correct the record or part of it.

4. If the Information Commissioner determines that under this Act, the concerned public body is not required to correct the personal records or a part of it, it must order such a public body not to correct the record or part of it.

5. Subject to the foregoing provisions, the procedure relating to the conduct of the proceeding by the Information Commissioner shall be such as may be prescribed by the rules.

(1) If after proceeding conducted under the provisions of Section 45 Information Commissioner is satisfied that any of the allegations contained in the complaint are proved, it shall issue an order.

(a) provide compensation for loss or injury caused to a requestor due to nondisclosure of records by a public body or to a third party due to disclosure of personal/commercial information;

(b) granting appropriate interim relief;

(c) to issue interim injunctions

(d) to award punitive damages against public body if the

148

officials are guilty of unconscionable conduct, lack of good faith and unfair dealing in the course of implementation of this Act.

(e) to give such other relief in deserving cases as Information Commissioner thinks appropriate;

(f) to provide for adequate costs to the parties

47. Burden of proof

In any proceedings before the Information Commissioner the burden of establishing that access to a record or part of a record should not be given shall be on the public body which holds the record, except where the proceedings relates to information which is claimed to be exempt under the provisions of section 17 when the burden shall be on the requestor to establish that disclosure of information would not be contrary to this Act. Where proceedings relate to information which is claimed not to be exempt under the provisions of Section 17, it is up to the party to establish that the requestor has no right of access under this Act to the record or a part thereof.

48. Decisions of the Information Commissioner

At the conclusion of a complaint the Information Commissioner

a) may make an order requiring the public body to take such action as it deems necessary, within such period of time as may be specified in the order;

b) shall give notice of its findings, stating its reasons and enclosing a copy of any order which it has made to the requestor, the public body and any other person who made representations to the Information Commissioner.

Every proceeding before the Chief Information Commissioner shall be deemed to be a judicial proceeding within the meaning of

sections 193 and 228 of Indian Penal Code (45 of 1860) and the Information Commissioner shall be deemed to be a Civil Court for the purpose of section 195 of Chapter XXVI of code of Criminal Procedure 1973 (2 of 1974).

49. Finality of orders of Chief Information Commissioner and Information Commissioner.

Every order of the Chief Information Commissioner and Information Commissioner shall , if no appeal has been preferred against such an order under the provisions of this Act shall be final.

50. Enforcement of order of Chief Information Commissioner and Information Commissioner.

Every order made by Chief Information Commissioner and Information Commissioner may be enforce by Chief Information Commissioner and Information Commissioner in the same manner as is it were a decree of order made by a Court in a suit pending here in and it shall be lawful for the concerned Chief Information Commissioner or Information Commissioner to send in the event of its inability to execute it, such an order to the Court within the local limits of whose jurisdiction

i. the complainant ordinarily resides or carries on business or works for personal gain or

ii. the public body against which the complaint was made is situated.

51. Terms and conditions :-

1. The chief Information Commissioner and Information Commissioner shall hold office as such for a term of five years from the date of appointment.

Provided that the Chief Information Commissioner and

150

Information Commissioner shall be eligible for appointment for a second term.

Provided that Chief Information Commissioner or Information Commissioner shall hold office after he has attained the age of 70 years.

2. Terms and conditions of service including remuneration of Chief Information Commissioner and Information Commissioner shall not be varied to their disadvantage during their tennure of office.

Provided that the remuneration of Chief Information Commissioner and Information Commissioner shall be fixed by the State Government on the recommendation of Selection Committee referred in Section 60 of this Act.

52. Vacancy :-

If any vacancy arises in the office of the Chief Information Commissioner or Information Commissioner owing to absence, illness or any other cause the State Government shall immediately fill the vacancy.

Explanation : The State Government shall maintain a panel of Chief Information Commissioners and Information Commissioner for the purpose of filling the vacancy as and when it arises.

53. Resignation and Removal :-

The Chief Information Commissioner and Information Commissioner by 3 months notice in writing addressed to the State Government may resign his office :

1. The Chief Information Commissioner and Information Commissioner shall unless permitted by the State Government

15/

to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice.

2. The Chief Information Commissioner and Information Commissioner shall not be removed from his office except by an order of the Governor passed after an address by Assembly supported by a majority of total membership of the Assembly and by a majority of not less than two thirds of the members of assembly present and voting and has been presented to the Governor in the same session for such removal on the ground of proved misbehaviour or incapacity.

54. Salaries and allowances and other terms and conditions of service of Chief Information Commissioner and Information Commissioner :-

The salary and allowances payable to and other terms and conditions of services including pension, gratuity and other retirement benefits of the Chief Information Commissioner and Information Commissioner shall be such as may be prescribed by the State Government.

Provided that neither the salary and allowances nor the other terms and conditions of service of the Chief Information Commissioner and Information Commissioner shall be varied to his disadvantage after his appointment.

55. Staff of office of the Chief Information Commissioner and Information Commissioner :-

1. The State Government shall determine the nature and categories of the officers and other employees required to

assist Chief Information Commissioner and Information Commissioner to discharge his duties and powers as it may deem fit .

2. The salaries and allowances and conditions of service of the officers and other employees of the office shall be such as may be prescribed by rules made by the State Government.

3. The State Government shall provide adequate infrastructure to the Chief Information Commissioner and Information Commissioner to discharge the powers, functions and duties conferred under this Act.

56. Dismissal of frivolous vexatious or malicious complaint

Where in complaint instituted under section 43 or appeal filed under section 61 is found to be malicious, frivolous or vexations. the Chief Information Commissioner or Information Commissioner or State Information Tribunal as the case may be for reasons to be recorded in writing dismiss the complaint or appeal.

153

CHAPTER VIII

TRIBUNAL

57. Establishment of State Information Tribunal :-
The State Government shall by notification establish State Information Tribunal to exercise the jurisdiction, power and authority conferred on the State Information Tribunal by or under this Act.

58. Composition of Tribunals :
(i) The State Information Tribunal shall consist of a Chairman, Vice Chairman and three other members.
(ii) Subject to the other provisions of this Act, the State Information Tribunal shall be presided over by the Chairman and in the absence of Chairman by the Vice-Chairman.
(iii) No proceedings of the State Information tribunal shall be conducted without the presence of Chairman or Vice-Chairman.
(iv) The proceedings of the State Information Tribunal will be conducted by minimum three members.

59. Qualifications for appointment of Chairman, Vice-Chairman and other members.

(1) A person shall not be qualified for appointment as the Chairman unless he-
(a) is, or has been, a judge of a High Court or,
(b) has, for at least two years, held the office of Vice-Chairman.

(2) A person shall not be qualified for appointment as the Vice-Chairman unless he -
(a) is eligible to be a Judge of a High Court or

(3) has for at least two years, held the post of a Registrar of High Court

(3) A person shall be qualified for appointment as a Member if he is a person who is of ability integrity and standing and have adequate knowledge or experience in dealing with problems relating to media, communication, law, administration, public affairs or industry, one of whom shall be a woman.

60. Appointment of Chairman, Vice Chairman and Members of State Information Tribunal :-

The chairman, vice chairman and members of tribunal shall be appointed by the State Government recommendation of selection committee.

The selection committee shall consist of :-

i) Chairman of State Council

ii) Secretary of Home Ministry of State Government

iii) Nominee of Chief Justice of High Court.

iv) other two members representing public interest group selected fro the national council for access to information one of whom shall be a woman.'

61. Jurisdiction of State Information Tribunal :

Subject to the other provisions of this act the State Tribunal shall have jurisdiction.

(a) to entertain appeals against the orders of Chief Information Commissioner or any Information Commissioners;

(b) to call for the records and pass appropriate orders in any dispute under this Act which is decided by any information Commission where it appears to the State Information Tribunal

155

that such Information Commission or Chief Information Commissioner has exercised a jurisdiction not vested in it by law or has failed to exercise a jurisdiction so reserved or has acted in the exercise of its jurisdiction illegally or with material irregularities.

62. Power of State Information Tribunal

The State Information Tribunal shall in the disposal of any proceedings before it, have

a. The power of civil court as specified in sub-section (4) of section 39;

b. The power to issue an order to the public body directing him/it to do any one or more of the things referred to in sub-section 3(1) and (1a) of section 46 and follow such procedure as may be prescribed by rules.

63. Limitation for Appeal

The appeal against the order of Chief Information Commissioner or Information Commissioner is should be made within 30 days of receipt of the order.

64. Terms and Conditions

1. The Chairman, Vice Chairman and members of Tribunal [illegible] hold office as such for a term of 5 years.

Provided that the Chairman, Vice Chairman and members of the Tribunal shall be eligible for reappointment for a second term.

Provided no Chairman, Vice Chairman or member shall hold office after he has attained 70 years of age.

156

2. Terms and conditions of service including remuneration of Chairman, Vice Chairman and members shall not be varied to their disadvantage during the tenure of office.

Provided that the remunaration of Chairman, Vice Chairman and member shall be fixed by State Government or the recommendation of Selection Committee referred Section 60 of this Act.

3. Terms and conditions of service of staff of State Information Tribunal shall be the same as that of staff of Chief Information Commissioner and Information Commissioner referred in Section 55 of this Act.

65. Resignation, Removal and Vacancy

1. The chairman, vice chairman and members may resign from the office by giving 3 months notice in writing to central government.

2. The chairman, vice chairman and members of State Information Tribunal shall not be removed from his office except by an order of the Governor passed after an address of the Assembly supported by a majority of total membership of the Assembly and by a majority or not less than two thirds of the memebrs of the Assembly present and voting has been presented to the Governor in the same session for removal on the ground of proved misbehaviour or incapacity.

3. If any vancancy arises in the office of Chairman, Vice Chairman or members of State Information Tribunal the State Government shall fill the vancancy immediately.

Provided that the State Government shall maintain a panel of

156-A

Chairman, Vice Chairman and members for this purpose.

66. Vice-Chairman to act as Chairman or to discharge his function in certain circumstances -

1. In the event of the occurrence of any vacancy in the office of the Chairman by reason of his death, resignation or otherwise, the Vice-Chairman until the date on which Chairman's appointment is made accordance with the provisions of this Act to fill such vacancy.

(ii) when the Chairman is unable to discharge his functions owing to absence, illness or any other cause, the Vice-Chairman shall discharge the functions of the Chairman until the date on which the Chairman resumes his duties.

67. Finality of order of State Information Tribunal

Information Tribunal shall be final.

68 Enforcement of order of State Information Tribunal

The order of the State Information Tribunal shall be enforced in the same manner as the order of Chief Information Commissioner and Information Commissioner.

69. Penalties

(1) Any person who destroys, disfigures, deletes, obscures or otherwise tampers with a record or part of a record held by a public body, which is required to be preserved under the provisions of Section 5, and thereby adversely affects a person's right to quick access to accurate information, is guilty of an offence and liable on conviction on indictment to imprisonment of a term not

157

exceeding six months or a fine, or both;

(2) A person charged with an offence under Subsection (1) will have to prove beyond reasonable doubt that at the time of the alleged offence he did not know, and could not have known with reasonable care and caution that the record was one to which the provisions of Section 5 apply;

(3) Where a public body against whom a complaint is made, or as the case may be by the National Tribunal, the person responsible for withholding the information against such as order, or disclosing personal or commercial information ordered by the Tribunal to be withheld, shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to 3 years, or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees, or with both:

Provided that the concerned Tribunal may, if it is satisfied that the circumstances of the case so require, impose a sentence of imprisonment or fine, or both, for a term lesser than the minimum term and the amount lesser than the minimum amount specified in this section.

For the purpose of executing the orders, the provision of Sections 418 to 422 of the Code of Criminal Procedure 1973 shall, with such modifications as may be necessary, be applicable and the Tribunal shall be deemed to be the Court of passing the sentence.

158

70 Lawyers not to appear before Chief Information Commissioner, Information Commissioner and Tribunals

Lawyers shall ordinarily not be permitted to be engaged for any proceedings before the Chief Information Commissioner, Information Commissioner and Tribunal. However, the opposite party may be allowed a lawyer only if

(1) the complainant has engaged a lawyer;

(2) with the consent of the complainant; or

(3) if the Tribunal desires their appearance due to legal complexities of the case for reasons to be recorded in writing and with the permission of the complainant.

71 Exclusion of writ jurisdiction of the High Court

The decisions of the Tribunal shall be, under Article 323 B of the Constitution of India, excluded from writ jurisdiction of the High Court.

159

CHAPTER IX

MISCELLANEOUS

72. Immunity to Chief Information Commissioner, —Information Commissioner and members of Tribunal and their staff for Acts done in good faith

No suit, prosecution or other legal proceedings shall lie against the Chief Information-Commissioner, Information Commissioner, Members of the Tribunal or any officer or person acting under the direction of the Commissioner Chief Information, Information Commissioner or Tribunal for executing any order made by it or in respect of anything which is in good faith done or intended to be done by such member, officer or person under this Act or under any rule or order made thereunder.

73. Immunity to public interest groups for acts done in good faith

No suit, prosecution or other legal proceedings shall lie against any requestor or voluntary consumer organisations or public interest groups or members thereof taking up activities or cases for protecting human rights, interests of consumers, disadvantaged groups of people or environmental interests, in respect of anything which is, in good faith, done or intended to be done by such organisation or member under this Act or under any rule or order made thereunder.

74. Power to remove difficulties

If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or

160

expedient for removing the difficulty;

provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.

75. Constitution of a Central Data Bank

1. Where data relating to the creditworthiness of persons is held by several credit institutions at a time, such data in respect of each person shall be collected and maintained by a Central Data Bank to be constituted at the centre.

2. Any person may, by making a request in writing to such a data bank, obtain information about his own creditworthiness, in a meaningful and effective manners by paying such fees as may be prescribed by Central Government for the purpose.

76. Repeal of Official Secrets Act 1923

The Official Secrets Act 1923 is hereby repealed.

77. (1) Power to make Rules

The Central Government may by notification make rules for carrying out the provisions of section. 30(2).31 and 75 of this Act and any other rules for carrying out the provisions of this Act.

(2) The State Government may by notification make rules for carrying out the provisions in section 15. 30(2)b. 55(4) and 55 of this Act and any other rules other than that made under sub-section above to carry out the provisions of this Act.

78. Laying of rules

(1) 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 the Parliament, while it is in session i for a total period of thirty days which may be comprised in one session or 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 of both houses agree that the rule should not be made the rule shall thereafter have effect only in 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 do the previously under that rule.

(2) Every rule made by the state legislature shall be laid as soon as may be after it is made before state legislature.

162

CHAPTER X

COMMUNITY RIGHT TO KNOW

79. Duty of industry to disclose

1. The State Government shall within 3 months of the enactment of this Act publish the list of hazardous substances as notified under Environment Protection Act 1986. The State Government may add from time to time hazardous substances to this list.

2. (i) The list prepared by the State Government under sub-section (1) shall also mention the threshold quantity of each hazardous substance specified therein.

(ii) The threshold quantity of a hazardous substance is the limit beyond which the production, storage, transportation, use or omission of the substance would be hazardous to the health or life of the community or to the environment.

3. The threshold quantity of each hazardous substance hazardous shall be determined under Subsection (2) after taking into account the toxicity, reactivity, volatility, 'dispersibility', combustibility, or flammability of such hazardous substance.

4. The list prepared under Subsection (2) shall be made available by the State Government to any person on request and shall also be made available to each industry.

163

(4) The list prepared by a State Government under Subsection (1) as well as the threshold quantities determined under Subsection (2) may be revised by the concerned State Government from time to time, taking into consideration the criteria laid down in Subsection (3).

6. (i) Each industry shall, at the beginning of each year, bring out a publication containing identification of the routes that are likely to be used for transportation of the hazardous substances, identification of the places where they may be stored or used as well as identification of the areas and communities that are likely to be affected in case of any accidental release of the substances or any hazard relating to the substance.

(ii) The publication under Subsection 6(i) shall also contain a description of the emergency equipment maintained by the industry as well as the procedure and measures to be adopted by the industry in case of an emergency or accident relating to the use, production, storage, transportation or release of the hazardous substances.

(iii) The publication under Subsection 6(i) shall also contain a description of the antidote measures to be adopted by the industry in case of an accident or hazard in such an industry.

7. Every industry shall, at the end of each year, publish a list containing a description of the names and quantities of hazardous and substances that had been produced,

164

facilities as well as the emergency equipment maintained by the industry.

12. Any person or the State Government, as the case may be, may, make a complaint to the Information Commissioner, that the provisions of this Act have not been complied with by an industry.

transported stored, used or released into the environment, whether routinely or accidentally during that year, by such an industry, where such quantities exceed the threshold limits determined under Subsection (2).

8. Every publication under Subsection (6) and (7) shall be supplied by the industry to any person on request as well as to the concerned State Government.

9. If release of an hazardous substance in excess of the threshold quantity occurs from an industry at which such a substance is produced, used or stored or where any hazard or accident takes place in such an industry, then the owner or operator of the concerned industry shall immediately notify the Commissioner that may be adversely affected by such hazard or release, as the case may be, of the measures that may be adopted by them to protect themselves against the adverse effects of such release.

10. In the event of any accident or hazard in an industry caused by the production, storage, transportation, use or emission of any hazardous substances in excess of the threshold quantities laid down in Subsection (2), the concerned industry shall be liable to undertake antidote measures for safeguarding the environment against damage or destruction as well as the wealth and lives of the community.

11. Each industry shall be required to appoint a particular day in each week when the public shall be entitled to visit the site of the industry and to scrutinize the production processes, the storage and transport

Appendix-I

[See Section 6(1)]

Records	Outlets	Language
1. Records of Central Government	Centre notified by Central Government at each district and Concerned legal Government Department and Tribunal	English and Hindi
2. Records of Central Government in regional languages	Centre notified by Central Government at each district and Concerned legal Government Department and Tribunal and Centre notified by Government at each district	Regional language
3. Records of State Government	Centre notified by State Government Concerned Govt. Department and Tribunal	English and Regional language
4. Records of Union Territory	Centre notified by the government of Union Territory. Government Department and Tribunal	Local language Regional Language

Appendix-II

[See Section 6(2)]

Records	Outlets	Language
1. The welfare Schemes guidelines, direction circulars, resolutions of Central Government	Centre notified by central Government concerned department	English and Hindi
2. The welfare Schemes guidelines, direction circulars, resolutions in regional language	Center notified by State Government Concerned department and Tribunal	Regional language
3. The welfare Schemes guidelines, direction circulars, resolutions of State Government	Center notified by State Government. concerned department and Tribunal and tribunal	Regional language

166

4. The welfare Schemes guidelines, direction circulars, resolutions of Union Territory	Centre notified by Union Territory Administration.	Regional language
5. Acts, rules, regulations bye-laws relating school, colleges, university	At the school, college or university as the case may be	English and Regional language
6. Jail manuals, rules laws etc.	At prisons and concerned courts	English and Regional language
7. Record of specific information on legal rights of patients in respect at medical facility/services given at the hospital	At the Hospital	English and Regional language

ACCESS TO INFORMATION BILL

An Act to provide a legal right to persons, whether citizens of India or foreign nationals, not being alien enemies, to obtain information from the Governments, Government instrumentalities as well as crucial public services like transport, banking, insurance etc. and for that purpose, to make provisions for the constitution of the office of Chief Information Commissioners, Information commissioners as well as the establishment of quasi-judicial tribunals for the settlement of disputes relating to Access to Information and for matters connected therewith. Be it enacted by the Parliament in the 47th year of the Republic of India.

Prefatory Note - Statement of Objects and Reasons

1. The Access to Information Bill 1994 seeks to provide the people with a legal Right of access to information about the Governments - Central, State as well as local, Government instrumentalities, and all other bodies falling within the definition of State under Article 12 of the Constitution of India as well as vital public services like banking, insurance, transport, etc. It also seeks to provide people with a legal right to obtain and to correct their personal records held by such bodies, and for the aforesaid purposes, it seeks to make provisions for the constitution of Information Commissioners in each district, Chief Information Commissioners in each State, as well as establishment of quasi-judicial tribunal for the settlement of disputes relating to access to information and for matters connected herewith.

LG 7

2. It seeks, inter alia, to make the Government, their

undertakings as well as public services like transport, banking, insurance etc. more accountable to the public by

(a) giving the public a right of access to records, and

(b) specifying limited and specified exemptions to the right of access.

3. The Bill also confers a right on persons to have access to personal records in the custody or control of such bodies defined as public bodies under the Act and to correct such records, where they are inaccurate.

4. Chapter X also seeks to create an obligation on the part of industry

(i) To inform the concerned State Government and the community about the hazardous chemicals and substances being produced, stored, transported, used or being released into the environment by such industry;

(ii) To provide information to the community about the harmful effects of any chemicals or substances being released by such an industry into the environment;

(iii) To undertake emergency planning to deal with any accident or hazard relating to the chemicals or substances dealt with by such industry;

(iv) To notify the State Government, the community and the State emergency facilities of any accident or hazard in the industry which is likely to affect adversely the community and/or the environment;

(v) To undertake emergency measures as well as remedial measures in case of any accident or hazard in such an industry.

168

Notes on Sections

Clause 1 Provides for the extension of the Act to the whole of India except Jammu and Kashmir.

Clause 2 Lays down the definitions.

Clause 3 Provides for the scope of the Act.

Clause 4 Prescribes that the right of access to records shall override any other provision of law denying access to records.

Clause 5 Provides for the maintenance and regular updation by public bodies of all legislations, reports and records specified therein.

Clause 6 Provides for the mandatory publication of all legislations, by-laws, manuals, rules and regulations and welfare schemes, guidelines, directives, circulars, resolutions, of the Governments, whether Central, State or local and availability of the same at adequate outlets and reasonable prices.

Clause 7 Provides for computerisation of all records of the Government and connection of the same through networks.

Clause 8 Lays down the duty of the public bodies to assist all requesters under the Act.

Clause 9 Provides for the extension of the right access to all persons, not being alien enemies.

Clause 10 Lays down the procedure for requesting access to information.

Clause 11 Provides for transfer of requests from one public body to another where the records are held by or are more closely related to the work of such other public body.

169

Clause 12 Lays down the procedure and time-limit for responding to a request for access to record.

Clause 13 Provides for extension of time-limit for responding to a request for access to a record.

Clause 14 Provides for the various forms in which access to a record may be requested and given.

Clause 15 Prescribes the fees to be paid for inspection of and/or for obtaining copies of the records requested and also provides for waiver of fees under circumstances mentioned therein.

Clause 16 Provides for the right of a requestor to obtain information about himself held by a public body and to correct such information where it is inaccurate.

Clause 17 Provides for non-disclosure of exempt information as well as the procedure to be followed by a public body when withholding such exempt records.

Clause 18 Provides for non-disclosure of information relating to the aid and advise to the Government.

Clause 19 Provides for non-disclosure of information where disclosure is likely to cause grave and significant damage to the country or to any of its States or territories.

Clause 20 Provides for non-disclosure of information where disclosure is likely to cause grave and significant damage to lawful activities of security services.

Clause 21 Provides for non-disclosure of information where such disclosure is likely to cause grave and significant damage to the conduct of international relations.

170

Clause 22 Provides for non-disclosure of information where such disclosure is likely to cause grave and significant damage to law enforcement activities.

Clause 23 Provides for non-disclosure of information involving the invasion of the privacy an identifiable individual.

Clause 24 Provides for non-disclosure of information where such disclosure is likely to cause grave and significant damage to the economic or commercial affairs of a public body. It also lays down circumstances where such disclosure is permitted.

Clause 25 Provides for non-disclosure of information where such disclosure is likely to cause grave and significant damage to the lawful commercial or professional activities of a third party. It also provides for circumstances where such information is not exempt.

Clause 26 Provides for non-disclosure of information of voluntary organisation, if it is perting to research activities etc.

Clause 27 Provides for notice to third parties.

Clause 28 Lays down the procedure of internal review of a decision by a public body.

Clause 29 Provides for the establishment and composition of a Central Council for Access to Information.

Clause 30 Provides for the establishment and composition of a Central Council for Access to information.

Clause 31 Provides for the procedure of the Central Council.

Clause 32 Lays down the objects of the Central Council.

Clause 33 Provides for the establishment and composition of the

171

State Council for Access to Information.

Clause 34 Provides that the objects of the State Council shall be to promote and protect within the concerned State the rights of persons as laid down in the clause relating to the objects of the Central Council.

Clause 35 Provides for the appointment of the Chief Information Commissioner.

Clause 36 Provides for qualifications for appointment of Chief Information Commissioner.

Clause 37 Lays down the Jurisdiction of Chief Information Commissioner.

Clause 38 Lays down the functions of the Chief Information Commissioner.

Clause 39 Lays down the powers of the Chief Information Commissioner.

Clause 40 Provides for the appointment of Chief Information Commissioner.

Clause 41 Provides for qualifications for appointment of Information Commissioner.

Clause 42 Lays down the powers of the Chief Information Commissioner.

Clause 43 Lays down the powers of the Chief Information Commissioner.

Clause 44 Lays down the limitations of time for filing the complaint to the Chief Information Commissioner.

Clause 45 Provides for procedure on receipt of a complaint by Information Commissioner.

Clause 46 Lays down that the Information Commissioner shall make an order requiring the public body to take such

172

action as he deems necessary.

Clause 47 Provides that the burden of establishing that a record is exempt under the Act will be on the public concerned.

Clause 48 Provides for the decision of the Information Commissioner.

Clause 49 Provides that an order of a Information Commissioner shall be deemed to be final it no appeal is preferred against such an order.

Clause 50 Provides for enforcement of opdens by the Chief Information Commissioner and Information Commissioner.

Clause 51 Provides for Terms and conditions of service of Chief Information Commissioner and Information Commission.

Clause 52 Provides for arising of vacancy in the office of the Chief Information Commissioner and Information Commissioner.

Clause 53 Lays down the procedure of resignation and removal of Chief information Commissioner and Information Commissioner.

Clause 54 Provides for salaries and allowances and other terms and conditions of service of Chief Information Comissioner and Information Commissioner.

Clause 55 Provides for staff of office of the Chief Information Commissioner and Information Commissioner.

Clause 56 Provides for the dismissal of frivolous suctions or meticious complaint.

Clause 57 Provides for establishment of State Information Tribunal.

Clause 58 Provides for the composition of State Information Tribunals.

Clause 59 Lays down the qualifications for appointment of

Chairman, Vice-Chairman and Other Members.

Clause 60 Provides for appointment of Chairman, Vice-Chairman and Members of State Information Tribunal.

Clause 61 Provides for the Jurisdiction of the State Information Tribunal.

Clause 62 Lays down the power of State Information Tribunal.

Clause 63 Lays down the limitation for appeal.

Clause 64 Lays down the terms and conditions of service of Chairman, Vice-Chairman and other members.

Clause 65 Provides for the resignation and removal of the Chairman, Vice-Chairman and members.

Clause 66 Lays down that the Vice-Chairman to act as Chairman or to discharge his function in certain circumstances.

Clause 67 Provides that an order of State Information Tribunal shall be final.

Clause 68 Provides for enforcement of orders by the State Information Tribunal

Clause 69 Provides for penalties in cases where any person fails to comply with any order of a Tribunal or destroys, disfigures or tampers with any record held by a public body and required to be preserved under the Act.

Clause 70 Provides that lawyers would not ordinarily be permitted to appear before the Chief Information Commissioner, Information Commissioner Tribunal except under certain circumstances specified therein.

Clause 71 Provides for the exclusion of the decisions of the Tribunal from the writ jurisdiction of the High Court.

Clause 72 Provides for immunity from prosecution to any member of the Tribunal, Chief Information Commissioner, Commissioner or other officer for any acts which in

good faith it done or intended to be done by them under the Act.

Clause 73 Provides for immunity from prosecution to any requestor including public interest groups for anything which in good faith is done by them under the Act.

Clause 74 Confers powers on the Central Govenment to make provisions for removal of any difficulty that may arise in giving effect to the provisions of this Act.

Clause 75 Provides for the constitution of a Central Data Bank for collecting and maintaining data relating to the credit worthiness of persons.

Clause 76 Provides for the repeal of the Official Secrets Act 1923.

Clause 77 Provides for power to make Rules by Central Government and State Government.

Clause 78 Provides for laying of rules.

Clause 79 Seeks to make provisions whereby industry will be obliged to disclose to the community information relating to its chemical releases, emergency preparedness etc.

Appendix-1 and 2 for outlets of records.

175

Financial Memorandum

1. Clause 5 seeks to make provisions for the maintenance, preservation and indexing of all Acts, public records, etc. mentioned therein. It is not possible to indicate at this stage the exact expenditure that would be involved for such maintenance, preservation and indexing of records. The public records Act 1994 in as also cast such an obligation.

2. Clause 6 seeks to make provisions for the publication and availability at reasonable prices of all Acts, rules and regulations, manuals, by-laws, whether of the central, state or local governments as well as reports of inquiry committees, reports of welfare schemes, etc. as specified therein. It is not possible to indicate at this stage the exact expenditure that would be involved for such publication and distribution.

3. Clause 7 provides for computerisation of all legislations, manuals, etc. specified in Clause 6 and connecting them by a network throughout the country on different systems. It is not possible to indicate at this stage the exact expenditure that would be involved for such computerisation and networking.

4. Clause 12 seeks to make provisions for responding to requests for Access to Information. It would, therefore, be necessary for each State and Union territory to establish a network for responding to such requests. It is not possible to indicate at this stage the expenditure that would be involved in establishing such a network.

176

5. Clause 30 provides for establishment of a Central Council for Access to Information at the Centre. It is not possible to indicate at this stage the exact expenditure that would be involved in the constitution and working of such a council.

6. Clause 33 provides for the establishment, in each State, of a State Council for Access to Information. It is not possible to indicate at this stage the exact expenditure that would be involved in the constitution and working of such a council.

7. Clause 35 and 40 seeks to make provisions for the appointment of the office of Chief Information Commissioner for Access to Information in each State and Union Territory and Information Commissioners at each District. It may, therefore, be necessary to establish a staff network to assist the Commissioner in the performance of his duties.

It is not possible at this stage to inidcate the exact expenditure that would be involved in setting up such a network.

8. Clause 57 provides for establishment of State Tribunals in each state. Clause 60 also provides for establishment of a selection committee for purpose of appointment of members of the Tribunal. These proposals, therefore, involve expenditure on selection committee members, salaries of members of Tribunal and other expenses incidental to, and connected with, establishment and working of such Tribunals.

It is not possible at this stage to indicate the exact expenditure that would be involved in setting up such a network.

177

By: SH. H.D. SHOURIE

FREEDOM OF INFORMATION BILL, 1997

A Bill to provide freedom to every citizen to secure information and in relation to matters connected therewith or incidental thereto.

Be it enacted by Parliament in the forty-seventh year of the Republic of India as follows:-

1. (1) The Act may be called the Freedom of Information Act, 1997.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires:- Definition

(a) "Information" means any material or information relating to the affairs, administration or decision of a public authority in respect of which public has a right to know, and includes any document or record relating to the affairs of the public authority;

(b) "prescribed" means prescribed by rules under the Act;

179

(c) "public authority" includes, -

(i) the Government and Parliament of India and the Government and Legislature of each of

.. Clause 75 seeks to make provisions for the constitution of a Central Data bank at the Centre. Such a bank shall compile and maintain data relating to the creditworthiness of persons where such data is held by several credit institutions at a time. It is not possible to indicate at this stage the exact expenditure that would be involved in the constitution and working of such a Data Bank.

Memorandum of Delegated Legislation

1. Clause 15 provides for prescription of reasonable fees by State Government for obtaining records from public bod..

2. Clause 30(2)b provides for prescription by Central Government the number of official, non official members of Central Council representing other interest.

3. Clause 31(2) provides for prescription by Central Government the procedure for transaction of business of Central Council.

4. Clause 75(2) provides for prescription of fees by Central Government for obtaining information about creditworthiness from Central Data Bank.

5. Clause 33(2)(b) provides for prescription by state Government the number of official or non official members of State Council representing other interest.

6. Clause 33(4) provides for prescription by State Government the procedure for transaction of business of State Council.

7. Clause 55(2) provides for prescription of terms and conditions of service of Stays of office of the Chief Information Commissioner and Information Commissioner.

178

the States and of local or other authorities within the territory of India or under the control of the Government of India; and

(ii) a company, corporation, trust, firm, society or a cooperative society, whether owned or controlled by the Government or by private individuals and institutions whose activities affect the public interest;

The expressions company, corporation, trust, firm, society and cooperative society shall have the same meaning as assigned to them in the respective Acts under which they are registered.

(d) "freedom of information" means the freedom to seek information and includes inspection, taking notes and extracts and obtaining certified copies of documents or records of any public authority;

(e) "State Government" includes the administrator of a Union territory appointed by the President under article 239 of the Constitution.

179

3. (1) Every citizen shall have a right to information from a public authority; Right to information

(2) Every public authority shall be under a duty to maintain all its records duly catalogued and indexed and subject to the provisions of section 4, to make available to any person requesting information from it, the information sought for, including such information as it is under an obligation to obtain and furnish and shall not withhold any information or limit its availability;

(3) Nothing in the foregoing provisions of this section shall preclude the right of any person to obtain such information as would affect his life or liberty.

(4) It shall be mandatory for each custodial establishment such as a police lock-up, jail, mental asylum. remand house , women's home and beggars' home to appoint a visitors' committee comprising of independent citizens which shall have full access to them at all hours of the day and night and to their records and inmates.

180

4. The public authority may, for reasons to be recorded in writing, withhold - Restricti on right informati

(a) information, the disclosure or contents of which will prejudicially affect the sovereignty and integrity of India, security of the State and friendly relations with foreign States, public order, investigation of an offence or which leads to incitement to an offonce;

(b) information relating to personal or other information, the disclosure of which has no relationship to any public activity or in which the public has no interest and would constitute a clear and unwarranted invasion of personal privacy;

(c) trade and commercial secrets protected by law.

Provided that information which cannot be denied to Parliament or State Legislature shall not be denied to any citizen.

181

Procedure f the supply information

5. (1) A person desiring information from a public authority under this Act shall make an application to the person for the time being in charge of the public authority.

(2) The information asked for under sub-section (1) shall be furnished to the applicant by the public authority within thirty days of the application under sub-section (1), and where such information relates to the life or liberty of the individual, the information shall be supplied within forty-eight hours of the making of the application.

(3) The information asked for under sub-section (1) shall be supplied in writing either in English or Hindi or in the language of the State in which the public authority is located.

(4) Every public authority shall have a right to charge fees for the supply of any document subject to the condition that such fees shall not exceed the cost of making and supplying the document.

182

Refusal to be given i writing

6. If the information asked for under sub-section (1) of Section 4 is refused by any public authority, the reasons for such refusal shall be given by such authority in writing.

Appeal

7. An appeal against a refusal to furnish any document by a public authority under this Act shall lie to the Principal Civil Judge of ordinary original civil jurisdiction of the area in which the office of the public authority is located and any appeal shall be preferred within fifteen days of the date of refusal of the supply of information by the public authority and any appeal so preferred shall be disposed of by the Civil Judge within thirty days of its filing, by a written order and giving reasons for its decision.

Penalties

8. (1) Any individual responsible for providing any information under this Act shall be personally liable for furnishing the information within the period specified therein.

(2) Where the information asked for under this Act is not furnished within the time specified, the person responsible for supplying the information shall be punishable with a fine of rupees fifty for every day of delay after the day by which it is required to be supplied.

183

(3) If any person responsible for providing any information under this Act, fails to furnish such information or furnishes any information which is false in

any material particular and which he knows or has reasonable cause to believe to be false or does not believe it to be true, he shall be punishable with fine which shall not be less than rupees one thousand and which may extend to rupees five thousand.

Provided that the Court may, for reasons to be recorded in writing levy a fine of less than one thousand rupees.

Offences b Companies

9. (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence:

184

(2) Notwithstanding anything contained in sub-section (1) where an offence

under this Act has been committed by a company, corporation, trust, firm, society or cooperative society and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer of the of the company, such director, manager, secretary or officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation:For the purpose of this section "director" in relation to a firm means a partner of the firm.

10. Notwithstanding anything contained in the Code of Criminal Procedure 1973, every offence under this Act shall be cognizable.

11. Notwithstanding anything contained in this Act or in any other law for the time being in force, it shall be the duty of every public authority which proposes to initiate any project or activity, subject to the provisions of section 4, to notify, as soon as possible, and in any case well before the commencement of the project or activity, for the information of the general public and the persons to be affected, such matters within its knowledge

185

and control as affect the general public or are vital to life, health and livelihood.

Protection of action taken in good faith

12. No suit, prosecution or other legal proceeding shall lie against the Central Government or a State Government or any individual, for anything which is in good faith done or intended to be done under the provisions of this Act or any rule made thereunder.

Act to have overriding effect

13. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force other than this Act.

Power of the Central Government to make Rules

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

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all matters in respect of which rules are required to be made by the Central Government under this Act.

Power to State Government to make rules

15. A State Government may, by notification in the Official Gazette, make rules to provide for any matter in respect of which rules are required to be made by the State Government under this Act.

Laying of rules

16. (1) Every rule made under this Act by the Central Government 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 made, before the State Legislature.

187

MOST IMMEDIATE

No.35011/1(6)/97-Estt.(B)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training
.....

27 JAN 1997

New Delhi, dated 20th Jan., 1997.

Subject: Working Group on Right to Information and promotion of open and transparent Government.

A copy of the proceedings of the second meeting of the "Working Group on right to information and promotion of open and transparent Government" held on 18th January, 1997, together with a copy of the citizen's guide on 'Freedom of Information Act' prepared by the Committee on Government Operations, U.S. House of Representatives, is enclosed for information/reference of the Working Group.

(Y.G. PARANDE)
DIRECTOR
O/C

1. Shri H.D.Shourie, A-31, Westend, New Delhi- 110 021. [Tele:6876666 (both Office and Residence)].

2. Shri Soli Sorabjee, Sr.Advocate, 138 Sundar Nagar, New Delhi- 110003. [Tele:4634003,4647504(Off.)-6855323,6862957(Res.)].

3. Shri Shashi Prakash, Joint Secretary, Ministry of Home Affairs, New Delhi. [Tele:3014979(Off.) -4675770(Res.)].

4. Shri A.Sinha, Joint Secretary, Department of Legal Affairs, Room No.417-A, Shastri Bhavan, New Delhi. [Tele:3382913(Off.) - 3239318(Res.)].

5. Shri R.N.Verma, Executive Director, Traffic Transportation (F), Railway Board, Rail Bhavan, New Delhi. [Tele:3384260(Off.) - 4672950(Res.)].

6. Shri S.P.Ojha, Sr.Deputy Director General (Vig.), Department of Posts, Dak Bhavan, New Delhi. [Tele:3711951(Off.) - 3017132(Res.)].

7. Shri Ashok Kumar, Joint Secretary, Department of Telecommunications, Room No. 301, Sanchar Bhavan, New Delhi. [Tele:3717411(Off.) -2922022(Res.)].

8. Shri S.Narendra, Principal Information Officer, Ministry of Information & Broadcasting, New Delhi. [Tele:3383683(Off.) -3381080(Res.)].

9. Shri N.S. Madhavan, Joint Secretary, Ministry of Information & Broadcasting, Shastri Bhavan, New Delhi. [Tele:3383857(Off.) -4615692(Res.)].

10. Shri Harinder Singh, Joint Secretary, Department of Personnel & Training, New Delhi. [Tele:3011276(Off.) - 2250370(Res.)].

Receipts & Issue Section

188

PROCEEDINGS OF THE SECOND MEETING OF THE WORKING GROUP ON RIGHT TO INFORMATION AND PROMOTION OF OPEN AND TRANSPARENT GOVERNMENT

The second meeting of the Working Group was held on 18th January, 1997. Shri H.D. Shourie was in the Chair.

2. Shri Soli Sorabjee expressed the view that the approach of the Group should be based on two principles:

(i) Disclosure of information should be the rule and withholding the exception; and

(ii) The exceptions should be narrowly defined and should be justiciable.

He further stated that concurrently with a move towards a legislation for freedom of information, steps should be taken to devise effective procedures and to build capacities in the administration to make the right to information meaningful. He felt that the experience of other countries particularly U.S.A. and Australia, would be relevant.

As for the right to information, Shri Sorabjee pointed out that even though the existing law did not provide for it, by virtue of the Supreme Court's judgement in S.P. Gupta's case, it had acquired a Constitutional status.

189

As was decided in the first meeting Shri Shourie then requested each representative of the Ministries to indicate briefly the information pertaining their organisation that could be made available to public and what to be withheld. The suggestions were discussed by the Group. It was mentioned that Department of Personnel would separately address a communication to all Ministries/Departments for this purpose.

Thereafter the draft "Freedom of Information Bill, 1997" prepared by Shri Shourie on the basis of Justice Sawant's "Right to Information Bill, 1996" was discussed. Clause 4 of the Bill was specifically discussed. A view was expressed that it was necessary to provide for safeguard for certain cases particularly against premature disclosures. It was noted that both, the Freedom of Information Act in the U.S. and the code of Practice on Access to Govt. Information in the U.K., provided for safeguards against disclosures of internal communications of the Govt. such as inter departmental momoranda etc. The need to protect secrecy of the budget was also discussed. The point was also made that the "Freedom of Information" in the proposed Bill would have to be subject to Parliamentary privileges.

It was accordingly decided that an attempt would be made to draft a Sub Clause under Clause 4 to protect such categories of information.

190

The draft amendment to rule 11 of the CCS(Conduct) Rules, 1964, prepared by the Department of Personnel (Annexure 'A') was discussed. The Group agreed with the proposal in principle. It was, however, decided that a

final proposal on this could be made only after the draft "Freedom of Information Bill, 1997" was finalised by the Group.

The proposed amendment to S.5 of Official Secrets Act, proposed by Shri Sashi Prakash, Joint Secretary, Ministry of Home Affairs (Annexure 'B') was also discussed. Some members of the Group felt that the definition of "Official Secret" was a little too wide and needed to be clearly related to security of the State. It was, however, pointed out that in the present context, it would not be enough to restrict the scope of the term "Official Secret" to only information relating to teritorial security of the State. It was necessary to cover critical economic and scientific & technological information. It was decided that members will further examine how the definition could be modified.

It was also felt that the right to information should find a place in the Charter of Ethics for the Civil Services which is being separately evolved.

Shri Shourie mentioned that it would be necessary to also draft rules for effectively carrying out the purpose of the Bill. While it was not possible to draw up a detailed set of rules at the present stage, the Group could define the broad outline of such rule so that the draft legislation, when prepared, could be accompanied by an indication of the rules that might be necessary.

ANNEXURE - A

Existing Rule	Proposed Rule
11. Unauthorised Communication of Information	11. Communication of Information
No Government servant shall, except in accordance with any general or special order of the Government or in the performance in good faith of the duties assigned to him, communicate, directly or indirectly, any official document or any part thereof or information to any Government servant or any other person to whom he is not authorised to communicate such document or information.	Subject to any law, every Government servant shall provide full and accurate information to a member of the public or to any organisation, while performing his duties in good faith, excepting classified information, information which is in the nature of commercial secrets or information the disclosure of which will infringe on an individual's privacy.
EXPLANATION Quotation by a Government servant (in his representation to the Head of Office, or Head of Department or President) of or from any letter, circular or office memorandum or from the notes on any file, to which he is not authorised to have access, or which he is authorised to keep in his personal custody or for personal purposes, shall amount to unauthorised communication of information within the meaning of this rule.	11A Unauthorised use of information A Government shall not use classified information for furtherance of any personal or service interest.

192

AMENDMENTS PROPOSED TO SECTION 5 OF THE OFFICIAL SECRETS ACT BY THE INTER-MINISTERIAL GROUP.

5(1) If any person, having in his possession or control any official secret which has come into his possession or control by virtue of,-

(a) his holding or having held an office with or under government, or

(b) a contract with the government, or

(c) it being entrusted to him in confidence by another person holding or having held an office under or with government, or in any other manner,

(i) communicates, without due authority such official secret to another person or uses it for a purpose other than a purpose for which he is permitted to use it under any law for the time being in force: or

(ii) fails to take reasonable care of, or so conducts himself as to endanger the safety of the official secret: or

(iii) wilfully fails to return the official secret when it is his duty to return it,

he shall be guilty of an offence under this Section.

(2) Any person voluntarily receiving any official secret knowing or having reasonable ground to believe, at the time he receives it that the official secret is communicated in contravention of this Act, he shall be guilty of an offence under this section.

(3) A person guilty of an offence under this Section shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine:

Provided that the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term less than three years.

Explanation: For the purpose of this Section 'Official Secret' means any information the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the state, friendly relations with foreign States, economic, commercial, scientific and technological matters relating to national security and includes:

193

(a) any secret code, pass word, sketch, plan, model, article, note or document in relation to a prohibited place: and

(b) any information in relation to the proceedings or decisions of the Council of Ministers including any committee thereof.

Union Calendar No. 53

103D CONGRESS
1st Session | HOUSE OF REPRESENTATIVES | REPORT
103-104

A CITIZEN'S GUIDE ON USING THE FREEDOM OF INFORMATION ACT AND THE PRIVACY ACT OF 1974 TO REQUEST GOVERNMENT RECORDS

MAY 24, 1993.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CONYERS, from the Committee on Government Operations, submitted the following

FIRST REPORT

BASED ON A STUDY BY THE INFORMATION, JUSTICE, TRANSPORTATION, AND AGRICULTURE SUBCOMMITTEE

On May 20, 1993, the Committee on Government Operations approved and adopted a report entitled "A Citizen's Guide on Using the Freedom of Information Act and the Privacy Act of 1974 To Request Government Records." The chairman was directed to transmit a copy to the Speaker of the House.

I. PREFACE

In 1977, the House Committee on Government Operations issued the first *Citizen's Guide* on how to request records from Federal agencies.[1] The original *Guide* was reprinted many times and widely distributed. The Superintendent of Documents at the Government Printing Office reported that almost 50,000 copies were sold between 1977 and 1986 when the guide went out of print. In addition, thousands of copies were distributed by the House Committee on Government Operations, Members of Congress, the Congressional Research Service, and other Federal agencies. The original *Citizen's Guide* is one of the most widely read congressional committee reports in history.

[1] *A Citizen's Guide on How to Use the Freedom of Information Act and the Privacy Act in Requesting Government Documents*, H. Rept. No. 95-793, 95th Cong., 1st sess. (1977).

In 1987, the committee issued a revised *Citizen's Guide*.[2] The new edition was prepared to reflect changes to the Freedom of Information Act made during 1986. As a result of special efforts by the Superintendent of Documents at the Government Printing Office, the availability of the new *Guide* was well publicized. The 1987 edition appeared on GPO's "Best Seller" list in the months following its issuance.

During the 100th Congress, major amendments were made to the Privacy Act of 1974. The Computer Matching and Privacy Protection Act of 1988[3] added new provisions to the Privacy Act and changed several existing requirements. None of the changes affects a citizen's rights to request or see records held by Federal agencies. However, some of the information in the 1987 *Guide* became outdated as a result, and a third edition was issued in 1989.[4]

During the 101st Congress, the Privacy Act of 1974 was amended through further adjustments to the Computer Matching and Privacy Protection Act of 1988. The changes do not affect access rights. This fourth edition of the *Citizen's Guide* reflected all changes to the FOIA and Privacy Act made through the end of 1990.[5] The current edition version is the fifth edition and includes an expanded bibliography and editorial changes.

II. Introduction

> A popular Government without popular information or the means of acquiring it, is but a Prologue to a Farce or a Tragedy or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives.—James Madison[6]

The Freedom of Information Act [FOIA] establishes a presumption that records in the possession of agencies and departments of the executive branch of the U.S. Government are accessible to the people. This was not always the approach to Federal information disclosure policy. Before enactment of the FOIA in 1966, the burden was on the individual to establish a right to examine these government records. There were no statutory guidelines or procedures to help a person seeking information. There were no judicial remedies for those denied access.

With the passage of the FOIA, the burden of proof shifted from the individual to the government. Those seeking information are no longer required to show a need for information. Instead, the "need to know" standard has been replaced by a "right to know" doctrine. The government now has to justify the need for secrecy.

---

[1] *A Citizen's Guide on Using the Freedom of Information Act and the Privacy Act of 1974 To Request Government Records*, H. Rept. No. 100-159, 100th Cong., 1st sess. (1987).

[2] Public Law 100-503.

[3] *A Citizen's Guide on Using the Freedom of Information Act and the Privacy Act of 1974 To Request Government Records*, H. Rept. No. 101-193, 101st Cong., 1st sess. (1989).

[4] *A Citizen's Guide on Using the Freedom of Information Act and the Privacy Act of 1974 To Request Government Records*, H. Rept. No. 102-146, 102d Cong., 1st sess. (1991).

[5] Letter to W.T. Barry, Aug. 4, 1822, in G.P. Hunt, ed., *The Writings of James Madison* 103 (1910).

The committee wishes to acknowledge the assistance of Harold C. Relyea, Specialist, American National Government, Government Division, Congressional Research Service, in the preparation of this report.

The FOIA sets standards for determining which records must be disclosed and which records can be withheld. The law also provides administrative and judicial remedies for those denied access to records. Above all, the statute requires Federal agencies to provide the fullest possible disclosure of information to the public.

The Privacy Act of 1974 is a companion to the FOIA. The Privacy Act regulates Federal Government agency recordkeeping and disclosure practices. The act allows most individuals to seek access to Federal agency records about themselves. The act requires that personal information in agency files be accurate, complete, relevant, and timely. The subject of a record may challenge the accuracy of information. The act requires that agencies obtain information directly from the subject of the record and that information gathered for one purpose not be used for another purpose. As with the FOIA, the Privacy Act provides civil remedies for individuals whose rights have been violated.

Another important feature of the Privacy Act is the requirement that each Federal agency publish a description of each system of records maintained by the agency that contains personal information. This prevents agencies from keeping secret records.

The Privacy Act also restricts the disclosure of personally identifiable information by Federal agencies. Together with the FOIA, the Privacy Act permits disclosure of most personal files to the individual who is the subject of the files. The two laws restrict disclosure of personal information to others when disclosure would violate privacy interests.

While both the FOIA and the Privacy Act support the disclosure of agency records, both laws also recognize the legitimate need to restrict disclosure of some information. For example, agencies may withhold information properly classified in the interest of national defense or foreign policy, trade secrets, and criminal investigatory files. Other specifically defined categories of confidential information may also be withheld.

The essential feature of both laws is that they make Federal agencies accountable for information disclosure policies and practices. While neither law grants an absolute right to examine government documents, both laws establish the right to request records and to receive a response to the request. If a record cannot be released, the requestor is entitled to be told the reason for the denial. The requester also has a right to appeal the denial and, if necessary, to challenge it in court.

These procedural rights granted by the FOIA and the Privacy Act make the laws valuable and workable. As a result, the disclosure of Federal Government information cannot be controlled by arbitrary or unreviewable actions.

III. Recommendations

The committee recommends that this *Citizen's Guide* be made widely available at low cost to anyone who has an interest in obtaining documents from the Federal Government. The Government Printing Office and Federal agencies subject to the Freedom of Information Act and the Privacy Act of 1974 should distribute this report widely.

The committee also recommends that this *Citizen's Guide* be used by Federal agencies in training programs for government employees who are responsible for administering the Freedom of Information Act and the Privacy Act of 1974. The *Guide* should also be used by those government employees who only occasionally work with these two laws.

IV. How To Use This Guide

This report explains how to use the Freedom of Information Act and the Privacy Act of 1974. It reflects all changes to the laws made since 1977. Major amendments to the Freedom of Information Act passed in 1974 and 1986. A major addition to the Privacy Act of 1974 was enacted in 1988. Minor amendments to the Privacy Act were made in 1989 and 1990.

This *Guide* is intended to serve as a general introduction to the Freedom of Information Act and the Privacy Act.[7] It offers neither a comprehensive explanation of the details of these acts nor an analysis of case law. The *Guide* will enable those who are unfamiliar with the laws to understand the process and to make a request. In addition, the complete text of each law is included in an appendix.

Readers should be aware that FOIA litigation is a complex area of law. There are thousands of court decisions interpreting the FOIA.[8] These decisions must be considered in order to develop a complete understanding of the principles governing disclosure of government information. Anyone requiring more details about the FOIA, its history, or the case law should consult other sources. There has been less controversy and less litigation over the Privacy Act, but there is nevertheless a considerable body of case law for the Privacy Act as well. There are other sources of information on the Privacy Act as well.

However, no one should be discouraged from making a request under either law. No special expertise is required. Using the Freedom of Information Act and the Privacy Act is as simple as writing a letter. This *Citizen's Guide* explains the essentials.

V. Which Act To Use

The access provisions of the FOIA and the Privacy Act overlap in part. The two laws have different procedures and different ex-

[7] This *Guide* is primarily intended to help the general public. It includes a complete explanation of the basics of the two laws. In the interest of producing a guide that would be both simple and useful to the intended audience, the committee deliberately avoided addressing some of the issues that are highly controversial. The committee cautions against treating the neutrally written descriptions contained in this report as definitive expressions of the committee's views of the law or congressional intent.

The committee has expressed its views on some of these issues in other reports. See, for example, *Security Classification Policy and Executive Order 12356*, H. Rept. No. 97-731, 97th Cong., 2d sess. (1982); *Who Cares About Privacy? Oversight of the Privacy Act of 1974 by the Office of Management and Budget and by the Congress*, H. Rept. No. 98-455, 98th Cong., 1st sess. (1983); *Electronic Collection and Dissemination of Information by Federal Agencies: A Policy Overview*, H. Rept. No. 99-560, 99th Cong., 2d sess. (1986); *Freedom of Information Act Amendments of 1986*, H. Rept. No. 99-832, 99th Cong., 2d sess. (1986) (report to accompany H.R. 4862). The latter report is a legislative report for a bill reforming the business procedures of the FOIA. The bill did not become law. The 1986 amendments to the FOIA were made by the Freedom of Information Reform Act of 1986, Public Law 99-570. There were no committee reports in either House or Senate accompanying the Freedom of Information Reform Act.

[8] See, e.g., U.S. Department of Justice, *Freedom of Information Case List* (published annually)

emptions. As a result, sometimes information exempt under one law will be disclosable under the other.

In order to take maximum advantage of the laws, an individual seeking information about himself or herself should normally cite *both* laws. Requests by an individual for information that does not relate solely to himself or herself should be made only under the FOIA.

Congress intended that the two laws be considered together in the processing of requests for information. Many government agencies will automatically handle requests from individuals in a way that will maximize the amount of information that is disclosable. However, a requester should still make a request in a manner that is most advantageous and that fully protects all available legal rights. A requester who has any doubts about which law to use should always cite both the FOIA *and* the Privacy Act when seeking documents from the Federal Government.

VI. The Freedom of Information Act

A. The Scope of the Freedom of Information Act

The Federal Freedom of Information Act applies to documents held by agencies in the executive branch of the Federal Government. The executive branch includes cabinet departments, military departments, government corporations, government controlled corporations, independent regulatory agencies, and other establishments in the executive branch.

The FOIA does not apply to elected officials of the Federal Government, including the President,[9] Vice President, Senators, and Congressmen.[10] The FOIA does not apply to the Federal judiciary. The FOIA does not apply to private companies; persons who receive Federal contracts or grants; tax-exempt organizations; or State or local governments.

All States and some localities have passed laws like the FOIA that allow people to request access to records. In addition, there are other Federal and State laws that may permit access to documents held by organizations not covered by the Federal FOIA.[11]

B. What Records Can Be Requested Under the FOIA?

The FOIA requires agencies to publish or make available for public inspection several types of information. This includes: (1) de-

[9] The Presidential Records Act of 1978, 44 U.S.C. §§2201-2207 (1982), does make the documentary materials of former Presidents subject to the FOIA in part. Presidential papers and documents generated after Jan. 20, 1981, will be available—subject to certain restrictions and delays—under the general framework of the FOIA.

[10] Virtually all official records of the Congress are available to the public. The *Congressional Record*, all bills introduced in the House and the Senate, and all committee reports (except for those containing classified information) are printed and disseminated. Most committee hearings are also printed and available. Copies of most congressional publications are available at Federal depository libraries throughout the county. Historical records of the Congress are made available in accordance with procedures established by House and Senate rules.

In addition, almost all activities of the Congress take place in public. The sessions of the House and Senate are normally open to the public and televised. Most committee hearings and markups are open to the public, and some are televised.

[11] See, e.g., the Federal Fair Credit Reporting Act, 15 U.S.C. §1681 et seq. (1982) (providing for access to files of credit bureaus); the Federal Family Educational Rights and Privacy Act of 1974, 20 U.S.C. §1232g (1982) (providing for access to records maintained by schools and colleges). Some States have enacted laws allowing individuals to have access to personnel records maintained by employers. See, e.g., Michigan Compiled Laws Annotated §423.501

scriptions of agency organization and office addresses; (2) statements of the general course and method of agency operation; (3) rules of procedure and descriptions of forms; (4) substantive rules of general applicability and general policy statements; (5) final opinions made in the adjudication of cases; and (6) administrative staff manuals that affect the public. This information must either be published in the *Federal Register* or made available for inspection and copying without the formality of an FOIA request.

All other "records" of a Federal agency may be requested under the FOIA. However, the FOIA does not define "record." Any item containing information that is in the possession, custody, or control of an agency is usually considered to be an agency record under the FOIA. Personal notes of agency employees may not be agency records. A document that is not a "record" will not be available under the FOIA.

The form in which a record is maintained by an agency does not affect its availability. A request may seek a printed or typed document, tape recording, map, photograph, computer printout, computer tape or disk, or a similar item.

Of course, not all records that can be requested must be disclosed. Information that is exempt from disclosure is described below in the section entitled "Reasons Access May Be Denied Under the FOIA."

The FOIA carefully provides that a requester may ask for *records* rather than information. This means that an agency is only required to look for an existing record or document in response to an FOIA request. An agency is not obliged to create a new record to comply with a request. An agency is not required to collect information it does not have. Nor must an agency do research or analyze data for a requester.[12]

Requesters must ask for existing records. Requests may have to be carefully written in order to obtain the desired information. Sometimes, an agency will help a requester identify a specific document that contains the information being sought. Other times, a requester may need to be creative when writing an FOIA request in order to identify an existing document or set of documents containing the desired information.

There is a second general limitation on FOIA requests. The law requires that each request must *reasonably describe* the records being sought. This means that a request must be specific enough to permit a professional employee of the agency who is familiar with the subject matter to locate the record in a reasonable period of time.

Because agencies organize and index records in different ways, one agency may consider a request to be reasonably descriptive while another agency may reject a similar request as too vague. For example, the Federal Bureau of Investigation has a central index for its primary record system. As a result, the FBI is able to search for records about a specific person. However, agencies

[12] When records are maintained in a computer, an agency is required to retrieve information in response to an FOIA request. The process of retrieving the information may result in the creation of a new document when the data is printed out on paper or written on computer tape or disk. Since this may be the only way computerized data can be disclosed, agencies are required to provide the data even if it means a new document must be created.

that do not maintain a central name index may be unable to conduct the same type of search. These agencies may reject a similar request because the request does not describe records that can be identified.

Requesters should make requests as specific as possible. If a particular document is required, it should be identified precisely, preferably by date and title. However, a request does *not* always have to be that specific. A requester who cannot identify a specific record should clearly explain his or her needs. A requester should make sure, however, that a request is broad enough to include all desired information.

For example, assume that a requester wants to obtain a list of toxic waste sites near his home. A request to the Environmental Protection Agency for all records on toxic waste would cover many more records than are needed. The fees for such a request might be very high, and it is possible that the request might be rejected as too vague.

A request for all toxic waste sites within 3 miles of a particular address is very specific. But it is unlikely that EPA would have an existing record containing data organized in that fashion. As a result, the request might be denied because there is no existing record containing the information.

The requester might do better to ask for a list of toxic waste sites in his city, county, or State. It is more likely that existing records might contain this information. The requester might also want to tell the agency in the request letter exactly what information is desired. This additional explanation may help the agency to find a record that meets the request.

Many people include their telephone number with their requests. Some questions about the scope of a request can be resolved quickly when an agency employee and the requester talk. This is an efficient way to resolve questions that arise during the processing of FOIA requests.

It is to everyone's advantage if requests are as precise and as narrow as possible. The requester benefits because the request can be processed faster and cheaper. The agency benefits because it can do a better job of responding to the request. The agency will also be able to use its resources to respond to more requests. The FOIA works best when both the requester and the agency act cooperatively.

C. MAKING AN FOIA REQUEST

The first step in making a request under the FOIA is to identify the agency that has the records. An FOIA request must be addressed to a specific agency. There is no central government records office that services FOIA requests.

Often, a requester knows beforehand which agency has the desired records. If not, a requester can consult a government directory such as the *United States Government Manual*.[13] This manual has a complete list of all Federal agencies, a description of agency functions, and the address of each agency. A requester who is un-

[13] The *United States Government Manual* is sold by the Superintendent of Documents of the U.S. Government Printing Office. Virtually every public library should have a copy on its shelves.

certain about which agency has the records that are needed can make FOIA requests at more than one agency.

Agencies normally require that FOIA requests be in writing. Letters requesting records under the FOIA can be short and simple. No one needs a lawyer to make an FOIA request. Appendix 1 of this *Guide* contains a sample request letter.

The request letter should be addressed to the agency's FOIA Officer or to the head of the agency. The envelope containing the written request should be marked "Freedom of Information Act Request" in the bottom left-hand corner.[14]

There are three basic elements to an FOIA request letter. First, the letter should state that the request is being made under the Freedom of Information Act. Second, the request should identify the records that are being sought as specifically as possible. Third, the name and address of the requester must be included.

Under the 1986 amendments to the FOIA, fees chargeable vary with the status or purpose of the requester. As a result, a requester may have to provide additional information to permit the agency to determine the appropriate fees. Different fees can be charged to commercial users, representatives of the news media, educational or noncommercial scientific institutions, and individuals. The next section explains the fee structure in more detail.

There are several optional items that are often included in an FOIA request. The first is the telephone number of the requester. This permits an agency employee processing a request to speak with the requester if necessary.

A second optional item is a limitation on the fees that the requester is willing to pay. It is common for a requester to ask to be notified in advance if the charges will exceed a fixed amount. This allows the requester to modify or withdraw a request if the cost may be too high. Also, by stating a willingness to pay a set amount of fees in the original request letter, a requestor may avoid the necessity of additional correspondence and delay.

A third optional item sometimes included in an FOIA request is a request for a waiver or reduction of fees. The 1986 amendments to the FOIA changed the rules for fee waivers. Fees must be waived or reduced if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Decisions about granting fee waivers are separate from and different than decisions about the amount of fees that can be charged to a requester.

A requester should keep a copy of the request letter and related correspondence until the request has been finally resolved.

[14] All agencies have issued FOIA regulations that describe the request process in greater detail. For example, large agencies may have several components each of which has its own FOIA rules. A requester who can find agency FOIA regulations in the *Code of Federal Regulations* (available in many libraries) might find it useful to check these regulations before making a request. A requester who *follows* the agency's specific procedures may receive a faster response. However, the simple procedures suggested in this guide will be adequate to meet the minimum requirements for an FOIA request.

D. FEES AND FEE WAIVERS

FOIA requesters may have to pay fees covering some or all of the costs of processing their requests. As amended in 1986, the law establishes three types of fees that may be charged. The 1986 law makes the process of determining the applicable fees more complicated. However, the 1986 rules reduce or eliminate entirely the cost for small, noncommercial requests.

First, fees can be imposed to recover the cost of copying documents. All agencies have a fixed price for making copies using copying machines. A requester is usually charged the actual cost of copying computer tapes, photographs, and other nonstandard documents.

Second, fees can also be imposed to recover the costs of searching for documents. This includes the time spent looking for material responsive to a request. A requester can minimize search charges by making clear, narrow requests for identifiable documents whenever possible.

Third, fees can be charged to recover review costs. Review is the process of examining documents to determine whether any portion is exempt from disclosure. Before the 1986 amendments took effect, no review costs were charged to any requester. Effective on April 25, 1987, review costs may be charged to commercial requesters only. Review charges only include costs incurred during the initial examination of a document. An agency may not charge for any costs incurred in resolving issues of law or policy that may arise while processing a request.

Different fees apply to different requesters. There are three categories of FOIA requesters. The first includes representatives of the news media, and educational or noncommercial scientific institutions whose purpose is scholarly or scientific research. A requester in this category who is not seeking records for commercial use can only be billed for reasonable standard document duplication charges. A request for information from a representative of the news media is not considered to be for commercial use if the request is in support of a news gathering or dissemination function.

The second category includes FOIA requesters seeking records for commercial use. Commercial use is not defined in the law, but it generally includes profit making activities. A commercial user can be charged reasonable standard charges for document duplication, search, and review.

The third category of FOIA requesters includes everyone not in the first two categories. People seeking information for personal use, public interest groups, and nonprofit organizations are examples of requesters who fall into the third group. Charges for these requesters are limited to reasonable standard charges for document duplication and search. Review costs may not be charged. The 1986 amendments did not change the fees charged to these requesters.

Small requests are free for a requester in the first and third categories. This includes all requesters *except* commercial users. There is no charge for the first 2 hours of search time and for the first 100 pages of documents. A noncommercial requester who limits a request to a small number of easily found records will not pay any fees at all.

1987

In addition, the law also prevents agencies from charging fees if the cost of collecting the fee would exceed the amount collected. This limitation applies to all requests, including those seeking documents for commercial use. Thus, if the allowable charges for any FOIA request are small, no fees are imposed.

Each agency sets charges for duplication, search, and review based on its own costs. The amount of these charges is listed in agency FOIA regulations. Each agency also sets its own threshold for minimum charges.

The 1986 FOIA amendments also changed the law on fee waivers. Fees now must be waived or reduced if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

The 1986 amendments on fees and fee waivers have created some confusion. Determinations about fees are separate and distinct from determinations about fee waivers. For example, a requester who can demonstrate that he or she is a news reporter may only be charged duplication fees. But a requester found to be a reporter is not automatically entitled to a waiver of those fees. A reporter who seeks a waiver must demonstrate that the request also meets the standards for waivers.

Normally, only after a requester has been categorized to determine the applicable fees does the issue of a fee waiver arise. A requester who seeks a fee waiver should ask for a waiver in the original request letter. However, a request for a waiver can be made at a later time. The requester should describe how disclosure will contribute to public understanding of the operations or activities of the government. The sample request letter in the appendix includes optional language asking for a fee waiver.

Any requester may ask for a fee waiver. Some will find it easier to qualify than others. A news reporter who is only charged duplication costs may still ask that the charges be waived because of the public benefits that will result from disclosure. A representative of the news media, a scholar, or a public interest group are more likely to qualify for a waiver of fees. A commercial user may find it difficult to qualify for waivers.

The eligibility of other requesters will vary. A key element in qualifying for a fee waiver is the relationship of the information to public understanding of the operations or activities of government. Another important factor is the ability of the requester to convey that information to other interested members of the public. A requester is not eligible for a fee waiver solely because of indigence.

E. REQUIREMENTS FOR AGENCY RESPONSES

Each agency is required to determine within 10 days (excluding Saturdays, Sundays, and legal holidays) after the receipt of a request whether to comply with the request. The actual disclosure of documents is required to follow promptly thereafter. If a request is denied in whole or in part, the agency must tell the requester the reasons for the denial. The agency must also tell the requester that there is a right to appeal any adverse determination to the head of the agency.

The FOIA permits an agency to extend the time limits up to 10 days in unusual circumstances. These circumstances include the need to collect records from remote locations, review large numbers of records, and consult with other agencies. The agency is supposed to notify the requester whenever an extension is invoked.[13]

The statutory time limits for responses are not always met. An agency sometimes receives an unexpectedly large number of FOIA requests at one time and is unable to meet the deadlines. Some agencies assign inadequate resources to FOIA offices. The Congress does not condone the failure of any agency to meet the law's time limits. However, as a practical matter, there is little that a requester can do about it. The courts have been reluctant to provide relief solely because the FOIA's time limits have not been met.

The best advice to requesters is to be patient. The law allows a requester to consider that his or her request has been denied if it has not been decided within the time limits. This permits the requester to file an administrative appeal or file a lawsuit in Federal District Court. However, this is not always the best course of action. The filing of an administrative or judicial appeal will not necessarily result in any faster processing of the request.

Each agency generally processes requests in the order of receipt. Some agencies will expedite the processing of urgent requests. Anyone with a pressing need for records should consult with the agency FOIA officer about how to ask for expedited treatment of requests.

F. REASONS ACCESS MAY BE DENIED UNDER THE FOIA

An agency may refuse to disclose an agency record that falls within any of the FOIA's nine statutory exemptions. The exemptions protect against the disclosure of information that would harm national defense or foreign policy, privacy of individuals, proprietary interests of business, functioning of the government, and other important interests. A document that does not qualify as an "agency record" may be denied because only agency records are available under the FOIA. Personal notes of agency employees may be denied on this basis. However, most records in the possession of an agency are "agency records" within the meaning of the FOIA.

An agency may withhold exempt information, but it is not always required to do so. For example, an agency may disclose an exempt internal memorandum because no harm would result from its disclosure. However, an agency is not likely to agree to disclose an exempt document that is classified or that contains a trade secret.

When a record contains some information that qualifies as exempt, the entire record is not necessarily exempt. Instead, the FOIA specifically provides that any reasonably segregable portions of a record must be provided to a requester after the deletion of the portions that are exempt. This is a very important requirement because it prevents an agency from withholding an entire document simply because one line or one page is exempt.

[13] Agencies that take more than 10 days to respond to a request do not always notify each requester that an extension has been invoked.

1. Exemption 1.—Classified Documents

The first FOIA exemption permits the withholding of properly classified documents. Information may be classified in the interest of national defense or foreign policy.

The rules for classification are established by the President and not the FOIA or other law. The FOIA provides that, if a document has been *properly* classified under a Presidential Executive order, the document can be withheld from disclosure.

Classified documents may be requested under the FOIA. An agency can review the document to determine if it still requires protection. In addition, the Executive order on security classification establishes a special procedure for requesting the declassification of documents.[16] If a requested document is declassified, it can be released in response to an FOIA request. However, a document that is declassified may still be exempt under other FOIA exemptions.

2. Exemption 2.—Internal Personnel Rules and Practices

The second FOIA exemption covers matters that are related solely to an agency's internal personnel rules and practices. As interpreted by the courts, there are two separate classes of documents that are generally held to fall within exemption 2.

First, information relating to personnel rules or internal agency practices is exempt if it is trivial administrative matter of no genuine public interest. A rule governing lunch hours for agency employees is an example.

Second, an internal administrative manual can be exempt if disclosure would risk circumvention of law or agency regulations. In order to fall into this category, the material will normally have to regulate internal agency conduct rather than public behavior.

3. Exemption 3.—Information Exempt Under Other Laws

The third exemption incorporates into the FOIA other laws that restrict the availability of information. To qualify under this exemption, a statute must require that matters be withheld from the public in such a manner as to leave no discretion to the agency. Alternatively, the statute must establish particular criteria for withholding *or* refer to particular types of matters to be withheld.

One example of a qualifying statute is the provision of the Tax Code prohibiting the public disclosure of tax returns and tax return information.[17] Another qualifying exemption 3 statute is the law designating identifiable census data as confidential.[18] Whether a particular statute qualifies under exemption 3 can be a difficult legal question.

4. Exemption 4.—Confidential Business Information

The fourth exemption protects from public disclosure two types of information: Trade secrets and confidential business information.

[16] At the time that this guide was prepared, the current Executive order on security classification was Executive Order 12356 which was promulgated by President Reagan on Apr. 2, 1982. The text of the order can be found at 47 *Federal Register* 14874–84 (Apr. 6, 1982). The rules for mandatory review for declassification are in sec. 3.4 of the Executive order.

[17] 26 U.S.C. § 6103 (1982).

[18] 13 U.S.C. § 9 (1982).

201

A trade secret is a commercially valuable plan, formula, process, or device. This is a narrow category of information. An example of a trade secret is the recipe for a commercial food product.

The second type of protected data is commercial or financial information obtained from a person and privileged or confidential. The courts have held that data qualifies for withholding if disclosure by the government would be likely to harm the competitive position of the person who submitted the information. Detailed information on a company's marketing plans, profits, or costs can qualify as confidential business information. Information may also be withheld if disclosure would be likely to impair the government's ability to obtain similar information in the future.

Only information obtained from a person other than a government agency qualifies under the fourth exemption. A person is an individual, a partnership, or a corporation. Information that an agency created on its own cannot normally be withheld under exemption four.

Although there is no formal requirement under the FOIA, many agencies will notify a submitter of business information that disclosure of the information is being considered.[19] The submitter then has an opportunity to convince the agency that the information qualifies for withholding. A submitter can also file suit to block disclosure under the FOIA. Such lawsuits are generally referred to as "reverse" FOIA lawsuits because the FOIA is being used in an attempt to *prevent* rather than to *require* the disclosure of information. A reverse FOIA lawsuit may be filed when the submitter of documents and the government disagree whether the information is confidential.

5. Exemption 5.—Internal Government Communications

The FOIA's fifth exemption applies to internal government documents. An example is a letter from one government department to another about a joint decision that has not yet been made. Another example is a memorandum from an agency employee to his supervisor describing options for conducting the agency's business.

The purpose of the fifth exemption is to safeguard the deliberative policymaking process of government. The exemption encourages frank discussion of policy matters between agency officials by allowing supporting documents to be withheld from public disclosure. The exemption also protects against premature disclosure of policies before final adoption.

While the policy behind the fifth exemption is well accepted, the application of the exemption is complicated. The fifth exemption may be the most difficult FOIA exemption to understand and apply. For example, the exemption protects the policymaking process, but it does not protect purely factual information related to the policy process. Factual information must be disclosed unless it is inextricably intertwined with protected information about an agency decision.

Protection for the decisionmaking process is appropriate only for the period while decisions are being made. Thus, the fifth exemp-

[19] See *Predisclosure Notification Procedures for Confidential Commercial Information*, Executive Order 12600 (June 23, 1987).

200

tion has been held to distinguish between documents that are predecisional and therefore may be protected, and those which are post-decisional and therefore not subject to protection. Once a policy is adopted, the public has a greater interest in knowing the basis for the decision.

The exemption also incorporates some of the privileges that apply in litigation involving the government. For example, papers prepared by the government's lawyers can be withheld in the same way that papers prepared by private lawyers for clients are not available through discovery in civil litigation.

6. Exemption 6.—Personal Privacy

The sixth exemption covers personnel, medical, and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. This exemption protects the privacy interests of individuals by allowing an agency to withhold intimate personal data kept in government files. Only individuals have privacy interests. Corporations and other legal persons have no privacy rights under the sixth exemption.

The exemption requires agencies to strike a balance between an individual's privacy interest and the public's right to know. However, since only a *clearly* unwarranted invasion of privacy is a basis for withholding, there is a perceptible tilt in favor of disclosure in the exemption. Nevertheless, the sixth exemption makes it harder to obtain information about another individual without the consent of that individual.

The Privacy Act of 1974 also regulates the disclosure of personal information about an individual. The FOIA and the Privacy Act overlap in part, but there is no inconsistency. An individual seeking records about himself or herself should cite both laws when making a request. This ensures that the maximum amount of disclosable information will be released. Records that can be denied to an individual under the Privacy Act are not necessarily exempt under the FOIA.

7. Exemption 7.—Law Enforcement

The seventh exemption allows agencies to withhold law enforcement records in order to protect the law enforcement process from interference. The exemption was amended slightly in 1986, but it still retains six specific subexemptions.

Exemption (7)(A) allows the withholding of a law enforcement record that could reasonably be expected to interfere with enforcement proceedings. This exemption protects an active law enforcement investigation from interference through premature disclosure.

Exemption (7)(B) allows the withholding of information that would deprive a person of a right to a fair trial or an impartial adjudication. This exemption is rarely used.

Exemption (7)(C) recognizes that individuals have a privacy interest in information maintained in law enforcement files. If the disclosure of information could reasonably be expected to constitute an unwarranted invasion of personal privacy, the information is exempt from disclosure. The standards for privacy protection in exemption 6 and exemption (7)(C) differ slightly. Exemption (7)(C) protects against an unwarranted invasion of personal privacy while exemption 6 protects against *clearly* a unwarranted invasion. Also, exemption (7)(C) allows the withholding of information that "could reasonably be expected to" invade someone's privacy. Under exemption 6, information can be withheld only if disclosure "would" invade someone's privacy.

Exemption (7)(D) protects the identity of confidential sources. Information that could reasonably be expected to reveal the identity of a confidential source is exempt. A confidential source can include a State, local, or foreign agency or authority, or a private institution that furnished information on a confidential basis. In addition, the exemption protects information furnished by a confidential source if the data was compiled by a criminal law enforcement authority during a criminal investigation or by an agency conducting a lawful national security intelligence investigation.

Exemption (7)(E) protects from disclosure information that would reveal techniques and procedures for law enforcement investigations or prosecutions or that would disclose guidelines for law enforcement investigations or prosecutions if disclosure of the information could reasonably be expected to risk circumvention of the law.

Exemption (7)(F) protects law enforcement information that could reasonably be expected to endanger the life or physical safety of any individual.

8. Exemption 8.—Financial Institutions

The eighth exemption protects information that is contained in or related to examination, operating, or condition reports prepared by or for a bank supervisory agency such as the Federal Deposit Insurance Corporation, the Federal Reserve, or similar agencies.

9. Exemption 9.—Geological Information

The ninth FOIA exemption covers geological and geophysical information, data, and maps about wells. This exemption is rarely used.

C. FOIA EXCLUSIONS

The 1986 amendments to the FOIA gave limited authority to agencies to respond to a request without confirming the existence of the requested records. Ordinarily, any proper request must receive an answer stating whether there is any responsive information, even if the requested information is exempt from disclosure.

In some narrow circumstances, acknowledgement of the *existence* of a record can produce consequences similar to those resulting from disclosure of the record itself. In order to avoid this type of problem, the 1986 amendments established three "record exclusions."

The exclusions allow an agency to treat certain exempt records as if the records were not subject to the FOIA. An agency is not required to confirm the existence of three specific categories of records. If these records are requested, the agency may respond that there are no disclosable records responsive to the request. However, these exclusions do not broaden the authority of any agency to withhold documents from the public. The exclusions are

only applicable to information that is otherwise exempt from disclosure.

The first exclusion may be used when a request seeks information that is exempt because disclosure could reasonably be expected to interfere with a current law enforcement investigation (exemption (7)(A)). There are three specific prerequisites for the application of this exclusion. First, the investigation in question must involve a possible violation of criminal law. Second, there must be reason to believe that the subject of the investigation is not already aware that the investigation is underway. Third, disclosure of the *existence* of the records—as distinguished from the contents of the records—could reasonably be expected to interfere with enforcement proceedings.

When all of these conditions exist, an agency may respond to an FOIA request for investigatory records as if the records are not subject to the requirements of the FOIA. In other words, the agency's response does not have to reveal that it is conducting an investigation.

The second exclusion applies to informant records maintained by a criminal law enforcement agency under the informant's name or personal identifier. The agency is not required to confirm the existence of these records unless the informant's status has been officially confirmed. This exclusion helps agencies to protect the identity of confidential informants. Information that might identify informants has always been exempt under the FOIA.

The third exclusion only applies to records maintained by the Federal Bureau of Investigation which pertain to foreign intelligence, counterintelligence, or international terrorism. When the *existence* of these types of records is classified, the FBI may treat the records as not subject to the requirements of FOIA.

This exclusion does not apply to all classified records on the specific subjects. It only applies when the records are classified and when the *existence* of the records is also classified. Since the underlying records must be classified before the exclusion is relevant, agencies have no new substantive withholding authority.

In enacting these exclusions, congressional sponsors stated that it was their intent that agencies must inform FOIA requesters that these exclusions are available for agency use. Requesters who believe that records were improperly withheld because of the exclusions can seek judicial review.

II. ADMINISTRATIVE APPEAL PROCEDURES

Whenever an FOIA request is denied, the agency must inform the requester of the reasons for the denial and the requester's right to appeal the denial to the head of the agency. A requester may appeal the denial of a request for a document or for a fee waiver. A requester may contest the type or amount of fees that were charged. A requester may appeal any other type of adverse determination including a rejection of a request for failure to describe adequately the documents being requested. A requester can also appeal because the agency failed to conduct an adequate search for the documents that were requested.

A person whose request was granted in part and denied in part may appeal the part that was denied. If an agency has agreed to disclose some but not all requested documents, the filing of an appeal does not affect the release of the documents that are disclosable. There is no risk to the requester in filing an appeal.

The appeal to the head of the agency is a simple administrative appeal. A lawyer can be helpful, but no one needs a lawyer to file an appeal. Anyone who can write a letter can file an appeal. Appeals to the head of the agency often result in the disclosure of some records that had been withheld. A requester who is not convinced that the agency's initial decision is correct should appeal. There is no charge for filing an administrative appeal.

An appeal is filed by sending a letter to the head of the agency. The letter must identify the FOIA request that is being appealed. The envelope containing the letter of appeal should be marked in the lower left hand corner with the words "Freedom of Information Act Appeal."[20]

Many agencies assign a number to all FOIA requests that are received. The number should be included in the appeal letter, along with the name and address of the requester. It is a common practice to include a copy of the agency's initial decision letter as part of the appeal, but this is not required. It can also be helpful for the requester to include a telephone number in the appeal letter.

An appeal will normally include the requester's arguments supporting disclosure of the documents. A requester may include any facts or any arguments supporting the case for reversing the initial decision. However, an appeal letter does not have to contain any arguments at all. It is sufficient to state that the agency's initial decision is being appealed. Appendix 1 includes a sample appeal letter.

The FOIA does not set a time limit for filing an administrative appeal of an FOIA denial. However, it is good practice to file an appeal promptly. Some agency regulations establish a time limit for filing an administrative appeal. A requester whose appeal is rejected by an agency because it is too late may refile the original FOIA request and start the process again.

A requester who delays filing an appeal runs the risk that the documents could be destroyed. However, as long as an agency is considering a request or an appeal, the agency must preserve the documents.

An agency is required to make a decision on an appeal within 20 days (excluding Saturdays, Sundays, and Federal holidays). It is possible for an agency to extend the time limits by an additional 10 days. Once the time period has elapsed, a requester may consider that the appeal has been denied and may proceed with a judicial appeal. However, unless there is an urgent need for records, this may not be the best course of action. The courts are not sympathetic to appeals based solely on an agency's failure to comply with the FOIA's time limits.

[20] Agency FOIA regulations will normally describe the appeal procedures and requirements with more specificity. At some agencies, decisions on FOIA appeals have been delegated to other agency officials. Requesters who have an opportunity to review agency regulations in the *Code of Federal Regulations* (available in many libraries) may be able to speed up the processing of the appeal. However, following the simple procedures described in this Guide will be sufficient to establish a proper appeal.

I. FILING A JUDICIAL APPEAL

When an administrative appeal is denied, a requester has the right to appeal the denial in court. An FOIA appeal can be filed in the U.S. District Court in the district where the requester lives. The requester can also file suit in the district where the documents are located or in the District of Columbia. When a requester goes to court, the burden of justifying the withholding of documents is on the government. This is a distinct advantage for the requester.

Requesters are sometimes successful when they go to court, but the results vary considerably. Some requesters who file judicial appeals find that an agency will disclose some documents previously withheld rather than fight about disclosure in court. This does not always happen, and there is no guarantee that the filing of a judicial appeal will result in any additional disclosure.

Most requesters require the assistance of an attorney to file a judicial appeal. A person who files a lawsuit and substantially prevails may be awarded reasonable attorney fees and litigation costs reasonably incurred. Some requesters may be able to handle their own appeal without an attorney. Since this is not a litigation guide, details of the judicial appeal process have been not included. Anyone considering filing an appeal can begin by reading the provisions of the FOIA on judicial review.[21]

ARVIND VARMA
सचिव
SECRETARY

Tele. : 3014848
Fax : 3012432

D.O.No.34011/1(S)/97-Estt(B)

भारत सरकार
कार्मिक, लोक शिकायत तथा पेंशन मन्त्रालय
नई दिल्ली-110001

GOVERNMENT OF INDIA
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES
AND PENSIONS
NEW DELHI-110001

January 24, 1997

Dear Secretary,

29 JAN 1997

The Department of Personnel has set up a Working Group on Right to Information and Promotion of open and transparent Government under Shri H.D. Shourie, Chairman, Common Cause, New Delhi. A copy of the Office Memorandum dated January 2, 1997 indicating the composition and the terms of reference of the Group is enclosed.

2. The Working Group is, *inter alia*, considering proposals to modify the existing legal and administrative framework to achieve a situation in which disclosure of information will be the rule and withholding of information the exception. This would basically mean that any citizen or organisation will have freedom of access to Governmental information in all areas except those areas which are clearly demarcated and classified.

3. In this connection I would request you to kindly list out areas of information which need to remain classified in the interest of security of the State, privacy of individuals, investigation of offences or where information needs to be withheld in the interest of objective and impartial

Contd....

decision-making. As a part of this exercise, it would also be necessary to review the various legal and statutory provisions administered by your Ministry/Department to ascertain the extent of legislative, statutory or other amendments which may be required to be carried out. I shall be grateful if this exercise is carried out and a paper setting out the information that can be disclosed, information that needs to be withheld from the public, along with grounds for such withholding, and the consequential legislative/statutory changes that may be necessary, is sent for consideration of the Working Group. It would be appreciated if this exercise is completed before the 15th February, 1997 and your comments sent to Shri Harinder Singh, Joint Secretary (Establishment), Room No.111, North Block, New Delhi (Telephone No. 3011276).

With regards,

Yours sincerely,

(ARVIND VARMA)
O/C

All Secretaries to the Govt. of India
(As per list attached)

205

D.O. No. I/21011/54/96-IS(US.D.II)

S. PRAKASH, IAS
संयुक्त सचिव
JOINT SECRETARY

Tel: 301 4979

भारत सरकार
GOVERNMENT OF INDIA
गृह मंत्रालय
MINISTRY OF HOME AFFAIRS

New Delhi, February 11, 1997.

Dear Shri Paranjpe

Please find enclosed my comments on the Draft Bill on 'freedom of information' which is currently being discussed by the Working Group set up under Shri H.D. Shourie.

Yours sincerely,

(S. PRAKASH)

Shri Y.G. Paranjpe,
Director,
Ministry of Personnel,
Public Grievances & Pensions,
D/o Personnel & Training,
New Delhi.

206

COMMENTS ON THE DRAFT BILL ON 'FREEDOM OF INFORMATION' PROPOSED BY SHRI H.D. SHOURIE.

1. Section 2(c) of the Act which defines public authorities includes both the Central and the State Government and all local and other authorities under their control. In this regard, it may be necessary to seek the views of the State Government before we include them within the ambit of the Act.

Section 2 c(ii) includes within public authorities, companies, corporations, society, firm or a cooperative society whether owned or controlled by private individuals and institutions whose activities affect the public interest. In this context, it may be mentioned that companies, corporations are engaged in commercial activities and their rights and privileges flow from several other statues. Hence, any provision regarding Right to Informatio with regard to these bodies will have to be made keeping in view its confirmity with the provisions of these Acts. Any curb on the rights and privileges flowing to these bodies from the other Act would make it liable for being challenged in the Law Courts. Therefore, a right balance will have to be struct between the requirment of 'Right to Information' and the rights and privileges that flows to these bodies from the different Acts. In addition, inclusion of these bodies within the definition of public body would not only raise the difficulties as mentioned above , but would also pose problems in their identification as only those bodies are supposed to be covered whose activities affect public interest. If this is to be included in the Bill, it would be necessary to appropriately define the term public interest in order to remove any ambiguity.

2. Section 3(4) of the Draft Bill envisages setting up of a visitors committee for all custodial establishments with full access to their records and inmates of such establishments. This arrangement is already existing with regard to the Jails, Remand Houses etc. in most of the States. It is felt that the

207

Contd...

arrangements as contemplated by this provision can be made through administrative orders without incorporation in the law.

3. Section 4 of the Draft Bill provide for the restriction on 'Right to Information'. With regard to this Section, the following is suggested:

i) Inter-Departmental and intra-Departmental notings should be excluded. This has been suggested keeping in view the fact that if the officers feel that their views are likely to be subjected to public gaze and exposure, they may not give their free and frank opinion particularly on the sensitive matters under consideration due to fear of reprisal and legal action.

ii) The restrictions as incorporated in the Section do not cover consideration of the budgetary issueswhich need to be protected until the budget is presented in the Parliament. This has to be carefully considered and incorporated in the Bill.

4. In view of the increasing bearing of economic commercial and scientific issues on the national interest, it is suggested that "scientific, economic and technological matters relating to national security" may be added to the list of restrictive items. This category of information has also been included in the restrictive items in the US Freedom of Information Act.

5. The proviso to Section 4 of the Draft Bill also needs to be clearly define taking into account the provisions relating to parliamentary privileges.

6. Section 8 of the Draft Bill of PCI provides for the personal responsibilites of officers for not furnishing information given the nature of Gov ~nment procedures and the

Contd...

208

large number of functionaries associated with its functions, such a provision needs a review, particularly because determining the liability with reference to the gravity of the fault of any person would pose serious problems in practice.

Financial Cost for Implementing the proposed Bill

In its report, the Task Force had indicated that in countries where the Right to Information is existing, the implementation of the Act involved heavy financial cost (in terms of additional man-power, procurement of equipment etc.). It has been stated that in the year 1989 - U.S. spent a sum of 65 million dollars and Canada spent a sum of 5 million dollars in 1988-89 in this regard. Cost of the implementation of the Act in this country is likely to be on the much higher side. This is so because unlike U.S. and Canada which are capitalists economies with the State having a restricted role, State activities in India are more comprehensive and impinge upon nearly every aspect of citizens life. It is for consideration whether at the present juncture when we are faced with resource crunch and effort are being made to curtail Government expenditure, we can go ahead with the enactment of this Bill which has a fairly high financial implications. If it is decided in principle to proceed with the Bill, it may be desirable that in the first phase, it is confined to Central Government and limited number of Public Bodies that are specified in a Schedule attached with the Bill; the scope of the Bill may be expanded in a phased manner, keeping in view the resource position and experience gained in implementation of the Bill.

209

Government of India
Ministry of Personnel, Public Grievances & Pensions
: : :
New Delhi, dated the 17th Feb., 1997

17/2/1997

Subject: Working Group on Right to Information and promotion of open and transparent Government.
*****

The observations of Shri H.D. Shourie on Shri S. Prakash's comments on the draft Bill are enclosed for the perusal of the Working Group.

2. As already intimated the next meeting of the Working Group will be held on Feb 19, 1997 at 4.30 P.M.in Conference Room (Room No.515, 5th floor), Sardar Patel Bhawan, Sansad Marg, New Delhi.

(Y.G. Parande)
Director

1. Shri H.D. Shourie, A-31, Westend, New Delhi-110021.

2. Shri Soli Sorabjee, Sr.Advocate, 134 Sundar Nagar, New Delhi-110003.
2. Shri Shashi Prakash, Joint Secretary, Ministry of Home Affairs, New Delhi

4. Shri A.K.Sinha, Joint Secretary, Department of Legal Affairs, Room No.417-A, Shastri Bhawan, New Delhi.

5. Shri R.N. Verma, Executive Director, Traffic Transportation (F), Railway Board, Rail Bhawan, New Delhi

6. Shri S.P. Ojha, Sr. Deputy Director General (Vig.), Department of Posts, Dak Bhawan, New Delhi

7. Shri Ashok Kumar, Joint Secretary, Department of Telecommunications, Room No.301, Sanchar Bhawan, New Delhi.

8. Shri S. Narendra, Principal Information Officer, Ministry of Information & Broadcasting, New Delhi.

9. Shri N.S. Madhavan, Joint Secretary, Department of Personnel & Training, New Delhi.
10. Shri Harinder Singh, Joint Secretary, Department of Personnel & Training, New Delhi.

c.c. to Dr. P.S.A. Sundaram, Additional Secretary (AR&T) Department of Administrative Reforms & Public Grievances, Sardar Patel Bhawan, New Delhi.

Receipts & Issue Section

210

OBSERVATIONS OF SHRI H.D. SHOURIE ON SHRI PRAKASH'S COMMENTS ON THE DRAFT BILL

(i) As regards the question of consultation with State Governments, matters like this which have an all India importance are normally enacted without necessarily consulting State Governments. For instance, Consumer Protection Act, which covers State Governments also, was possibly enacted without consultation with State Governments.

(ii) As to the problem arising from the inclusion of Private Corporations etc., it may be mentioned that the provisions of Clause 4(C) of the Bill already protect trade or commercial secrets from disclosure. Outside the area of trade or commercial secrets, there would be a large area of information, the disclosure of which would be necessary in consumers' interest - without necessarily affecting the legitimate interests of a firm as regards its competitiveness in the market.

(iii) As regards visitors committees, there might be no objection to delete the statutory provision if such bodies can be set up under administrative orders.

(iv) The point regarding protection against disclosure of intra-departmental or interdepartmental correspondence and noting would be relevant so far as premature disclosure of information is concerned. There need be no inhibition in regard to disclosure of such matters after the decision is made. There is no reason why any officer should fight shy of frank expression of his views merely because they are likely to be known to outsiders after the announcement or making of a decision.

211

(v) As regards economic, scientific or technological information having a bearing on national security, Clause 4 can be suitably amended to protect such information from disclosure. The same applies to information relating to budget and the overriding nature of Parliamentary Privilege.

(vi) As regards the penal provisions, it needs to be noted that these would be attracted only in respect of a person who is under an obligation to suply information under the provisions of the Act. It would not be attracted in respect of other functionaries.

(vii) As regards financial cost , this is bound to be there. It is a cost that has to be paid in the larger interest of transparency and openness. At the same time, it has to be also recognised that such costs can be substantially met through fees to be levied for supplying information.

212

Proceedings of the 3rd Meeting of the Working Group held on Feb 19, 1997

The third meeting of the Working Group was held on Feb 19, 1997. Shri H.D. Shourie was in the Chair.

The Working Group first considered the comments given by Shri Shashi Prakash on the Draft Bill. The following decisions were taken:

a) Consultation with State Governments:
Shri Shourie stated that in his view, considering the all-India importance of the proposed legislation, consultation with State Governments did not appear necessary. He referred to the Consumer Protection Act, which created certain liabilities on the State Governments. The question of competence of the Parliament to enact the proposed legislation, in the context of certain entries in the State list in the Seventh Schedule, such as entry No.12 was also discussed. It was felt that these entries related primarily to records of the State Government and did not impinge on centre's field. Broadly, it was felt that Parliament had the necessary competence. However, it was decided that this aspect would be further examined by the Members.

b) Application of the Bill to private Corporations/firms:- Under clause 2(c)(ii), the definition of public authority covered private corporations/firms. It was felt that this required reconsideration since the legislation should preferably cover only governmental organisations. The right to information in most countries was vis-a-vis the State. While the citizen, as a taxpayer, had the right to have access to information held by Government, he did not stand in a similar relationship to a private firm. Besides, the implications of such a right on business activities, which generally should

212

be left to the market forces, were another aspect to be considered. In the areas where activities of firms were subject to regulation, such as environmental/ safety standards etc., the relevant information would be obtainable though the concerned agencies of the State - subject to such information not being trade/commercial secrets. However, it was quite another matter to create such obligations directly on the private firms, which may not be desirable. On balance of considerations, it was decided that the definition of public bodies may be amended to include only organisations substantially funded/controlled by the Government.

c) Exclusion of Interdepartmental/Intra-departmental notings/correspondence: It was noted that both the code of Practice in the U.K. and Freedom of Information Act in the U.S. excluded such information from disclosure. There was a broad agreement that such documents needed to be protected from disclosure in the interest of objectivity of advice that civil servants were required to bring into decision-making processes and to protect candour and frankness of expression in discussions. The question, however, was whether such documents needed to be protected against disclosure permanently - even after decisions had been made. It was noted that the Courts in the U.S. had, over a period of time, afforded the protection against public disclosure to such documents in the pre-decisional phase only. Thus the protection to such records in the US was primarily against premature disclosure. The UK Code of Practice on the other hand did not seem to make any distinction both the pre-decisional and post-decisional phases. It was felt that this issue needed very careful consideration in the context of our own situation. Shri Sorabjee

214

also pointed out that one needed to take into account the law laid down in S.P. Gupta's case. It was decided that a suitable draft exclusion clause would be prepared after a comparative study of the provisions relating disclosure of such information in various other countries. The exclusion clause would also take into account the need to afford protection to scientific, technological and economic information having a bearing on national security, as well as information relating to Budget and information the disclosure of which might constitute beech of Parliamentary Privilege.

d) Personal responsibility - Punishment for violation of the Act:- It was pointed out by some members that these provisions appeared draconian. Most often the person who was vested with the responsibility to provide information would not himself be possessing or controlling it, and would have to obtain it from his superiors, colleagues or subordinates. In such a situation it would be undesirable to subject him, to the liability of punishment. There would be a clear prospect of a large number of cases being dragged into litigation - debilitating the system on one hand and defeating the primary purpose of providing information on the other, given the state of arrears in Courts. The responsibility should, therefore, rest primarily on the concerned agencies rather than individual officers. It was felt, in this context, that one deficiency in the Bill was the absence of a mediating authority between the State and the citizen. Many countries had provided for Ombudsmen and we could consider a similar institution. At the same time one

215

had also to keep in mind the need to avoid excessive proliferation of such institution in view of their financial burden on the State. One option was to assign the task to Lokayuktas in the states where they existed. It was decided that this matter would be further considered by the Members and a suitable revision of clauses 7,8,9,10 and 11 attempted.

It was pointed out during discussions that in many cases, where decision had to be taken in extremely short time spans to meet emergent situations, no records were usually maintained as maintenance of records was not functionally necessary. The Bill should not result in an obligation to create records where none were operationally necessary. It was decided that provisions of clause 3(2) would be suitably modified to ensure that they would not necessitate creation of such records - on the analogy of FOIA of US.

It was pointed out that, under clause 14 both the Central and State Governments had the power to frame rules. It was desirable to maintain a degree of uniformity on a national basis. There should, therefore, be a requirement for the State Governments to get their rules cleared from the Central Government as was reportedly the practice in respect of rules framed under the Consumer Protection Act.

Clause 5(3) of the Bill required supply of information in English, Hindi or in the language of the State in which the public authority was located. It was apprehended that the requirement to supply information in the language of the local state may create difficulties. In any case, this was a matter of detail and could be covered in the rules. As such the provision could be deleted from the Bill.

216

In the light of the Freedom of Information Bill, it would be necessary to amend other laws/regulations such as Official Secrets Act, the relevant provisions of Indian Evidence Act and CCS (Conduct) Rules. Draft amendments of S.5 of Official Secrets Act and Conduct Rules had briefly been considered by the Group earlier. As regards, amendments to Evidence Act, the Law Commission's recommendations, in their 69th Report could be taken into consideration.

217

No.34011/1(s)/97-Estt.(B)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

New Delhi, dated 27th Feb.,1997 27 FEB 1997

Subject:Working Group on Right to Information and promotion of open and transparent Government.

A copy of the procedings of the third meeting of the Working Group on "Right to Information and promotion of open and transparent Government" held on 19th February,1997 is enclosed.

2. The next meeting of the Working Group will be held on March 14, 1997 at 4.30 p.m. in Conference Room (Room No. 515, 5th floor), Sardar Patel Bhavan, Sansad Marg, New Delhi. Kindly make it convenient to attend.

(Y.G.PARANDE)
DIRECTOR

1.Shri H.D.Shourie, A-31, Westend, New Delhi- 110 021.

2.Shri Soli Sorabjee,Sr.Advocate, 134 Sunder Nagar, New Delhi- 110003.

3.Shri Shashi Prakash, Joint Secretary, Ministry of Home Affairs, New Delhi.

4.Shri A.Sinha, Joint Secretary, Department of Legal Affairs,Room No.417-A, Shastri Bhavan,New Delhi.

5.Shri R.N.Verma, Executive Director,Traffic Transportation (F), Railway Board, Rail Bhavan, New Delhi

6.Shri S.P.Ojha, Sr.Deputy Director General (Vig.), Department of Posts, Dak Bhavan, New Delhi.

7.Shri Ashok Kumar, Joint Secretary, Department of Telecommunications,Room No. 301, Sanchar Bhavan, New Delhi.

8.Shri S.Narendra, Principal Information Officer, Ministry of Information & Broadcasting, New Delhi.

9.Shri N.S.Madhavan, Joint Secretary, Ministry of Information and Broadcasting, Shastri Bhavan, New Delhi.

10.Shri Harinder Singh, Joint Secretary, Department of Personnel & Training, New Delhi.

c.c. to Dr. P.S.A. Sunderam, Additional Secretary (AR&T), Department of Administrative Reforms and Public Grievances, Sardar Patel Bhavan, New Delhi.

218

Proceedings of the 3rd Meeting of the Working Group held on Feb 19, 1997

The third meeting of the Working Group was held on Feb 19, 1997. Shri H.D. Shourie was in the Chair.

The Working Group first considered the comments given by Shri Shashi Prakash on the Draft Bill. The following decisions were taken:

a) Consultation with State Governments: Shri Shourie stated that in his view, considering the all-India importance of the proposed legislation, consultation with State Governments did not appear necessary. He referred to the Consumer Protection Act, which created certain liabilities on the State Governments. The question of competence of the Parliament to enact the proposed legislation, in the context of certain entries in the State list in the Seventh Schedule, such as entry No.12 was also discussed. It was felt that these entries related primarily to records of the State Government and did not impinge on centre's field. Broadly, it was felt that Parliament had the necessary competence. However, it was decided that this aspect would be further examined by the Members.

b) Application of the Bill to private Corporations/firms:- Under clause 2(e)(ii), the definition of public authority covered private corporations/firms. It was felt that this required reconsideration since the legislation should preferably cover only governmental organisations. The right to information in most countries was vis-a-vis the State. While the citizen, as a taxpayer, had the right to have access to information held by Government, he did not stand in a similar relationship to a private firm. Besides, the implications of such a right on business activities, which generally should

219

be left to the market forces, were another aspect to be considered. In the areas where activities of firms were subject to regulation, such as environmental/ safety standards etc., the relevant information would be obtainable though the concerned agencies of the State - subject to such information not being trade/commercial secrets. However, it was quite another matter to create such obligations directly on the private firms, which may not be desirable. On balance of considerations, it was decided that the definition of public bodies may be amended to include only organisations substantially funded/controlled by the Government.

c) Exclusion of Interdepartmental/Intra-departmental notings/correspondence: It was noted that both the code of Practice in the U.K. and Freedom of Information Act in the U.S. excluded such information from disclosure. There was a broad agreement that such documents needed to be protected from disclosure in the interest of objectivity of advice that civil servants were required to bring into decision-making processes and to protect candour and frankness of expression in discussions. The question, however, was whether such documents needed to be protected against disclosure permanently - even after decisions had been made. It was noted that the Courts in the U.S. had, over a period of time, afforded the protection against public disclosure to such documents in the pre-decisional phase only. Thus the protection to such records in the US was primarily against premature disclosure. The UK Code of Practice on the other hand did not seem to make any distinction both the pre-decisional and post-decisional phases. It was felt that this issue needed very careful consideration in the context of our own situation. Shri Sorabjee

220

also pointed out that one needed to take into account the law laid down in S.P. Gupta's case. It was decided that a suitable draft exclusion clause would be prepared after a comparative study of the provisions relating disclosure of such information in various other countries. The exclusion clause would also take into account the need to afford protection to scientific, technological and economic information having a bearing on national security, as well as information relating to Budget and information the disclosure of which might constitute beach of Parliamentary Privilege.

d) Personal responsibility - Punishment for violation of the Act:- It was pointed out by some members that these provisions appeared draconian. Most often the person who was vested with the responsibility to provide information would not himself be possessing or controlling it, and would have to obtain it from his superiors, colleagues or subordinates. In such a situation it would be undesirable to subject him, to the liability of punishment. There would be a clear prospect of a large number of cases being dragged into litigation - debilitating the system on one hand and defeating the primary purpose of providing information on the other, given the state of arrears in Courts. The responsibility should, therefore, rest primarily on the concerned agencies rather than individual officers. It was felt, in this context, that one deficiency in the Bill was the absence of a mediating authority between the State and the citizen. Many countries had provided for Ombudsmen and we could consider a similar institution. At the same time one

221

had also to keep in mind the need to avoid excessive proliferation of such institution in view of their financial burden on the State. One option was to assign the task to Lokayuktas in the states where they existed. It was decided that this matter would be further considered by the Members and a suitable revision of clauses 7,8,9,10 and 11 attempted.

It was pointed out during discussions that in many cases, where decision had to be taken in extremely short time spans to meet emergent situations, no records were usually maintained as maintenance of records was not functionally necessary. The Bill should not result in an obligation to create records where none were operationally necessary. It was decided that provisions of clause 3(2) would be suitably modified to ensure that they would not necessitate creation of such records - on the analogy of FOIA of US.

It was pointed out that, under clause 14 both the Central and State Governments had the power to frame rules. It was desirable to maintain a degree of uniformity on a national basis. There should, therefore, be a requirement for the State Governments to get their rules cleared from the Central Government as was reportedly the practice in respect of rules framed under the Consumer Protection Act.

Clause 5(3) of the Bill required supply of information in English, Hindi or in the language of the State in which the public authority was located. It was apprehended that the requirement to supply information in the language of the local state may create difficulties. In any case, this was a matter of detail and could be covered in the rules. As such the provision could be deleted from the Bill.

222

In the light of the Freedom of Information Bill, it would be necessary to amend other laws/regulations such as Official Secrets Act, the relevant provisions of Indian Evidence Act and CCS (Conduct) Rules. Draft amendments of S.5 of Official Secrets Act and Conduct Rules had briefly been considered by the Group earlier. As regards, amendments to Evidence Act, the Law Commission's recommendations, in their 69th Report could be taken into consideration.

223

Most Immediate

No. 34011/1(s)/97-Estt.(B)

Government of India

Ministry of Personnel, Public Grievances & Pensions

Department of Personnel & Training

***

New Delhi, the 13th March'97.

Subject: Working Group on Right to Information and promotion of open and transparent Government.

***

A draft Statutory Scheme for Freedom of Information is enclosed for consideration of the Working Group in its meeting to be held on March 14, 1997.

2. In particular, the Working Group may need to discuss in detail a few major issues.

3. The first item is the category of information exempted from disclosure. A brief note on this subject has already been circulated.

4. The second item is the Review mechanism. A review of the schemes elsewhere shows that different countries have followed different ways for devising review mechanism under their Statutes.

5. The practice in the U.S.A. is that a requester can make an appeal to the head of the concerned agency when his request for access to information is turned down. If this administrative appeal fails he can go to a Court which may order disclosure of the information. There is thus no intermediary authority to resolve disputes before matters reach Courts.

6. This situation is similar to the one contemplated in the Press Council's Bill which the Working Group has been considering.

7. Canada, Australia, and also New Zealand, on the other hand have placed intermediary authorities between the administration and the Courts. In the U.K., complaints can be made first to the Department concerned and then to the Ombudsman through a Member of Parliament. The Code being non-statutory, there seems to be no further judicial remedy under it. In Australia and New Zealand a requester who is refused access can complain to the Ombudsman. The Australian Law also provides for complaints to Administrative Tribunal.

8. Canada has the Information Commissioner who performs an Ombudsman like role.

224

9. In all the three cases, i.e. the ombudsmen in Australia and New Zealand and Information Commissioner in Canada can investigate complaints and make recommendations to the Ministries or Heads of agencies. But they cannot order disclosure.

10. In the case of Australia, even the orders of the Tribunal are not binding on the Government and the Minister can decide not to revoke the certificate regarding exempt nature of the document in question. In such an event, he has to issue notice to the party briefly stating his finding and reasons and also lay a copy of the notice before each House of Parliament within 5 sitting days from the issue of the notice. Similarly, in New Zealand, the Governor-General in Council can override a recommendation of the Ombudsman by an Order in Council which is to be published in the Gazette and also laid before the Parliament as soon as practicable. This Order is subject to judicial review by High Court.

11. Under the Canadian law also, the decision of a head of agency not to comply with a recommendation of the Information Commissioner, as regards disclosure of information, is open to review in Federal Court.

12. During its last meeting, the Working Group had noted the absence of a mediating mechanism between the citizen and the administration before disputes reached Courts. Having regard to, the cardinal principle of the Ministers' responsibility to Parliament in a Parliamentary Democracy, it is felt that a combination of Ombudsman type intervention and judicial review would be more appropriate in our context. One has also to bear in mind the state of arrears in Courts. If matters are permitted to reach Courts directly, without any filtering, it is unlikely that persons seeking access would get remedies within the stipulated time limit.

13. The draft Statutory Scheme, therefore envisages the role of the Ombudsman for the Information Commissioner with the provision that wherever Lokayuktas exist, they may be made Information Commissioners ex-officio.

14. A related aspect is the question of providing a district level machinery under the Information Commissioner. The Statutory Scheme proposes that such a machinery in the form of a Deputy Information Commissioners be created, as far as possible, within the

existing resources. The purpose is to meet the twin objectives of minimising the burden on the exchequer on the one hand, and providing citizens access to the grievance redressal forum as close as possible to their places of residence or business. There can be suitable delegation to Deputy Information Commissioners to enable them to discharge some of the functions of Information Commissioners. The Group may like to deliberate on the feasibility of the arrangement. While economy is undoubtedly very important, the machinery would not serve the intended purpose unless it is also effectives. Therefore, this is an aspect that would require careful consideration.

15. The Freedom of Information Bill will necessitate review and amendments of the relevant provisions of many Acts which deal with information. The Working Group has already briefly discussed the need for amendments to S.5 of the Official Secrets Act and Sections 123, 124 of the Evidence Act. Besides these, there may be a large number of laws which will need review. Their identification requires extensive research and, as such, would be a matter the Working Group may be unable to deal with. The appropriate method might be to entrust the task to Law Commission or a body like the National Law Institute. The Group might consider this aspect also.

16. Finally, in the proposed review mechanism, State level Lokayuktas are being given jurisdiction over Central Government Organisations, with a provision requiring from Information Commissioners to give annual reports of functioning of the Act, to be laid in the Parliament. A fair amount of coordination at the Central level would be necessary. Further, it is desirable that the rules/regulations, etc. under the Act are framed by the Central Government to ensure homogeniety and uniformity of approach. It would, therefore, be necessary to allocate the policy and administration of the Act to one Central Ministry by suitably amending Allocation of Business Rules. The Group may like to deliberate over this also.

(Y.G. PARANDE)
Director

1. Shri H.D. Shourie, A-31 Westend, New Delhi-110021

2. Shri Soli Sorabjee, Sr. Advocate, 134 Sundar Nagar, New Delhi-110003.

226

3. Shri Shashi Prakash, Joint Secretary, Ministry of Home Affairs, New Delhi.

4. Shri A. Sinha, Joint Secretary, Department of Legal Affairs, Room No. 417-A, Shastri Bhawan, New Delhi.

5. Shri R.N. Verma, Executive Director, Traffic Transportation (F), Rly. Board, New Delhi.

6. Shri S.P. Ojha, Sr. Deputy Director General (Vig.), Department of Posts, Dak Bhawan New Delhi.

7. Shri Ashok Kumar, Joint Secretary, Department of Telecommunications, Room No. 301, Sanchar Bhawan, New Delhi.

8. Shri S. Narendra, Principal Information Officer, Ministry of Information & Broadcasting, New Delhi.

9. Shri N.S. Madhavan, Joint Secretary, Ministry of Information & Broadcasting, Shastri Bhawan, New Delhi.

10. Shri Harinder Singh, Joint Secretary, Department of Personnel & Training.

Copy to:

Dr. P.S.A. Sundaram, Additional Secretary (AR&T), Department of Administrative Reforms and Public Grievances, Sardar Patel Bhawan, New Delhi.

(Y.G. PARANDE)
Director

227

A STATUTORY SCHEME FOR FREEDOM OF INFORMATION

PURPOSE:

The statute may be called Freedom of Information Act. Its purpose would be to progressively extend the present laws and systems that provide access to information under the control of Govt. of India, State Governments, Union Territories and other governmental agencies and organisations substantially controlled or funded by the government (hereafter referred to as public authorities) in order:

(a) to promote openness and transparency in administration;

(b) to enable fuller and more meaningful participation of the people in making and implementation of policies and programmes affecting the public; and

(c) to promote accountability and responsibility in administration.

To fulfil these purposes, the right of access to information would be provided to citizens on the broad principles that -

(i) access to information should be the rule and denial of access the exception;

(ii) the grounds for denial may be clearly and specifically defined; and

(iii) there should be a provision for an independent review of decisions to withhold information.

SCOPE:

The scheme should apply to all Ministries/Departments of Central/State Governments and their attached and subordinate offices and other bodies including PSUs and autonomous bodies, substantially funded or controlled by the Government. The State governments may consider its extension to local bodies such as Municipal Corporations, Zilla Parishads and Panchayati Raj institutions. So far as the Judiciary, Tribunals and such other judicial/quasi-judicial bodies and Parliament/State Legislatures are concerned, the scheme would only cover their administrative/support services with the concurrence of the Chief Justice and the Speakers, as the case may be.

OBLIGATIONS ON PUBLIC AUTHORITIES.

Each public authority should publish periodically, and keep updated, information indicating

1. Particulars of its organisation, functions and responsibilities; 228

2. Description of its decision making processes in terms of procedures and powers and responsibilities of its officers and employees;

3. Norms for performance of activities such as prescribed periods for their processessing and completion, physical and financial targets etc., and the actual achievement with reference to such norm

4. Classes of records under its control including the rules, regulations, instructions and lists of manuals etc. used by its employees for carrying out activities;

5. The facilities provided for access to information; and

6. The name, designation and other relevant particulars of the officer, to be called the Information Facilitation Officer, to whom requests for information may be addressed.

It shall also be the duty of the concerned officers of a public authority to give reasons for decisions - whether administrative or adjudicative - to those affected and to disclose the relevant facts and analyses when major policies or decisions are announced.

GROUNDS FOR REFUSAL OF ACCESS IN CERTAIN CASES:

Access to information may be refused where :

(I) the request is too general or of such a nature that, having regard to the volume of information required to be retrieved or processed for fulfilling it, it would involve unreasonable diversion of the resources of a public authority and would interfere with normal functioning of such authority;

provided that, where access is being refused on the ground that the request is too general, it would be the duty of the designated officer in a public authority, to help the requester to reframe his request in such a manner as would facilitate compliance with it;

(ii) the request relates to information that is likely to be published soon or it relates to a matter that is required by law or convention to be published at a particular time;

(iii) the request relates to information which is already contained in published material available for sale.

THE PROCEDURE AND FORMS OF ACCESS.

Each public authority shall appoint officers to be called Information Facilitation Officers in its offices. While appointing these officers, the public authority concerned shall keep in mind the overriding need to

229

provide access to information as conveniently, cheaply and effectively and as close as possible to a cit place of residence or business.

It will be the responsibility of the Information Facilitation Officers to ensure access of informatio those making requests for it under the Scheme. The decision to refuse access should, however, be taken officers at level of Heads of Department in the various public authorities.

A request under this Scheme should be made in writing and should, as clearly as possible, specify particulars of the document or record to which access is being sought. Where a citizen cannot, for a va reason cannot make a request in writing, the Information Facilitation Officer may either accept an oral requ or assist the requester in making a written request.

The Information Facilitation Officer shall endeavour to provide access as expeditiously as possible an a decision in the matter should be taken within the maximum period of 30 days from the date of receipt the request. In case the decision is to refuse access, the grounds for refusal should be clearly indicated, alon with a decription of the review procedure open to the requester.

In the event it is not possible to respond to a request within the period of 30 days, the period may b extended upto a maximum of another 30 days for reasons to recorded, and communicated to the requester in writing.

Lack of response from a public authority, within the above period, shall be deemed to amount to a refusal of request for access to information and the requester shall be entitled to seek recourse to the review procedure.

Where the public authority, to whom a request under the Scheme is addressed, does not hold the requisite information, or where the information requested for is primarily the concern of some other public authority, it would be the responsibility of the Designated Officer in the authority to whom the request is addressed to transfer the request to such other public authority. In that case, the time limit of thirty days shall apply from the date it is received in the public authority to which it is transferred.

Access may be provided in one or more of the following forms

(i) A reasonable opportunity to inspect records/documents.

(ii) Supply of copies of documents; or

230

(iii) Where the information requested for is stored in computers, a provision of access through terminals or supply of print-outs etc.

Access should ordinarily be provided in the form it is requested for unless -

(a) it would unreasonably divert the resources of a public authority; or

(b) would be detrimental to storage or preservation of the record/document in question

FEE:

Fees may be charged for access to information and may be based on the cost of supplying the information such as cost of research involved in compiling the information and cost of copying etc. the fee may be waived in the cases where the disclosure can be said to be in the larger public interest.

EXEMPTIONS FROM DISCLOSURE:

Disclosure of information may be refused if the information is covered by any of the following categories:

(The categories would be incorporated in the Scheme once the Working Group takes a final view on the exclusion clauses in the proposed Freedom of Information Bill)

THIRD PARTY INTERVENTION:

Where a public authority intends to disclose information which has been supplied in confidence by a third party, or which might contain trade or commercial secrets of a third party, and such disclosure can reasonably be expected to harm the interest of such third party, a notice may be given to it of the intended disclosure and it may be permitted to make a representation, within 14 days of the receipt of the above notice, stating reasons why the information should not be disclosed. The public authority shall take such representation into account while taking a decision on the request for information. In the case of information other than trade or commercial secrets protected by law, disclosure shall be permitted if public interest outweighs in importance any expected harm or injury to the interests of the third party.

231

REVIEW PROCESS:

An Information Commissioner may be appointed, for resolving disputes between individuals seeking access to information under the Scheme and the concerned public authority, for each State/Union Territory and he shall have jurisdiction over all public authorities - whether under the Central Government or under the respective State/UT Governments - in the particular State or Union Territory. In the States where the institution of Lokayukta exists, the Lokayuktas may be made Information Commissioners *ex-officio*. Elsewhere a separate institution of Information Commissioner may be created.

Under the Information Commissioner, a District level machinery may be created, preferably within the available resources, headed by an officer to be designated as Deputy Information Commissioner, to provide an effective and economical remedy to citizens as close as possible to their places of residence or business. The Information Commissioner may make suitable delegation of his powers to the Deputy Information Commissioners to facilitate the functioning of his machinery.

The powers, responsibilities and procedures for functioning of Information Commissioner and his officers may be defined through rules or executive instructions. Broadly, however, he would be vested with the powers necessary for effective investigation and inquiry, including the power to peruse the record in question where necessary.

The review application against the decisions to withhold disclosure by a public authority, against a deemed refusal arising from its failure to respond to a request in the prescribed time, or the fee charged by it, would lie to the Information Commissioner.

A reasonable period may be fixed for the Information Commissioner to dispose of the review applications. Where the information requested for is in the nature of third party information, he may also be required to give due opportunity to such third party during the proceedings before him.

Considering the vital importance of confidentiality in many cases, a provision should be made for proceedings *in camera* in suitable cases on the request of the representatives of public authorities.

232

RECOMMENDATIONS BY THE INFORMATION COMMISSIONER

On completion of the review proceeding, the Information Commissioner shall send his report containing his recommendations to the public authority and the other parties to the review proceedings.

Where the recommendation is for providing access to the information sought, the public authority would be under a duty to take one of the following decisions on the recommendations within a fixed time of, say, 21 days,:

(a) Accept the recommendation and send a notice accordingly to the party; or

(b) Reject the recommendation and inform the party accordingly, giving brief reasons for the decision.

The decision not to release information pursuant to a recommendation of the Information Commissioner shall invariably be taken by the Minister in charge of the concerned Ministry/Department and it shall be laid on the Tables of the Houses of Parliament or State Legislature as soon as practicable.

In case the decision as above is not communicated to a party in time the Information Commissioner may advise the party of the judicial review open to him.

JUDICIAL REVIEW

There should an appropriate mechanism for judicial review of the decisions of various authorities under the Act, including a provision to enable the Information Commissioner to make a reference to High Courts in appropriate cases involving substantial questions of law.

There should also be provision for the Information Commissioner to cause appearance on behalf of a party in deserving cases.

REPORTS TO PARLIAMENT / STATE LEGISLATURES.

The Information Commissioner shall furnish annual reports indicating the functioning of the review machinery under the Act, such as the number of applications received and disposed of, time taken for disposal, the number of cases in which his recommendation was not accepted by public authorities etc. The appropriate

government shall cause these reports to be laid on the Tables of Parliament or the concerned State Legislature, together with a memorandum explaining the reasons for non-acceptance of any recommendations.

RULES AND REGULATIONS.

Rules and regulations may be made to carry out the purposes of the Act. They may deal with matters such as fees and waiver of fees, forms of application for access and review of decisions to deny access, procedures for review and other similar matters.

REVIEW OF THE ACT.

A Committee of Parliament may be set up, after three years of the commencement of the Act, to review the functioning of the Act and to recommend suitable measures for its improvement, including amendments to any of the provisions of the Act.

234

MOST IMMEDIATE

No. 34011/1(s)/97-Estt.(B)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training
: : :

New Delhi, the 11th March, 97

Subject: Working Group on Right to Information and promotion of open and transparent Government.
*****

It was decided during the last meeting of the Working Group that a statement comparing the salient features of the provisions relating to exemption from disclosure of information in some other countries should be prepared. Accordingly, a brief Note on the subject along with a chart showing the gist of provisions, relating to exempted information, in Australia, Canada, U.K. and U.S.A. is enclosed for the perusal of the Working Group.

2. As already intimated, the next meeting of the Working Group will be held on March 14, 1997 at 4.30 P.M.in Conference Room (Room No.515, 5th floor), Sardar Patel Bhavan, Sansad Marg, New Delhi. Kindly make it convenient to attend.

(Y.G. PARANDE)
Director

1. Shri H.D. Shourie, A-31, Westend, New Delhi-110021.

2. Shri Soli Sorabjee, Sr. Advocate, 134 Sundar Nagar, New Delhi-110003.

3. Shri Shashi Prakash, Joint Secretary, Ministry of Home Affairs, New Delhi.

4. Shri A. Sinha, Joint Secretary, Department of Legal Affairs,Room No.417-A, Shastri Bhawan, New Delhi.

5. Shri R.N. Verma, Executive Director, Traffic Transportation (F), Rly. Board, New Delhi.

6. Shri S.P. Ojha, Sr.Deputy Director General(Vig.) Department of Posts, Dak Bhawan, New Delhi.

7. Shri Ashok Kumar, Joint Secretary, Department of Telecommunications,Room No.301, Sanchar Bhawan, New Delhi.

8. Shri S. Narendra, Principal Information Officer, Ministry of Information & Broadcasting, New Delhi.

9. Shri N.S. Madhavan, Joint Secretary, Ministry of Information & Broadcasting, Shastri Bhawan, New Delhi.

10. Shri Harinder Singh, Joint Secretary, Department of Personnel & Training, New Delhi.

o.c. to Dr. P.S.A. Sundaram, Additional Secretary (AR&T) Department of Administrative Reforms & Public Grievances, Sardar Patel Bhawan, New Delhi.

235

DEPARTMENT OF PERSONNEL & TRAINING

A BRIEF NOTE ON INFORMATION EXEMPTED FROM DISCLOSURE IN SOME OTHER COUNTRIES.

During the last meeting of the Working Group, it was decided that a comparison would be made of the categories of information exempted from disclosure, in some other countries, to enable the Group to take a final view on the exclusion clause of the proposed Freedom of Information Bill. Hence this brief review of the relevant provisions of:

a) **Australia** : Freedom of Information Act, 1982.
b) **Canada** : Access to Information Act, 1980.
c) **U.K.** : Code of Practice on Access to Govt. Information, Second Edition, 1997 (there is no statute).
d) **U.S.A.** : Freedom of Information Act, 1966 as amended & codified at 5 USC Section 552.

Besides the above Canada & U.S. also have Privacy Acts, but they are not directly relevant to the present analysis.

CATEGORIES OF INFORMATION

Looking to the schemes of the above Acts, it would seem that information is broadly categorised into 3 categories, viz.

(i) Information that is to be published, suo motu, by Govt. agencies;
(ii) Information whose disclosure may be refused; and
(iii) Information which would be available on request and for a fee.

The Acts and the U.K. Code of Practice lay down broad parameters of information as at (i) & (ii) above and the information that remains outside these would generally fall in category (iii).

INFORMATION THAT IS REQUIRED TO BE PUBLISHED

Such information broadly relates to particulars of each organisation, its functions and responsibilities, decision making processes in terms of procedures and powers and responsibilities of officers at different levels, list of manuals etc. used by employees for carrying out activities and facilities for access of public to information including particulars of the officers to whom requests are to be addressed.

EXEMPTED INFORMATION

Broadly, the following categories of information have been exempted from disclosure:

(i) Information affecting national security, defence, international relations and federal-provincial relations;

236

(ii) Information affecting law enforcement, investigation and public safety;
(iii) Information in the nature of internal working papers, discussion and advice in government and its agencies;
(iv) Information concerning government's management of the economy, economic and commercial interests of the government and regulation of financial institutions;
(v) Information affecting management of public services and operations of government agencies;
(vi) Third party information;
(vii) Information affecting privacy of individuals;
(viii) Information required to be withheld under other statutes, and
(ix) Certain other categories such as Parliamentary privilege, client-solicitor privilege, etc.

The chart attached to this note gives a gist of the relevant provisions in the four countries. It is necessary to mention that the material in it is not an exhaustive reproduction of the relevant provisions but is only a brief summary.

A few words about some common and notable features of the schemes.

SEVERABILITY

The Acts of Australia, Canada and U.S. also incorporate the principle of severability. That is, if the information contained in a document is segregable, such of the information as is not required to be withheld, can be communicated to a requester.

MANDATORY AND DISCRETIONARY REFUSALS

The Canadian law makes a distinction between cases where bar against disclosure is mandatory and those where its is discretionary. In the former category comes information such as that obtained from foreign governments, international organisations, provincial governments, etc., in confidence - though disclosure may allowed with the consent of the concerned Govt./organisation or where such Govt./organisations have themselves made the information public. Similarly, third party information falls in the category of mandatory refusals except in situations mentioned in the enactment - which primarily have to do with larger public interest.

PREDOMINANCE OF PUBLIC INTEREST

Disclosure of information often, and necessarily, involves conflict resolution of broadly two varieties, i.e. public interest in disclosure vs. public interest in secrecy and public interest in disclosure vs. the legitimate interests of private persons, bodies or organisations. Broadly, it would appear that the laws contemplate subordination of private

236-A

interest to overriding public interest in some crucial areas.

One does not find a clear enunciation of this principle in the U.S. FOIA, though it would appear implicit in its scheme and the law evolved by Courts.

In the U.K. Code of Practice, the principle finds a general expression. In the introduction to Part-II, relating to reasons for confidentiality, the Code says that in dealing with categories which refer to harm or prejudice or expected harm or prejudice, the presumption remains that information should be disclosed unless the harm arising from disclosure would outweigh the public interest in making the information available, and it would be considered whether harm or prejudice arising from disclosure would be outweighed by public interest in that disclosure.

It is in the Acts of Australia and Canada that ones finds a clear incorporation of this principle. Thus in the Australian Act, in the category of exemption dealing with financial and property interest of the Commonwealth, the Act lays down that the exemption does not apply to a document if its disclosure would, on balance, be in public interest. The same applies to documents relating to certain operations of agencies.

Similarly the Canadian Act, while dealing with third party information provides that the head of an agency may disclose information, which is otherwise excluded from disclosure, if the disclosure would be in public interest as it relates to public health, public safety or protection of the environment, and if the public interest in disclosure clearly outweighs in importance any financial loss or gain to, or prejudice to the competitive position of, a third party.

OTHER STATUTES

In all the four countries, the right to information is subject to the requirement to withhold the information flowing from other statutes - whether such prohibition against disclosure in other statutes is absolute or conditional. Under the provisions of the U.S. Freedom of Information Act, the position is slightly different in that, to qualify for exemption, a statute must require that matters must be withheld from public in such a manner as not to leave any discretion with the agency concerned or, alternatively, such statute must establish criteria for withholding or refer to particular types of information to be withheld.

CERTAIN OTHER GROUNDS FOR REFUSAL/DEFERMENT OF ACCESS

Apart from different categories of exemptions, request for access

to documents may be refused or deferred on some other grounds such as:

(a) Prematurity of access with reference to publication:

Under the Australian Law, access may be deferred if publication of the concerned document is required by law - till expiry of the period within which it is to be published; if it is to be presented to the Parliament or a particular person or a body - till a reasonable period has elapsed from its preparation or if premature release would be contrary to public interest - till the occurrence of any event or expiry of any period beyond which disclosure would not be contrary to public interest (S.21). The Canadian Law also provides for refusal of access if the information is soon to be published (S.20). Under the U.K. Code of Practice, disclosure is exempted if the information is soon to be published or if its premature disclosure, with reference to a planned or potential publication or announcement, would cause harm (Para 10 of Part II).

(b) Voluminous Requests:

Under the Australian law as well as U.K. Code of Practice, requests for access to documents/information are liable to be refused if they relate to voluminous records or are expressed in too general a manner and, therefore, would require unreasonable diversion of resources and interfere with the normal functioning of agencies.

STATEMENT INDICATING, IN BRIEF, INFORMATION EXEMPTED FROM DISCLOSURE

CATEGORY OF EXEMPTED INFORMATION	AUSTRALIA	CANADA	U.K.	U.S.A
1. National security, defence, international relations and federal provincial relations.	A. A document is exempt from disclosure, on grounds of public interest, if its disclosure would, or could be reasonably expected to, cause damage to security, defence or international relations or would divulge information communicated in confidence by a foreign Govt. or any of its authorities or an international organisation. (S.33) B. A document is exempt from disclosure if its disclosure would, or could be reasonably expected to, cause damage to relations between the commonwealth and a State or would divulge information communicated in confidence by a State or its authorities. (S.33A)	A. Disclosure shall be refused of information obtained in confidence from foreign Govts., international organisations or provincial Govts. or statutory municipal bodies. Disclosure may, however, be allowed, if such a foreign Govt. etc. consents to disclosure or makes the information public. (S.13) B. Disclosure may be refused of record containing information if it could reasonably be expected to be injurious to conduct of federal provincial affairs by Govt. of Canada, such as; (i) information on federal provincial	Disclosure may be refused if it would harm national security or defence, conduct of international relations or affairs or if it is information received in confidence from foreign Govts., foreign Courts or international organisations (Para 1 of Part II).	The requirement of disclosure not to apply to matters authorised under criteria to be established by an Executive Order, to be kept secret in the interest of national defence or foreign policy and in fact, properly classified pursuant to such Executive Order. (The criteria and procedure for classification are laid down in Executive Order 12958). (S.552(b)(1)).

239

Category of Exempted information	Australia	Canada	U.K.	U.S.A.
2. Information affecting law enforcement, investigation and public safety; safety of individuals.	A document is exempt if its disclosure would or could be reasonably expected to: (a) prejudice investigation into a violation or a possible violation of a law; (b) prejudice the secrecy as regards the existence or identity of a confidential source of information; (c) endanger life or a physical safety of an individual; (d) prejudice fair trial or impartial adjudication; (e) disclose lawful methods/ procedures for preventing, detecting, investigating or dealing with evasions/breaches of law if such disclosure would adversely affect the effectiveness of those methods, procedures, etc. (f) prejudice the maintenance or enforcement of lawful methods of protection of public safety. (S.37)	A.Disclosure may be refused of record containing information obtained or prepared by investigation agencies in the course of lawful investigations pertaining to: (i) detection, prevention or suppression of crime; (ii) enforcement of any law of Canada or a province; or (iii) activities suspected of constituting threats to security of Canada within the meaning of Canadian Security Intelligence Services Act, If such record came into existence less than 20 years prior to the request for disclosure. (iv) If such disclosure could reasonably be expected to be injurious to the enforcement of any federal/provincial law or conduct of a lawful investigation such as information relating to: (i) existence or nature of an investigation; (ii) existence or identity of a confidential source of information;	Disclosure may be refused when it would (a) Prejudice administration of justice (including fair trial), legal proceedings in tribunals etc., public enquiries or formal investigations; (b) prejudice enforcement of laws, including detection, investigation or prevention of crimes; (c) information relates to proceedings terminated or completed or relating to investigation which have or might have resulted in proceedings; (d) violate legal professional privilege; (e) prejudice public safety, or public order or safety of a penal institution; (f) endanger the life or physical safety of an individual, or identify a source of information or assistance for law enforcement or security; (g) increase the liklihood of damage to environment or rare and endangered species and their habitats. (Para 4 of Part II).	Disclosure of information compiled for law enforcement purposes may be refused if it: (a) could reasonably be expected to interfere with enforcement proceedings; (b) would adversely affect the right to fair trial or impartial adjudication; (c) could be reasonably expected to constitute unwarranted invasion of personal privacy; (d) could be reasonably expected to disclose identity of a confidential source of information; (e) would disclose techniques and procedures for law enforcement investigations/prosecutions, or guidelines for them, if such disclosure could reasonably be expected to risk circumvention of the law; or (f) would endanger the life or safety of an individual.

240

Category of Exempted information	Australia	Canada	U.K.	U.S.A.
2. Information affecting law enforcement, investigation and public safety/ safety of individuals.	A document is exempt if its disclosure would or could be reasonably expected to: (a) prejudice investigation into a violation or a possible violation of a law; (b) prejudice the secrecy as regards the existence or identity of a confidential source of information; (c) endanger life or a physical safety of an individual; (d) prejudice fair trial or impartial adjudication; (e) disclose lawful methods/ procedures for preventing, detecting, investigating or dealing with evasions/breaches of law if such disclosure would adversely affect the effectiveness of those methods, procedures, etc. (f) prejudice the maintenance or enforcement of lawful methods of protection of public safety. (S.37)	A.Disclosure may be refused of record containing information obtained or prepared by investigation agencies in the course of lawful investigations pertaining to: (i) detection, prevention or suppression of crime; (ii) enforcement of any law of Canada or a province; or (iii) activities suspected of constituting threats to security of Canada within the meaning of Canadian Security Intelligence Services Act, If such record came into existence less than 20 years prior to the request for disclosure. (iv) If such disclosure could reasonably be expected to be injurious to the enforcement of any federal/provincial law or conduct of a lawful investigation such as information relating to: (i) existence or nature of an investigation; (ii) existence or identity of a confidential source of information;	Disclosure may be refused when it would (a) Prejudice administration of justice (including fair trial), legal proceedings in tribunals etc., public enquiries or formal investigations; (b) prejudice enforcement of laws, including detection, investigation or prevention of crimes; (c) information relates to proceedings terminated or completed or relating to investigation which have or might have resulted in proceedings; (d) violate legal professional privilege; (e) prejudice public safety, or public order or safety of a penal institution; (f) endanger the life or physical safety of an individual, or identify a source of information or assistance for law enforcement or security; (g) increase the liklihood of damage to environment or rare and endangered species and their habitats. (Para 4 of Part II).	Disclosure of information compiled for law enforcement purposes may be refused if it: (a) could reasonably be expected to interfere with enforcement proceedings; (b) would adversely affect the right to fair trial or impartial adjudication; (c) could be reasonably expected to constitute unwarranted invasion of personal privacy; (d) could be reasonably expected to disclose identity of a confidential source of information; (e) would disclosee techniques and procedures for law enforcement investigations/prosecutions, or guidelines for them, if such disclosure could reasonably be expected to risk circumvention of the law; or (f) would endanger the life or safety of an individual.

241

Category of exempted information	Australia	Canada	U.K.	U.S.A.
		(iii) Disclosure may also be refused of information if it could reasonably be injurious to the security of penal institutions. B. Disclosure may be refused of record containing information that could reasonably be expected to facilitate commission of an offence, such as information on: (i) criminal methods/techniques (ii) technical information regarding weapons; or (iii) Vulnerability of particular buildings and systems, including computer systems, and methods employed to secure their safety. C. Disclosure may be refused of record containing information compiled by RCMP during policing duties for provinces/municipalities and the federal govts. on request from provinces/municipalities has agreed not to disclose information. (S.16) Information which could reasonably be expected to endanger the safety of an individual. (S.17)		

242

Category of exempted information	Australia	Canada	U.K.	U.S.A.
3. Information in the nature of internal working papers discussion and advice in govt. and its agencies.	Disclosure is exempted of: A. Cabinet documents including document submitted and prepared for submission to Cabinet or document the disclosure of which would involve disclosure of the deliberations on decisions of Cabinet other than a document by which such decision was published. This does not apply to documents containing factual material unless the disclosure of such document would involve disclosure of deliberations or decisions of the Cabinet and the fact of such deliberation or decision has not been officially published. (S.34). B. Executive Council Documents.	Disclosure may be refused of record containing information relating to: (a) Advice or recommendation developed by or for a govt. institution or a Minister; (b) Consultations and deliberations involving officers and employees of govt. institutions; Ministers and staff of Ministers; (c) positions and plans developed for negotiations by and or behalf of Govt.; (d) Plans for management of personnel or administration of a govt. institution that have not yet been put into operation; if the record came into existence	Disclosure may be refused of information relating to: (i) proceedings of Cabinet and Cabinet Committees; (ii) internal opinion, advice, recommendation, consultation and deliberation; (iii) Projections and assumptions relating to internal policy analysis, analysis of alternative policy options information relating to rejected policy options; (iv) confidential communications between departments, public bodies & regulatory bodies. (Para 2 of Part II).	Disclosure may be refused of information relating to intra-agency or inter-agency correspondence which by law would not be available to a party other than an agency involved in litigation with the agency. (S.552(b)(5)).

EM2

Category of Exempted Information	Australia	Canada	U.K.	U.S.A.
	Similar to A. above. (S.35).	less than 20 years prior to the request.		
	C. Internal Working Documents if their disclossure would result in disclosure of matter in the nature of opinion, advice, recommendations or deliberation for the purposes of deliberative processes of an agency; and would be contrary to public interest.	The above does not apply to:		
	This does not apply to:	(a) a statement of reasons for a decision made in exercise of discretionary powers or adjudicative junctions affecting rights of individuals;		
	(i) purely factual material;	(b) a report prepared by an advisor or a consultant who was not, at the time of its preparation, an employee of a Govt. institution or a member of the staff of a Minister. (S.21)		
	(ii) reports of scientific/ technical experts including their opinion contained in such reports;			
	(iii) reports of a prescribed body or organisation established within an agency.			
	(iv) record of or reasons for a formal decision in exercise of a power or adjudicative function. (S.36)			

Category of exempted information	Australia	Canada	U.K.	U.S.A.
4. Information concerning governments management of the economy, economic and commercial interests of the Govt. and regulation of financial institutions.	Disclosure may be refused in public interest if it would, or could be reasonably be expected to: (a) adversely affect the ability of the Govt. to manage the national economy; or (b) disturb the ordinary course of business in the community or result in undue benefit or detriment to a person or a class of persons by reason of premature knowledge about action or inaction by Govt. or the Parliament.	Disclosure may be refused of: (i) trade secrets or financial, commercial, scientific or technical information having, or reasonably likely to have, substantial value and belonging to the Govt. or a Govt. institution; (ii) information disclosure of which could reasonably be expected to prejudice the competitive position of a Govt. institution; (iii) scientific or technical information obtained through research by an employee whose disclosure might deprive him of priority of publication.	Disclosure may be refused of information: (a) whose disclosure would harm the ability of the govt. to mange the economy, prejudice the conduct of official market operations or could lead to improper gain or advantage; or (b) whose disclosure would prejudice assessment and collection of taxes, duties, National Insurance Contributions or assist tax avoidance or evasion. (Para 6 of Part II)	Disclosure may be refused of information relating to examination, operating or condition reports prepared by or for an agency responsible for supervision of financial institution. (S.552(b)(8)).

Category of exempted information	Australia	Canada 322	U.K.	U.S.A.
	Illustrations (i) currency & exchange rates; (ii) interest rates; (iii) taxation matters; (iv) regulation and super vision of financial institutions. (S44) Disclosure may be refused if it would have a substantial adverse effect on the financial or property interests of the Govt. or an agency. This does not apply where disclosure, on balance, would be in public interest. (S.39).	(iv) information disclosure of which could reasonably be expected to be materially injurious to the financial interests of Canada, or the abilkity of the Govt. to manage the economy of Canada or could be reasonable expected to result in undue benefit to any person. Illustrations: (i) currency & coinage. (ii) changes in rate of interest and govt. borrowing. (iii) taxation matters; (iv) contemplated rate on purchase securities andd currency; (v) contemplated rate or acquisition land on property.(S.18)		

246

Category of exempted information	Australia	Canada	U.K.	U.S.A.
5. Information affecting management of public services and operations of Govt. agencies.	Disclosure may be refused if it would, or could be reasonably expected to - (a) prejudice the effectiveness of any procedures or methods for tests, examinations or audits by an agency; (b) prejudice the attainment of such tests, examinations or audits; (c) have a substantial adverse effect on the management or assessment of personnel; (d) have a substantial adverse effect on proper and efficient conduct of the operations of an agency; (d) have a substantial adverse effect on conduct of industrial relations.	Partly covered under S.No. 3 above. Disclosure of information may be refused if it relates to testing or auditing procedures & details of techniques of specific tests or audits, if such disclosure would prejudice the use or results of particular tests or audits. (S.22)	Disclosure information may be refused when it would lead to improper gain or advantage or would prejudice - (a) competitive position of a department or a public authority; (b) negotiations or the effective conduct of personnel management or contractual or commercial activities; (c) awarding of discretionary grants; or (d) proper and efficient conduct of the operations of a Department or other public body or authority, including any regulatory body. Also exempt from disclosure are: (a) Personnel records, including those relating to recruitment,	Disclosure may be refused of records/information solely related to internal personnel rules and practices of an agency. (S.552(b)(2)).

Category of exempted information	Australia	Canada	U.K.	U.S.A.
	The above does not apply where, on balance, disclosure would be in public interest. (S.40)		promotion and security vetting; (b) information, opinions and assessments, given in confidence, in relation to public employment or appointments made by Ministers, by the Crown or the advice of Ministers or by statutory office holders; and (c) information, opinion and assessments given in relation to recommendations for honours. (Paras 7 & 8 of Part II).	

Category of exempted information	Australia	Canada	U.K.	U.S.A.
6. Third partly information.	Disclosure may be refused of : (a) trade secrets; (b) any information having a commercial value that would, or could be reasonably expected to be, destroyed or diminished by disclosure; (c) information (other than above) concerning business or professional affairs of a person or business, financial or commercial affairs of an organisation, the disclosure of which: (i) would , or could reasonably be expected to, unreasonably affect that person adversely in respect of his lawful business or professional affairs or that organisation in respect of its lawful business, financial or commercial affairs; or	Disclosure shall be refused of: (a) trade secrets of a third party; (b) financial, commercial, scientific or technical information of confidential nature supplied to the Govt. by a third party that is consistently treated as confidential by the third party; (c) information disclosure of which could reasonably be expected to result in material loss or gain to, or could reasonably be expected to prejudice the competitive position of a third party; or (d) information disclosure of which could reasonably be expected to interfere with	Disclosure may be refused of information including commercial confidences, trade secrets or intellectual property whose unwarranted disclosure would harm the competitive position of a third party. (Para 13 of Part II)	Disclosure to be refused of trade secrets and commercial and financial information obtained from a person and priveleged and confidential. (S.552(b)(4)).

egor
mr

Category of exempted information	Australia	Canada (32)	U.K.	U.S.A.
	(ii) would, or could reasonably be expected to, prejudice future supply of information for the purpose of the administration of a law or other matters administered by an agency. (S.43).	contractual or other negotiations of a third party. B. Such disclosure shall not be refused in respect of information relating product or environmental testing carried out by or on behalf of a Govt. institution, unless such testing was done as a service to a person, group of persons or an organisation, not being a govt. organisation, and for a fee. The tests contemplated here do not include tests conducted for the purpose of developing methods of testing. C. information as at A above may be disclosed with the consent of the third party to whom it relates. D. The information, as at A above, may also be disclosed if such disclosure would be in public interest as it relates to health, public safety and protection of environment and if the public interests in disclosure clearly outweight in importance any financial loss or gain to, prejudice to the competitive position of an interference with contractual or other negotiations of, a third party. (S.20)		

258

Category of exempted information	Australia	Canada	U.K.	U.S.A.
7. Information affecting privacy of individuals.	Disclosure may be refused if it would involve unreasonable disclosure of information relating to personal affairs of a person (including a deceased person). (S.41)	Disclosure shall be refused of any record that contains personal information as defined in S.3 of the Privacy Act. Disclosure of such record may, however, be permitted if; (i)the person to whom it relates, consents to disclosure; (ii) the information is publicly available; or (iii) the disclosure is in accordance with Section 8 of Privacy Act. (S.19)	Disclosure may be refused to a third party of personal information about any person (including a deceased person) at any other disclosure which would constitute or could facilitate an unwarranted invasion of privacy. (Para 12 of Part II).	Disclosure may be refused of records containing personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. S.552(b)(6)).

Category of exempted information	Australia	Canada	U.K.	U.S.A.
8. Information required to be witheld under other Statutes/ Parliamentary Privileges, Client Solicitor Privileges, etc.	A. A document is exempt from disclosure if it contains information of a kind whose disclosure is specifically prohibited, either absolutely or subject to exceptions or qualifications by some other Statutes (S.38) 8. A document is exempt from disclosure in such disclosure would: (a) be in contempt of Court; (b) be contrary to a decision given by a Royal Commission, or a tribunal or a person or a body having power to take evidence on oath; or	A.Disclosure shall be refused of record containing information whose disclosure is restricted by the provisions set out in Schedule II of the Act. The statutory provisions referred to above are subject to review by the Parliamentary Committee established under S.75. (S.24) 8. Disclosure of record may be refused if it contains information that is subject to Client-Solicitor Privilege. (S.23).	A.Disclosure may be refused of information whose disclosure : (a) is prohibited by or under any enactment, European Community law or international agreement. (b) would constitute branch of Parliamentary Privilege. (Para 15 Part II) 8. Disclosure may be refused of information supplied in confidence by a person who: (a) gave it under a statutory guarantee of protection of confi-	Disclosure may be refused of information whose disclosure is specifically required to be witheld under a statute (Other than FOIA) provided that such a statute: (a) leaves no discretion in the matter; or (b) establishes particular criteria for withholding or refers to particular types of matters to be withheld. (S.552(b)(3)).

252

Category of exempted information	Australia	Canada	U.K.	U.S.A.
	(c) infringe on the privileges of the Parliament of the Commonwealth or of a State. (S.46).		dentiality; or	
	C. Disclosure may also be refused of a document, the disclosure of which would result in breach of confidence.		(b) was not under any legal obligation, actual or implied, to supply it, and has not consented to its disclosure.	
	This provision is for documents other than internal documents covered under S.36(S.45) (Category 3 above).		C. Disclosure may be refused of information if it would prejudice future supply of information.	
	D. Disclosure may be refused if it would violate Client-Solicitor Privilege. (S.42).		D. Disclosure may be refused of medical information that would harm the subject or should only be made by a medical practitioner. (Para 14 of Part II).	

Ref
Issue FCs(11/03)
21/3

MOST IMMEDIATE

No.34011/1(s)/97-Estt.(B)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

.....

New Delhi, dated 21st March,97

21 MAR 1997

Subject:Working Group on Right to Information and promotion of open and transparent Government.

***

A copy of the proceedings of the fourth meeting of the "Working Group on right to information and promotion of open and transparent Government" held on 14th March, 1997, is enclosed for information/reference of the Working Group.

As decided the next meeting of the Working Group would be held at 10.30 A.M on April 12.1997 at Sardar Patel Bhawan, New Delhi.

(Y.G.PARANDE)
DIRECTOR

o/c

1.Shri H.D.Shourie, A-31, Westend, New Delhi- 110 021.

2.Shri Soli Sorabjee,Sr.Advocate, 134 Sundar Nagar, New Delhi- 110003.

3.Shri Shashi Prakash, Joint Secretary, Ministry of Home Affairs, New Delhi.

4.Shri A.Sinha, Joint Secretary, Department of Legal Affairs,Room No.417-A, Shastri Bhavan,New Delhi.

5.Shri R. N. Verma, Executive Director, Traffic Transportation (F), Railway Board, Rail Bhavan, New Delhi.

6.Shri V. Saksena, Sr.Deputy Director General (Vig.),Department of Posts, Dak Bhavan, New Delhi.

7.Shri Ashok Kumar, Joint Secretary, Department of Telecommunications,Room No. 301, Sanchar Bhavan, New Delhi.

8.Shri S.Narendra, Principal Information Officer, Ministry of Information & Broadcasting, New Delhi.

9.Shri N.S. Madhvan, Joint Secretary,Ministry of Information and Broadcasting, New Delhi.

10.Shri Harinder Singh, Joint Secretary, Department of Personnel & Training, New Delhi.

254

21/...

c.c. to Dr. P.S.A. Sundaram, Additional Secretary (AR&T), Department of Administrative Reforms

DEPARTMENT OF PERSONNEL & TRAINING

Proceedings of the Fourth meeting of the Working Group on Right to Information and promotion of open and transparent Government

The fourth meeting of the Working Group was held on March 14, 1997 under the Chairmanship of Shri H.D. Shourie.

2. As regards competence of Parliament to enact the proposed legislation, Shri Sorabjee stated that in his view the competence of the Parliament was clear. He promised to circulate a brief note on the subject.

3. The draft statutory scheme circulated to the Members was discussed. The following broad conclusions were reached:-

(i) The function of facilitating access to information should be vested with persons at the operational level as far as possible. The same person should also have authority to withhold information on the specified grounds. Considering the varied organisational structures and patterns of functioning, the choice as to the level of such officers, and the level of offices in which they may be appointed, may be left to the organisations concerned.

(ii) The provision for transfer of requests to other public authorities was considered unworkable. It was felt that the onus of making a request to the correct authority should lie primarily on the requester.

(iii) It was felt that creation of the Information Commissioner or entrusting the function to Lokayuktas may not be a workable arrangement. There may also be considerable difficulties in creating new machinery at the district level. Lokayuktas were generally overburdened with work and may not be in a position to cope with new demands. It was, therefore, decided that the Scheme should provide for an internal

255

(iv) The categories of information exempted from disclosure were briefly discussed and it was decided that the relevant clauses in the draft Bill would be suitably modified and placed before the Group for its final consideration during the next meeting.

(v) With reference to the non-obstante clause in the Bill, giving the Act overriding effect, Shri Shourie suggested an alternative formulation based on the relevant provision of the Consumer Protection Act, which stated that the provisions of that Act would be in addition to, and not in derogation of, the provisions of any other law for the time being in force. This was in view of the fact that the implications of an overriding provision could not be properly assessed unless a study was carried out to identify the various other laws that might impinge on disclosure of information. The Group accepted the suggestion.

(vi) The proposed amendments to S.5 of Officials Secrets Act and Rule 11 of CCS (Conduct) Rules were also briefly discussed. However, since these had necessarily to be dovetailed into the proposed Freedom of Information Act, it was decided that final drafts of amendments, along with final Draft of the Freedom of Information Bill, would be considered by the Group in its next meeting.

(vii) With regard to the amendment of Sections 123, 124 & 125 of Evidence Act, it was noted that the Law Commission's recommendations in this regard were quite old. It was decided that it would be ascertained whether the Law Commission had made any further suggestions before the Group took a final view in this regard.

(viii) The Group expressed its support to the draft Charter of Ethics which was separately under Government's consideration.

It was decided that the next meeting of the Group would be held on April 12, 1997 during which a revised draft Bill would

256

257

10. Shri Rajinder Singh, Joint Secretary, Department of Personnel & Training, New Delhi.

11. Secretary, Ministry of Information & Broadcasting, Shastri Bhawan, New Delhi.

12. Secretary, Union Public Service Commission, Dholpur House, New Delhi.

13. Secretary, Department of Personnel & Training, Block No. 4, Old JNU Campus, New Delhi.

14. Chairman, Railway Board, Rail Bhawan, New Delhi.

15. Secretary, Department of Posts, Dak Bhawan, New Delhi.

16. Secretary, Department of Telecommunications, Sanchar Bhawan, New Delhi.

17. [illegible]

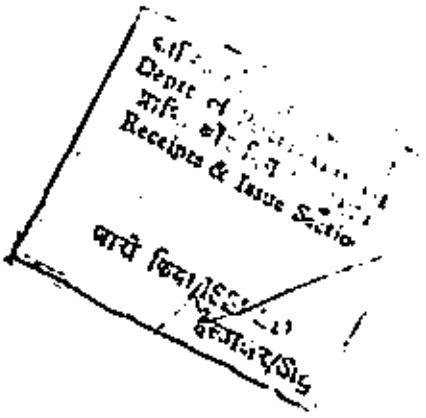
Dr. [illegible] Administrative Officer (Establishment), Department of Administrative Reforms & Public Grievances, Sardar Patel Bhawan, New Delhi.

Staff Officer, [illegible]

18. [illegible]

19. [illegible]

20. [illegible]



258

MOST IMMEDIATE

No. 34011/1(s)/97-Estt.(B)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

New Delhi, dated the 11th April,1997.

OFFICE MEMORANDUM 11 APR 1997

Subject:- Working group on Right to information and promotion of open and transparent Government.

A copy of the Note from Shri Soli J. Sorabjee, Senior Advocate, Supreme Court of India regarding the legislative competence of the Union Government to enact a Freedom of Information Act, together with the proposed amendment to Rule 11 of the Central Civil Services (Conduct) Rules,1964, is enclosed for consideration /reference of the Working Group.

2. As already intimated, the next meeting of the Working Group will be held on April 12,1997 at 10.30 A.M. in Conference Room (Room No. 515 , 5th floor), Sardar Patel Bhavan, Sansad Marg, New Delhi. Kindly make it convenient to attend.

(Y.G.PARANDE)
DIRECTOR

1. Shri H.D.Shourie, A-31, Westend, New Delhi-110021.
2. Shri Soli Sorabjee, Sr. Advocate, 134 Sundar Nagar New Delhi.
3. Shri Shashi Prakash, Joint Secretary, Ministry of Home Affairs, New Delhi.
4. Shri A.Sinha, Joint Secretary, Department of Legal Affairs, Room No. 417-A, Shastri Bhawan, New Delhi.
5. Shri R.N.Verma, Executive Director, Traffic Transportation (F), Railway Board, Rail Bhawan, New Delhi.
6. Shri V.Saksena, Sr. Deputy Director General (Vig.),Department of Posts, Dak Bhawan, New Delhi.
7. Shri Ashok Kumar, Joint Secretary, Department of Telecommunications, Room No. 301, Sanchar Bhawan, New Delhi.
8. Shri S.Narendra, Principal Information Officer, Ministry of Information & Broadcasting, New Delhi.
9. Shri N.S.Madhavan, Joint Secretary, Ministry of Information & Broadcasting, New Delhi.
10. Shri Harinder Singh, Joint Secretary, Department

259

NOTE

A doubt has been expressed about the legislative competence of the Union government to enact a Freedom of Information Act

The Union has legislative competence in respect of the items specified in List I of the Seventh Schedule. Item 97 is the residuary item which enables the Union government to legislate in respect of all other matters in addition to those which are specifically enumerated. The settled legal position is that the only limitation on the legislative competence of the Union is that the subject matter of the legislation should not be within the exclusive competence of the State legislature in List II of Seventh Schedule

Item 12 of the State list reads thus:

> "Libraries, museums and other similar institutions controlled or financed by the State; ancient and historical monuments and records other than those declared by or under law made by Parliament to be of national importance".

The proposed Freedom of Information Act having regard to its true character and pith and substance cannot fall under the said item 12 read in its proper setting and context

In my view the Union government has the requisite legislative competence to enact the proposed legislation.

260

Proposed amendment to Rule 11 of Conduct Rules

Existing Rule	Proposed Rule
11. Unauthorised Communication of Information	11. Communication of Official Information:
No Government servant shall, except in accordance with any general or special order of the Government or in the performance in good faith of the duties assigned to him, communicate, directly or indirectly, any official document or any part thereof or information to any Government servant or any other person to whom he is not authorised to communicate such document or information.	Subject to the provisions of any law for the time being in force, every Government servant shall, provide full and accurate information to a member of the public or any organisation, while performing his duties in good faith, excepting classified information, information which is in the nature of commercial secrets or information the disclosure of which will infringe on an individual's privacy.
EXPLANATION - Quotation by a Government servant (in his representation to the Head of office, or Head of Department or President) of or from any letter, circular or office memorandum or from the notes on any file, to which he is not authorised to have access, or which he is authorised to keep in his personal custody or for personal purposes, shall amount to unauthorised communication of information within the	EXPLANATION Nothing in this rule shall be construed as permitting communication of classified information in an unauthorised manner or for improper gains to a Government servant or others.

261

COMMON CAUSE

A REGISTERED SOCIETY

AN ORGANISATION FOR VENTILATING COMMON PROBLEMS OF THE PEOPLE

A-31, West End New Delhi-110021

April 18, 1997.

Dear Mr. Venkat Subramanian,

I and Dr. P.S.A. Sundaram, Additional Secretary of Personnel Ministry were to discuss with you whether it would be feasible to utilise the availability of Consumer Protection Act to meet the requirements of any refusal or omission to supply information to an applicant, so that a suitable provision may be made in FREEDOM OF INFORMATION ACT, which we are discussing in the Working Group set up by the Personnel Ministry.

I have given thought to this matter and my view is that this requirement can very easily be met. I have given my views in the attached note. I would be grateful for your views on it. We will then go ahead with the finalisation of the draft Bill of the proposed Freedom of Information Act.

I am sending a copy of this letter to Dr. Sundaram.

Kind regards,

Yours sincerely,

(H. D. SHOURIE)
Director.

Mr. A. K. Venkat Subramanian,
Secretary,
Department of Consumer Affairs,
Ministry of Civil Supplies,
Krishi Bhawan,
New Delhi - 110001.

✓Copy to Dr. P.S.A. Sundaram, Additional Secretary, Department of Administrative Reforms and Grievances, 5th Floor, Sardar Patel Bhawan, New Delhi - 110001.

262

Subject: SUPPLY OF INFORMATION.

It is envisaged that under the Freedom of Information Act people will be able to seek information on a wide range of matters relating to Government functioning (other than those specifically defined in the proposed Act and which relates to areas such as defence, integrity and safety of the country and relations with other countries etc.). They can submit applications, on payment of prescribed fee, to the designated authorities of (i) District, for information relating to operatic of data available in the district, (ii) State Government, for information relating to departments, organisations of the State Governments and also its functioning and (iii) the concerned Ministries, Departments, organisations of the Central Government, for information relating to them.

We have been considering as to what provisions should be made for Appeals against refusal on the part of any official to supply the required information. I have made the suggestion that we should invoke the provisions of Consumer Protection Act for meeting this requirement.

Supply of information on payment of prescribed fee, is obviously a 'service' under the definition of Consumer Protection Act. Where application for the supply of information is refused, it constitutes 'deficiency' in service. I am of the view, therefore, that aggrieved person should be able to file a 'complaint' under the C. P. Act. Irrespective of the fact whether the refusal is at the District level, State level or Central level, the complaint will lie before the District Forum of the District where the concerned office of the designated authority is located. If the District Forum rejects the complaint, the appeal will lie, in accordance with the normal procedure prescribed in the C. P. Act, to State Commission, and thereafter the Revision will lie to the National Commission. Compensation can be awarded by these respective consumer 'Courts' if there has been a loss caused by the refusal of supply of required information.

263

contd...2.

I think the solution to the problem will lie in merely prescribing in the Freedom of Information Act that from the viewpoint of the provision of C. P. Act the supply of information under this Act, on the basis of payment of prescribed fee, will constitute a 'service' as defined in C. P. Act and that an aggrieved person, who fails to secure the information applied for, can file a 'complaint' under the C. P. Act before the concerned District Forum. (As the matter of supply of information is not likely to involve compensation of heavy amount, such as Rs.10 lakhs and above which lie within the direct jurisdiction of State Commission and National Commission, the complaints emanating under the Freedom of Information Act will obviously lie before the District Forum of respective places). There will be no need to effect any modification in the C. P. Act.

(M. D. SHOURIE)

264

AMENDMENTS PROPOSED TO SECTION 5 OF THE OFFICIAL SECRETS ACT BY THE INTER-MINISTERIAL GROUP

5(1) If any person, having in his possession or control any official secret which has come into his possession or control by virtue of :-

(a) his holding or having held an office with or under governmnent, or

(b) a contract with the government, or

(c) it being entrusted to him in confidence by another person holding or having held an office under or with government, or in any other manner,

(i) communicates, without due authority such official secret to another person or uses it for a purpose other than a purpose for which he is permitted to use it under any law for the time being in force; or

(ii) fails to take reasonable care of, or so conducts himself as to endanger the safety of the official secret; or

(iii) wilfully fails to return the official secret when it is his duty to return it,

shall be guilty of an offence under this Section.

(2) Any person voluntarily receiving any official secret knowing or having reasonable ground to believe, at the time he receives it that the official secret is communicated in contravention of this Act, he shall be guilty of an offence under this Section.

(3) A person guilty of an offence under this Section shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

Explanation : For the purpose of this Section 'Official Secret' means any information the disclosure of which is likely to prejudically affect the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, economic, commercial, scientific and technological matters relating to national security and includes:

Any secret code, pass word, sketch, plan, model, article, note or document in relation to a prohibited place;

265

Proceedings of the 5th Meeting of Working Group on Right to Information and promotion of open and transparent Government.

The 5th meeting of the working group was held on 12th April, 1997 at 10.30 A.M. Shri H.D. Shourie was in the Chair.

2. At the outset the Chairman briefed the Working Group about his discussions with Justice P.B. Sawant, Chairman, Press Council of India, on whom he, accompanied by Dr. P.S.A. Sundaram, Additional Secretary(AR) and Shri Y.G. Parande, Director had called on April 9, 1997. The purpose of the call was to apprise Justice Sawant of the draft Freedom of Information Bill which was being finalised by the Working Group and to elicit his views on the subject.

3. While Justice Sawant appeared to be broadly in agreement with the approach adopted by the Working Group, he had expressed reservations on a couple of issues

4. The first reservation of Justice Sawant related to the scope of the proposed Bill as reflected in the definition of " public authority". He appeared to prefer the definition of public authority as contained in the Right to Information Bill prepared by the Press Council of India, which covered even private organisations/ institutions whose activities affected public interest. Justice Sawant felt that exclusion of private bodies from the scope of freedom of information legislation amounted to a substantial dilution of the applicability of such legislation which was undesirable since the activities of many such organisations often impinged on vital matters such as public health and safety and public should have the right to secure information relating to such activities from them.

5. Justice Sawant's second reservation related to clause 17 of the draft Freedom Information Bill which stipulated that the provisions of the Act would be in addition to and not in derogation of any other law. He felt that the non-obstante clause as contained in the Press Council's Bill was clearly required. He pointed out that in the absence of such a clause it would be open to the Government, including State Governments, to legislate on matters relating to information under different Acts and thereby whittle down the Freedom of Information Act substantially.

6. The question of an appropriate appellate forum was also discussed with Justice Sawant. He indicated that the intention in giving this jurisdiction to the Principal Civil Judge, in the Press Council's Bill, was to ensure easy access for citizens to the appellate forum. Justice Sawant was apprised of the deliberations in the Working Group on this issue. It was mentioned

that the arrears in the Courts would be a major difficulty in ensuring timely disposal of cases. Besides, freedom of information was a specialised field and, therefore, required a somewhat different approach. Justice Sawant, however, felt that it would not be expedient to create a separate apparatus for this purpose alone in view of the costs involved. One could, however, think of using some other existing forum for this purpose. It was felt that the machinery under the Consumer Protection Act could possibly be a viable option.

7. The Working Group considered these matters. As regards the question of widening the definition of 'public authority' to include private corporation etc the Working Group was of the view that at the present stage such a wide scope was not desirable. Considering the possible impact of the Freedom of Information Act when it comes into force, it was felt that the need was for a gradual approach and the scope of the Act should be widened progressively only after taking into account the experience gained along the way. One could also not rule out the possibility of use of Freedom of Information Act by private firms as a matter of competitive strategy, particularly if private firms were directly brought within its ambit. Besides, public would have access to information, regarding the operations of private firms, which is held in different regulatory authorities. Taking into consideration these factors, it was decided that the existing definition of public authority as contained in the draft Bill should be retained.

8. The Working Group, however, found considerable force in the argument that the Freedom of Information Act should be given an overriding effect through a non-obstante clause. It was noted that clause 11 of the draft Bill laid down detailed categories of exemptions from disclosure and as such most of the information which needed to be protected would remain protected. On the other hand, in the absence of a non-obstante clause, the object of the Act could be frustrated by recourse to other legislation. It was accordingly decided to substitute clause 17 of the draft Bill by a non-obstante clause as contained in the Press Council's Bill.

9. The Working Group then proceeded to discuss the other provisions of the draft Bill and the following decisions were reached.

(i) On the question of legislative competence of the Parliament to enact the proposed Bill, Shri Sorabjee had circulated a note confirming the competence of the Parliament in this regard. The working Group was also apprised of the fact that during discussions with him, Justice Sawant had also confirmed the legislatisve of competence the Parliament in this regard and had also expressed the view that it would be preferable for the Parliament to enact the proposed law.

267

(ii) The Working Group decided that the

designation 'Information Facilitation Officer' should be substitued by 'Public Information Officer'.

(iii) The Working Group also considered the suggestion made by Shri A. Sinha, Joint Secretary and Legal Advisor, Department of Legal Affairs, for redrafting of certain provisions of the Bill and decided to adopt the modifications proposed by him.

(iv) The issue of Appellate machinery was also discussed in the light of the note dated the 4th April, 1997 circulated by the Department of Personnel. It was generally agreed that courts are already suffering under a heavy burden of arrears and therefore would not perhaps be in a position to deliver justice to the citizens or to public authorities in time. If, therefore, some alternative machinery could be entrusted with this function that would be the preferable option. In this background, the suggestion emerged that the machinery under the Consumer Protection Act would be useful in this respect. The District forums exist at the level of every district and therefore there would be ready access for people to the appellate machinery. It was pointed out during discussion that in many cases the progress made by State Governments in setting up the machinery under the Consumer Protection Act was far from satisfactory and if these forums were to be given the additional task of deciding cases under the Freedom of Information Act it was essential that steps are taken to ensure that the deficiencies in the working of these forums are removed. The Chairman indicated that he and Dr. Sundaram would discuss this issue with Secretary, Deptt. of Consumers Affairs. The Group decided that appellate functions may be entrusted to the District Consumer Forums in the case of field level offices and State and National Commissions in the case of State and Central Secretariat respectively. It was also decided that a provision may be made in the Bill for revision of the orders of the Appellate authorities where substantial question of law are involved.

(v) The second issue raised in the note dated 4th April, 1997 i.e. related to the question whether certain authorities needed to be excluded from the proposed Freedom of Information Act. It was decided that it would not be desirable to make any such exceptions. However, to afford the necessary protection to the operation of intelligence agencies, clause 11(v) of the Bill should be suitably amended to cover in the exemption clause, information the disclosure of which would adversely affect the operation of intelligence agencies to be specified by the Government.

(vi) The third point raised in note dated 4th April, 1997 relating to the question of excluding even acknowledgment of the existence of certain documents under the proposed legislation was discussed. In this case also it was decided that clause 11(v) would be suitably amended to protect the identity not only of a confidential source of information, but also of confidential record, to tide over the problem.

268

(vii) The fourth point raised in the note dated 4th April, 1997 related to the question of severability. After discussions the Group decided that the Bill should incorporate the principle of severability. The draft of the provision for this purpose to be incorporated in the Bill was discussed and approved by the Working group.

(viii) The Group also decided that the Bill should provide for the constitution of a Council for purposes such as to examine the implementation of the Act, review its operation and to suggest suitable measures for improvements etc.

10. The Group then considered the proposed amendment to section 5 of Official Secret Act. Shri Sorabjee suggested a slight change in the explanation, to add the word " prejudicially" before the word "affect" in the third line. With this modification and a small grammatical correction, the proposed amendment was approved by the Working Group.

11. The need to amend the relevant provisions of the Indian Evidence Act, 1972 was discussed. The Group was apprised of the recommendations of the Law Commission contained in their Eighty Eighth Report dated January 7, 1983. The Group felt that the recommendations for revision of Sections 123,124 and the amendment, to insert a provision for appeal to High Court, in respect of a claim of privilege under sections 123 and 124 of the Evidence Act, in the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973, deserved acceptance by the Government. Shri Sorabjee suggested the following changes in the formulation of Clause 123 and 124 proposed by the Law Commission.

(a) In the first line of S.123(2), the word "reasonably" may be added after the words "he is" and before the word "satisfied".

(b) The word "rejecting" in the first line of section 124(2) may be substituted by the words "adjudicating upon".

The Group decided accordingly.

12. The Working Group also considered the proposed amendment to Rule 11 of CCS(Conduct) Rule circulated vide Department of Personnel's note dated April 11, 1997.

13. Another draft amendment to rule 11 of CCS(Conduct) Rules, to be made after the Freedom of Information Act comes into force, was placed before the Working Group. It was approved.

14. It was decided that the next meeting of the Working Group would be held on April 25, 1997 at 5.30 p.m.

269

MOST IMMEDIATE

No. 34011/1(s)/97-Estt.(B)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training
*****

7 APR 1997

New Delhi, dateed the 4 April, 1997

Subject: Working Group on Right to Information and promotion of open and transparent Government.

As decided during the last meeting of the Working Group held on March 12, 1997, a draft of the Freedom of Information Bill 1997 has been attempted and attached herewith for the consideration of Working Group. The draft is based on Justice Sawant's Bill as modified by Shri Shourie, the freedom of information legislation in Australia, Canada, U.S. and the Code of Practice of U.K. and the statutory scheme circulated for consideration of the Working Group during its last meeting. The points that have arisen during the deliberation of the Working Group so far have also been kept in mind while drafting the Bill.

2. While considering the Bill, the Working Group may like to deliberate on the following specific points:-

(i) Appeals

The draft Bill envisages appeal to Civil Courts after the internal review. The provision for appeal is based on the one contained in Justice Sawant's Bill.

In this regard, a point of view has been expressed in some quarters that appeals to Courts may not yield the desired result either from the citizen's point of view or from the point of view of the public authorities/Government. First, given the existing state of arrears in Courts, which are already overburdened with

270

cases, an affected citizen may not be able to secure timely redress. Secondly, disclosure of information is a specialised field, as it often involves a delicate balance between public interest in disclosure and public interest in secrecy or public and private interests. An appellate authority without adequate experience in this field may not always be in a position to appreciate the nuances of such cases. The necessary expertise can perhaps be built up in the judiciary over a period of time and that too only if Special Courts are set up for this purpose.

The Group may, therefore, like to consider again whether it would not be desirable to have a separate institution like an Ombudsman or a Tribunal for deciding appeals. Such body could be given the fullest measure of autonomy and independence in order that it inspires confidence in public. The Act or the rules could lay down appropriate qualifications for appointment in order to ensure that only suitable persons are appointed to such a body.

(ii) <u>Whether certain authorities need to be excluded from the proposed Freedom of Information Act.</u>

In terms of the Australian Freedom of Information Act, 1982, there are two categories of exemption in respect of certain agencies. First, certain agencies are entirely exempted from the purview of the Act. Secondly, certain other agencies are exempted from the operation of the Act in respect of particular documents. These agencies are listed in Part I and Part II of the Schedule 2 of the Freedom of Information Act, 1982. Copies of the relevant Sections, i.e. S.7, and Schedule 2 are attached as Annexure 'A' to this Note.

Considering the situation in our country, it might perhaps be desirable to exempt certain organisations, particularly the intelligence organisations, from the operation of the proposed Freedom of Information Act by a specific exclusion. The Working Group may like to consider this aspect.

271

भारतीय प्रेस परिषद्
PRESS COUNCIL OF INDIA
स्थापना : 1979
Established : 1979
दूरभाष : 3381569
Tel. : 3381569
फरीदकोट हाउस, (ग्राउंड), कोपरनिकस मार्ग, नई दिल्ली-110001
Faridkot House, (Gr. Floor), Copernicus Marg, New Delhi-110 001
Fax No. 011-338 6003

अध्यक्ष :
Chairman : JUSTICE P.B.SAWANT

सचिव :
Secretary : G.K.BATRA

No. 25/9/96-PCI

January 9, 1996

The Secretary to the Government of India,
Ministry of Personnel Public Grievances and
Pensions, North Block,
New Delhi.

Sir,

I am sending herewith a copy of the Model Bill on 'Right to Information' for information, as desired.

Yours faithfully,

(G K Batra)
Secretary

272

THE RIGHT TO INFORMATION BILL 1996

A Bill to make provision for securing right to information and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the forty-seventh year of the Republic of India as follows:-

1. (1) The Act may be called the Right to Information Act, 1996.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,- Definitions

(a) "information" means any material or information relating to the affairs, administration or conduct of a public authority in respect of which public has a right to know, and includes any document or record relating to the affairs of the public authority;

(b) "prescribed" means prescribed by rules under the Act;

(c) "public authority" includes,-

(i) the Government and Parliament of India and the Government and Legislature of each of

273

the States and of local or other authorities within the territory of India or under the control of the Government of India; and

(ii) a company, corporation, trust, firm, society or a cooperative society, whether owned or controlled by the Government or by private individuals and institutions whose activities affect the public interest;

The expressions company, corporation, trust, firm, society and cooperative society shall have the same meaning as assigned to them in the respective Acts under which they are registered.

(d) "right to information" means the right of access to information and includes the inspection, taking notes and extracts and obtaining certified copies of documents or records of any public authority;

(e) "State Government" includes the administrator of a Union territory appointed by the President under article 239 of the Constitution.

274

3. (1) Every citizen shall have a right to information from a public authority; Right to information

(2) Every public authority shall be under a duty to maintain all its records duly catalogued and indexed and subject to the provisions of section 4, to make available to any person requesting information from it, the information sought for, including such information as it is under an obligation to obtain and furnish and shall not withhold any information or limit its availability;

(3) Nothing in the foregoing provisions of this section shall preclude the right of any person to obtain such information as would affect his life or liberty.

(4) It shall be mandatory for each custodial establishment such as a police lock-up, jail, mental asylum, remand house , women's home , beggars' home , etcetera to appoint a visitors' committee comprising of independent citizens which shall have full access to them at all hours of the day and night and to their records and inmates.

275

4. The public authority may, for reasons to be recorded in writing, withhold - Restrictic on right t informatic

(a) information, the disclosure or contents of which will prejudicially affect the sovereignty and integrity of India, security of the State and friendly relations with foreign States, public order, investigation of an offence or which leads to incitement to an offence;

(b) information relating to personal or other information, the disclosure of which has no relationship to any public activity or in which the public has no interest and would constitute a clear and unwarranted invasion of personal privacy;

(c) trade and commercial secrets protected by law.

Provided that information which cannot be denied to Parliament or State Legislature shall not be denied to any citizen.

275-A

Procedure for the supply of information

5. (1) A person desiring information from a public authority under this Act shall make an application to the person for the time being in charge of the public authority.

(2) The information asked for under sub-section (1) shall be furnished to the applicant by the public authority within thirty days of the application under sub-section (1), and where such information relates to the life or liberty of the individual, the information shall be supplied within forty-eight hours of the making of the application.

(3) The information asked for under sub-section (1) shall be supplied in writing either in English or Hindi or in the language of the State in which the public authority is located.

(4) Every public authority shall have a right to charge fees for the supply of any document subject to the condition that such fees shall not exceed the cost of making and supplying the document.

275

6. If the information asked for under sub-section (1) of Section 4 is refused by any public authority, the reasons for such refusal shall be given by such authority in writing. Refusal to be given in writing

7. An appeal against a refusal to furnish any document by a public authority under this Act shall lie to the Principal Civil Judge of ordinary original civil jurisdiction of the area in which the office of the public authority is located and any appeal shall be preferred within fifteen days of the date of refusal of the supply of information by the public authority and any appeal so preferred shall be disposed of by the Civil Judge within thirty days of its filing, by a written order and giving reasons for its decision. Appeal

8. (1) Any individual responsible for providing any information under this Act shall be personally liable for furnishing the information within the period specified therein. Penalties

(2) Where the information asked for under this Act is not furnished within the time specified, the person responsible for supplying the information shall be punishable with a fine of rupees fifty for every day of delay after the day by which it is required to be supplied.

(3) If any person responsible for providing any information under this Act, fails to furnish such information or furnishes any information which is false in

276

any material particular and which he knows or has reasonable cause to believe to be false or does not believe it to be true, he shall be punishable with fine which shall not be less than rupees one thousand and which may extend to rupees five thousand.

Provided that the Court may, for reasons to be recorded in writing levy a fine of less than one thousand rupees.

Offences by Companies

9. (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence;

(2) Notwithstanding anything contained in sub-section (1) where an offence

277

under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation:For the purposes of this section,-

(a) "company" means any body corporate, and includes a firm or association of individuals; and

(b) "director" in relation to a firm means a partner of the firm.

Offences to be cognizable

10. Notwithstanding anything contained in the Code of Criminal Procedure 1973, every offence under this Act shall be cognizable.

11. Notwithstanding anything contained in this Act or in any other law for the time being in force, it shall be the duty of every public authority which proposes to initiate any project or activity, subject to the provisions of section 4, to notify, as soon as possible, and in any case well before the commencement of the project or activity, for the information of the general public and the persons to be affected, such matters within its knowledge

218

and control as affect the general public or are vital to life, health and livelihood.

Protection of action taken in good faith

12. No suit, prosecution or other legal proceeding shall lie against the Central Government or a State Government or any individual, for anything which is in good faith done or intended to be done under the provisions of this Act or any rule made thereunder.

Act to have overriding effect

13. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force other than this Act.

Power of th Central Government to make Rules

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

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all matters in respect of which rules are required to be made by the Central Government under this Act.

Power to State Government to make rules

15. A State Government may, by notification in the Official Gazette, make rules to provide for any matter in respect of which rules are required to be made by the State Government under this Act.

Laying of rules

16. (1) Every rule made under this Act by the Central Government 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 made, before the State Legislature.

130/CS/97
10/1

No. 2438-G/LS/97

13/DOR(SPS)
13/1

सत्यमेव जयते

डा० वी० के० अग्रवाल
विधि सचिव .
Dr. V. K. AGARWAL
LAW SECRETARY

Phone : Off : 3384777, 3382902
Fax : 011-3387259
भारत सरकार
विधि और न्याय मंत्रालय
विधि कार्य विभाग
नई दिल्ली
GOVERNMENT OF INDIA
MINISTRY OF LAW AND JUSTICE
DEPARTMENT OF LEGAL AFFAIRS
NEW DELHI

104/JS(Ec)/97
13-1

dated the, 9th January, 1997.

213/JS(E)/97
20/1

Shri T.S.R. Subramanian,
Cabinet Secretary,
Cabinet Secretariat,
Rashtrapati Bhawan,
New Delhi.

Sir,

On 19th December, 1996, in a meeting taken by you on the "Effective and responsive administration", the subject relating to 'Right to Information' and transparency was discussed. Incidentally, Hon'ble Shri Justice P.B. Sawant (retired Judge of Supreme Court and presently Chairman, Press Council of India) has on his own prepared a Right to Information Bill, a copy of which is enclosed herewith for your kind information and action as considered appropriate.

Yours faithfully,

(Dr. V.K. Agarwal)
Law Secretary

Encl: As above.

281

सत्यमेव जयते

डा. पी. एस. ए. सुंदरम
DR. P.S.A. SUNDARAM
TELE. : 3732133, 3732546
FAX : 3732133

अपर सचिव
प्रशासनिक सुधार और लोक शिकायत विभाग
भारत सरकार
सरदार पटेल भवन, संसद मार्ग, नई दिल्ली-११०००१
ADDITIONAL SECRETARY (AR & T)
DEPARTMENT OF ADMINISTRATIVE
REFORMS & PUBLIC GRIEVANCES
GOVERNMENT OF INDIA
SARDAR PATEL BHAVAN, SANSAD MARG,
NEW DELHI-110001

अ. स. प. सं.
D. O. No.

दिनांक
Dated

Subject : Draft legislation for Freedom of Information

Dear Sir,

You are aware that the Government has set up a Working Group under the Chairmanship of Shri H.D. Shourie to formulate a legislation for Freedom of Information and amendments to other relevant laws for ensuring transparency in administration and easy access of information to the public. The Working Group has finalised a draft Bill after examining suggestions received from various experts and the provisions of similar laws in other countries. A copy of the draft Bill is enclosed.

2. The Bill envisages that in case the information requested by the applicant is refused by the Head of the Department, then the applicant will be able to approach a court of law in appeal to secure the information requested by him according to the statutory provisions. The Working Group felt that the appeal may not be referred to the existing civil courts because of the huge pendency of cases, specialised nature of the request, and the need to provide for access to the appellate authority with minimum cost and procedure. It was noted that the Consumer Protection Act provides for the constitution of district consumer courts in all the districts of the country with provisions for appeal at the State and National level. The court will have the necessary sympathetic approach and administration knowledge to deal with the request. It is, therefore, proposed by the Group that the existing provisions of the Consumer Protection Act may be suitably modified/expanded in order to deal with appeals from the citizens regarding information from various public authorities. It is, therefore, proposed that in respect of appeals lien from State secretariat departments, the appeal may lien to the State consumer courts instead of the district courts because of the level of decision taken by the State Secretary. In respect of appeals against Central Ministries and Departments, the appeal may similarly lien directly to the apex consumer court.

282

3. It is realised that there are many problems relating to the setting up of the consumer courts, their infrastructure, staff, facilities etc. However, it is felt that, while processing this legislation, Central and State Governments may simultaneously examine the entire question of strengthening existing arrangements under the Consumer Protection Act.

4. The Working Group has asked this Department to take up the matter with you for concurrence to the proposed provision of the draft bill for the cases under the new Act to be dealt with by the consumer courts. I hope you will concur with the suggestions made by the Working Group. I would also request you to provide your detailed comments or the manner in which the appellate authority may be exercised by the consumer courts and what recommendations should be made by the Working Group regarding the strengthening of the consumer courts.

With regards,

Yours sincerely,

(P.S.A. Sundaram)

Shri Venkat Subramanian
Secretary
Department of Consumer Affairs
and Public Distribution
Krishi Bhavan, New Delhi

Copy to : Shri H.D. Shourie, A-31, Westend, New Delhi.

(P.S.A. Sundaram)

283

RECOMMENDATIONS OF THE CONFERENCE OF CHIEF SECRETARIES

The Conference shared the concern of the Prime Minister and the Government of India over the need to assure the people of India an efficient, open, responsive, accountable, clean and dynamically adjusting administration at all levels. It is necessary to make corrective efforts to arrest the present drift before it is too late. It realised the importance of changing the present negative perception of public services as apathetic, insensitive, dilatory, corrupt and discriminatory. The blame has to be shared both by the political and bureaucratic elements. The emphasis is here not just on civil services but the public services subsuming all technical, professional, law enforcement and administrative personnel. It is recognised that these Services have played a major role since Independence in steering the country through turbulent times and new challenges. While the inefficiency and eroded morality of a growing minority have distorted the system, the rationale for a vibrant civil service in promoting the progress and integrity of the country, and pursue ideals of social justice, is as valid today as when the Republic came into being. It is necessary to devise urgent steps to restore the confidence of the public, especially the vulnerable groups, in the capacity and fairness of administration at various levels.

2. The Conference recognised that governance has to extend beyond conventional bureaucracies to involve actively citizen and consumer groups at all levels, to empower and inform the public

and the disadvantaged groups, and, to ensure service delivery and programme execution through autonomous elected local bodies.

3. The operative recommendations of the Conference are enclosed.

4. The Chief Secretaries ~~will bring up~~ agreed to pursue governmental support for these measures, and elicit the widest possible response from all sections of society and citizen groups on the context and direction of the changes needed. The objective would be to identify critical thrust areas for immediate action and to generate a political consensus in a meeting of Chief Ministers within the next few months.

285

(iii) Acknowledgement as to the existence of certain documents/records.

There may be situations in which mere acknowledgement of the existence of a particular document or record may produce consequences similar to those arising from disclosure of an exempted document or record. Both the Australian and US Freedom of Information Acts take note of such situations and provide for exclusions in certain cases. The intention of such exclusions, however, is not to broaden the scope of exemptions from disclosure. Therefore, they apply only in respect of document/records which are otherwise exempted from disclosure. In the Australian Act, this applies to documents relating to security, defence and international relations, documents relating to relations with States, Cabinet documents and Executive Council documents. By way of example, Sections 33(1) and 33(4) of the Australian Act may be quoted -

"Documents affecting national security, defence or international relations

33(1) A document is an exempt document if disclosure of the document under this Act would be contrary to the public interest for the reason that the disclosure -

(a) would, or could reasonably be expected to, cause damage to -

(i) the security of the Commonwealth;

(ii) the defence of the Commonwealth; or

(iii) the international relations of the commonwealth; or

(b) would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign

government or an international organisation to the Government of the Commonwealth, to an authority of the Commonwealth or to a person receiving the communication on behalf of the Commonwealth or of an authority of the Commonwealth.

33.(4) Where a Minister is satisfied that information as to the existence or non-existence of a document as described in a request would, if contained in a document of an agency, cause the disclosure under this Act of the last-mentioned document to be contrary to the public interest for a reason referred to in sub-section (1), he may sign a certificate to that effect (specifying that reason)".

Similarly, Sections (c)(1), (c)(2) & (c)(3) the U.S. Freedom of Information Act establish three exclusions. The first exclusion is in respect of records or information compiled for law enforcement purposes, disclosure of which could be reasonably be expected to interfere with enforcement proceedings. Where a request for information relates to such record and - (A) the investigation of proceedings involve a possible violation of criminal law; and (B) there is reason to believe that (i) the subject of the investigation of proceeding is not aware of its pendency; and (ii) the disclosure of the existence of the records would be reasonably expected to interfere with enforcement proceedings, the concerned agency can, during the time the above circumstances continue, treat the record as if it were not subject to FOIA.

The second exclusion relates to informant records maintained by a criminal law enforcement agency.

The third exclusion relates to classified information/records, maintained by FBI, on foreign intelligence, counterintellignece or international terrorism, so long as the classification remains valid.

287

The effect of these exclusions is that the concerned agency does not have to confirm the existence of a record, so long as it is covered by the above three categories.

The Working Group may like to consider if a similar provision needs to be incorporated in the Bill.

(vi) Severability

The laws of most countries require disclosure of a document or record after deletion of exempt matter, where such exempt matter can reasonably be segregated. This is undoubtedly a salutary principle, but it can create difficulties in implementation as it involves exercise of judgement as to severability of an exempt matter without prejudice to its confidentiality. This is an area where training and orientation of officers is essential in order to ensure correct decisions. The Group may like to discuss this issue and decide whether this principle should be incorporated in the Bill.

3. The draft of proposed amendment to S.5 of Official Secrets Act is also enclosed for the consideration of the members of the Working Group. Similarly, a copy of the draft Code of Ethics for Public Services is also attached for perusal.

4. As already intimated, the next meeting of the Working Group would be held on April 12, 1997 at Sardar Patel Bhawan, New Delhi. The meeting would be followed by a working lunch.

(Y.G. PARANDE)
Director

1. Shri H.D, Shourie, A-31, Westend, New Delhi-110021.
2. Shri Soli Sorabjee, Sr. Advocate, 134 Sundar Nagar, New Delhi.
3. Shri Shashi Prakash, Joint Secretary, Ministsry of Home Affairs, New Delhi.

288

5. Shri R.N. Verma, Executive Director, Traffic Transportation (F), Railway Board, Rail Bhawan, New Delhi.

6. Shri V. Saksena, Sr. Deputy Director General (Vig.), Department of Postls, Dak Bhawan, New Delhi.

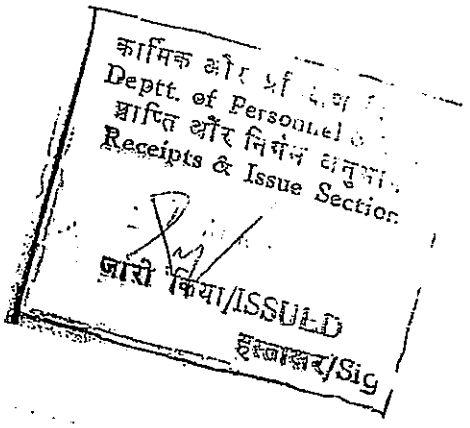
7. Shri Ashok Kumar, Joint Secretary, Department of Telecommunications, Room No.301, Sanchar Bhawan, New Delhi.

8. Shri S. Narendra, Principal Information Officer, Ministry of Information & Broadcasting, New Delhi.

9. Shri N.S. Madhavan, Joint Secretary, Ministry of Information & Broadcasting, New Delhi.

10. Shri Harinder Singh, Joint Secretary, Department of Personnel & Training, New Delhi.

o.c. to Dr. P.S.A. Sundaram, Additional Secretary (AR&T), Department of Administrative Reforms and Public Grievances, Sardar Patel Bhawan, New Delhi.



289

AMENDMENTS PROPOSED TO SECTION 5 OF THE OFFICIAL SECRETS ACT BY THE INTER-MINISTERIAL GROUP

5(1) If any person, having in his possession or control any official secret which has come into his possesssion or control by virtue of,-

(a) his holding or having held an office with or under government, or

(b) a contract with the government, or

(c) it being entrusted to him in confidence by another person holding or having held an office under or with government, or in any other manner,

(i) communicates, without due authority such official secret to another person or uses it for a purpose other than a purpose for which he is permitted to use it under any law for the time being in force; or

(ii) fails to take reasonable care of, or so conducts himself as to endanger the safety of the official secret; or

(iii) willfully fails to return the official secret when it is his duty to return it,

he has been guilty of an offence under this Section.

(2) Any person voluntarily receiving any official secret knowing or having reasonable ground to believe, at the time he receives it that the official secret is communicated in contravention of this Act, he shall be guilty of an offence under this section.

(3) A person guilty of an offence under this Section shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

Explanation : For the purpose of this Section 'Official Secret' means any information the disclosure of which is likely to affect the soverignty and integrity of India, the security of the State, friendly relations with foreign States, economic, commercial, scientific and technological matters relating to national security and indludes:

Any secret code, pass word, sketch, plan, model, article, note or document in relation to a prohibited place;

290

A. SINHA
;क्त सचिव और विधि सलाहकार
INT SECRETARY & LEGAL ADVISER

Tel: 3382913

D.O.No. 32296/96-Adv.B
भारत सरकार
GOVERNMENT OF INDIA
विधि, न्याय और कम्पनी कार्य मंत्रालय
MINISTRY OF LAW, JUSTICE
& COMPANY AFFAIRS
विधि कार्य विभाग
DEPARTMENT OF LEGAL AFFAIRS

New Delhi,
dated the 11th April, 1997

Dear Shri Parande,

In the last meeting of the Working Group on 'Right to Information', some of the members wanted to know whether Law Commission of India has in the recent past examined the provisions of sections 123, 124 and 162 of the Indian Evidence Act.

2. The Law Commission last submitted its Report on this subject in 1983. I am enclosing the relevant extracts of the Eighty-Eighth Report of Law Commission in this regard. You may like to circulate its amongst members.

3. I am also enclosing my comments on the draft Freedom of Information Bill.

With regards,

Yours sincerely,

(A. SINHA)

Shri Y.G. Parande,
Director,
D/o Personnel & Training.

291

Comments on the draft Freedom of Information Bill, 1997

I. Cl. 2 of the Bill defines 'access to information' (sub-cl.a) and 'freedom of information' (sub-cl.d). Both deal with the same subject matter, i.e., what is meant by a citizen's right to seek information from the Government. But these two sub-clauses are differently worded and are somewhat overlapping. It is felt that only one of these two definitions, with suitable modifications, would serve the purpose. Since we have proposed the tile 'Freedom of Information Bill' to the legislation, the heading 'Freedom of Information' would appear more appropriate for the purpose of the present definition. In view of this, it is suggested that sub-cl. (a) may be dropped and sub-cl.(d) may be modified as follows:

> " 'Freedom of Information' means the freedom to seek information, and includes inspection, taking notes and obtaining certified copies of documents and records of any public authority; and where the information is stored in a computer or any other electro magnetic device, the facility to access it through terminals or supply of print-outs."

Consequent amendments in other clauses wherever the expression 'access to information' has been used, would also become necessary.

292

Harsh Mander,
Commissioner,
Bilaspur Division,
Bilaspur (M. P.)
495 001

Phone : Office 24178
Residence 23975
Fax : Office 07752-25903

D. O. Letter No. 173/111/Steno/97

OFFICE OF THE COMMISSIONER
Bilaspur Division, Bilaspur (M. P.)

Bilaspur, Dated 28th March, 97

Dear Dr Sundaram,

It was a pleasure to meet you, along with Shri B.S.Baswan, to discuss the proposed legislation regarding right to information.

As desired I worked on a short note on some specific issues with regard to which the right to information of the citizen is most vital. I enclose the note, and hope it will be of some use.

Encl:- As above. With regards,

Yours sincerely,

Harsh Mander

(Harsh Mander)

To

Dr. P.S.A.Sundaram,
Additional Secretary (AR & T)
Department of Administrative
Reforms & Public Grievances,
Govt. of India,
Sardar Patel Bhavan, Sansad Marg,
New Delhi- 110001
FAX: 011-3732133

293

RIGHT TO INFORMATION

ISSUES OF IMMEDIATE CONCERN TO THE ORDINARY CITIZEN

Today there is wide acceptance in principle that the right to information is an indispensable instrument for increasing citizen control over exercise of executive power, and for enforcing transparency and accountability. The debate has shifted to the *practicality* of legislation that would guarantee such a right to the ordinary citizen, and which would lay down time-limits as well as penalties in case information is not provided on time. Opponents of such a proposed legislation argue that government is unable to cope even with the demands for information of a few hundred legislators and parliamentarians. It would be paralysed and swamped if every citizen would enjoy the freedom to demand bulky and even irrelevant information.

It is important to allay such fears by pointing out that most of the information relevant to a citizen is already being collated and compiled within government. There is very little authority that is exercised in government which is at least in theory not accountable to a higher level. The vital difference is that documents, reports and other information which at present available only to superior supervisory levels should be now also available to the ordinary citizen. Looked at in this way, it would become clear that the burden of additional workload which would be generated by the right to information would not be in the collection and collation of fresh information, but only in making available copies of information already available somewhere within the system. Given the ready availibility of technology of photocopying machines and computers, generating additional copies of information at a price would by no means be unbearably burdensome to the system.

We may also identify in the first stage some examples of such information that may be easily made available to the ordinary citizen on demand, but which would be momentous in its cumulative impact on control of corruption and the arbitrary exercise of power.

Such information may broadly be classified under the following heads :

i) All information related to development programmes, including estimates, sanctions, physical progress and expenditure.
ii) All information related to the award of licences, permits, contracts and selection of beneficiaries.
iii) All information related to selection for any appointment in government service or a public undertaking.
iv) Land records.
v) All information related to curtailment of liberty and crime control.
vi) All information related to impacts on the environment.

An illustrative list of such information is given below :-

---

* Copies of the allotment register and distribution register under PDS.
* All estimates, sanctions, bills, vouchers and muster rolls.
* Criterion and procedure for selction of beneficiaries for any government programme, list of applicants and list of persons selected.
* Per capita food eligibility and allotments under nutrition supplementation programmes, in hospitals, welfare and custodial institutions etc
* Allotments and purchase of drugs and consumables in hospitals.

No.34011/1(s)/97-Estt.(B)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

New Delhi, dated the 24th April, 1997

Subject: Working Group on Right to Information and promotion of open and transparent Government.

*****

The proceedings of the 5th meeting of the Working Group are enclosed.

2. A copy of letter dated April 18, 1997 addressed by Chairman of the Working Group to Secretary, Consumer Affairs on the issue of utilising the machinery under Consumer Protection Act is also enclosed for the perusal of the Members.

3. Based on the discussions during the last meeting of the Working Group, the draft Freedom of Information Bill has been suitably revised and is enclosed for the perusal of the Members. Similarly, copies of the draft amendments to Section 5 of Official Secrets Act, Sections 123, 124 of the Indian Evidence Act and Rule 11 of the CCS (Conduct) Rules, as revised on the basis of deliberation in the Working Group are enclosed for the Members' perusal.

4. As was decided during the last meeting of the Working Group, Dr. P.S.A. Sundaram, Additional Secretary (AR) called on Shri A.K. Venkata Subramanian, Secretary, Department of Consumer Affairs on 17th April to apprise him broadly of the

295

provisions of Freedom of Information Act and to hold informal consultation on the question of entrusting the appellate functions to the machinery under the Consumer Protection Act, 1986. Secretary, Consumer Affairs indicated that it would be possible to utilise the District Forums and the State and National Commissions under the Consumer Protection Act for the purpose of appeals under the proposed Freedom of Information Act. He, however, pointed out that in many cases the State Governments have not displayed the desired degree of willingness to put in place an effective machinery under the Consumer Protection Act despite the fact that funding for this purpose was being given from the Centre. He, therefore, felt that the proposed appellate mechanism would not be effective unless all the States cooperate in the matter and take purposeful steps to make appointments to the District forums and State Commissions and also provide these bodies with adequate support in terms of manpower and other required resources. He also felt that the proposal might entail certain legislative changes in the Consumer Protection Act. He, therefore, stated that it may be formally referred to his Department at an appropriate stage so that they could take a view in the matter. In the course of this exercise, the views expressed by the Chairman in his letter to Shri Venkata Subramanian (as circulated) can also be taken into account by that Department.

296

5. As decided, the next meeting of the Working Group will be held on April 25 at 5.30 P.M. in Conference Room (Room No.515, 5th floor), Sardar Patel Bhawan, Sansad Marg, New Delhi.

(Y.G. PARANDE)
Director

Copy to:-

1. H.D.Shourie, A-31, Westend, New Delhi-110021.
2. Soli Sorabjee, Sr. Advocate, 134 Sundar Nagar, New Delhi.
3. Shri Shashi Prakash, Joint Secretary, Ministry of Home Affairs, New Delhi.
4. Shri A. Sinha, Joint Secretary, Department of legal Affairs, Room No.417-A, Shastri Bhawan, New Delhi.
5. Shri R.N. Verma, Executive Director, Traffic Transportation (F), Railway Board, Rail Bhawan, New Delhi
6. Shri V.Saksena, Sr. Deputy Director General (Vig) Department of Posts, Dak Bhawan, New Delhi.
7. Shri Ashok Kumar, Joint Secretary, Department of Telecommunication. Room No. 301, Sanchar Bhawan, New Delhi.
8. Shri S. Narendra, Principal Information Officer, Ministry of Information & Broadcasting, New Delhi.
9. Shri N.S. Madhavan, Joint Secretary, Ministry of Information & Broadcasting, New Delhi
10. Shri Harinder Singh, Joint Secretary, Department of Personnel & Training, New Delhi.

o.c.to Dr. P.S.A. Sundaram, Additional Secretary (AR&T), Department of Administrative Reforms and Public Grievances, Sardar Patel Bhawan, New Delhi.

297

Draft of proposed revisions in Sections 123 and 124 of the Indian Evidence Act,1872 and the proposed provision to be inserted at the appropriate place in the Code of Civil Procedure, 1908 and the Code of Criminal Procedure.

(1) Proposed Sections 123 & 124, Indian Evidence Act.

"123.(1) Subject to the provisions of this section, no one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, unless theofficer at the head of the department concerned has given permission for giving such evidence.

(2) Such officer shall not withhold such permission, unless he is reasonably satisfied that the giving of such evidence would be injurious to the public interest; and where he withholds such permission, he shall make an affidavit containing a statement to that effect and setting forth his reasons therefor:

"Provided that where the Court is of opinion that the affidavit so made does not state the facts or the reasons fully, the Court may require such officer or, in appropriate cases, the Minister concerned with the subject, to make a further affidavit on the subject.

(3) Where such officer has withheld permission for the giving of such evidence, the court, after considering the affidavit or further affidavit, and if it so thinks fit, after examining such officer or, in appropriate cases, the Minister, orally:-

(a) shall issue a summons for the production of the unpublished official records concerned, if such summons has not already been issued.

(b) shall inspect the records in chambers; and

(c) shall determine the question whether the giving of such evidence would or would not be injurious to public interest, recording its reasons therefor.

(4) Where, under sub-section (3),the court decides that the giving of such evidence would not be injurious to public interest, the provisions of sub-section (1) shall not apply to such evidence".

"124.(1) No public officer shall be compelled to disclose communications made to him in official confidence, when the court considers that the public interests would

suffer by the disclosure.

(2) Where a public officer who is a witness is asked a question which might require the disclosure of any such communication, and he objects to answering the question on the ground that the public interests would suffer by its disclosure, theCourt shall, before adjudicating upon his objection, ascertain lfrom him, in chambers, the nature of his objection and reasons therefor.

(3) Nothing in this section applies to communications contained in unpublished official records relating to any affairs of State, which shall be dealt with under Section 123."

<u>Draft of proposed provision to be inserted at the appropriate place in the Court of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973.</u>

"Any person aggrieved by the decision of any court subordinate to the High Court rejecting a claim for privilege made under section 123 or section 124 of the Indian Evidence Act, 1872 shall have a right of appeal to the High Court against such decision, and such appeal may be filed notwithstanding the fact that the proceeding in which the decision was pronounced by the court is still pending."

299

Proposed amendment to Rule 11 of CCS(Conduct) Rules, 1964

Existing Rule	Proposed Rule
11. Unauthorised Communication of Information	11. Communication of Official Information:
No Government servant shall, except in accordance with any general or special order of the Government or in the performance in good faith of the duties assigned to him, communciate, directly or indirectly, any official document or any part thereof or information to any Government servant or any other person to whom he is not authorised to communicate such document or information.	Subject to the provisions of any law for the time being in force, every Government servant shall, provide full and accurate information to a member of public or any organisation, while performing his duties in good faith, excepting classified information, information which is in the nature of commercial secrets or information the disclosure of which will infringe an individual's privacy.
EXPLANATION - Quotation by a Government servant (in his representation to the Head of Office, or Head of Department or President) of or from any letter, circular or office memorandum or from the notes on any file, to which he is not authorised to have access, or which he is authorised to keep in his personal custody or for personal purposes, shall amount to unauthorised communication	EXPLANATION - Nothing in this rule shall be construed as permitting communication of classified information in an unauthorised manner or for improper gains to a Government servant or others.

300

ARVIND VARMA

सचिव
SECRETARY

Tele. : 3014848
Fax : 3012432

भारत सरकार
कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय
नई दिल्ली-110001
GOVERNMENT OF INDIA
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES
AND PENSIONS
NEW DELHI-110001
May 5, 1997

7 MAY 1997

Dear Secretary

Subject : Steps for Transparent Administration.

I write this in the context of this Ministry's ongoing initiative towards administrative reforms under the supervision of Cabinet Secretary. A critical element in the reform process is making the administration more transparent and responsive to the needs of the people it serves. Transparency will also ensure greater accountability in the administration, as lack of transparency often shields corrupt or arbitrary action.

a/c

2. The Conference of Chief Secretaries held on November 20, 1996, had made the following recommendations in this regard:-

> "(2) It is necessary to introduce greater transparency and openness in the functioning of Government and public bodies. This would cover, for example, movement towards a Right to Information Act, transparent and well publicised procedures for approvals by the general public and entrepreneurs under various statutes and regulations; for the allotment of land and immovable property; systems of assessment, levy and collection of various taxes and charges; the award of work tenders for construction and provision of services; procurement of goods and services; and various arrangements for the involvement of the private sector in contracting of services and infrastructure projects by suitable amendment of relevant laws. The aim should be to move towards a citizen centered administration.

.... 2

301

(3) The citizens in urban and rural areas should be provided with widespread and easy access, through the media, posters and various forms of neighbourhood level communications, to all information relating to Government operations and reverse the undue emphasis on secrecy, details of various Government and local schemes, information on award of tenders and procurement, procedures for identification of beneficiaries under various Government schemes, and for the receipt of benefits thereunder, publication of scores for all cases of admission to colleges and for recruitment, the delivery of various civic services etc. The progressive computerisation of information on public operations and work procedures will be of benefit to the Government and the people."

3. The Government has set up a Working Group on "Right to Information and open and transparent Government" under the Chairmanship of Shri H.D. Shourie. The Working Group has formulated a Freedom of Information Act, and allied amendments of the Official Secrets Act, the Evidence Act and the Conduct Rules to facilitate greater flow of information to the public.

4. While the enactment of a legislation would naturally take time, it is necessary for us to take steps to make the administration more open and transparent even within the existing statutory/administrative framework. This would be in conformity with our recent initiative for the formulation of Citizens' Charters by all public agencies.

5. I would, therefore, request you to undertake a review of areas of information, which are at present not open to public, in the organisation(s) under your charge and take steps to provide to the public access to such information which is specifically not prohibited by law or which would not be in public interest to disclose. In fact, there will be a large area of information which should be made available to the public *suo-motu*, such as information relating to functions and responsibilities of various organisations, their decision-making processes, including delegation of authority, the specific plans or ongoing projects of public importance, targets (both physical and financial) for various activities, etc. Similarly, the relevant statutory provisions, rules, regulations etc., within the framework of which organisational activities are carried out, also need to be widely disseminated

302

6. Attached to this letter is an illustrative list of records/information which can be shared with the public. Some of these are relevant to field offices and some to the State Government. It may serve as a useful guidelines. I would again emphasise that it is only an illustrative list and each organisation will have to draw up its own list of records/information which public should be given access to. As regards the modalities of information delivery, I have separately requested all Ministries having a public interface to set up facilitation counters linked to a computer network, and utilise the counter to provide written and oral information, forms, and various forms of assistance.

7. Often doubts and fears are expressed about the impact of right to information on the administration. Apprehensions are expressed about the costs involved and the possible paralysing effect on administration of a heavy overload of demands for information. While there is undoubtedly some cost involved, there are no valid grounds for such fears. It needs to be noted that bulk of the information relevant to the citizens is already being compiled within the Government and what is required for providing access is mainly better management of that information. There is also no reason to suppose that citizens would be making demands for information which is irrelevant or in which they have no direct interest. We, therefore, need to remove the mental inhibitions that might exist among our employees in this regard.

8. You will agree that the administration can become transparent in the true sense of the term only when there is a change in our ethos and work-culture. The culture that by and large pervades the Government today is one of secrecy, and an important reason for this is the lack, among Government employees, of sensitivity to the rights, interests and needs of the public they are supposed to serve. We, therefore, need to take steps to bring about an attitudinal change in our officers and employees and the leadership that you and your colleagues provide will be critical for the success of open and transparent Government.

9. I would request you to accordingly initiate steps for providing greater access to information in the organisations under your charge and give wide publicity to your efforts. I would request you also to issue instructions to all the attached/field offices, PSUs and other organisations, controlled/financed by your Ministry/Department.

.... 4

303

The details of the measures undertaken may please be intimated i. a month's time to Dr. P.S.A. Sundaram, Additional Secretary (AR). I hope the free flow of information as envisaged in this letter would commence by not later than end of May, 1997.

10. An important incidental benefit of such measures would be that we would be prepared to cope with demands for access to information once legislation for freedom of information is introduced and enacted.

11. If you have any ideas or suggestions which you think might be of benefit to others, please communicate them to Dr. Sundaram so that we could make an appropriate use of your suggestions.

With regards,

Yours sincerely,

(ARVIND VARMA)
O/C

All Secretaries (by name)
(As per list attached)

Copy to:
1. *Cabinet Secretary.*
2. *Principal Secretary to PM.*
3. *Shri S. Narendra, Principal Information Officer, PIB, Shastri Bhawan, New Delhi.*

(ARVIND VARMA)
O/C

304

ILLUSTRATIVE LIST OF RECORDS THAT CAN BE MADE PUBLIC

1. Particulars of an organisation, its functions and responsibilities.

2. Description of the organisation's decision making processes in terms of procedures and powers and responsibilities of its officers and employees.

3. Norms for performance of an organisation's activities such as prescribed periods for their processing and completion, physical and financial targets etc., and the actual achievements with reference to such norms/targets.

4. Classes of records under the control of an organisation including the rules, regulations, instructions and list of manuals etc., used by its employees for carrying out activities.

5. Facilities provided by the organisation for access to information.

6. Name, designation and other relevant particulars of the Information Facilitation Officer.

7. Publication, in advance, of such matters relating to a project/activity as are likely to affect the general public or are vital to life, health and livelihood.

8. Copies of the allotment registers and distribution register under PDS.

9. Criterion and procedure for selection of beneficiaries for any government schemes.

10. Per capita food eligibility and allotments under nutrition supplementation programmes, in hospitals, welfare and custodial institutions etc.

11. Allotments and purchase of drugs and consumables in hospitals.

12. Rules related to award of permits, licences, house allotments, gas, water and electricity connection etc., list of applicants with relevant details of applications, and list of those selected, conditions of award, if any etc.

13. Copies of all lands records.

14. Statements of revenue, civil and criminal case work disposal.

305

.....2

15. Details of afforestation works, including details of land/sites species and numbers of plants, expenditure on protection etc.

16. Rules related to criterion and procedure for selection of persons to appointment in government, local bodies or public undertakings, copy of advertisement and/or references to employment exchange, list of applicants with relevant details, and list of beneficiaries selected.

17. Prescribed procedure of sending names from employment exchanges, relevant details of demands from prospective employers, list of candidates registered and list referred to specific employers.

18. Rules related to criterion and procedure for college admissions, list of application with relevant details, and list of persons selected.

19. Copies of monthly crime report.

20. Details of registration and disposal of crimes against women, SC, ST and other vulnerable groups, crimes committed during communal riots and corruption etc.

21. Number and list of undertrials in any jail, including reasons and length of custody, details of presentation before courts etc.

22. Air and Water emission levels and content of all manufacturing units with rights of citizens committees to check the veracity of these figures, copies also of levels declared safe by the Central Pollution Board relevant in each case.

-::0::-

306

Shri M.S. Ahluwalia,
Secretary,
Ministry of Finance,
North Block,
NEW DELHI.

Shri P.R. Dasgupta,
Secretary,
Department of Education,
Shastri Bhawan,
NEW DELHI.

Shri C.M. Vasudev
Additional Secretary,
Ministry of Finance (Banking),
Jeevan Deep Building,
Parliament Street,
NEW DELHI.

Shri Vinod K. Dhall,
Additional Secretary,
Ministry of Finance (Insurance),
Lok Nayak Bhawan,
NEW DELHI.

Shri Shyamal Ghosh,
Secretary,
Department of Electronics,
Electronics Niketan,
6, CGO Complex,
NEW DELHI.

Shri Visvanath Anand
Secretary,
Ministry of Environment and Forests,
Paryavaran Bhawan, CGO Complex,
NEW DELHI.

Shri C. Ramachandran,
Secretary,
Department of Expenditure,
North Block,
NEW DELHI.

Shri Salman Haider,
Foreign Secretary,
South Block,
NEW DELHI.

Shri Y.N. Chaturvedi,
Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan,
NEW DELHI.

Shri Anil Kumar,
Secretary,
Department of Fertilizers,
Shastri Bhawan,
NEW DELHI.

Shri Arun Sinha,
Secretary,
Ministry of Food,
Krishi Bhawan,
NEW DELHI.

Shri S.P. Jakhanwal,
Secretary,
Deptt. of Food Procurement & Distribution,
Krishi Bhawan,
NEW DELHI.

Shri S.S. Boparai,
Secretary,
Ministry of Food Processing Industries,
Panchsheel Bhavan,
Khelgaon Marg,
NEW DELHI.

Shri P.P. Chauhan,
Secretary,
Ministry of Health & Family Welfare,
Nirman Bhawan,
NEW DELHI.

Smt. Shanta Shastri,
Secretary,
Ministry of Health & Family Welfare,

Shri Prabir Sengupta
Secretary,
Department of Heavy Industry,

307

Secretary,
Department of Agriculture & Cooperation,
Krishi Bhawan,
NEW DELHI.

Secretary,
Department of Animal Husbandry & Dairying,
Krishi Bhawan,
NEW DELHI.

Dr. R.S. Paroda,
Secretary,
Department of Agricultural Research & Education,
Krishi Bhawan,
NEW DELHI.

Shri B.P. Singh,
Secretary,
Department of Culture,
Shastri Bhawan,
NEW DELHI.

Dr. R. Chidambaram,
Secretary,
Department of Atomic Energy,
South Block,
NEW DELHI.

Dr. (Smt.) Manju Sharma,
Secretary,
Department of Bio-Technology,
Block No.2, CGO Complex,
Lodi Road,
NEW DELHI.

Shri Ajit Kumar,
Secretary,
Cabinet Secretariat (Coordination),
Rashtrapathi Bhawan,
NEW DELHI.

Shri N.R. Banerji,
Secretary,
Department of Chemical & Petrochemicals,
Shastri Bhawan,
NEW DELHI.

Shri M.K. Kaw,
Secretary,
Ministry of Civil Aviation,
Rajiv Gandhi Bhawan,
Safdarjung Airport,
NEW DELHI.

Shri N.N. Mookerjee,
Secretary,
Department of Civil Supplies,
Krishi Bhawan,
NEW DELHI.

Shri A.K.V. Subramanian,
Secretary,
Department of Consumers' Affairs and
Public Distribution,
Krishi Bhawan,
NEW DELHI.

Shri N.P. Bagchee,
Secretary,
Ministry of Coal,
Shastri Bhawan,
NEW DELHI.

Shri P.P. Prabhu,
Secretary,
Ministry of Commerce,
Udyog Bhawan,
NEW DELHI.

Shri T.S. Krishnamurthy,
Secretary,
Department of Company Affairs,
Shastri Bhawan,
NEW DELHI.

Shri T.K. Banerji,
Secretary,
Ministry of Defence,
South Block,
NEW DELHI.

308

Shri T.S. Vijayaraghavan,
Secretary,
Department of Defence Production & Supplies,
South Block,
NEW DELHI.

Shri P. Abraham,
Secretary,
Ministry of Power,
Shram Shakti Bhawan,
NEW DELHI.

Shri M.P. Modi,
Secretary,
Department of Programme Implementation,
Sardar Patel Bhawan,
NEW DELHI.

Shri P.G. Mankad,
Secretary,
Department of Public Enterprises,
Block.14, CGO Complex,
Lodi Road,
NEW DELHI.

Shri N.K. Singh,
Secretary,
Department of Revenue,
North Block,
NEW DELHI.

Shri N.C. Saxena,
Secretary,
Department of Rural Development,
Krishi Bhawan,
NEW DELHI.

Shri G. Parthasarathi Rao
Secretary,
Deptt. of Rural Employment & Poverty Alleviation,
Krishi Bhawan,
NEW DELHI.

Prof. V.S. Ramamurthy,
Secretary,
Ministry of Science & Technology,
Technology Bhawan,
New Mehrauli Road,
NEW DELHI.

Dr. R.A. Mashelkar,
Secretary,
Deptt. of Scientific & Industrial Research,
Technology Bhawan,
New Mehrauli Road,
NEW DELHI.

Shri S.S. Boparai,
Secretary,
Deptt. of Small Scale Agro and Rural Industries,
Udyog Bhawan,
NEW DELHI.

Dr. K. Kasturirangan,
Secretary,
Department of Space,
Lok Nayak Bhawan,
NEW DELHI.

Shri M.D. Asthana,
Secretary,
Department of Statistics,
Sardar Patel Bhawan,
NEW DELHI.

Dr. J.K. Bagchi
Secretary,
Departmenmt of Steel,
Udyog Bhawan,
NEW DELHI.

Shri S. Bandopadhyaya
Secretary,
Department of Supply,
Nirman Bhawan,
NEW DELHI.

Shri Yogendra Narain,
Secretary,
Ministry of Surface Transport,
Transport Bhawan,
NEW DELHI.

Shri Prabhat Kumar,
Secretary,
Ministry of Textiles,
Udyog Bhawan,
NEW DELHI.

Shri M.P. Bezbaruah,
Secretary,
Ministry of Tourism,
Transport Bhawan,
NEW DELHI.

309

Secretary,
Ministry of Home Affairs,
[illegible] rth Block,
NEW DELHI.

Secretary,
Inter State Council Secretariat,
Ministry of Home Affairs,
Vigyan Bhawan Annexe,
NEW DELHI.

Shri P.G. Mankad,
Secretary,
Department of Industrial Development,
Udyog Bhawan,
NEW DELHI.

Shri T. Ramachandra Prasad
Secretary,
Deptt. of Industrial Policy & Promotion,
Udyog Bhawan,
NEW DELHI.

Shri N.P. Nawani,
Secretary,
Ministry of Information & Broadcasting,
Shastri Bhawan,
NEW DELHI.

Dr. L.D. Mishra,
Secretary,
Ministry of Labour,
Shram Shakti Bhawan,
NEW DELHI.

Dr. V.K. Agarwal,
Secretary,
Departmenty of Legal Affairs,
Shastri Bhawan,
NEW DELHI.

Shri K.L. Mohanpuria,
Secretary,
Legislative Department,
Ministry of Law & Justice,
Shastri Bhawan,
NEW DELHI.

Shri B.B. Tandon,
Secretary,
Department of Mines,
Shastri Bhawan,
NEW DELHI.

Shri Ashok Parthasarathi,
Secretary,
Ministry of Non-conventional Energy Sources,
Block No.14, CGO Complex,
Lodi Road,
NEW DELHI.

Dr. A.E. Muthunayagam,
Secretary,
Department of Ocean Development,
Mahasagar Bhawan, CGO Complex,
NEW DELHI.

Shri C.D. Tripathi,
Secretary,
Department of Official Languages,
Lok Nayak Bhawan,
NEW DELHI.

Shri R.C. Tripathi,
Secretary,
Ministry of Parliamentary Affairs,
Parliament House,
NEW DELHI.

Dr. Vijai Kelkar,
Secretary,
Ministry of Petroleum & Natural Gas,
Shastri Bhawan,
NEW DELHI.

310

Dr. Bimal Jalan,
Member Secretary,
Planning Commission,
Yojana Bhawan,
NEW DELHI.

Shri R.U.S. Prasad,
Secretary,
Department of Posts,
Dak Bhawan,
NEW DELHI.

Shri A.V. Gokak,
Secretary,
Department of Telecommunications,
Sanchar Bhawan,
NEW DELHI.

Shri N.P. Singh,
Secretary,
Department of Urban Development,
Nirman Bhawan,
NEW DELHI.

Smt. Kiran Aggarwal,
Secretary,
Department of Urban Employment and Poverty Alleviation,
Nirman Bhawan,
NEW DELHI.

Shri Mata Prasad,
Secretary,
Ministry of Water Resources,
Shram Shakti Bhawan,
NEW DELHI.

Shri K.K. Baksi,
Secretary,
Ministry of Welfare,
Shastri Bhawan,
NEW DELHI.

Smt. Asha Das,
Secretary,
Deptt. of Women & Child Development,
Shastri Bhawan,
NEW DELHI.

Shri Bhaskar Barua,
Secretary,
Department of Youth Affairs & Sports,
Shastri Bhawan,
NEW DELHI.

Shri M. Ravindra,
Chairman,
Railway Board,
Rail Bhawan,
NEW DELHI.

Total 72 letters

+3 enclosures = 75

311

LYRIX 6.1

LIST OF CHIEF SECRETARIES AS ON 04.03.1997

	STATE	HEADQUARTER	S/SHRI
1.	Andhra Pradesh	Hyderabad	:DR.M.S.RAJAJEE (AGMP [illegible]
2.	Arunachal Pradesh	Itanagar	:D.C. MISHRA (AGMP [illegible]
3.	Assam	Dispur	:T.K.KAMILLA [illegible]
4.	Bihar	Patna	:R.P.VERMA (HP [illegible]
5.	Delhi	Delhi	:P.V.JAIKRISHNAM (AGMP [illegible]
6.	Gujarat	Gandhinagar	:S.S. RAJ [illegible]
7.	Goa	Panaji	DR.G.C.SRIVASTAVA (AGMP [illegible]
8.	Haryana	Chandigarh	:RAM S VARIA (HP [illegible]
9.	Himachal Pradesh	Shimla	:A.N.VIDYARTHI (HP [illegible]
10	Jammu & Kashmir	Srinagar	:ASHOK JAITLY (JK [illegible]
11.	Karnataka	Bangalore	:B.R.PRABHAKARA (KT [illegible]
12.	Kerala	Trivandrum	:C.P.NAIR (KE [illegible]
13.	Madhya Pradesh	Bhopal	:ELIPA S SHARMA (MP [illegible]
14.	Maharashtra	Mumbai	:DINESH ALIBHPURKAR (MH [illegible]
15.	Manipur	Imphal	:H.JELSHYAM (MN [illegible]
16	Meghalaya	Shillong	:D.K.CHAKRAVARTY (ML [illegible]
17.	Mizoram	Aizwal	:LALFAK ZUALA (MI [illegible]
18.	Nagaland	Kohima	:L.COLONEY (NL [illegible]
19.	Orissa	Bhubaneswar	:R.K.BHUJABALA (OR [illegible]
20.	Punjab	Chandigarh	:R.S. MANN (PB [illegible]
21.	Rajasthan	Jaipur	:M.L.MEHTA (RJ [illegible]
22.	Sikkim	Gangtok	:K.S.RAO (SK [illegible]
23.	Tamil Nadu	Madras	:K.A.NAMBIAR (TN [illegible]
24.	Tripura	Agartala	:V.TULSHI DAS (TR [illegible]
25.	Uttar Pradesh	Lucknow	:BRIJENDRA SAHAY (UP [illegible]
26.	West Bengal	Calcutta	:A.K.MAZUMDAR (WB [illegible]

UNION TERRITORIES/ADMINISTRATION

1.	Andaman & Nicobar	Port Blair	:NARENDRA PRASAD (AGMP [illegible] (Chief Secretary)
2.	Chandigarh		:LT.GEN.B.K.N.CHHIBBER (Administrator)
3.	Daman & Diu	Daman	:S.P.AGGARWAL (AGMP [illegible] (Administrator)
4.	Lakshdweep	Kavaratti	:RAJEEV TALWAR (AGMP [illegible] (Administrator)
5.	Pondichery		:S.R.SHARMA (AGMP [illegible] (Chief Secretary)
6.	Dadra Nagar Haveli	Silvasa	:S.P.AGGARWAL (AGMP [illegible] (Administrator)

312

Department of Personnel and Training
Estt. (B) Section

F.No. 34011/1(J)/97-Estt.(B) Dated the 9th May, 97

A Press Note on the subject of transparency and openness in Government is enclosed. Deputy Principal Information Officer is requested to kindly arrange for wide publicity of this Department's Press Note.

(Y.G. Parande)
Director

Shri A.N. Sharma,
Dy. Principal Information Officer,
Department of Personnel and Training.
New Delhi.

313

PRESS NOTE

As a part of the Government's ongoing initiative towards administrative reforms, the Government has launched an initiative for introducing greater openness and transparency in administration. The Working Group constituted under the Chairmanship of Shri H.D. Shourie for recommending measures in this direction, including a Bill for Freedom of Information, is expected to submit its report shortly. Meanwhile, it has been decided that steps should be initiated to provide the people wider access to information regarding the functioning of the Government and its agencies. As a sequel to this, the Ministry of Personnel has written to all the Central Ministries/Departments requesting them to urgently undertake a review of areas of information which is at present not open to public. The Ministries/Departments have been requested to provide, to the public, access to information which is specifically not prohibited by law or which would not be in public interest to disclose. Such information includes the statutory/administrative framework within which the various organisations function, their decision-making processes, the delegation of powers, specific plans or projects of public importance and the targets for achievement, both in

physical and financial terms. The letter stresses the importance of an attitudinal change among employees in order to remove the mental inhibitions they may have as regards sharing of information with the public as also the need to improve the management of information in various organisations to facilitate public access to information.

In tune with this initiative, Ministries/Departments with public interface have been asked to set up public facilitation counters where information regarding schemes and procedures of the concerned organisation as well as status of individual application would be made available to the public on request. These counters are eventually proposed to be linked to computer networks in order to ensure prompt provision of information and assistance. Various Ministries/Departments have also been asked to formulate Citizen's Charters in which concerned organisations will commit themselves to declared standards of service, well publicised channels of redressal and independent scrutiny of performance.

315

Department of Personnel & Training

The report of the Working Group on Right to Information and promotion of open and transparent Government is going to be presented to the Cabinet Secretary by the Chairman of the Group, Shri H.D. Shourie, on May 21, 1997 at 10.00 A.M.

2. A draft Press Note proposed to to be released is placed below for approval.

(Y.G. PARANDE)
DIRECTOR
19.5.1997

JS(E)

(HARINDER SINGH)
Joint Secretary (Estt)

Secy.(P)

(Arvind Varma)
Secretary

JS(E)

316

PRESS NOTE

The Government had set up, in January, 1997, a Working Group on Right to Information and Promotion of Open and Transparent Government. The Group was asked to examine the need and feasibility of a Right to Information Act. It was also asked to examine the existing rules framework with particular reference to Conduct Rules and Manual of Office Procedure with a view to introducing greater openness and transparency in the Government's functioning.

2. The Chairman of the Working Group was Shri H.D.Shourie and its Members included Shri Soli J. Sorabjee, eminent Advocate and former Attorney General of India and the representatives of certain major Ministries/Departments such as Ministries of Railways, Home Affairs, Telecommunications, Posts, Law and Personnel.

3. The Working Group has submitted its report to Government on May 21, 1997. The report was presented to the Cabinet Secretary by the Chairman of the Working Group, Shri H.D. Shourie.

4. The Group has prepared a draft Freedom of Information Bill.

317

DEPARTMENT OF PERSONNEL & TRAINING

With reference to the meeting of the Cabinet Secretary with Shri H.D. Shourie on May 21,1997 at 10.10 A.M., a brief Note on the report of the Working Group on Right to Information and promotion of open and transparent Government is attached for information.

(Y.G. Parande)
Director
20.5.97

Shri K. Unnikrishnan
Staff Officer to the Cabinet Secretary
Cabinet Secretariat

318

A brief Note on the Report of Working Group on Right to Information and Promotion of Open and Transparent Government

The Working Group was set up with Shri H.D. Shourie as its Chairman. Its members included Shri Soli Sorabjee, former Attorney General of India, and representatives of certain major Ministries/Departments. A copy of the O.M.No.34011/1(s)/97-Estt.(B) dated Jan. 2, 1997 setting up the Working Group is at Annexure 'A'.

2. The Working Group has drafted a Freedom of Information Bill. Some of the salient features of the Bill are:

(i) It applies to public authorities which include the Government of India, Governments of States/Union Territories and other bodies owned or substantially controlled or funded by the Government of India or Governments of States/Union Territories and also to the administrative offices of the Supreme Court, High Courts, Subordinate Courts and of the Parliament and State Legislatures.

(ii) It creates an obligation on public authorities to maintain their records, as per their operational requirements, in proper order, to facilitate access to information. It also requires them to

319

publish, suo motu, certain kinds of information such as the particulars of their organisation, functions, responsibilities etc., administrative/legal framework within its function, description of its decision making processes, norms for performance and targets and physical and financial targets etc.

(iii) It provides for exemption from disclosure of specified categories of information. There are in all 11 categories of information which are exempted from disclosure.

(iv) The Bill also provides for certain other grounds for refusal of access to information. Thus, requests for information may be refused when they are too general or would involve disproportionate diversion of the resources of a public authority. There is, however, a duty cast on the concerned officers to help a requester to reframe his request in such a manner as may facilitate compliance with it, before rejection of the request on the ground of its being too general.

(v) The Bill also provides for charging of fees for supply of information with the proviso that where disclosure is in the larger public interest, the fees can be waived.

320

(vi) The Bill also incorporates the principle of severability. Thus, in the case of a document which contains both exempted and non-exempted information, the non-exempted information can be disclosed if it can be reasonably severed from the part that contains exempted information.

(vii) In the case of information relating to third parties, there is a provision to give notice to such parties before disclosure of information, and the representation, if any, made by such third parties is required to be taken into consideration before a decision in the matter. While making this provision, the Bill also stipulates that such information may be disclosed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of the concerned third party.

(viii) A provision has been made for a departmental remedy in the form of internal review by the concerned Head of Department, or such other authority as may be prescribed, to whom an application can be made for reviewing a decision to refuse access to information.

(ix) It is proposed to utilise the machinery created under the Consumer Protection Act, 1986

cases where continued classification is required for reasons that have to do with the national interest. In such cases the competent officer has to record reasons for continued classification, in writing.

322

MOST IMMEDIATE

NO.501/6/4/96-CA.V(Vol.II)
CABINET SECRETARIAT
RASHTRAPATI BHAVAN

As part of the ongoing exercises for undertaking reforms so as to ensure an effective and responsive administration, a Working Group on Right to Information and Promotion of Open and Transparent Government had been set up in January, 1997. The Group was asked to examine the need and feasibility of a Right to Information Act. It was also asked to examine the existing frame-work of rules with particular reference to the Conduct Rules and Manual of Office Procedure with a view to introducing greater openness and transparency in the functioning of the government. The composition of the Group included Shri H.D. Shourie as Chairman and Shri Soli J. Sorabjee and representatives of some of the major Ministries/ Departments as Members. A copy of the order issued in this regard by D/o Personnel and Training is enclosed.

2. The Working Group has since submitted its report on 21st May, 1997. The Group has prepared a draft Freedom of Information Bill for consideration of the Government. It has also recommended amendments to certain other important provisions which affect availability of information for the public, such as Section 5 of the Official Secrets Act, 1923, Sections 123 and 124 of the Indian Evidence Act, 1872 and Rule 11 of the Central Civil Services (Conduct) Rules 1964. The Group has further examined the system of classification of information in the government and has made certain recommendations for streamlining of the system with a view to promoting greater flow of information to the public as well as ensuring that only such information which deserves classification is classified. A copy of the report submitted by the Group is enclosed.

3. Action is being initiated by D/o Personnel and Training to process the recommendations made by the Group. In the meanwhile, since issues relating to 'transparency' and 'right to information' figure prominently in the Action Plan proposed to be discussed in the Conference of Chief Ministers on 24th May, 1997 and as the agenda document also refers to the setting up of this Group for

323

by the Group in the Conference so as to elicit the views of the participating Chief Ministers. However, while circulating the report of the Group, a note will be attached to indicate that the report is yet to be considered in the Government of India and the views expressed by the Group should not be interpreted as the views of the Government of India.

4. I am asking Secretary, Personnel to take action as indicated in the preceding para. Prime Minister may kindly see for information.

CS-280/SLW/CB/97
28-5-97

(T.S.R. SUBRAMANIAN)
CABINET SECRETARY
23.05.1997

PRIME MINISTER

Copy to: Secretary, Personnel

324

डा. पी. एस. ए. सुंदरम
DR. P.S.A. SUNDARAM
TELE. : 3732133, 3732546
FAX : 3732133

अपर सचिव
प्रशासनिक सुधार और लोक शिकायत विभाग
भारत सरकार
सरदार पटेल भवन, ससद मार्ग, नई दिल्ली-११०००१
ADDITIONAL SECRETARY (AR & T)
DEPARTMENT OF ADMINISTRATIVE
REFORMS & PUBLIC GRIEVANCES
GOVERNMENT OF INDIA
SARDAR PATEL BHAVAN, SANSAD MARG
NEW DELHI-110001

सत्यमेव जयते

2458/Dir(R)/97 22/9 7440/JS(E)/97 15/9 2184/JS(H)(R)/97 29/10/97

अ. स. प. सं.

D. O. No. K-11022/14-CM(2.1)/97-P

दिनांक

Dated 15.9.97

51/Dir(E-II)/97 17/9

Subject : **Modifications to Archival Policies and Rules.**

Dear Shri

17/9/97-Sec (R) (97)

Your attention is invited to letter from Secretary(Personnel) forwarding a copy of the report of the Working Group on Right to Information and Transparency, as also communication from this Department forwarding a copy of the Conference Statement issued after the Conference of Chief Ministers on Effective and Responsive Government held on 24th May, 1997. You are aware that the Prime Minister has announced that a Bill for Right to Information will be introduced in the Parliament in the Winter Session 1997. The statutory scheme for this purpose is proposed to be submitted for the approval of the Cabinet shortly.

2. As a part of the statutory scheme, it is envisaged that the Government will also process amendments to related Central legislations and rules such as Official Secrets Act, Criminal Procedure Court, Classification of Records, Code of Conduct Rules etc. In the course of examination of the matter relating to classification of records, it has been found that it would be necessary to consider modifications to policy relating to National Archives and access to records in order to ensure the access of the public to all information and records other than those exempted in the proposed legislation.

3. The National Archives keeps non-current records of permanent nature of the Government of India. Presently 30 year old records were accessible to scholars. However, restrictions have been placed in some cases, such as records of the Ministries of External Affairs and Defence pertaining to modern India from 1st January, 1914, and records in respect of some other Ministries pertaining to Jammu & Kashmir pertaining to the period after 1st January, 1925. There are problems relating to access to maps where clearance of MEA, MHA and the Ministry of Defence is necessary. There are problems relating to de-classification of records, having regard to the provisions of Manual of Office Procedure, and the suggestions from the Intelligence Bureau.

This may concern Dir(R) as he is handling Right to Information Bill & related matters.

S-Sec 17.9

17/9/97

Dir(E/II)

Dir (R)

24/10 DS(R)

325

4. As regards the documents of classified nature, they are required to be reviewed in five years to consider their de-classification, so that access to scholars and seekers of information can be thought of. However, it appears that not much action was taken in this field by different Departments and files continue to enjoy classified status even when there may be no longer any basis for their classification. National Archives officials are sympathetic to this requirement in view of the severe problems faced by them in the storage of documents, and the fact that sometimes files of earlier period get destroyed. In the course of a workshop on the subject convened by the Centre for Policy Research, following suggestions were given:

(a) Amendment to existing rules and regulations governing the National Archives Act, having regard to the provisions of the proposed Freedom of Information Act (copy of which is contained in the enclosed report) in order to ensure access of the public to all records in terms of the provisions of the proposed legislation.

(b) Amendment to existing instructions, de-classification of files, providing for automatic de-classification/documenting of files 85 years old, unless a decision is taken on each file at the level of a Joint Secretary.

(c) Careful and quick review of all classified files already transferred to the National Archives of India by various Ministries/Departments.

(d) Thorough review of Intellilgence Bureau records pertaining to freedom struggle, prior to August 1947, and the transfer of such files of Intelligence Bureau to National Archives of India after they are de-classified.

(e) Appropriate stock taking of classified files.

(f) Compilation of appropriate reference tools in the form of indeces facilitating quick retrieval of information.

(g) Appropriate upkeep and maintenance of files, including possibility of image scanning and storage in CD-ROMs during the period the files enjoyed classified categorisation, so that access to people can be ensured easily after de-classification.

326

5. You may like to convene a meeting to discuss the matter in detail, when myself and concerned officials in the Department of Culture, National Archives of India, Intelligence Bureau etc. could be invited. Kindly give this matter your urgent consideration.

With regards,

Yours sincerely,

/

(P.S.A. Sundaram)

Shri B.P. Singh
Secretary
Department of Culture
Shastri Bhavan, New Delhi

Copy to : Shri S. Sarkar, Director General, National Archives of India, with a similar request for comments.

Copy to : Joint Secretary(E), DoPT with the request to obtain the remarks of Intelligence Bureau also on the subject and incorporate them in the final submissions to the Cabinet Secretariat.

(P.S.A. Sundaram)

327

COMMON CAUSE

A REGISTERED SOCIETY
AN ORGANISATION FOR VENTILATING COMMON PROBLEMS OF THE PEOPLE
A-31, West End New Delhi-110021

May 15, 1998.

Dear Shri Advaniji,

You would be aware that the previous Government had set up a Committee to study and make recommendations on the subject of "Right to Information", for bringing about greater transparency and accountability in the Government functioning. I had the privilege of being nominated as Chairman of this Committee.

The Committee formulated concrete proposals and prepared a draft of self-contained Bill which we preferred to call "Freedom of Information Bill". We preferred to use the term "Freedom of Information" taking into account that this term is used in some other important countries and also that the word "Right" always carried the connotation that the Right claimed by one could be challenged by the other.

"Freedom of Information Bill" prepared by the Committee was generally hailed by the media, and the previous Government gave indication that they would soon submit it to the Parliament. I do not know what the present stage is, and I have, therefore, considered it appropriate to request you to kindly see whether this important proposed legislation can be enacted soon. Present Government is handling major tasks remarkably well; I have confidence that it will deal effectively also with this pending matter which promises to bring the much-desired transparency and accountability in the operations of Government functionaries.

With kind regards,

Yours sincerely,

(H. D. SHOURIE)
DIRECTOR

Mr. L. K. Advani,
Minister of Home Affairs,
Ministry of Home Affairs,
North Block, Central Sectt.,
New Delhi - 110001.

328

D.O.No.1920/Secy.(P)/98

ARVIND VARMA
सचिव
SECRETARY

Tele. : 3014848
Fax : 3012432

भारत सरकार
कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय
नई दिल्ली–110001
GOVERNMENT OF INDIA
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES
AND PENSIONS
NEW DELHI-110001

May 27, 1998

28 MAY 1998

Dear Shri Shourie,

I have received the copy of your letter dated May 15, 1998 to the Home Minister about enactment of the Freedom of Information Bill, the need for and the draft of which was given in the Report of the Working Group under your Chairmanship which was set up by Government in January, 1997.

2, The matter is receiving the active attention of the Government, and it is hoped that a Bill in this regard will be placed before Parliament in the near future.

With best regards,

Yours sincerely,

o/c

(ARVIND VARMA)

Shri H.D.Shourie,
Director,
Common Cause,
A-31, West End,
NEW DELHI-110021.

...del & Trg.
...अनुभाग
...ceipts & Issue Section
... 1998
...) किया/ISSUED
...हस्ताक्षर/Sig.

R&I.
Pl. issue
28/5

329

D.O.No.1920/Secy(P)/98

ARVIND VARMA

May 19, 1998

I have received the copy of your letter dated May 15, 1998 to the Home Minister about enactment of the Freedom of Information Bill, the need for and the draft of which was given in the Report of the Working Group under your Chairmanship which was set up by Government in January 1997.

2. The matter is receiving the active attention of the Government, and it is hoped that a ~~draft of the~~ Bill in this regard will be placed before Parliament in the near future.

With best regards,

Yours sincerely,

(ARVIND VARMA)

Shri H.D. Shourie,
Director,
Common Cause,
A-31, Westend,
New Delhi-110021.

330

P-3052/SVEL/99
20-9-99

5400/JS(E)/99
21/9/99

D.O. No. CVC/99/771

Central Vigilance Commission
Satarkata Bhawan
General Pool Offices Complex
Block-A, INA
New Delhi-110 023.

N. Vittal

भारत सरकार
केन्द्रीय सतर्कता आयुक्त
GOVERNMENT OF INDIA
CENTRAL VIGILANCE COMMISSIONER
Jaisalmer House, Man Singh Road,
New Delhi-110011

Dated September 15, 1999

Dear Shri Tandon,

Sub: Checking corruption through transparency - Freedom of Information Act

One method of checking corruption is to improve greater transparency in the system. We have an Official Secrets Act and the question of having a Freedom of Information Act has been under consideration of the Government for some time.

In the interests of bringing in greater transparency and empowering the public who then may be able to check corrupt practices of the public servants, it may be worthwhile to have a Freedom of Information Act urgently so that at least those specific areas of interface between the citizen / public which give scope for corruption can be tackled by the Act. After all corruption has been defined as exploiting public office for private benefit. A Freedom of Information Act, which empowers the citizen, may go a long way in checking the scope for corruption. This is particularly so at the cutting edge of administration.

I shall be grateful if you could examine the issue urgently and initiate action for passing a Freedom of Information Act which will incidentally also check corruption.

With regards,

Yours sincerely,

(N. Vittal)

295(5)/99-Estt(D)
22/9/99

Shri B.B. Tandon
Secretary (Personnel)
Department of Personnel & Training
North Block
New Delhi-110 011

JS(E)
20.9.99

Cave pl.
21/9.
D(Ad.II)

P.S. 20/9/99
US(Estt-B/RKM)

331

D.O. No. 99/VGL/55

सत्यमेव जयते

N. Vittal

भारत सरकार
केन्द्रीय सतर्कता आयुक्त
GOVERNMENT OF INDIA
CENTRAL VIGILANCE COMMISSIONER
CENTRAL VIGILANCE COMMISSION,
SATARKTA BHAWAN, G.P.O. COMPLEX,
BLOCK-A, INA, NEW DELHI-110 023.

Dated November 4, 1999

Dear Shri Tandon,

Kindly refer to my D.O. letter No.CVC/99/471 dated 15th September 1999 regarding checking corruption through transparency - Freedom of Information Act.

I shall be grateful if you could kindly get the matter expedited.

With regards,

Yours sincerely,

(N. Vittal)

Shri B.B. Tandon
Secretary (Personnel)
Department of Personnel & Training
North Block
New Delhi-110 011

D.O.No. 34011/1(S)/97-Estt.(B)

सत्यमेव जयते

B. B. TANDON

सचिव
SECRETARY

Tele.: 3014848
Fax : 3012432

भारत सरकार
कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय
नई दिल्ली-110001
GOVERNMENT OF INDIA
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES
AND PENSIONS
NEW DELHI-110001

November 30, 1999

30 NOV 1999

Dear Shri Vittal,

Kindly refer to your D.O. letter No. CVC/99/771 dated the 15th September, 1999 about enactment of the Freedom of Information Act.

2. The matter is receiving the active attention of the Government, and it is hoped that a Bill in this regard will be placed before Parliament in the near future.

With regards,

Yours sincerely,

(B.B. TANDON)

Shri N. Vittal,
Central Vigilance Commissioner,
Central Vigilance Commission,
Satarkata Bhavan, GPO Complex,
Block-A, INA, New Delhi - 110 023.

R.A.J.
P.C. issue
30/11/99.

कार्मिक लोक शिकायत विभाग
Dept. of Personnel & Trg.
कार्मिक लोक शिकायत तथा पेंशन मंत्रालय
Receipts & Issue Section
30 NOV 1999
जारी किया/ISSUED
हस्ताक्षर/Sig.

D.O.No. 34011/1(s)/97-Estt.(B)

Secretary(P)

New Delhi, dated the November, 1999

Dear Shri Vittal,

Kindly refer to your D.O. letter No. CVC/99/771dated the 15th September, 1999 about enactment of the Freedom of Information Act.

The matter is receiving the active attention of the Government, and it is hoped that a Bill in this regard will be placed before Parliament in the near future.

With regards,

Yours sincerely,

Secretary(P) 23.11.99

Shri N.Vittal,
Central Vigilance Commissioner,
Central Vigilance Commission,
Satarkta Bhavan, G.P.O. Complex,
Block- A, INA, New Delhi- 110023.

334

OFFICE OF SECRETARY (PERSONNEL)

Shri Arun Kalia
Joint Secretary
Consumer Affairs,
Mahanishtha Bhawan
Sec 35(E) in connection
with a Met. Govt.
file relating to Section
(Information Bill.

He/she desires that 35(E)
may not meet him. (In this
case, the same may be given
to him/her by 35(E).

35(E)

(P. D BHARDWAJ)
Sr. P.P.S to Secretary (Pers)
29/11

335

D.O.No.34011/1(s)/2003-Estt(B)

MOST IMMEDIATE

भारत सरकार
कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय
नई दिल्ली-110 001
GOVERNMENT OF INDIA
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES
AND PENSIONS
NEW DELHI-110001

S.S. DAWRA
सचिव
SECRETARY

Tel.23094848
Fax : 3092432

January 30, 2003

Dear Secretary,

As you may be aware, Government of India have, with a view to promoting openness, transparency and accountability in administration, enacted the 'Freedom of Information Act, 2002' so as to provide for freedom to every citizen to secure access to information under the control of public authorities. A copy of the Act, together with a statement listing some of its salient features, is enclosed. The Act marks the beginning of a new era in approach of governmental functioning where openness shall now be the rule and secrecy an exception. It is, therefore, imperative to bring the provisions of the enactment to the notice of all employees so that they are familiar with the new work-culture when the Act comes into operation. We would, therefore, as a first step request you to give wide publicity to the Act and arrange for its circulation amongst employees of the various organizations under the administrative control of your Ministry/Department to which it is applicable.

2. It may be appreciated that for the Act to become operational, it would be necessary to provide before hand the requisite infra-structure in the form of rules, etc and since it would take some time for this set-up to be formalized, it has not been possible to bring into force the legislation with immediate effect. However, it is felt, that there are still some areas where the provisions of the Act could be complied with even during this interregnum. In particular, I would invite your attention to Sections 4 and 14 of the Act. Section 4 casts an obligation on all public authorities to maintain its records in a prescribed manner and to publish certain categories of information. The compliance of this provision can be achieved independently of the other provisions of this Act, and we foresee no difficulty in its implementation. As for Section 14, the provisions contained therein give the Act an over-riding effect in character. In keeping with this, we would suggest that an immediate review may be undertaken of all such Acts and instruments administered by the Ministry and amendments made thereto, wherever necessary, so that the scheme is not subverted through the operation of conflicting provisions in these Acts/Instruments.

336

.....2/-

(37

MOST IMMEDIATE
D.O. No.34012/4(s)/2005-Estt.(B)

Secretary(Personnel)

Dated: February, 2005

Dear Secretary,

In order to promote openness, transparency and accountability in administration, Government of India had enacted the 'Freedom of Information Act, 2002' which enables a citizen of India to secure access to information under the control of public authorities. The Act could not be brought into force, however, as the basic infrastructure required for its operationalisation could not be fully established.

2. **The National Common Minimum Programme** of the Government has envisaged that '**The Right to Information Act will be made more progressive, participatory and meaningful'**, following which it was decided to repeal the 'Freedom of Information Act, 2002' and replace it by a new legislation. Accordingly, the **'Right to Information Bill, 2004'** was introduced in the Lok Sabha on 23.12.2004. A copy of the Bill is enclosed for reference.

3. You will notice that while the 'Right to Information Bill, 2004' retains some of the provisions of the 'Freedom of Information Act, 2002', major changes have been made in several others either by modifying the existing provisions or by including new features.

4. The Right to Information Bill, on becoming an Act following its approval by Parliament, would require all Departments and Ministries (Public Authorities) to set up the necessary infrastructure to operationalize the proposed Act. Unlike the Freedom of Information Act, 2002 which left it open to the Central Government to decide and notify the date from which the Act would come into force, the RTI Bill envisages that the new **RTI Act would come into force on the one**

337

hundred and twentieth day of its enactment. Considering that the Government proposes to bring up the Bill for consideration of the Parliament in the forthcoming Budget Session, it is quite likely that the Bill shall become an Act quite soon, leaving just 4 months time to set up the stipulated infrastructure. In writing the letter, it is my intention to request you to start the process of setting up at least a part of the infrastructure from now itself, so that you gain some valuable lead time in complying with the mandatory provisions of the proposed RTI Act.

(i) - Preparing Manuals: -

5. The first and the foremost task before each public authority is to compile and publish the 17 manuals, etc. as are listed in **clause 4(1)(b)** of the Bill. Six of these publications have, in fact, have been retained from the FOI Act, 2002 and I trust that these must have already been compiled as advised earlier in our letter of 30th January, 2003 (copy enclosed). Action should be urgently initiated to have all 17 manuals in place in anticipation of the Bill being enacted in the present form.

(ii) Appointment of PIOs: -

6. The contemplated legislation also casts an obligation on each Public authority to designate its Public Information Officers whose duty it would be to provide information to those who ask for it [**clause 5(1)**]. Such authority is also required to designate Assistant Public Information Officers at each sub-divisional or sub-district level to receive the applications for furnishing information or appeals under the Act and forward them to the authority or to the Government [**clause 5(2)**]. Since these appointments have to be made **within one hundred days of the enactment**, it may perhaps be advisable to take steps to determine now itself the number of such officers as may be required by an authority and simultaneously identify them so that these appointments are made within the contemplated statutory period.

(iii) Security organs: -

7. I further invite your attention to **clause 21** of the Bill under which specified intelligence and security organizations shall be exempted from being covered within the ambit of the contemplated enactment. Similar provisions exist in the Freedom of Information Act, 2002 and in our letter

of 30th January, 2003, we had requested the Ministries that in case any organization included in the Schedule requires to be deleted or there is any other organization which merits **inclusion**, their names may be suggested together with justifications for such proposed exclusion/inclusion. Unfortunately, not many Ministries/Departments have responded in the matter and, in order to avoid any complications at a later date, this aspect may be given immediate attention so that the decision regarding exemption of an agency from the Act, is taken well before the Act comes into operation.

iv) Amendment of the existing Rules etc. :-

8. **Clause 19** of the RTI Bill, which has provisions similar to Section 14 of the FOI Act, 2002, envisages that the contemplated Act would over-ride any other Act, Rule or Order. It is suggested that an immediate review may be made of all such Acts and instruments administered by the Ministry and, amendments made thereto, wherever necessary, so that the points of conflict between the RTI Act and other Acts/ Rules/ instructions etc. are ~~restricted~~. eliminated/restricted.

v) Framing Rules: -

9. **Clause 25** of the RTI Bill confers on the various competent authorities the power to make rules so as to carry out the provisions of the Act. In case there is any public authority which is attached or administratively under the control of your Ministry, and for which the competent authority, as defined in Clause 2 (b), is required to make rules for giving effect to the provisions of the RTI Act, suitable action may be initiated in this regard on priority.

vi) Internal Procedures: -

10. There is another key operational aspect of which has to be looked into by each public authority. Considering that the organizational set up varies from one public authority to another, it is not feasible to lay down in the enactment itself, or for that matter in the rules to be framed thereunder, internal procedures for processing requests as would be common to all such authorities. However, ~~the understanding is~~ it is expected, that once the Act comes into force, each public authority shall have to follow well defined procedures so that the entire process is streamlined and the

for information

decisions on requests are taken at an appropriate level. Keeping this in view, it may be desirable to examine the issue now itself so that internal procedures, which includes the channel for collecting information, creating facilities for inspection of documents/taking of samples, fixing levels at which a decision shall be taken on a request, preparation of a document for supply to the requester, etc., are formulated in advance. **Internal procedures** should, likewise, be also devised by each public authority to process appeals as are submitted under the Act.

6

11. The purpose in writing this letter is to alert you regarding certain provisions of the RTI Bill which call for time bound action. These actions, if initiated early, allow valuable lead time and thus prevent default. I would urge action at your end. In case your Ministry requires any clarification etc. in the matter, the Department of Personnel & Training would provide all necessary assistance.

With regards,

Yours sincerely,

(A.N. TIWARI)

To

All the Secretaries to Government of India. (By name)

Encl: (1) Copy of 'The Right to Information Bill, 2004'
(2) Secy(P)'s D.O.No.34011/1(s)/2003-Estt(B) dated 30th Jan., 2003.

340

R. 701/Supdt/2005
18-2-2005

(40

वजाहत हबीबुल्लाह
सचिव
Wajahat Habibullah
Secretary

सत्यमेव जयते

पंचायती राज मंत्रालय
भारत सरकार
कृषि भवन, नई दिल्ली –110001
MINISTRY OF PANCHAYATI RAJ
GOVERNMENT OF INDIA
KRISHI BHAVAN, NEW DELHI-110001

D.O. No. N-11012/9/2005-PR

February 18, 2005

Dear Shri Tewari

Thank you for your **DO No.34012/4(S)/2005-Estt (B) of 14th February, 2005** on the **Right to Information Bill 2004** and its implications for all Ministries and Departments, including its expected enforcement. Since the Ministry of Panchayati Raj is a new Ministry we have few Acts or rules requiring amendment other than those that are for general application to all Ministries and Departments. We will ensure that this Ministry's full development and framing of rules is in keeping with the proposed legislation. Appointment of a PIO will however have to await the necessary government approvals sanctioning staffing of the Ministry, which at present is only basic.

JS(E) – on leave

Dir(Estt)

With good wishes,

Yours sincerely,

21.2.05

(Wajahat Habibullah)

US (Estt B-M)

Shri AN Tewari,
Secretary,
Ministry of Personnel, Public Grievances & Pensions
North Block,
New Delhi 110 001

341



42

535/C/JS(E)/05
01/4/05

सचिव
संसदीय कार्य मंत्रालय
8, संसद भवन
नई दिल्ली-110001

Dr. V.K. AGNIHOTRI, IAS

SECRETARY
MINISTRY OF PARLIAMENTARY AFFAIRS
8, Parliament House
New Delhi-110001

D.O.No.15(7)/2005-Admn

March 31, 2005

Please refer to your letter No.3401/4(S)/2005-Estt(B) dated February 17, 2005 regarding advance action to be taken for implementing the Right to Information Bill on its enactment.

2. I took a meeting with all the officers of the Ministry of Parliamentary Affairs on 28.03.2005 to discuss the implications of the Right to Information Bill, 2004 and the action to be taken in this regard. Shri T. Jacob, Joint Secretary, Department of Personnel & Training had also attended the meeting.

3. I am now forwarding the minutes of the meeting for your kind perusal and appropriate action.

Yours sincerely,

Sd/-

(V.K. Agnihotri)

Shri A.N. Tiwari,
Secretary,
Ministry of Personnel, Public Grievances and Pension,
North Block,
New Delhi.

Copy to Shri T. Jacob, Joint Secretary, Department of Personnel & Training, North Block, New Delhi.

(P. Gopalakrishnan)
Joint Secretary to the Govt. of India

Dir(E-II)
9
6.4.05
JS (E&B-II)

सर्व शिक्षा अभियान
सब पढ़ें सब बढ़ें

TELEPHONES : 23017663, 23034644 FAX : 011-23017726
website : http://www.mpa.nic.in E-mail : secympa@sansad.nic.in

342

Ministry of Parliamentary Affairs
(Administration Section)

MINUTES OF THE MEETING HELD BY SECRETARY, MINISTRY OF PARLIAMENTARY AFFAIRS WITH THE OFFICERS OF THE RANK OF SECTION OFFICERS & ABOVE AT 11.30 A.M. ON 28.03.2005 TO DISCUSS THE IMPLICATIONS OF THE RIGHT TO INFORMATION BILL, 2004 AND THE ACTION TO BE TAKEN IN THIS REGARD.

Secretary took a meeting in his room (Room No. 8, Parliament House) at 11.30 a.m. on 28.03.2005 to discuss the implications of the Right to Information Bill, 2004 and the action to be taken in this regard. All the officers of the Ministry of Parliamentary Affairs attended the meeting.

2. Shri T. Jacob, Joint Secretary, Department of Personnel & Training was invited to explain the implications of the Bill. He briefly explained the requirements under the Right to Information Bill. He stated that similar acts are already in implementation in 8 States, including Maharashtra and Kerala, and the Department of Personnel & Training will study the working of these acts before framing the Rules under the proposed Central Act. He also indicated that if the Ministry of Parliamentary Affairs has any specific points for clarification/suggestion regarding the implementation of the Bill after its enactment, the same may be furnished to Department of Personnel and Training.

3. It was noted that the Ministry will have to take the action in regard to:-

(a) preparation of the Manuals referred to in Section 4(1)(b) of the Bill, in so far as these relate to the Ministry.

(b) Make appointments of Public Information Officer and Assistant Public Information Officers as envisaged in the Bill.

343

(c) Take necessary action to evolve internal procedures for serving the Act.

4. There are certain points of clarifications/obstacles likely to be faced in the Ministry in implementing the Act. As the Department of Personnel & Training has to take a final view in the matter and to frame rules thereunder, it was felt that the following points may be brought to their notice:-

(a) Whether Lok Sabha Secretariat/Rajya Sabha Secretariat would come within the ambit of the proposed Act? The Ministry of Parliamentary Affairs is concerned with the mapping, transaction and monitoring of the government business and acts as a link between the Ministries/ Departments and the two Houses of Parliament. The Ministry may not be able to furnish information which is under the jurisdiction of various Ministries/ Departments or in the domain of the two Houses of Parliament, whereas the Ministry will receive queries from the public on these matters, the public since the public are not well aware of the distribution work. What course of action should be Ministry of Parliamentary Affairs adopt in such cases, particularly since the business of Parliament does not come within the purview of Government?

(b) A procedure for transfer of queries to the concerned Ministry/ Lok Sabha/Rajya Sabha will be required to be put in place for smooth functioning of the Act. A Central Public Information Office would perhaps be required which would work as a Clearing House for tranfer of queries including misdirected queries.

344

(c) Since each public authority is to compile and publish the manuals etc. as required by clause 4(1)(b) of the Bill, it would necessitate a large number of publications to be brought out by the Government Press in very short period of time. Suitable strengthening of arrangements, therefore, need to be made at the Government press or action should be taken to empanel private printing presses to carry out the work of publication.

(d) Provision for opening of sales counters by the Publication Division at convenient locations would perhaps need to be made for the sale of manuals/booklets etc. by various Ministries/Departments/Organisation.

(e) A campaign to educate the people about the functions of various Ministries/Departments/Organisations would have to be launched in order to ensure that they send their requests for information to the appropriate agencies.

(f) Whether the information asked for by the people would require to be provided bilingually or only in English (if the original version of the document is in English)? It may not be possible to provide the Hindi version within the stipulated time limit, in such cases.

The meeting ended with a vote of thanks to the chair.

345

(50

सत्यमेव जयते

R.K. Singh

अध्यक्ष, रेलवे बोर्ड
एवं
पदेन प्रमुख सचिव, भारत सरकार
रेल मंत्रालय
नई दिल्ली-११० ००१
CHAIRMAN, RAILWAY BOARD
&
EX-OFFICIO PRINCIPAL SECRETARY,
GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
NEW DELHI-110001

R.1349/Sec-A-B/2005
30-3-2005

DO No.2005/O&M/25/1

29th March, 2005

Dear Shri Tiwari,

Please refer to your DO letter No: 34012/4(S)/2005-Estt(B) dated 14/17.2.05 regarding Right to Information Bill 2004.

2. I have noted the contents of your above DO letter and having the necessary action initiated for timely implementation of the various provisions of the Bill.

3. In this connection, I would also draw your attention to this Ministry's DO letter No: 97/O&M/65 dated 28.2.1997 (copy enclosed) forwarding therewith a negative list of areas/items concerning Railways and advising DOP&T that the information in respect of these areas/items should not be disclosed to the public. This negative list will hold good even after RTI Bill 2004 comes into force.

With regards,

Yours sincerely,

29-3-05

(R. K. Singh)

D.A: One

Shri A.N.Tiwari,
Secretary to Govt. of India
Ministry of Personnel, Pubic Grievances & Pensions,
North Block
New Delhi-110 001

346

DO.No.97/O&M/65 dated 28th February, 1997

Dear Shri Singh,

Kindly refer to D.O.letter No.34011 /1(S)/97-Estt(B) dated 24/29.1.1997 addressed to Chairman Railway Board by Shri Arvind Verma, Secretary , Ministry of Personnel, Public Grievances and Pensions, calling for a negative list of items where it would not be desirable to give information to the public.

2. A negative list of areas/items in respect of Railway Ministry where the information should not be disclosed to the public is enclosed, as desired.

DA: As above

Yours sincerely,

(M.N. Khanna)

Shri Harinder Singh,
Joint Secretary (E),
Room No.111,
North Block,
New Delhi.

जारी
ISSUED
हस्ताक्षर
Signature
दिनांक
Date

347

NEGATIVE LIST OF ITEMS ON WHICH INFORMATION SHOULD NOT BE DISCLOSED TO PUBLIC.

1. Information on vital installations viz. bridges, loco sheds, microwave towers affecting security.

2. Information about the movements of VIPs, military, para-military personnel affecting the security.

3. Information on current files of different subjects including tenders proceedings till a decision is taken.

4. Information about internal meetings including Railway Board Meetings, except the decision part of it.

5. Budget proposals.

6. Notings on files dealing with inter-departmental and intra departmental matters even after a decision has been taken.

7. Information which cannot be given before being given to Parliament as per Parliamentary privileges.

8. Information related to scientific, economic and technological matters affecting the national security.

9. Information relating to Trade and Commercial Secrets.

10. Matters relating to Vigilance and Investigation of an offence.

11. Details of Legal Cases which are being fought by the Department.

12. Matters relating to promotion/empanelments/ACRs etc.

13. Memorandum submitted to Cabinet

348

F.No. 1/3/2004-BO.I
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF ECONOMIC AFFAIRS
BANKING DIVISION

Jeevan Deep Building,
10, Parliament Street,
NEW DELHI

Dated : February 28, 2005

OFFICE MEMORANDUM

Subject : Right to Information Bill, 2004.

The undersigned is directed to invite attention to the aforesaid Bill and to say that provisions contained in Clause 19 of the Bill override the following provisions in the banking statutes :

1. Section 13 of the Banking Companies (Acquisition & Transfer of Undertakings) Act, 1970/1980 provides that nationalized banks shall not divulge any information relating to or to the affairs of its constituents. Further, Section 44 of the State Bank of India Act, 1955 and Section 52 of SBI (Subsidiary Banks) Act, 1959 also provides same provisions to be observed by SBI and its subsidiaries.
2. In terms of Section 45E of RBI Act, RBI is not required to disclose 'Credit Information' except as provided in the above Section. As per Section 45 NB (4), no Court or any other authority can compel RBI to produce information obtained by it under Chapter IIIB of RBI Act.
3. Further under Section 28 of Banking Regulation Act, RBI has a privilege of not disclosing the information obtained by it under Banking Regulation Act. Again Section 34 provides that no banking company shall be compelled to furnish information, which is of a confidential nature.

...2.

(54

The provisions contained in Clause 19 of the proposed Bill would override the above provisions and as such would seriously affect the secrecy in the Banker/Customer relationship and as such, the PSBs would be at a disadvantage vis-a-vis private sector banks. Further, RBI could also be compelled to disclose 'credit information' and such other information, which are of confidential nature.

It is, therefore, requested that Ministry of Personnel, Public Grievances and Pension may consider necessary amendment in Clause 19 of the proposed Bill so that the above provisions in banking statutes are not affected.

(G B SINGH)
UNDER SECRETARY TO THE GOVERNMENT OF INDIA

To

The Secretary,
Ministry of Personnel, Public Grievances & Pensions,
Sardar Patel Bhawan,
Sansad Marg,
NEW DELHI.

350

D.O.No.34012/4/(s)/2005-Estt(B) RTI PRIORITY/PERSONAL ATTENTION

सत्यमेव जयते

सचिव
SECRETARY
Tel. : 23094848

भारत सरकार
कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय
नई दिल्ली-110 001
GOVERNMENT OF INDIA
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES
AND PENSIONS
NEW DELHI-110 001

27th May, 2005
2 MAY 2005

Dear Secretary,

Kindly refer to my letter of 14th/17th February, 2005 (copy enclosed) wherein we had requested the Ministries/Departments to take advance preparatory action on some of the provisions of 'The Right to Information Bill, 2004' (RTI Bill) so as to allow valuable lead time in setting up the infrastructure towards operationalisation of the Act. The matter must have received necessary attention and substantial progress would have been made by now towards setting up the infrastructure.

2. The RTI Bill, as introduced in the Lok Sabha on 23rd December, 2004, was subsequently passed by the House on 11th May, 2005 after adopting certain amendments. A statement listing some of its salient features, is also enclosed (Annexure). The Bill was later passed by the Rajya Sabha on 12th May, 2005 without any amendments and now awaits the assent of the President.

3. I wish to emphasise once again that the Act would come into force on the one hundred and twentieth day of its enactment. It would, therefore, be appreciated if an action plan is drawn for each item and definite time-schedules are laid down therefor so that the entire-infrastructure is set up within the time period stipulated in the Act. For this purpose, I suggest that a Committee may be set up for your Department under your Chairmanship which could monitor the progress on day-to-day basis.

4. As the provisions of the RTI Bill call for time-bound action, I would urge immediate action at your end and thus prevent default. In case your Ministry/Department requires any clarification etc in the matter, the Department of Personnel and Training would provide all necessary assistance.

With regards,

Yours sincerely,

Encls:as above

All Secys (by name) of Min/Depts of GOI
(As per list enclosed)

(A.N. TIWARI)

कार्मिक और प्रशिक्षण विभाग
Deptt. of Personnel & Trg.
प्राप्ति और निर्गम अनुभाग
Receipt & Issue Section
27 APR 2005
जारी किया/ISSUED
हस्ता/Sig. .....

O/C-351

SALIENT FEATURES OF THE RIGHT TO INFORMATION ACT, 2005

❖ The short title of the legislation has been changed from 'The Freedom of Information Act' to 'Right to Information Act'.

❖ Provides a very definite day for its commencement, i.e. 120 days from enactment.

❖ It defines "*appropriate Government*" as meaning, in relation to a "*Public Authority*" established, constituted or owned or substantially financed by funds provided directly or indirectly or controlled

i. By the Central Government, the Central Government;
ii. By the State Government, the State Government".

❖ It shall apply to "*Public Authorities*" which means any authority or body or institution of self-government established or constituted by or under the Constitution; by any law made by the appropriate Government or, any other body owned, controlled or substantially financed directly or indirectly by the appropriate Government, and includes non-government organizations, substantially financed by the government.

❖ The ambit covers the two Houses of Parliament, State Legislatures, the Supreme Court / High Court / Subordinate Courts including their administrative offices, Constitutional Authorities like Election Commission, Comptroller & Auditor General, Union Public Service Commission etc. **Only domestic and foreign private bodies working within the country have been excluded from the purview of the Act.**

❖ All citizens shall have the right to information, subject to the provisions of the Act.

❖ It casts an obligation on Public Authorities to grant access to information and to publish certain categories of

352

(60

information within 120 days of the enactment. The responsibility about suo-moto disclosure/publication by public authorities has been considerably enlarged.

- The Act lays down the machinery for the grant of access to information. The Public Authorities are required to designate Public Information Officers and Assistant Public Information Officers within 100 days of the enactment and whose responsibility it is to deal with requests for information and also to assist persons seeking information.

- Provision has been made for transfer of a request by a public authority to another public authority wherein the subject matter/information is held by the latter.

- A time limit of 30 days has been prescribed for compliance with requests for information under the Act, which, can be extended to 40 days where third-party interests are involved.

- Fee to be reasonable. Also, no fee to be charged from persons who are below poverty line. Further, information to be provided free of charge where the response time-limit is not adhered to.

- Certain categories of information have been exempted from disclosure under sections 8 and 9 of the Act. The categories, by way of illustration, include, information likely to affect security of the State, strategic, scientific or economic interests of the State, detection and investigation of offences, public order, conduct of international relations and Cabinet papers. Trade or commercial secrets, information the disclosure of which would cause breach of privilege of Parliament or State Legislature and personnel information which has no relationship with public activity and could cause unwarranted invasion of the privacy of any person, are also exempted from disclosure. However, exemptions provided are not absolute and withholding of information

351

(61

must be balanced against disclosure in the public interest. Information to be released even if harm is shown to the public authority if the public benefit in knowing the information outweighs the harm that may be caused by disclosure.

- Subject to 3 exceptions, the Act also contains a provision for reveal of information, which is otherwise, exempted from disclosure under section 8 on completion of 20 years after the completion of the event.

- The Act also incorporates the principle of severability.

- Envisages creation of an independent non-judicial machinery, viz., Central Information Commission and State Information Commissions comprising a Chief Information Commissioner and Information Commissioners to decide 2nd stage appeals.

- Legal frame work of exercise of powers by the Commission defined in the Act.

- The Act also provides a two-tier Appellate Forum. First appeal to departmental officer senior to the Public Information Officer. The second appeal to be made to Commission.

- On a request for information being refused, the applicant can prefer an appeal to the prescribed authority within 30 days of the decision; the time limit for disposal of appeal being also 30 days extendable to 45 days.

- Intelligence and security agencies specified in Schedule II to the Act have been exempted from being covered within the ambit of the Act. However, the exemption is not absolute; agencies shall have the obligation to provide information in matters relating to corruption and human rights violations.

354

- The jurisdiction of subordinate courts has been barred expressly by section 23 of the Act.

- The provisions of the proposed Act have been made over-riding in character, so that the scheme is not subverted through the operation of other minor Acts.

- Monitoring and reporting-Act makes a provision to produce statistics to assess its implementation so that improvements could be effected.

- Central Information Commission and State Information Commissions to monitor the implementation of the Act and prepare an Annual Report to be laid before Parliament/State Legislature.

- Central Government to prepare programmes for development of 'information' regime.

- FOI Act, 2002 to be repealed.

D.O.No.34012/4(S)/2005-Estt(B)
RTI ACT PRIORITY/PERSONAL ATTENTION

MOST IMMEDIATE

भारत सरकार
कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय
नई दिल्ली-110 001
GOVERNMENT OF INDIA
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES
AND PENSIONS
NEW DELHI-110 001

सचिव
SECRETARY
Tel. : 23094848

23rd June, 2005

Dear Secretary,

Kindly refer to my letters of 14/17th February and 27th May, 2005 regarding enactment of a new legislation on 'Right to Information' to replace 'The Freedom of Information Act, 2002'. 'The Right to Information Bill, 2005', as passed by the Houses of Parliament, received the assent of the President on 15th June, 2005 following which 'The Right to Information Act, 2005' has been published in the Gazette of India on 21st June, 2005. A copy of the Act is enclosed.

2. As a first step towards implementation, it is requested that the RTI Act may be given wide publicity and also brought to the notice of all employees in your Ministry/Department, as well as organizations under its administrative control which are covered by the definition of 'public authority' as given in section 2(h), so that an awareness is created about the new work culture.

3. Further, and as has been emphasized in my earlier letters, it is necessary to establish the requisite infrastructure beforehand in order to make the Act operational. The specific areas on which action is called for on the part of Ministries/Departments have already been brought to your notice and on the assumption that substantial progress would have been made during the last 4 months, it should now be possible to formalize the arrangements made in this regard.

4. Section 5 of the Act makes it incumbent upon every public authority to designate Public Information Officers(PIO) whose duty it is to deal with requests for information. A provision has been made in the legislation that such a Public Information Officer can seek assistance of any other officer in the public authority; and, in that eventuality, the latter shall come to be regarded as a de-facto Public Information Officer. Some of these de-facto Public Information Officers would, under the internal procedures, be actually taking a decision on an information request which, in turn, would be communicated to the requester through the designated Public Information Officer. In the event of the request being rejected, etc., the Act casts an obligation upon the designated PIO to communicate to the requester the particulars of the appellate authority also. Having regard to the above, it would be necessary for all the public authorities to designate their appellate authorities in accordance with the provisions of section 19(1).

P..2/--

356

5. Section 25 of the Act provides that the Central Information Commission shall monitor the implementation of the Act by Public authorities under the Central Government and prepare an annual report which shall be laid before each House of Parliament. For the purpose of compilation of the Report, the Commission would require certain statistical information from the various public authorities under the jurisdiction of Ministries/Departments. The public authorities under the administrative control or associated with your Ministry may be suitably apprised of the provisions in this section so that action may be taken by them to compile the statistics from the date the Act comes into operation as would enable the Commission to prepare its Annual Report.

6. Incidentally, information of general interest on the RTI Act is being made available on this Department's web-site at the following address:-

<http://www.persmin.nic.in>

We would welcome your suggestions to effect any improvement in the contents.

7. As the provisions of the RTI Act call for time-bound action since the 120 days period laid down in section 1(3) thereof has commenced from 15th June, 2005, I take this opportunity to request once again immediate action at your end so as to prevent any default towards implementation of the legislation.

With regards,

Yours sincerely,

(A.N. TIWARI)

Encls : as above

Copy to
1. Sh. V. K. Bhargava, Secy, M/o Home Affairs.
2 -do- D/o Justice
3 Sh. D.K. Sankaran, Secy, Border Management - MHA
4. Sh. K.M. Chandrasekhar, Secy. D/o Revenue
5 " A. Kishore, Secy., D/o Expenditure
6 " Rakesh Mohan, Secy. D/o Eco. Affairs

357

LIST OF ESSENTIAL ACTIVITIES TO BE UNDERTAKEN TO MAKE THE 'RIGHT TO INFORMATION ACT, 2005' OPERATIONAL – TIME SCHEDULE

1. TARGET DATE 31ST JULY, 2005

No.	Item	Present status
(i)	Framing of rules by the Central Government under section 27.	Draft rules referred to the Ministry of Law & Justice for legislative clearance and vetting.
(ii)	Amendment of Central Civil Services (Conduct) Rules, 1964	Draft rules referred to the Ministry of Law & Justice for legislative clearance and vetting.
(iii)	Designating Public Information Officers and Assistant Public Information Officers	Ministries/Departments advised on 14th February, 2005 and reminded on 27th May and 23rd June, 2005 to expedite appointments.
(iv)	Developing web-site on Right to Information	Material has already been placed on the existing Departmental web-site and efforts are being made to develop the same.

2. TARGET DATE 31ST AUGUST, 2005

No.	Item	Present status
(i)	Procedure to be adopted by the Central Information Commission in deciding appeals.	Draft rules referred to the Ministry of Law & Justice for legislative clearance and vetting.
(ii)	Creation of posts in the Central Information Commission for providing supporting staff to the Commissioners.	Proposal referred to the Ministry of Finance for approval.
(iii)	Training of Public Information Officers of various Ministries/ Departments.	Training Division of the DOPT advised to conduct courses.

358

No.	Item	Present status
(iv)	Development of a directory/ database of Public Information Officers and other key officials in various public authorities under Central Ministries/Departments responsible for implementing the Act.	*Action will be initiated after the Public Information Officers are appointed.*
(v)	Framing of rules by competent authorities under section 28.	Ministries/Departments directed on 14th/17th February, 2005 to advise the competent authorities to initiate action. Reminded on 27th May and 23rd June, 2005.

3. **TARGET DATE 30TH SEPTEMBER, 2005**

No.	Item	Present status
(i)	Setting up of the Central Information Commission and appointment of Chief Information Commissioner, etc.	*Action initiated to set up the Commission.*
(ii)	Framing of recruitment rules for various posts in the Central Information Commission.	*Action to be initiated soon after the posts are created.*
(iii)	Training of Public Information Officers. *(continued)*	
(iv)	Creating public awareness of the Act.	Matter to be taken up with DAVP.
(v)	Publication of Manuals by public authorities under section 4(1)(b).	Ministries/Departments advised on 14th February, 2005 to initiate action. Reminded on 27th May and 23rd June, 2005.

389

CS-2927/Sec'y(B)/2005
11-7-2005

S.no. (R) 104

Vijai Sharma
Tel : 2301 2697

अपर सचिव
मंत्रिमण्डल सचिवालय
राष्ट्रपति भवन, नई दिल्ली - 110004
ADDITIONAL SECRETARY
CABINET SECRETARIAT
RASHTRAPATI BHAWAN
NEW DELHI - 110004

IMMEDIATE

D.O.No. 331/2/2/05-CA-V

8th July, 2005.

Dear Shri Tiwari,

Please refer to your Note No.34012/4(s)/2005-Estt(B) dated 5th July, 2005 on operationalising the Right to Information Act, 2005.

2. Cabinet Secretary has desired that the activities listed in the Annexure to your Note must be completed within the identified time schedule. For timely completion of the various tasks, it is important that the Public Information Officers and Assistant Public Information Officers are designated immediately by the various Ministries/Departments/ Central Government Organizations. You may like to closely monitor the progress in this regard.

12.7
JS(E)

3. The designated Public Information Officers and Assistant Public Information Officers would need to be properly sensitized and trained so that the systems needed to ensure smooth implementation of the Act are put in place in the shortest possible time. For this purpose, you may like to organize special sessions/meetings with the identified officers in small groups.

Dir(E-II)
13/7

US (E&HB-M)

4. Cabinet Secretary has also desired that he may please be kept informed of the progress made in operationalising the Act. Any shortcomings/bottlenecks in this regard should, therefore, be quickly brought to the notice of this Secretariat. It would be appreciated if progress made in this regard is reported to us by 25th July, 2005.

With regards,

Yours sincerely,

Vijai Sharma

(Vijai Sharma)

Shri A.N. Tiwari,
Secretary,
Deptt. of Personnel & Training,
New Delhi.

360

105

pm-3010/Secy(Pmnt)
15/7/05

प्रधान मंत्री कार्यालय
PRIME MINISTER'S OFFICE

नई दिल्ली-110 011
New Delhi-110 011

Department of Personnel & Training may kindly refer to their D.O. No.34012 10(s)/2005-Estt.(B) dated 27.6.2005 regarding status of Implementation of Right to Information Act. 2005.

In this regard. Prime Minister has directed to furnish specific progress on each of the following on a fortnightly basis starting from 15.7.2005:

14.7
JS(E)

i. Every public authority shall publish within 120 days of the enactment such of the manuals as prescribed in items (i) to (xvii) of Section 4 of the Act:
ii. Every public authority shall within 100 days of the enactment, designate as many officers as Public Information Officers and Assistant Public Information Officers as may be necessary:
iii. Constitution of the Central Information Commission and appointment of Chief Information Commissioner and Informational Commissioners: and
iv. Framing of rules to carry out the provisions of the Act, etc.,

Department is further directed to furnish report on the issues raised by the President of India, after taking into account the views of the Ministry of Law.

V. Vidyavathi

(V. Vidyavathi)
Director

Secretary, Department of Personnel & Training
PMO UO No.600/40/C/05/2004-ES.II Dated : 14.07.05

361

D.O.No.34012/4(s)/2005-Estt(B) **MOST IMMEDIATE**

108

सत्यमेव जयते

सचिव
SECRETARY
Tel. : 23094848

भारत सरकार
कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय
नई दिल्ली-110 001
GOVERNMENT OF INDIA
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES
AND PENSIONS
NEW DELHI-110 001

15th July, 2005

19 JUL 2005

Dear Secretary,

RLR

Issue at once

99 FCs

RP

18/7

Kindly refer to my letters of 14th February, 27th May and 23rd June, 2005 regarding setting up of the basic infrastructure by central public authorities towards implementation of 'The Right to Information Act, 2005'. I enclose a copy of the letter dated 8th July, 2005 received in this regard from the Cabinet Secretariat.

2. The eight specific areas, on which action is called for on the part of the public authorities, have already been brought to your notice in my letters of the 14th February and 23rd June, 2005. As the date from which the Act shall come into force is fast approaching, I thought it necessary to emphasize once again timely action at your end so as to prevent default.

3. Further, the Prime Minister has directed to furnish specific progress on each of the following on a fortnightly basis, starting from 15th July, 2005:

(i) Every public authority shall publish within 120 days of the enactment such of the manuals as prescribed in items (I) to (xvii) of Section 4 of the Act.

(ii) Every public authority shall within 100 days of the enactment, designate as many officers as Public Information Officers and Assistant Public Information Officers as may be necessary.

4. I would be grateful if the progress reports pertaining to each of the fortnights of July, August, September and October, 2005 are furnished to us positively by the 3rd and 18th of every month. The report for the first fortnight of July may please be sent by 20th July, 2005.

Yours sincerely,

(A.N. TIWARI)

To

Secretaries (by name)
Ministries / Depts. of Govt. of India.

o/c.

कार्मिक और प्रशिक्षण विभाग
Deptt. of Personnel & Trg.
प्राप्ति और निर्गम अनुभाग
Receipt & Issue Section

362

No.34012/4(s)/2005-Estt.(B)
DEPARTMENT OF PERSONNEL & TRAINING
*****

Dated the 16th September, 2005.

Subject :'The Right to Information Act, 2005' – schedule of activities for operationalisation of.

Reference the Cabinet Secretariat's D.O.No.331/2/2/05-CA-V dated 8th July, 2005 on the above subject.

2. A status note, indicating the progress made till 15th September, 2005 on each of the activities being undertaken to make 'The Right to Information Act, 2005 operational, is enclosed.

(A.N.TIWARI)
SECRETARY

CABINET SECRETARY

363

(116

LIST OF ESSENTIAL ACTIVITIES TO BE UNDERTAKEN TO MAKE THE 'RIGHT TO INFORMATION ACT, 2005' OPERATIONAL – TIME SCHEDULE

(as on 15th September, 2005)

2. TARGET DATE 31ST JULY, 2005

No.	Item	Present status
(i)	Framing of rules by the Central Government under section 27.	The Right to Information (Regulation of Fee and Cost) Rules, 2005 as approved by PM, are under issue.
(ii)	Amendment of Central Civil Services (Conduct) Rules, 1964.	Draft amendments to the rules, vetted by the Ministry of Law & Justice and concurred by C&AG, put up for obtaining MOS(PP)'s approval.
(iii)	Designating Public Information Officers and Assistant Public Information Officers.	Ministries/Departments advised on 14th February, 2005 and reminded on 27th May, 23rd June, and 15th July, 2005 to expedite appointments. A total of ~~45~~ 53 Ministries/ Departments have since designated their PIOs.
(iv)	Developing web-site on Right to Information.	Material has already been placed on the existing Departmental web-site and efforts are being made to develop the same.

364

2. TARGET DATE 31ST AUGUST, 2005

No.	Item	Present status
(i)	Procedure to be adopted by the Central Information Commission in deciding appeals.	Draft rules, duly vetted by Ministry of Law & Justice, referred to National Advisory Council for comments as per directions of PMO.
(ii)	Creation of posts in the Central Information Commission for providing supporting staff to the Commissioners.	Ministry of Finance have approved the proposal for creation of 50 posts for the Commission. Action being taken to obtain Cabinet's approval to the creation of one post of Secretary and one post of Joint Secretary & Registrar. Draft Cabinet Note put up for obtaining approval of MOS(PP)/PM.
(iii)	Training of Public Information Officers of various Ministries/ Departments.	On the directions of Training Division of the DOPT, ISTM have conducted a number of courses for the PIOs designated by the various public authorities. 3 more such courses are scheduled towards the end of September, 2005.
(iv)	Development of a directory/ database of Public Information Officers and other key officials in various public authorities under Central Ministries/ Departments responsible for implementing the Act:	*Action will be initiated after the Public Information Officers are appointed.*
(v)	Framing of rules by competent authorities under section 28.	Ministries/Departments directed on 14th/17th February, 2005 to advise the competent authorities to initiate action. Reminded on 27th May. 23rd June and 15th July, 2005.

365

3. **TARGET DATE 30TH SEPTEMBER, 2005**

No.	Item	Present status
(i)	Setting up of the Central Information Commission and appointment of Chief Information Commissioner, etc.	*Action initiated to set up the Commission and make selections for Chief Information Commissioner and Information Commissioners.*
(ii)	Framing of recruitment rules for various posts in the Central Information Commission.	*Action being taken to bring the senior posts under the Central Staffing Scheme and encadre the remaining posts in various Services.*
(iii)	Training of Public Information Officers. *(continued)*	
(iv)	Creating public awareness of the Act.	Matter taken up with DAVP. Publicity material tentatively prepared by DAVP being examined.
(v)	Publication of Manuals by public authorities under section 4(1)(b).	Ministries/Departments advised on 14th February, 2005 to initiate action. Reminded on 27th May, 23rd June and 15th July, 2005. Finalisation of these manuals is nearing completion in most of the Ministries/Departments.

366

IMPLEMENTATION OF THE ACT BY THE STATE GOVERNMENTS

1. Salient features of the contemplated RTI Act forwarded to State Governments on 26th May, 2005 with the request to take steps to set up the basic infrastructure towards implementation.
2. Copy of the RTI Act, 2005 forwarded to all State Governments on 23rd June, 2005 with a renewed request to set up the infrastructure.
3. First zonal meeting of Chief Secretaries of Karnataka, Tamil Nadu, Kerala, Andhra Pradesh and Pondicherry held at Bangalore on 6th August, 2005 to review the progress made by the State Governments in the implementation of the Act.
4. Second zonal meeting of Chief Secretaries of Rajasthan, Maharashtra, Punjab, Himachal Pradesh, Haryana and Gujarat held at Jaipur on 7th September, 2005 to review the progress made by these State Governments in the implementation of the Act.
5. Third zonal meeting of Chief Secretaries of Uttaranchal, Uttar Pradesh, West Bengal, Bihar, Jharkhand, Orissa, Chattisgarh, Madhya Pradesh, Goa and the Union Territories of Delhi, Chandigarh, Dadra and Nagar Haveli, Daman and Diu, Andaman & Nicobar Islands and Lakshadweep to be held at New Delhi on 23rd September, 2005 to review the progress of implementation.

369

D.O.No. 34011/2(s)/2003-Estt.(B)

MOST IMMEDIATE

S.No.1 (I)

भारत सरकार
कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय
नई दिल्ली-110 001
GOVERNMENT OF INDIA
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES
AND PENSIONS
NEW DELHI-110001

RLE
Issue
FCs (30 Nos)
as per list attached

S.S. DAWRA
सचिव
SECRETARY

11/2

Tel. : 3094848
Fax : 3092432

February, 10 2003

11 FEB 2003

Dear Chief Secretary,

As you may be aware, Government of India have, with a view to promoting openness, transparency and accountability in administration, enacted the 'Freedom of Information Act, 2002' so as to provide for freedom to every citizen to secure access to information under the control of public authorities. The Act marks the beginning of a new era in approach of governmental functioning where openness shall now be the rule and secrecy an exception. A copy of the Act, together with a Statement listing some of its salient features, is enclosed.

2. You may recall that in its Report submitted to the Government in May, 1997, the H.D.Shourie Working Group had observed that the legislation on Freedom of Information should be enacted by the Parliament to ensure uniformity of its application throughout the country. The Group found that the subject did not fall in any of the entries in the State List(List-II) in the Seventh Schedule of the Constitution and accordingly concluded, that, it would be covered by entry 97 in the Union List(List-I) – it being the settled legal position that the only limitation of the legislative competence of the Union is that the subject matter of the legislation should not be within the exclusive competence of the State Legislature in terms of List-II. This aspect was also examined by the Attorney General of India who has confirmed that the legislative competence of the Parliament on the enactment would be covered by the residuary entry No.97. Having regard to the above, the 'Freedom of Information Act, 2002' has been made applicable not only to the 'public authorities' administratively connected with the

.....2

368

Central Government but to such of these authorities as are administratively connected with the State Governments. Since the Act casts an obligation upon all such authorities to grant access to information and to publish certain categories of information, it is imperative to bring the provisions of the enactment to the notice of all employees so that they are familiar with the new work-culture when the Act comes into operation. We would, therefore, as a first step request you to give wide publicity to the Act and arrange for its circulation amongst employees of the various organizations under the administrative control of your State Government to which it is applicable.

3. Incidentally, it is observed that some State Governments have, in the meanwhile, enacted their own legislations on the subject. In keeping with the spirit of uniformity, we would request that where such legislations have already been enacted but are yet to be brought into force, action be taken to repeal these Acts immediately. Where, however, such Acts are already in force, it would obviously not be desirable to create a vacuum and we suggest that the present set-up may continue till such time as the Central Government's Act takes effect.

4. Further, it may be appreciated that for the Act to become operational, it would be necessary to provide before hand the requisite infra-structure in form of rules, etc. and since it would take some time for this set-up to be formalized, it has not been possible to bring into force the legislation with immediate effect. However, it is felt, that there are still some areas where the provisions of the Act could be complied with even during this interregnum. In particular, I would invite your attention to Sections 4 and 14 of the Act. Section 4 casts an obligation on all public authorities to maintain its records in a prescribed manner and to publish certain categories of information. The compliance of this provision can be achieved independently of the other provisions of this Act, and we foresee no difficulty in its implementation. As for Section 14, the provisions contained therein give the Act an over-riding effect in character. In keeping with this, we would suggest that an immediate review may be undertaken of all such Acts and instruments administered by the 'public authorities' administratively connected with the State Government and amendments made thereto, wherever necessary, so that the scheme is not subverted through the operation of conflicting provisions in these Acts/Instruments.

.....3

369

5. I also invite your attention to the enabling provisions of Section 16(4) of the Act under which the State Government is empowered to exempt any of its specified intelligence or security organizations from being covered within the ambit of the Act. In case there is any such organization which, in the opinion of the State Government, merits exemption from the Act, action may be taken to issue the necessary notification on priority basis and, in case, before the Act comes into effect.

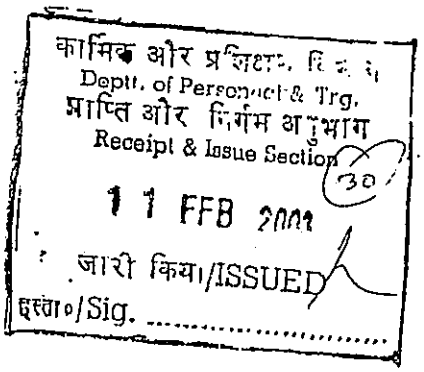
6. Sections 18 and 19 of the FOI Act confer on the State Government and the various competent authorities the power to make rules so as to carry out the provisions of the Act. The State Government may, accordingly, take action to make rules for giving effect to the provisions of the Act. Similar action may also be taken in respect of any public authority which is administratively connected with the State Government, and for which the competent authority, as defined in Section 2(b), is required to make rules.

7. As the entire infra-structure for bringing the Act into force has to be set up within the shortest possible time, I shall be grateful if the above aspects receive your personal attention so that there is no cause for delay in bring the 'Freedom of Information Act, 2002' into force. In case the State Government requires any clarifications etc. in the matter, you may kindly let us know.

With regards,

Yours sincerely,

(S.S. DAWRA)



370

D.O.No.34012/4/(s)/2005-Estt(B)

RTI PRIORITY/PERSONAL ATTENTION

भारत सरकार
कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय
नई दिल्ली-110 001
GOVERNMENT OF INDIA
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES
AND PENSIONS
NEW DELHI-110 001

सचिव
SECRETARY
Tel. : 23094848

26th May, 2005

Dear Chief Secretary,

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

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

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

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

371

....2/-

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

With regards,

Yours sincerely,

Encls: as above

(A.N.TIWARI)

372

ANNEX - II

A. TASKS TO BE COMPLETED PRIOR TO COMMENCEMENT OF THE ACT

(1) Preparing Manuals

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

(*i*) the particulars of its organisation, functions and duties;

(*ii*) the powers and duties of its officers and employees;

(*iii*) the procedure followed in the decision making process, including channels of supervision and accountability;

(*iv*) the norms set by it for the discharge of its functions;

(*v*) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;

(*vi*) a statement of the categories of documents that are held by it or under its control;

(*vii*) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or administration thereof;

(*viii*) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advise, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;

(*ix*) a directory of its officers and employees;

(*x*) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;

(*xi*) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;

(*xii*) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;

(*xiii*) particulars of recipients of concessions, permits or authorisations granted by it;

(*xiv*) details in respect of the information, available to or held by it, reduced in an electronic form;

(*xv*) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;

(*xvi*) the names, designations and other particulars of the Public Information Officers;

(*xvii*) such other information as may be prescribed;

and thereafter update these publications every year;

373

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

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

The contemplated legislation also casts an obligation on each Public authority to designate, within one hundred days of the enactment of the Act, its Public Information Officers whose duty it would be to provide information to those who ask for it [**clause 5(1)**]. Such authority is also required to designate Assistant Public Information Officers at each sub-divisional or sub-district level to receive the applications for furnishing information or appeals under the Act and forward them to the authority or to the Government [**clause 5(2)**]. Since these appointments have to be made **within one hundred days of the enactment**, it may perhaps be advisable to take steps to determine now itself the number of such officers as may be required by an authority and simultaneously identify them so that these appointments are made within the contemplated statutory period.

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

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

374

(4) Constitution of State Information Commission

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

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

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

(6) Intelligence and Security Organisations

Clause 24 of the Bill provides that the Act shall not apply to such intelligence and security organizations established by the State Government and which have been specified as such by the Government to a notification in the Official Gazette. . Similar provisions exist in the Freedom of Information Act, 2002. This aspect may be given immediate

375

attention so that the decision regarding exemption of an agency from the Act is taken, and the requisite notification issued, well before the Act comes into operation.

(7) Framing Rules

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

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

(b) the fee payable under sub-section (1) 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 Commission in deciding the appeals under sub-section (10) of section 16; and

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

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

376

(8) Internal procedures

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

(9) Annual Report of the State Information Commission

Clause 25 of the Bill provides that the State Information Commission shall monitor the implementation of the Act by Public authorities under the State Government and prepare an annual report which shall be laid before the State Legislature. For the purpose of compilation of the Report, the Commission would require certain statistical information from the various public authorities under the State Government. Action may be taken to apprise the public authorities of the provisions in this clause so that action may be taken by them to compile the statistics from the date the Act comes into operation as would enable the Commission to prepare its Annual Report..

377

राष्ट्रीय एकता
National Integration

भारत सरकार
कार्मिक और प्रशिक्षत विभाग
कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय
नार्थ ब्लाक, नई दिल्ली-110001
GOVERNMENT OF INDIA
DEPARTMENT OF PERSONNEL AND TRAINING
MINISTRY OF PERSONNEL PUBLIC GRIEVANCES
AND PENSIONS
NORTH BLOCK, NEW DELHI-110001

HARINDER SINGH
JOINT SECRETARY(E)
TEL.NO. 301 1276

D.O. No. 34011/1(S)/97-ESH.(E) Dated the 29th November,1999.

Dear Shri Joshi,

Kindly refer to our discussion regarding legislative proposal for Freedom of Information. The last meeting of the Group of Ministers was held on 22nd November, 1999 and the matter is at an advanced stage of consideration with the Group of Ministers as the Government proposed to introduce the Bill at the earliest in view of the assurances already given in the Parliament. After the Group of Ministers approve the formulation the matter will be placed before the Cabinet and we are fully concious of the need to introduce the Bill at the earliest.

With sincere regards,

Yours sincerely,

(Harinder Singh)

Shri Bindu Mahadev Joshi,
Minister for Consumer Affairs,
Government of Maharashtra,
MUMBAI

US(RM)

378

File 2

FILE 2

THE TIMES OF INDIA.

DATED MONDAY 9TH MARCH

TIMES OF INDIA

the Vajpayee government's confidence motion in the Lok Sabha and wait for the government to fall.

no change in her party's decision to stay out of any BJP-led coalition government.

14,939 votes.

▶ Detailed report on page 8

BJP plans transparency legislation to create goodwill

By Bhaskar Roy
The Times of India News Service

NEW DELHI: In an apparent move to win new friends and influence more people in other camps, the BJP-led coalition intends to pass a legislation combining features of a transparency law and freedom-of-information Bill as one of its first acts in government.

The combine's Prime Ministerial aspirant Atal Behari Vajpayee himself has taken the initiative in this regard primarily to create goodwill and dispel notions in certain quarters that his government will pursue a 'hate agenda'.

During consultations with his party colleagues and leaders of the coalition partners in the past week, Mr Vajpayee has made it clear that a government led by him would not charter a different course straying away from what has been termed as "secular polity".

According to the coalition sources, Mr Vajpayee is of the view that by its action his government should be able to dilute the basis of a broad anti-BJP line-up proposed by CPM general secretary Harkrishan Singh Surjeet.

Another move being mooted by the BJP think-tank is to shift the direction of alignment of the political forces from being anti-BJP to anti-Congress. "The model for 1998 should be political polarisation that marked 1989 and not that of 1996," said a party strategist.

The dilemma of Andhra Pradesh chief minister Chandrababu Naidu in supporting a Congress- led coalition at the Centre is being cited by the BJP strategists as the beginning of a new trend.

If a Vajpayee government assumes office, it will insist on downplaying all contentious issues which could revive a controversy over its secular credentials, maintained a party source.

Samata Party president George Fernandes, who has been consulted by Mr Vajpayee in preparing the outlines of his government's priorities, discounts apprehensions of an assertion by the *Hinduva* hardliners within the Sangh Parivar in pushing its own agenda down the throat of the coalition. "In a coalition in which almost every third MP is from a non-BJP party, this is not possible," he pointed out.

In fact, using this new "compulsion for moderation", the Vajpayee lieutenants are planning the strategy for the government's survival. "By reducing the areas of conflict and lessening the level of confrontation, the Vajpayee government can claim to be following the course of the minority Narasimha Rao government in the initial years of its term," said a member of the think-tank.

Parvathi calls off pact with BJP

NEW DELHI: The Bharatiya Janata Party and Telugu Desam (NTR) on Sunday parted ways following a unilateral decision of its leader Lakshmi Parvathi to severe connection due to what she called the attempts of her rival Chandrababu Naidu's Telugu Desam trying to come closer to BJP. "When she (Parvathi) says it's all over what else could we say but that it is over," BJP spokesman Venkaiah Naidu told reporters.

The BJP and Telugu Desam (NTR) had entered into a seat adjustment for the Lok Sabha elections in Andhra Pradesh and Parvathi's Telugu Desam did not win a single seat.

Asked if Chandrababu Naidu's Telugu Desam was likely to extend support in forming a BJP led government at the Centre, Venkaiah Naidu said, "Some well wishers have suggested this but it was for TDP to decide on the matter." (PTI)

Starting today, every second & fourth Monday, Education Times will provide students with complete information on courses and careers. Plus the added attraction of expert opinion and information on the web.
This is one more plus for our readers. Since we know *you deserve the best.*

THE TIMES OF INDIA

New Zealand skier killed in HP

SHIMLA: Heli-skiing, a sport for which the ski slopes of Manali are very popular with foreigners, took its first toll when a New Zealander was buried in an avalanche on March 6. The police confirmed that the New Zealander, a heli-skiing guide, and identified as Christopher John Ailled was killed.

CITY WEATHER

FORECAST: Partly cloudy sky. Rise in night temperature. Not much change in day temperature.

TEMPERATURE: Maximum temperature on Sunday 24.0 degree C (minus 4) and minimum 10.6 degree C (minus 3)

Maximum relative humidity on Sunday 78 per cent and minimum 29 per cent.

Sunset (Monday)	1826 hrs.
Sunrise (Tuesday)	0637 hrs.
Moonset (Monday)	0445 hrs.
Moonrise (Tuesday)	1512 hrs.

● Detailed national and international weather on page 2.

Internet edition
http://www.timesofindia.com
For advertisements call: 3352094

Book your Classifieds

Secret
Copy No.

21

No.34011/1(s)/97-Estt.(B)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training
*****

New Delhi, Oct. , 1997.

Minutes of the meeting of Group of Ministers held on October 28, 1997 at 10.30 A.M. in the Chamber of the Minister of Home Affairs.

Present

1. Shri Indrajit Gupta, Minister of Home Affairs
2. Shri Janeshwar Mishra, Minister of Petroleum & Natural Gas
3. Shri Ramakant Khalap, Minister of State (Independent charge) of the Ministry of Law & Justice.

In Attendance

1. Shri K. Padmanabhaiah, Home Secretary
2. Shri B.P. Singh, Officer on Special Duty, Ministsry of Home Affairs
3. Shri K.L.Mohanpuria, Secretary, Legislative Department
4. Dr. P.S.A. Sundaram, Additional Secretary, Department of Administrative Reforms & Public Grievances.
5. Shri Pawan Chopra, Additional Secretary, Cabinet Secretariat
6. Shri A. Sinha, Joint Secretary, Department of Legal Affairs
7. Shri Y.G. Parande, Director, Department of Personnel & Training

Department of Personnel and Training **Secret**

Subject: Legislative proposal for Freedom of Information and amendments to related Acts and Rules.

The Cabinet in its meeting held on October 20, 1997 had decided that this Department's proposal on the above subject should first be considered by Group of Ministers comprising the Minister for Home Affairs, Minister of Petroleum & Natural Gas, Minister of Industry and Minister of State (Independent Charge) of the Ministry of Law & Justice.

2. The Home Minister took a meeting of the Group of Ministers on 28th October, 1997 at 10.30 A.M.

3. The background of the Department of Personnel's proposal seeking the approval of the Cabinet for introduction of the proposed Freedom of Information Bill in the forthcoming Winter session of the Parliament was noted by the Group of Ministers. The Group of Ministers was also apprised of the deliberations on the issue in the Committee of Secretaries. In particular, they noted:

- the proposed definition of "public authority", vide Clause 2(g) of the Bill, which covers bodies established or constituted by or under the Constitution, by any law made by the appropriate Government and includes bodies owned controlled or substantially funded by the Government. Thus the proposed legislation would cover public sector undertakings.
- the obligations of making suo moto disclosures by the public authorities including the obligation to give reasons for decisions and to publish facts concerning important decisions, policies or projects as are likely to affect the general public, vide Clause 4 of the Bill.
- the provisions of Clauses 8 and 9 of the Bill setting out exemptions from disclosure of information and the grounds for refusal of access to information in certain situations.
- the two-tier appellate remedy of a purely departmental character and the bar to the jurisdiction of the Courts, vide Clauses 12 and 27 of the Bill.
- the exclusion of certain intelligence and security organisations from the proposed Act vide Clause 28 of the Bill.

4. A point was made that the proposed Act may generate considerable additional workload and

as such it might be necessary to make an assessment of such additional workload by consulting all Ministries/Departments. It was explained in this context that the proposed Act only envisaged disclosure of available information and did not envisage the creation of any records which were not operationally required. Therefore, bulk of the information that may be sought would already be available in the public authorities. Therefore, while it was difficult make an accurate estimate of the possible impact in terms of additional workload or finance, the expectation was that the Act may not lead to insuperable difficulties and most public agencies should be in a position to meet the manpower requirements from within their resources. Further there was a built in safeguard providing for rejection of request which were too general in nature or which would involve disproportionate diversion of the resources of a public authority vide Clause 9 of the Bill. This was noted by the Group of Ministers.

5. A concern was expressed that the public sector undertakings operating in a competitive environment might be at a disadvantage vis-a-vis their private sector competitors since the former would be within the ambit of the proposed Act while the latter would not be. It was mentioned that this aspect had already been considered at length by the Committee of Secretaries and, as a result of those discussions, the relevant exemption clause had been modified to specifically exempt from disclosure information which might prejudicially affect the competitive position of a public authority vide Cl. 8 (10). Further trade or commercial secrets and information having a commercial value which was likely to be prejudicially affected by disclosure also was exempted under the provisions of Cl. 8 (12). This was noted by the Group of Ministers.

6. A point was also made that apart from the information already exempted under the proposed Act, it may be necessary to safeguard certain other information which would have strategic implications for the country's economic security. This included information relating to matters such as bio diversity and natural resources such as geological data. It was decided that the relevant exemption clauses would be suitably modified to take care of this concern.

7. A point was also made that there should be adequate safeguards against unwarranted disclosures particularly in regard to sensitive matters having a bearing on national security including economic security. It was mentioned that the Department of Personnel was taking measures to draw

up detailed administrative guidelines for the guidance of the officers in public authorities in order to ensure the maximum possible uniformity in approach on the one hand and to minimise the errors in decisions on the other. The proposed guidelines would also cover the aspect of classification of information which would ensure that information deserving classification alone would be appropriately classified while information which did not require classification would be available for wide dissemination. In this context it was also felt that the exemption for Cabinet papers should be modified to specifically cover papers in the Cabinet Secretariat relating to deliberations of the Committee of Secretaries since these often formed an inextricable part of the Cabinet's decision-making process. It was decided that the relevant clause would be suitably modified.

8. The possibility that a provision for appeals of a purely departmental character may invite public criticism, as being detrimental to the credibility of the proposed Act, was noted by the Group of Ministers. However, it was also noted that the deficiencies in the working of the courts as well as the district consumer forums (which the Woking Group chaired by Shri Shourie had suggested as the appellate forum), in the form of massive arrears and chronic shortages of manpower etc., would appear to undermine the effectiveness of either of these forums as appellate forums under the proposed Act. Further departmental appeals would be far more economical and cost effective for the appellants as they would not entail expenses such as lawyer's fees, court fees etc. For a person dissatisfied with the outcome of his appeal, the writ jurisdiction of the High Courts would still be available. In view of this and also considering that the proposed legislation was a new kind of legislation, it was felt that it might be better to review the situation after gaining some experience.

9. It was decided that a specific provision may be added to the Bill to provide for a review of the functioning the Act at the end of a specified period, say 10 years.

10. It was also decided that the Chairmen of the National and State Freedom of Information Councils should be eminent personalities from public life rather than Minsters.

11. The Group of Ministers also felt that in view of the commitment of the Government as reflected in the Common Minimum Programme, the proposed legislation should clearly reflect the desire to share as much information as possible with the public. Therefore, this should find an appropriate reflection either in the preamble to the proposed Act or in the Statement of Objects and

Reasons of the Bill.

12. The Group of Ministers was also informed that a reminder had been sent to the Ministries/Departments whose responses to the recommendations of the Working Group on Right to Information and Promotion of Open and Transparent Government, chaired by Shri H.D. Shourie, were still awaited in view of the direction of the Cabinet that the Group of Ministers should specially consider their comments. These Ministries had been given time till the 31st October, 1997 to furnish their comments and informed that in the event no responses was received by that date it would be presumed that they have no comments to offer. The responses received would be placed before the Group of Ministers in their next meeting.

ARVIND VARMA

सचिव
SECRETARY

Tele. : 3014848
Fax : 3012432

D.O.No.34011/1(s)/97-Estt(B)

भारत सरकार
कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय
नई दिल्ली-110001
GOVERNMENT OF INDIA
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES
AND PENSIONS
NEW DELHI-110001
May 5, 1997

MAY 1997

Dear Secretary

Subject : Steps for Transparent Administration.

I write this in the context of this Ministry's ongoing initiative towards administrative reforms under the supervision of Cabinet Secretary. A critical element in the reform process is making the administration more transparent and responsive to the needs of the people it serves. Transparency will also ensure greater accountability in the administration, as lack of transparency often shields corrupt or arbitrary action.

2. The Conference of Chief Secretaries held on November 20, 1996, had made the following recommendations in this regard:-

> "(2) It is necessary to introduce greater transparency and openness in the functioning of Government and public bodies. This would cover, for example, movement towards a Right to Information Act, transparent and well publicised procedures for approvals by the general public and entrepreneurs under various statutes and regulations; for the allotment of land and immovable property; systems of assessment, levy and collection of various taxes and charges; the award of work tenders for construction and provision of services; procurement of goods and services; and various arrangements for the involvement of the private sector in contracting of services and infrastructure projects by suitable amendment of relevant laws. The aim should be to move towards a citizen centered administration.

.... 2

(3) The citizens in urban and rural areas should be provided with widespread and easy access, through the media, posters and various forms of neighbourhood level communications, to all information relating to Government operations and reverse the undue emphasis on secrecy, details of various Government and local schemes, information on award of tenders and procurement, procedures for identification of beneficiaries under various Government schemes, and for the receipt of benefits thereunder, publication of scores for all cases of admission to colleges and for recruitment, the delivery of various civic services etc. The progressive computerisation of information on public operations and work procedures will be of benefit to the Government and the people."

3. The Government has set up a Working Group on "Right to Information and open and transparent Government" under the Chairmanship of Shri H.D. Shourie. The Working Group has formulated a Freedom of Information Act, and allied amendments of the Official Secrets Act, the Evidence Act and the Conduct Rules to facilitate greater flow of information to the public.

4. While the enactment of a legislation would naturally take time, it is necessary for us to take steps to make the administration more open and transparent even within the existing statutory/administrative framework. This would be in conformity with our recent initiative for the formulation of Citizens' Charters by all public agencies.

5. I would, therefore, request you to undertake a review of areas of information, which are at present not open to public, in the organisation(s) under your charge and take steps to provide to the public access to such information which is specifically not prohibited by law or which would not be in public interest to disclose. In fact, there will be a large area of information which should be made available to the public *suo-motu*, such as information relating to functions and responsibilities of various organisations, their decision-making processes, including delegation of authority, the specific plans or ongoing projects of public importance, targets (both physical and financial) for various activities, etc. Similarly, the relevant statutory provisions, rules, regulations etc., within the framework of which organisational activities are carried out, also need to be widely disseminated

.... 3

6. Attached to this letter is an illustrative list of records/information which can be shared with the public. Some of these are relevant to field offices and some to the State Government. It may serve as a useful guidelines. I would again emphasise that it is only an illustrative list and each organisation will have to draw up its own list of records/information which public should be given access to. As regards the modalities of information delivery, I have separately requested all Ministries having a public interface to set up facilitation counters linked to a computer network, and utilise the counter to provide written and oral information, forms, and various forms of assistance.

7. Often doubts and fears are expressed about the impact of right to information on the administration. Apprehensions are expressed about the costs involved and the possible paralysing effect on administration of a heavy overload of demands for information. While there is undoubtedly some cost involved, there are no valid grounds for such fears. It needs to be noted that bulk of the information relevant to the citizens is already being compiled within the Government and what is required for providing access is mainly better management of that information. There is also no reason to suppose that citizens would be making demands for information which is irrelevant or in which they have no direct interest. We, therefore, need to remove the mental inhibitions that might exist among our employees in this regard.

8. You will agree that the administration can become transparent in the true sense of the term only when there is a change in our ethos and work-culture. The culture that by and large pervades the Government today is one of secrecy, and an important reason for this is the lack, among Government employees, of sensitivity to the rights, interests and needs of the public they are supposed to serve. We, therefore, need to take steps to bring about an attitudinal change in our officers and employees and the leadership that you and your colleagues provide will be critical for the success of open and transparent Government.

9. I would request you to accordingly initiate steps for providing greater access to information in the organisations under your charge and give wide publicity to your efforts. I would request you also to issue instructions to all the attached/field offices, PSUs and other organisations, controlled/financed by your Ministry/Department.

.... 4

The details of the measures undertaken may please be intimated in a month's time to Dr. P.S.A. Sundaram, Additional Secretary (AR). I hope the free flow of information as envisaged in this letter would commence by **not later than end of May, 1997.**

10. An important incidental benefit of such measures would be that we would be prepared to cope with demands for access to information once legislation for freedom of information is introduced and enacted.

11. If you have any ideas or suggestions which you think might be of benefit to others, please communicate them to Dr. Sundaram so that we could make an appropriate use of your suggestions.

With regards,

Yours sincerely,

(ARVIND VARMA)
O/c

All Secretaries (by name)
(As per list attached)

Copy to:
1. *Cabinet Secretary.*
2. *Principal Secretary to PM.*
3. *Shri S. Narendra, Principal Information Officer, PIB, Shastri Bhawan, New Delhi.*

(ARVIND VARMA)
O/c

ILLUSTRATIVE LIST OF RECORDS THAT CAN BE MADE PUBLIC

1. Particulars of an organisation, its functions and responsibilities.

2. Description of the organisation's decision making processes in terms of procedures and powers and responsibilities of its officers and employees.

3. Norms for performance of an organisation's activities such as prescribed periods for their processing and completion, physical and financial targets etc., and the actual achievements with reference to such norms/targets.

4. Classes of records under the control of an organisation including the rules, regulations, instructions and list of manuals etc., used by its employees for carrying out activities.

5. Facilities provided by the organisation for access to information.

6. Name, designation and other relevant particulars of the Information Facilitation Officer.

7. Publication, in advance, of such matters relating to a project/activity as are likely to affect the general public or are vital to life, health and livelihood.

8. Copies of the allotment registers and distribution register under PDS.

9. Criterion and procedure for selection of beneficiaries for any government schemes.

10. Per capita food eligibility and allotments under nutrition supplementation programmes, in hospitals, welfare and custodial institutions etc.

11. Allotments and purchase of drugs and consumables in hospitals.

12. Rules related to award of permits, licences, house allotments, gas, water and electricity connection etc., list of applicants with relevant details of applications, and list of those selected, conditions of award, if any etc.

13. Copies of all lands records.

14. Statements of revenue, civil and criminal case work disposal.

15. Details of afforestation works, including details of land/sites species and numbers of plants, expenditure on protection etc.

16. Rules related to criterion and procedure for selection of persons to appointment in government, local bodies or public undertakings, copy of advertisement and/or references to employment exchange, list of applicants with relevant details, and list of beneficiaries selected.

17. Prescribed procedure of sending names from employment exchanges, relevant details of demands from prospective employers, list of candidates registered and list referred to specific employers.

18. Rules related to criterion and procedure for college admissions, list of application with relevant details, and list of persons selected.

19. Copies of monthly crime report.

20. Details of registration and disposal of crimes against women, SC, ST and other vulnerable groups, crimes committed during communal riots and corruption etc.

21. Number and list of undertrials in any jail, including reasons and length of custody, details of presentation before courts etc.

22. Air and Water emission levels and content of all manufacturing units with rights of citizens committees to check the veracity of these figures, copies also of levels declared safe by the Central Pollution Board relevant in each case.

-::0::-

Secret

Copy No.

F.N. 34011/1(S)/97-Estt.(B)

Department of Personnel and Training.

New Delhi.

August , 1997.

Subject: Right to Information and Transparency - regarding

Reference is invited to the Cabinet Secretariat's communication No. 1/97/3/97-CA. V containing the minutes of the meeting of the Committee of Secretaries, held on Aug. 21, 1997, on this Department's note of even number dated Aug. 19, 1997 on the above subject.

2. Comments on the issues discussed and observations of the COS mentioned in the minutes are given below.

Application of the proposed Act to PSUs.

Observation of the COS:

3.1. Notwithstanding the provisions of Clauses 9 (vi) and 9 (Viii), Public Sector Undertakings, other than public utilities working in a monopolistic environment, should be excluded from the legislation so that they are not placed at a disadvantage vis-vis their competitors in the private sector (para 2 (a) of the minutes).

Comment:

3.2. It might be mentioned in this context that one of the most prominent points of criticism voiced

13

in various public forum has been the exclusion of private sector from the purview of the legislation. If even public sector undertakings, albeit only of a certain kind, are excluded from the scope of the legislation, there is likely to be considerable criticism.

3.3. If such bodies are to be excluded from the legislation, it can be done either by having a separate provision in the Bill making it inapplicable to identified bodies or by suitably amending the definition of "public authority" vide Clause 2 (g) of the Bill. Both the alternatives would appear to have their own problems. Considering the large number of PSUs in the Central as well as State sectors, specific identification of bodies would be an extremely time consuming process, as it would involve extensive consultations with the State governments and a large number of Ministries/Departments of the Central Government. Further, a provision empowering the government to exclude certain bodies from the purview of the legislation would be apt to be regarded as vesting excessive discretion with the government. Even the decisions of the government in individual cases might themselves become the subject matter of controversy. Therefore, this does not appear to be a feasible option.

3.4. On the other hand, it appears difficult to arrive at definition of "public authority" which will draw a clear line of demarcation between organisations in the public sector which are primarily commercial entities operating in a commercial environment and others. One way would appear to be to exclude companies registered under the Companies Act. It is, however, not clear whether this would ensure the distinction that is sought to be made since there would be a large number of statutory organisations organisations which might be functioning in competitive markets.

3.5 Thus, whichever way one approaches the issue, there are serious difficulties in providing for selective application of the proposed Act to PSUs.

3.6. As a matter of general principle, PSUs should fall within the ambit of the legislation in view of their public ownership. At the same time care has to be taken to ensure competitive neutrality in regard to statutory obligations. In view of the difficulties in arriving at a satisfactory classification of PSUs, the only possible option would appear to be to provide adequate safeguards in the legislation. It is felt that the provisions of Clauses 9 (vi) and (viii) provide such safeguards. In order to make the safeguards even more clear, the main provision of Cl. 9 (vi) can be suitably rephrased to exempt from disclosure information whose disclosure would impair the competitive position of a public authority

as indicated below.

> *"(vi) information the disclosure of which would prejudicially affect the Government's ability to manage the economy; or would prejudicially affect the legitimate economic and commercial interests or the competitive position of a public authority; or would cause unfair gain or loss to any individual or organisation."* (amendment underlined).

Exemption for information under Clause 9 (ii) of the Bill.

Observation of the COS:

4.1. The Bill should specifically provide that the Secretary of the Ministry should finally decide on the question of disclosure of information which could affect Centre-State relations with reference to Cl. 9(ii) of the Bill (para 2 (c) of the minutes).

Comment:

4.2. It may be difficult to make a specific provision to this effect solely with reference to Cl. 9 (ii). Such a provision would also not accord well with general scheme of the Bill. It is felt that this aspect can be taken care of by way of internal delegation which can be reflected in the administrative instructions.

The obligation under Clause 4 (3) read with Cl. 9 (iv) and 9 (vii) of the Bill.

Observation of the COS:

5.1. In the context of Cl. 9 (iv) read with Cl. 4 (3), it should not be necessary to provide for reasons for each and every major policy decision as other fora such as the Parliament, the State legislatures and the Press etc. are available for eliciting information and debating policy issues. Similarly, in the area of personnel management, while criteria for promotion, transfer etc. should be openly declared, the opinions of DPC/selection committee members and ACRs should be kept confidential as their disclosure would affect the free and frank expression of views (para 2(e) of the minutes).

once the reasons for a particular decision are furnished. The affected persons would be free to seek remedies that the appropriate statutes or rules provide.

5.5. Finally, it is our expectation that the provisions for suo motu disclosure would substantially and effectively bring down the number of individual requests for information thus reducing the workload involved in furnishing information under the proposed legislation. Therefore, they are desirable even from an administrative point of view.

5.6. It is, therefore, felt that the Bill should contain the above provision in a form that would retain their essence while steering clear of avoidable controversy. The following revised formulation for Cl. 4 (3) is accordingly submitted for consideration.

> *"4(3) It shall also be the duty of the concerned officers of a public authority to give reasons for decision - whether administrative or adjudicative - to those affected and to disclose the relevant factual details of important decisions or policies that affect the general public, when such decisions or policies are announced."* (The amended portion underlined).

5.7. Further, to make it absolutely clear that the above obligation does not extend to furnishing information that is covered by any of the exemptions contained in Clause 9, the main Clause 9 may be rephrased as follows:

> *" 9. Exemption from disclosure of Information:*
>
> *Notwithstanding anything contained in this Act, information covered by any of the following categories shall be exempted from disclosure under the provisions of this Act:"* (the amended portion underlined).

5.8. So far as personnel management is concerned, the relevant exemption clause is Cl. 9 (vii) of the Bill which exempts from disclosure information whose disclosure would prejudicially affect the management of services under a public authority. Things like ACRs, DPC assessment papers etc. would get covered under this exemption. This clause thus adequately covers the concerns expressed in this regard. If necessary for the sake of clarity, it can be slightly modified to specifically cover personnel matters. It may read:

> *"(vii) information the disclosure of which will prejudicially affect the effective*

Comment.

5.2. It is submitted that the intention behind the principle of *suo motu* disclosures enshrined in Cl 4 (3) is twofold. First, there is an obligation to disclose the reasons for a decision to the affected persons. Secondly, there is an obligation to share with the public at large the background and basis of decisions that may affect them - though, admittedly, what constitutes a "major" policy or decision could itself become a matter of contention.

5.3. Both these elements, it is felt, constitute fundamental aspects of openness and transparency. In a sense, they constitute the very soul of the Bill and ought to be retained, in a suitably modified form to make the provisions more practicable, if necessary. As far the obligation to disclose the reasons for decisions to the affected persons is concerned, it is felt that it should be the cornerstone of an open and transparent administration even in the absence of any law relating to freedom of information. Therefore, the provision in the Bill is but an acknowledgement of this necessity. It is needless to add that the Government's openness, to the utmost extent possible, must also extend to its employees as openness has been widely been recognised as an essential ingredient of an effective human resource management policy. And the provision requiring a public authority, to share with the public the relevant information relating to major policy decisions, is a reflection of the changing nature of the democratic governance in the modern context which envisages a fuller, more meaningful and effective public participation in decision making and a more direct accountability to the people. It needs to be noted that the obligation in this regard is post decisional and does not go so far as to require pre-decisional consultations with the community at large through publication of papers in the nature of White Papers and it can be argued that it does not fully serve the cause of decision making with a full participation of the stakeholders, including members of the public, in decisions of major importance. That is an ideal which might be incapable of immediate attainment, but one which must be striven for in the long run.

5.4. The apprehension that is often expressed in this context is that even if reasons are communicated, the persons concerned may raise questions about the adequacy of the information supplied and entangle the authorities in endless controversies on this score. The answer to this is that the Freedom of Information Act is not the remedy to any perceived injury or wrong arising from a decision. It is about disclosure of information and the obligation under this Act would be discharged

management of personnel under, and operations of, public authorities;" (the amended portion underlined).

5.9. In this Department's note of even number dated Aug. 19, 1997, the following formulation for Cl. 9 (iv) was suggested:

> *"(iv) information in the nature of advice, opinions, recommendations or minutes for the purposes of the deliberative processes in a public authority, contained in intra-departmental or inter-departmental papers, including information subject to legal professional privilege.*
>
> *Provided that this exemption shall not apply to reasons required to be given for administrative or adjudicative decision required to be given under Section 4 (3).*
>
> *Provided further that this exemption shall not apply to reports of scientific or technical experts, including their opinions, on scientific and technical matters or to information that is factual."*

5.10. In the light of the foregoing discussion, it is for consideration whether the first proviso in the above formulation may be deleted and the formulation approved accordingly.

Appellate Forum.

Observation of the COS:

6.1. The appeal against the decision of the Head of Department, in internal review, should not lie to the Consumer Forums but to the District Magistrates in the case of district level matters and to the Chief Secretary/Secretary, Public Grievances in State Level matters and to Secretary (Coordination) in the case of Central Government level matters. Beyond this, it would be open to a dissatisfied person to invoke the writ jurisdiction of the High Courts or the Supreme Court (para 2 (g) of the minutes).

Comment:

6.2. At the outset it is pointed out that the stage of appeal, in the scheme the Bill, is the third stage - the first one being the decision of the Public Information Officer and the second the departmental remedy in the form of a review application to the concerned Head of Department or some other prescribed authority. Thus the remedy suggested above would virtually be a second appeal of a purely departmental character.

6.3. As already pointed out in this Department's previous note dated Aug.19, 1997, a critical element that needs to be considered in this context is credibility. A purely departmental machinery is unlikely to enjoy the requisite degree of credibility in the eyes of the public and, therefore, an independent appellate machinery would appear to be a fundamental requirement of the scheme of the Bill. The other vital aspect, having regard to the conditions of life of the majority of our citizens, particularly in the rural areas, is the need for an inexpensive redressal and easy accessibility to the forum that provides the redressal. Even though the option of invoking the writ jurisdiction of High Courts would still remain, it would hardly be an efficacious remedy for the ordinary citizen who would lack the resources to avail of it. Effectively, therefore, it would only be available to individuals or organisations in possession of adequate resources. A provision of the nature suggested would, therefore, be apt to regarded as substantially diluting the effectiveness and credibility of the legislation.

6.4. It is also submitted that the administrative arrangement as suggested may pose a number of practical difficulties. In a number of cases, the Heads of Departments, both in the Central and State Government offices would be senior in rank to District Magistrates. In such a situation it would clearly be undesirable to make their decisions subject to appeal to the District Magistrates. In case it is finally decided to have only departmental remedy even for appeal, it would be much better to provide that the appeal shall lie to the Central Government or the State Government, as the case may be, or to such other authority as may be prescribed. It would then be open to the concerned government to specify the authority that shall act as the appellate authority.

6.5. In the light of the discussion above, it is submitted that in case it is felt that it would neither be feasible to assign this task to the District Consumer Forums or State Commissions, because of their diverse inadequacies, nor would it be feasible to create a separate machinery, in the form of, say,

a Tribunal, the possibility of vesting the appellate jurisdiction in the Civil Courts will have to be seriously considered. It is true that the judiciary today is labouring under the burden of enormous arrears. However, this problem is engaging the Government's attention at the highest level as reflected in the Conference of Law Ministers held in June - July this year. It may be possible to prescribe summary procedures and time limits for the disputes under the proposed Freedom of Information Act and also to set up special benches, where necessary, by extending the required financial support.

6.6. In order to ensure that the appeals are dealt with at a sufficiently high level in the judiciary, this function could be assigned to District Judges.

6.7. The Committee of Secretaries may, therefore, please reconsider this issue.

Sections 123 and 124 of the Indian Evidence Act.

Observation of the COS:

7.1. The proposed revision of S. 123 and 124 of the Indian Evidence Act should be reviewed to prevent opening of floodgates for production of unpublished official records in the courts and, particularly in respect of security matters covered by Cl. 9 (i), the law should provide that no Courts below the High Courts shall summon record in respect of which privilege is claimed on grounds covered by Cl. 9 (i) (para 2 (h) of the minutes).

Comment:

7.2. It is submitted that it would be legally difficult to make a provision of this nature since the law on privileges has been laid down in a number of cases and the trend of the judicial decisions has been that the Courts are entitled to peruse the documents in question, where they are not satisfied with the affidavits filed, to decide upon the claim of privileges. Besides, the amendment recommended for the Code of Civil Procedure and the Code of Criminal Procedure is specifically for providing an appeal direct to the High Court against a decision of a subordinate Court on the question of privilege. There would thus be adequate safeguard to secure the interests of the Government. In this Department's note dated Aug. 19, 1997, it was recommended that the proviso below Cl. 15 (3), which stipulates

that no document or record should be withheld from the perusal of the appellate authority, should be deleted. With its deletion as recommended, it would be ensured that the normal provisions of the Evidence Act would come into play.

7.3. In any case, the Indian Evidence Act falls within the purview of the Legislative Department who have already been requested to process the recommendations of the Working Group in this regard. They may be requested to consider the suggestion while finalising their proposals in this regard.

Certain other issues.

8.1. Apart from the above issues certain other suggestions have also emerged from prominent persons in public life and the legal fraternity. Some of these are mentioned below.

Nomenclature:

8.2. It has been suggested that the Act should be entitled "Right to Information Act" and the provisions of Cl. 3 should refer to the right to information rather than "freedom of information". The Working Group had preferred the present title for the Bill since, according to them, the right to information had already received judicial recognition as a facet of the fundamental right to free speech and expression and the purpose in enacting the Freedom of Information Act was primarily to provide a statutory framework for that right. They, therefore, felt that the expression "freedom of information" more fully reflected the spirit and intent in the proposed legislation.

8.3. It might be mentioned that the legislation already passed by Tamil Nadu and Goa refers to right to information. Similarly, in the discussions in public media and the Parliament also references are usually made to the right to information.

8.4. The Committee of Secretaries may like to take a view on this.

Special Provisions for Custodial Institutions :

8.5. The Right to Information Bill prepared by the Press Council has a specific provision in respect of custodial establishments, including jails, police lock-ups, mental asylums, women's homes, beggars' homes etc., which requires such establishments to appoint visitors committees comprising

independent citizens and to give such committees full access to the establishments and their records at all times of day and night. There is no similar provision the Freedom of Information Bill proposed by the Working Group.

8.6. The view has been expressed by many, including Justice Sawant, that a similar provision needs to be specifically incorporated in the proposed Freedom of Information Act in view of continuing complaints of human rights abuses in such establishments. This suggestion has been reiterated by a number of speakers in a recent seminar held at Hyderabad which attended by a number of luminaries, including Justice Sawant.

8.7. This issue was mentioned in this Department's Note dated July 25, 1997 for the meeting of the Committee of Secretaries held on July 29, 1997. However, no final view in the matter was taken.

8.8. The Committee of Secretaries may please consider this suggestion too.

A separate time limit for disclosure of information relating to life or liberty.

8.9. The view has been expressed the time of 30 days for compliance with requests for information is too long where it relates to an individual's life or liberty. The Press Council's Bill lays down the time limit of 48 hours for release of such information. The Committee of Secretaries may like to consider if a similar provision may be made in the Freedom of Information Bill, 1997.

The Freedom of Information Councils to submit annual reports.

8.10. It has been suggested that the National and State Councils envisaged under Cl. 19 and 21 should be required to submit annual reports to be laid on the Table the Parliament and the State Legislatures respectively along with a report by the Government on the action taken on their recommendations. The suggestion may be considered for acceptance.

Proceedings of the Parliament and the State Legislatures.

8.11. The definition of "public authority" covers administrative offices of the Parliament and the State legislatures. A view has been expressed that the Act should cover the information relating to proceedings of the Parliament and the State legislatures, which are in any case open to public and the definition of public authority as proposed in the Bill might result in denial of such information. The

suggestion that has been made in this context is that the expression "public authority" should refer to Parliament and the State Legislatures and not merely to their administrative offices. The Committee of Secretaries may like to take a view on this aspect also.

9. A number of other suggestions have also been received from various sources which relate mainly to the drafting aspects. This would be taken into account at the stage of vetting of the Bill by the Legislative Department.

10. This Note issues with the approval of Secretary (Personnel).

(Harinder Singh)
Joint Secretary.

New Delhi
Dated

To be discussed in the Senior Officers meeting on 27/5/97

Department of Personnel & Training

The Conference Statement issued at the conclusion of Conference of Chief Ministers held on 24.5.97 to discuss Action Plan for 'Effective and Responsive Administration' at Central and State levels is placed below. It is requested that immediate action may kindly be taken in regard to paras relating to your charge.

(Harinder Singh)
Jt. Secretary(Estt.)
26/5/97

E.O.

A.S.(S&V)

Copy to Director(R).

124

a systematic and continuous review of outdated laws and procedures. Moreover, the rules framed under the laws need to be reviewed so that they do not militate against the very purpose for which the laws were enacted. He favoured that the people should have a Right to Information to combat undue secrecy in the Government. The Prime Minister said that the issue of corruption needs to be addressed firmly but there should be no witch-hunting. Quiet and diligent action by investigating agencies would give them more credibility. He opined that the Action Plan document has provided a good diagnosis and that it has to be followed up by a credible and implementable therapy.

4. The Chief Ministers and Central Ministers attending the Conference strongly endorsed the need for ensuring responsive, accountable, transparant and people-friendly administration at all levels and agreed that neccesary corrective steps must be taken to arrest the present drift in the management of public services. While expressing concern on the attempts made by the Legislature, Executive and the Judiciary to encroach upon each other's domain, the Conference urged that measures should be taken to restore the faith of the people, particularly the weaker sections of the society, in the fairness and capacity of administration. The concept of social audit as an instrument of greater accountability was emphasised. The Conference, however, recognised that the implementation of any Action Plan would require consistent support at the highest level in the Government as well as coordinated action including essential legislation and monitoring through a nodal Cell or Department reporting to the

Cabinet Secretary/Chief Secretary. Further, the increasing establishment expenditure and large size of Government staff is adversely affecting the development process by reducing the investible funds. The ambit and scope of government intervention needs to be redefined so that the superfluous functions can be dispensed with.

5. The Conference resolved that the Central and State Governments would work together to concretise the Action Plan dealing with the following themes:

(i) Accountable and citizen-friendly Government;

(ii) Transparency and Right to Information; and

(iii) Improving the performance and integrity of the public services.

6. ACCOUNTABLE AND CITIZEN-FRIENDLY GOVERNMENT

The following specific areas would be addressed :

6.1 **Citizens' Charter** : The Central and State Governments would formulate Citizens' Charters for Departments and offices, starting with those which have a large public interface. These Citizens' Charters would specify standards of service and time limits that the public can reasonably expect, avenues of grievance redressal and a provision for independent scrutiny with the involvement of citizen and consumer groups. These Citizens'

Charters would be widely publicised; efforts would be made to make these Charters operational over the next three months.

6.2 **Redressal of Public Grievances** : All Central and State Departments would publicise widely, facilities at various levels for the prompt and effective redressal of public grievances from the secretariat downwards to the village. Review of existing systems of redressal of public grievances, and institution of measures for streamlining them with a built-in system for independent monitoring, should be in place over the next six months.

6.3 **Review of Laws, Regulations and Procedures** : The Central and State Governments would work together for the simplification of existing laws, regulations and procedures, repeal of obsolete laws, reform of laws operating against the weaker sections, and steps to reduce the time and cost of the disposal of cases in civil and criminal courts. The entire process of approvals, sanctions and issue of permits would be made simpler, transparent and single-window-based. A priority agenda will be adopted and implemented over the next one year for this purpose.

6.4 **People's Participation, Decentralisation and Devolution of Powers** : There was recognition of the need for greater decentralisation and devolution of administrative powers at all levels. Consistent with the spirit of the 73rd and 74th Amendments of the Constitution, immediate steps would be

initiated by different State Governments, with the involvement of the Central Government to strengthen people's participation in Government. Steps would be taken to ensure adequate devolution of powers and resources to the elected local bodies in rural and urban areas, in line with the recommendations of the State Finance Commissions. The Central and State Governments would encourage and sustain people's participation and dedicated voluntary agencies in all the schemes for the delivery of basic services, as resolved earlier in the Conference of Chief Ministers in July 1996.

7. TRANSPARENCY AND RIGHT TO INFORMATION

7.1 The Conference recognised that secrecy and lack of openness in transactions is largely responsible for corruption in official dealings, and is also contrary to the spirit of an accountable and democratic Government. Steps would be taken over the next three months to ensure easy access of the people to all information relating to Government activities and decisions, except to the extent required to be excluded on specific grounds like national security.

7.2 The Government of India would take immediate necessary steps, in consultation with State Governments, for examining the report of the Working Group on Right to Information, and for introducing in Parliament before the end of 1997 a legislation for Freedom of Information, and amendments to the relevant provisions of the Official Secrets Act, 1923 and the Indian

Evidence Act. Endorsing the proposals made in the Action Plan, some of the State Governments indicated the need to include provisions which would ensure that the misuse of provisions under this Right do not lead to embarrassment of the governments. While some of the States have already initiated steps to provide the Right to Information, others would also undertake a similar exercise.

7.3 The Central and State Governments would open computerised information and facilitation counters in all their offices with large public interface, so that information and assistance is available to the public on essential services and approvals. The on-going efforts for systematic and phased computerisation of Governmental operations would be speeded up with the help of the National Informatics Centre. In this process, particular attention will be given to areas of computerisation which provide significant benefit to the population such as land records, passports, investigation of offences, administration of justice, tax collection and administration, issue of permits and licences etc.

8. IMPROVING THE PERFORMANCE AND INTEGRITY OF THE PUBLIC SERVICES

8.1 The Conference noted that people-friendly and effective administration depends on cleansing of civil services at all

levels, adherence to ethical standards, commitment to basic principles of the Constitution, and clear understanding of the relationship regulating the politicians and the civil servants. It was agreed that elimination of corruption in the public services would require prevention, surveillance and deterrent prosecution. It would also need to deal ruthlessly with the instances of nexus among politicians, civil servants and criminals. It was agreed that the politicisation of the civil services would be curbed so as to minimise its impact not only on the morale and motivation of the services, but on the sustained flow of responsive services to the public and efficient execution of schemes.

8.2 The existing rules and legal provisions in Central and State Governments would be amended in six months to enable the immediate and exemplary prosecution and removal of corrupt officials, and for weeding out staff of doubtful integrity. At the same time, a suitable mechanism would be evolved to reward Government employees doing good work.

8.3 The investigation agencies and vigilance machinery would be strengthened by Central and State Governments with the provision of adequate staff, powers, resources and independence.

8.4 The existing procedures for departmental enquiries and vigilance proceedings of Government employees would be revamped within three months on the basis of a study of detailed proposals worked out by the Government of India.

8.5 The areas of discretion available to various levels of administration would be reduced to the minimum, alongwith steps to prevent their arbitrary use.

8.6 The role and powers of audit in the identification and pursuit of financial and procedural irregularities would be strengthened, and there will be close networking of various agencies like Lok Ayukta, CBI, vigilance machinery, income tax authorities, Enforcement Directorate and CAG.

8.7 The Conference appreciated the importance of encouraging and ensuring the commitment of the employees of public services to ethical standards and basic principles of Constitution such as secularism, social justice, attention to the needs of weaker sections, rule of law, professionalism and integrity. The State Governments would consider formulating and enforcing a Code of Ethics for State Services similar to the Draft Code being considered for introduction at the Central level.

8.8 It was recognised that frequent and arbitrary transfer of public servants affect the ability of the system to deliver services effectively to the people, and the implementation of poverty alleviation schemes. It was agreed that institutional arrangements should be evolved for enabling objective and transparent decisions on postings, promotions and transfers of officials, particularly those working in key areas to ensure stability of tenure and de-politicised postings at all levels.

Though some misgivings were expressed regarding the mechanism of the Civil Services Board, it was clarified that the Board as envisaged in the Action Plan was to basically aid the political executive in the State Governments to implement a streamline and transparent transfer and promotion policy so as to ensure stability of tenures to the government functionaries and to sustain their morale.

9. IMPLEMENTATION ARRANGEMENTS

9.1 In order to carry forward the Action Plan for immediate as well as long term improvements in administration, it was decided to set up a Committee under the Cabinet Secretary including some of the Chief Secretaries representing the different regions of the country as well as some senior officials of the Government of India in order to elaborate the different elements of the Action Plan in terms of operational content, and to work out the decisions required at Central and State levels. The Committee would draw up a timebound agenda for legal and regulatory reforms in priority areas including a statutory scheme for Freedom of Information. It would consider steps to secure widespread acceptance and feedback from different sections of the public, and elicit the cooperation of the people for responsive administration.

10. CONCLUSION

10.1 The Conference recognised that, as the country completes 50 years of independence, and as the people are

assailed by growing doubts about the accountability, effectiveness and moral standards of administration, Central and State Govenments should move together to justify the trust and faith of the people in the Government by taking up the implementation of the Action Plan endorsed by the Conference in a time bound manner. The Prime Minister agreed to convene a Conference of Chief Ministers before the end of this year again to review the progress in the implementation of the Action Plan.

D.O.No34011/1(S)/97-Estt(B) (Pt.)

भारत सरकार
कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय
नई दिल्ली-110001
GOVERNMENT OF INDIA
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES
AND PENSIONS
NEW DELHI-110001
June 3, 1997

ARVIND VARMA
सचिव
SECRETARY
Tele. : 3014848
Fax : 3012432

- 3 JUN 1997

Dear Secretary

You would be aware that the Central Government had appointed a Working Group on *"Right to Information and Promotion of Open and Transparent Government"* under the Chairmanship of Shri H.D. Shourie. The Group was asked to examine, among other things, the need and feasibility of a Right to Information Act and to examine the administrative/rules framework with a view to promoting openness and transparency in the Government.

2. The Working Group submitted its report to the Government on May 21, 1997, a copy of which is enclosed. This report was circulated to the participants during the Conference of Chief Ministers on *"Effective and Responsive Administration"*, held on May 24, 1997. There was a broad consensus in support of a legislation for freedom of information during the Conference. The decision taken in the Conference is reflected in para 7.2 of the Conference Statement which reads:

"The Government of India would take immediate necessary steps, in consultation with State Governments, for examining the report of the Working Group on Right to Information, and for introducing in Parliament before the end of 1997 a legislation for Freedom of Information, and amendments to the relevant provisions of the Official Secrets Act, 1923 and the Indian Evidence Act. Endorsing the proposals made in the Action Plan, some of the State Governments indicated the need to include provisions which would ensure that the misuse of provisions under this Right do not lead to embarrassment of the Governments. While some of the States have already initiated steps to provide the Right to Information, others would also undertake a similar exercise."

134

Contd. . . . 2

3. I would request you to have the report examined and send to us your views/comments on the recommendations of the Working Group.

4. Since the decision in the Chief Ministers' Conference was that the necessary legislation would be introduced in the Parliament before the end of 1997, we would need a very early response from your side. I shall, therefore, be grateful if your reply reaches us latest by June 30, 1997.

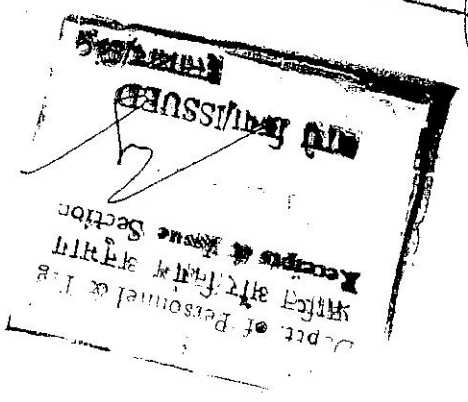
With regards,

Yours sincerely,

(ARVIND VARMA)
c/c

All Secretaries to the Govt. of India
(As per list enclosed)

69



Please refer to my D.O. letter of even number dated June 3, 1997, along with which I had sent to you a copy of the Report of the Working Group on Right to Information and Promotion of Open and Transparent Government.

2. The Working Group has, inter-alia, recommended amendments to Section 5 of the Official Secrets Act, 1923 and certain changes in the Manual of Departmental Security Instructions. Both these fall within the purview of Ministry of Home Affairs. I would, therefore, request you to please initiate appropriate steps to take a decision and the implemental action, including the necessary legislative measures, in respect of these recommendations.

3. As far as the Freedom of Information Bill and amendments to CCS (Conduct) Rules are concerned, further action is being taken in this Ministry. To help us to finalise these, the comments sought vide my D.O. letter referred to above may please be sent as requested.

4. I may mention that we have received directions from the Prime Minister that the action on the Report is to be completed within the next three months. I would, therefore, request you to accord top priority to the matter.

4. A copy of the Report of the Working Group is enclosed for ready reference.

Yours sincerely,

o/c S.P.

(Arvind Varma)

Shri K. Padmanabhaiah,
Home Secretary,
New Delhi.

136

D.O.No.13011/1(s)/97-Estt(B) (Pt.)

ARVIND VARMA

June 19, 1997

Please refer to my d.o. letter of even number dated June 3, 1997, along with which I had sent to you a copy of the Report of the Working Group on Right to Information and Promotion of Open and Transparent Government, for your comments.

2. We have since received directions from the Prime Minister that the action on the Report is to be completed within the next three months. In view of the urgency of the matter, I would request you to kindly have your comments on the report finalised as early as possible. In particular, I would request you to have the Freedom of Information Bill, 1997, proposed by the Working Group, examined and vetted from the legal angle on top priority basis to enable us to take further action in the matter.

3. The Working Group has, *inter-alia*, also recommended amendments to Sections 123 & 124 of the Indian Evidence Act, 1872, the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973. All these Acts fall within the purview of the Legislative Department. I would, therefore, request you to please initiate appropriate steps to take a decision and the implemental action, including the necessary legislative measures, in respect of these recommendations.

4. In case any clarifications etc., are required by your officers, they may please be asked to contact Shri Harinder Singh, Joint Secretary (E) {Tel. No.3011276 (O) 2250870 (R) } or Shri Y.G. Parande, Director {3015589 (O) 5765988(R)}.

5. A copy of the Report of the Working Group is enclosed for ready reference.

With regards,

Yours sincerely,

o/c

(ARVIND VARMA)

Shri K.L. Mohanpuria,
Secretary,
Legislative Department,
Shastri Bhawan,
New Delhi.

137

MOST IMMEDIATE

CABINET SECRETARIAT
RASHTRAPATI BHAVAN

Subject :- ***Report of Working Group on Right to Information and Promotion of Open and Transparent Government.***

Department of Personnel & Training may kindly refer to their Note No.3401/1(S)/97-Estt.(B), dated the 20th May, 1997, forwarding therewith a brief note on the report of the Working Group on Right to Information and Promotion of Open and Transparent Government.

2 It is requested that the Cabinet Secretariat may please be apprised of the follow-up action taken on the Report of the Working Group on "Right to Information and Promotion of Open and Transparent Government".

(Bijoy Chatterjee)
Joint Secretary

Shri Arvind Varma, Secretary, Deptt.of Personnel & Training.

Cabinet Sectt. U.O. No.501/6/1/97-C.A.V. dated June 12, 1997.

138

MOST IMMEDIATE

DEPARTMENT OF PERSONNEL & TRAINING

Subject:- Report of Working Group on Right to Information and promotion of Open and Transparent Government.

Cabinet Secretariat may kindly refer to to their U.O.No. 502/6/2/97-CA.I dated the 12th June,1997 non the above subject.

2. The report of the Working Group was circulated to the Chief Ministers during the Chief Ministers' Conference held on May 24,1997, and there was a general consensus on the need to take urgent measures for enacting the necessary legislation. In pursuance thereto, the report has been circulated to all State Governments/UTS, and also to the various Ministries/Departments in the Central Government, for seeking their comments. The Legislative Department has been requested to vet the Freedom of Information Bill from the legal angle. Views of Department of Consumer Affairs have also been sought on the Working Group's recommendations for utilising the machinery created under the Consumer Protection Act,1986, as the appellate machinery under the Proposed freedom of Information Act, and for augmenting the said machinery in view of the additional function proposed to be assigned to it.

3. The Working Group has also recommended amendments to

(a) Section 5 of the Official Secrets Act, 1923;

(b) Section 123 and 124 of the Indian Evidence Act, 1872;

(c) The Code of Civil Procedure 1908 and the Code of Criminal Procedure, 1973; and

(d) Manual of Departmental Security Instructions.

The Official Secrets Act and the Departmental Security Instructions are administered by the Ministry of Home Affairs while the Evidence Act and Codes of Civil and Criminal Procedure are administered by the Legislative Department. Both the Ministry of Home Affairs and the Legislative Department have been requested to initiate action separately in respect of the recommendations pertaining to the above subject.

(Y.G.Parande)
Director (R)

20/6/97

C/c

Cabinet Secretariat [Shri Dilip Chatterjee, U.S.(A)]

Deptt. of Personnel & Trg. I.D.No. 34011/1(S)/97-Estt.(B) dated 23 June,97

139

राष्ट्रीय ग्रामीण विकास संस्थान
(ग्रामीण विकास मंत्रालय, भारत सरकार का संस्थान)
राजेन्द्रनगर, हैदराबाद-५०० ०३० (भारत)

NATIONAL INSTITUTE OF RURAL DEVELOPMENT
(An Organisation of the Ministry of Rural Areas & Employment)
Rajendranagar, Hyderabad-500 030 (India)

फोन ४०१५००१-४
Phone 4015001-4
ग्राम ग्राविक
Grams GRAVIK
टेलेक्स ०४२५-६५१०
Telex 0425-6510
फैक्स ४०१५२७७
Fax 4015277
ईमेल
E-mail } nirdhy @ x 400 nicgw.nic.in

H HANUMANTHA RAO
DIRECTOR (IEC)

No.142/SRI/IEC/97
10 June, 1997.

SPEED POST

Dear Shri Parande,

The National Institute of Rural Development which is a premier organisation for training and research in rural development and is one of the leading institutions in the Asia-Pacific region, has a tradition of organising National Seminars and Workshops on topics of current interest affecting rural people either directly or indirectly.

As part of this tradition, we are organising A NATIONAL WORKSHOP ON RIGHT TO INFORMATION, 3 -4 September, 1997.

In connection with this workshop I had written to Shri N.S.Madhavan, Joint Secretary, M/o Information & Broadcasting for a copy of H.D.Shourie Report and a copy of the draft bill on Right to Information suggested by them. I have been advised by the M/o I & B to contact you for the same.

The proposed National Workshop in which leading Jurists, Media Professionals and Social Activists will be participating, will discuss in depth both the H.D.Shourie Report and tho Tamilnadu Right to Information Act. As such, may I request you to kindly supply us with a copy of tho H.D.Shourie Report and draft bill for placing before the workshop?

As the invitations for the workshop have already been sent, I shall be grateful for your positive and early response.

With regards,

Yours sincerely,

(H HANUMANTHA RAO)

Shri Y.G.Parande
Director
Deptt. of Personnel & Training
M/o Personnel, PG & Pensions
North Block
New Delhi - 110 001

No. 34011/1(s)/97-Estt.(B)

DEPARTMENT OF PERSONNEL & TRAINING

Subject: Status Note on the processing of the Report of the Working Group on Right to Information and Promotion of Open and Transparent Government.

*****

The Working Group has submitted its Report to Government on May 21, 1997.

2. Copies of the Report has been sent to all State Governments/Union Territories and to Ministries/Departments of the Central Government seeking their views/comments on the recommendations of the Working Group. So far 14 Departments have responded to our letter. All of them have broadly supported the recommendations of the Working Group. Response from other Departments and the State Governments is still awaited. Reminders have been issued.

3. A proposal is also under consideration for engaging a Consultant for finalising the modalities for operationalising the proposed Freedom of Information Act.

4. Efforts are also being made to identify a Consultant for framing rules under the proposed Act.

5. With a view to eliciting opinion on the recommendations of the Working Group from a wide spectrum of society, we are exploring the possibility of holding a Seminar under the auspices of the Indian Institute of Public Administration, soon after the ensuing Parliament session.

(Y.G. PARANDE)
Director
15.7.97

D/Administrative Reforms & Public Grievances
(Shri Nikhilesh Jha, Deputy Secretary)

141

A brief Summaryof points that emerged during the discussions on Report of the "Working Group on Right to Information and Promotion of Open and Transparent Government", in I.I.P.A. on July 10,1997 in Prof. Shekhar Singh's Room.

*****

(i) There should be a mechanism for review of the functioning of the Act.

(ii) A view was expressed by some of the participants that the term 'Public Authority' should also cover. Private bodies such as commercial firms and industries, NGOs etc. whose activities impinge on public interest. The point of view of the Working Group was explained to the participants. It was mentioned that the Working Group felt that the term 'Public Authority' should cover only governmental/semi-governmental institutions or organisations which are funded or controlled by the Government as extension of the definition to private firm may have certain undesirable consequences. Besides the information relating to activities of private organisations which effect public interest would be available to the citizens through the concerned regulatory authorities. It was also mentioned to the participants that the relationship of citizens vis-a-vis the Government and the bodies funded or controlled by the Government was different from that of a citizen or a shareholder vis-a-vis a private firm.

(ii) It was mentioned by some participants that the provision for visitors' committees in custodial institutions should be specifically incorporated in the Bill.

(iii) Some of the participants also mentioned that the time limit for supply of information which impinged on a person's right to life and liberty should be much

shorter than 30 days. Further in view of the law laid down by the Courts the right to life and liberty is available not only to citizens but even to foreigners. This should be specifically reflected in the Bill.

(iv) Another aspect which figured in the discussions was absence of penal provisions in the Bill. Some of the participants felt that in the absence of such penal provisions, the purposes of the proposed Act are likely to be frustrated by Government servants who may refuse to part with information. It was mentioned to the participants that the Working Group had separately recommended amendments to the Conduct Rules which govern Government servants. The proposed amendments would have the affect of casting a duty on the Government servant to furnish information which is disclosable under the proposed Freedom of Information Act and any failure on their part to abide by their duty would automatically amount to mis-conduct and be punishable under the Conduct Rules. Some of the participants, however, felt that this would not be enough and it would be desirable to create atleast a civil liability under the Act to deter the employees of public authorities from withholding information..

(v) Some of the participants also referred to the clause of the Press Council Bill which stated that information which cannot be refused to Parliament cannot be withheld from public. They mentioned that this provision was a salutary provision and should be incorporated in the Bill.

(vi) It was also suggested that the disclosure of criteria for selection for employment, award of contracts, house allotment and selection of beneficiaries under any scheme should be specifically mentioned among the obligations on public authorities in the clause 4 of the Bill.

(vii) Most participants felt that clause 9 (ix) of the Bill was too wide and could frustrate the objections of the proposed Act as it gave almost unlimited discretion to authorities to refuse information. It must be deleted.

(viii) Some of the participants also felt that exemption for Cabinet papers and internal notes etc. was too wide and was susceptible to be used as a cover for denial of information to which public should have access. The other point of view, that this exemption was necessary both to prevent premature disclosure and to avoid undesirable press was being brought to bear on decision-making processes, was also expressed. It was also mentioned that access to internal notes, opinion etc. would adversely affect the frankness of expression and candour necessary for well considered decisions.

(ix) As regards the proposal to utilise the machinery under the Consumer Protection Act, the participants felt that there may be no objection to the recommendations of the Working Group provided the machinery is suitably augumented and Consumer Protection Act suitably amended.

SECRET

Copy No. 18

F.N.34011/1(S)/97-Estt. (B)

Department of Personnel and Training.

New Delhi, dated July 25, 1997.

Subject: Right to Information and Transparency - regarding.

Attention is invited to Cabinet Secretariat's notice F.N. 1/97/3/97-CA V dated July 24,1997 for the meeting on the above subject to be held at 4.30 P M on July 29, 1997 in the Committee Room of the Cabinet Secretariat, Rashtrapati Bhavan, New Delhi

2. The agenda paper for the aforesaid meeting is enclosed.

(Harinder Singh)
Joint Secretary

To

1. Shri K. Padmanbhiah, Home Secretary.
2. Dr. V.,K. Agarwal, Secretary, Department of Legal Affairs.
3. Shri N.N. Mookerjee, Secretary, Department of Consumer Affairs.
4. Dr. N.C. Saxena, Secretary, Department of Rural Development.
5. Shri M. Ravindra, Chairman, Railway Board.
6. Shri Ajit Kumar, Defence Secretary.
7. Shri N.P. Nawani, Secretary, M/o Information & Broadcasting.
8. Shri A.V. Gokak, Secretary, Department of Telecommunication.
9. Shri C. Ramachandran, Secretary, Department of Expenditure.
10. Shri R.U.S. Prasad, Secretary, Department of Posts.

145

11. Shri P.R.Dasgupta, Secretary, Department of Education.

12. Shri S. Narendra, Principal Information Officer.

13. Dr. N. Seshagiri, D.G., NIC, Planning Commission.

Copy forwarded to:

Shri N.N. Vohra, Principal Secretary to P.M.

Copy also forwarded to:

Shri Bijoy Chatterjee, Joint Secretary, Cabinet Secretariat, along with 7 copies of the agenda paper. .

Shri Arvind Varma, Secretary (Personnel).

Dr. P.S.A. Sundaram, Additional Secretary, Deptt. of AR&PG

(Harinder Singh)
Joint Secretary

SECRET
COPY NO:

No. 34011 1(S)/97-Estt (B)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training

NOTE FOR COMMITTEE OF SECRETARIES

Subject: Right to Information and Promotion of Open and Transparent Government.

*****

1.0 This Note deals with the recommendations of the Working Group on Right to Information and Promotion of Open and Transparent Government, which was constituted, under the Chairmanship of Shri. H.D Shourie, vide this Department's Office Memorandum No. 34011/1(S)/97-Estt (B) dated January 2, 1997. Among other things, it was asked to examine the feasibility and need of either a full fledged Right to Information Act or its introduction in a phased manner to meet needs of open and responsive Government and to examine the Rules framework with particular reference to Conduct Rules and Manual of Office Procedure with a view to introducing greater transparency and openness in Government working. The Group submitted its report on May 21, 1997 a copy of which is attached to this Note

BACKGROUND -

2.1 There have been demands for the past many years for greater transparency and openness in the functioning of the Government. It is widely recognised that secrecy and lack of openness in functioning are major contributors to corruption and abuse of authority. This forms an important element of the Civil Service Reforms initiated by the Government.

1

- SECRET -

147

2.2 In terms of the Common Minimum Programme the Government is committed to bring forward a Bill on Freedom of Information.

2.3 This issue figured in the deliberations of the conference of the Chief Secretaries held in November 1996 and there was unanimity on the need to enact a law for Right to Information in order to make the Government more transparent and accountable to people.

2.4 This issue was also discussed during the Chief Ministers's Conference on "Effective and Responsive Government" held on May 24, 1997. A Statutory Scheme, based on the deliberations of the Working Group had been circulated to the participants for consideration during the conference. The conference statement adopted at the conclusion of the meeting reflects the consensus among the Chief Ministers that a legislation for Right to Information should be enacted as early as possible A view was also expressed that while making this legislation, due care should be taken for protecting the confidentiality of information whose disclosure would be against the public interest.

REPORT OF THE WORKING GROUP

3.1 The Report of the Working Group is based, among other things, on a study of the freedom of information legislation in some other countries. The Group also took into consideration the Right to Information Bill, 1996 which was prepared by the Press Council of India under the Chairmanship of Justice P.B.Sawant.

3.2 The important recommendations of the Group are

- The Group has recommended the enactment of 'Freedom of Information Act' by the Parliament For this purpose they have given the "Freedom of Information Bill , 1997" which is at Annexure A to the Report.

- The Group has also recommended amendment to Section 5 of the Official Secrets Act , 1923 which is at Annexure B of the Report

- Amendments have also been proposed to Sections 123 and 124 of the Indian Evidence Act. 1872 the Code of Civil Procedure' 1908 and the ' Code of Criminal Procedure', 1973. The proposed amendments are at Annexure C of the Report.

- They have also recommended amendment to the Rule 11 of the CCS (Conduct) Rules , 1964 and the corresponding Rules for other Services including the All India Services.. The draft amendments recommended by the Working Group are at Annexures D and E of the Report.

- Amendments have also been proposed by the Group to the Manual of Departmental Security instructions dealing with classification of information. The recommendations in this regard are contained in Annexure F to the Report.

3.3 In the context of its Freedom of Information Bill, 1997, the Group has also emphasized the need to develop modern information management systems and special training programmes for bringing about the necessary

attitudinal change and for developing the necessary skills and aptitude among the employees.

3.4 It may be mentioned that while the Department of Personnel and Training is processing the recommendations in regard to Freedom of Information Bill, 1997 and amendment to Conduct Rules, the Ministry of Home Affairs has been requested to process the recommendations regarding amendments to the Official Secrets Act, 1923 Manual of Departmental Security Instructions and Code of Criminal Procedure, 1973 The Legislative Department has been requested to process the recommendations in respect of amendments to Indian Evidence Act, 1872 and the Code of Civil Procedure, 1908.

CONSULTATION WITH STATE GOVERNMENTS AND MINISTRIES / DEPARTMENTS OF THE CENTRAL GOVERNMENT

4.1 The Copies of the Report of the Working Group were sent to all States/ Union Territories for their comments. No responses have yet been received from the State Governments/ Union Territories. It may, however, be mentioned that the statutory scheme prepared on the basis of deliberations in the Working Group had been circulated for discussions during the Chief Ministers' Conference held on May, 24, 1997 . As already mentioned above, it had received broad approval of the Conference.

4.2 As far as Ministries/ Departments of the Central Government are concerned, responses have so far been received from only 22 Ministries/ Departments.

4.3 These Ministries Departments have broadly supported the recommendations of the Group. Some of the Ministries have however pointed out that the proposed Freedom of Information Act will entail considerable administrative work owing to high demand for information and the litigation that might ensue. Concern has also been expressed by some about the possibility of misuse of the Act by different interest groups. An apprehension has been expressed that at least initially, information which may be required to be kept secret may be released due to lack of adequate appreciation on the part of officers of the intricacies of the provisions of the proposed Act. Questions have also been raised as regards the feasibility of the provision for appeals (Cl. 15 of the Bill) which envisages the use of the machinery under the Consumer Protection Act, 1986 as the appellate forum under the proposed Freedom of Information Act. The apprehensions in this respect are mainly twofold. First, the performance of these forums in redressal of complaints under the Consumer Protection Act itself leaves much to be desired as they seem to suffer from endemic shortages in terms of manpower and material resources and are already labouring under the burden of arrears. Secondly, in some cases, the decision to withhold information may have to be taken at very high level in the Government and it may not be appropriate to vest District Forums with appellate powers over such decisions.

REACTIONS FROM THE MEDIA AND OTHER SECTIONS OF SOCIETY

5.1 The Report has been generally been welcomed in the articles appearing in the newspapers and magazines. Informal discussions have been held with experts in the field and social activists etc. who have also generally expressed themselves in support of the recommendations of the Working Group barring criticism in respect of certain aspects of the Bill formulated by the Working Group. Particular mention may be made of the

discussions held with Justice P B Sawant Chairman Press Council of India who also supported the recommendations of the Group while expressing his reservations in some respects The significant points of criticism which have emerged from these discussion are briefly indicated below

- The provision that has drawn pointed comment is Clause 9 of the Bill which sets out the categories of information exempted from disclosure under the Act. The criticism is that there are too many exemptions and they would frustrate the objectives of openness and transparency in Government. In particular, Clause 9 (ix) has been assailed as giving excessively wide and unfettered discretion to officers to refuse access to information.

- Under the Bill, the definition of the term "Public Authority" (Cl.2 (g) of the Bill) has been restricted to the Government and bodies owned, substantially controlled or funded by the Government. This leaves out private firms whose activities often impinge on public interest The definition of Public Authorities should be expanded to cover such private bodies also.

- There is no penal provision in the Bill. The absence of a penal provision would make the legislation toothless as there would be no sanction against public authorities or their officers who withhold information in violation of the provision of the Act.

- Another point of criticism was the absence of a specific provision in respect of the custodial institutions. It may be mentioned in this context that the Right to Information Bill submitted by the Press Council has a provision which requires the appointment of Visitor's Committees and

grant of access to such Committees at all times

- With regard to the appellate function, while there appeared be no objection in principle to vesting this function in the machinery under the Consumer Protection Act, 1986, the apprehension was expressed that the glaring deficiencies in that machinery would prevent timely disposal of appeals and unless effective were taken to improve the functioning of District Forums etc., the appellate remedy might not be as effective as would be desirable.

POINTS FOR CONSIDERATION OF COMMITTEE OF SECRETARIES

6.1 In the above background, the Committee of Secretaries may please consider the Freedom of Information Bill, 1997 before it is submitted to the Cabinet. In particular, they may like to take a view on the following aspects on which concerns have been expressed in various forums.

A. The Definition of Public Authority [Cl. 2(g) of the Bill.

With regard to the definition of Public Authority, the view that it should cover private bodies such as commercial firms and other non-governmental organisations was also echoed by Justice Sawant. The argument put forward in favour of this view is that quite often the activities of such bodies are injurious to public interest and given the present state of regulation of such bodies and with the Government getting out of a large number of areas there is a growing need to safeguard public interest. By way of example, the Bhopal disaster is quoted.

It may be mentioned that the Working Group had deliberated on this aspect and consciously decided to restrict the ambit of the Bill to governmental bodies for the following main reasons.

- The relationship of a citizen vis-a-vis the Government stands on a different footing from that vis-a-vis a private body.

- The Right to Information is generally envisaged everywhere with reference to governmental information

- Information relating to operations of private firms which impinge on public interest such as health, safety, or environment standards would in any case be accessible under the provisions of the Act from the concerned regulatory authorities.

- The Group took note of the fact that in all countries, whose freedom of information laws they had studied, the legislation was with respect to governmental information.

While taking a view on this aspect one has also to take note of the possibility of abuse of the Act by private firms for their competitive strategies and actions. There are also likely to be implementational difficulties with regard to the internal review procedure since this has been devised with governmental/semi-governmental structures in mind

The Committee of Secretaries may like to take a view on this aspect.

B. Exemptions from disclosure (Cl.9 of the Bill)

In drafting these provisions, the Working Group has sought to strike a balance between the public interest in disclosure of information and the public interest in secrecy. Most of the exemptions clearly define the categories of information protected from disclosure in public interest. The criticism that Cl. 9 (ix) is too wide in its scope, however, appears to be justified and there would seem to be a case for is delction.

C. Absence of Penal Provisions.

This is another major area of criticism. It might be mentioned that the Bill prepared by the Press Council provides for personal liability on individuals responsible for furnishing information and provides for fines for violation of the Act.

This aspect was also consciously considered by the Working Group and it was decided not to include a provision for penalty for the reason that it might embroil agencies or their officers in litigation. It might also breed resistance and resentment among employees thus adversely affecting the implementation of the Act in its true spirit and intent. It might be mentioned that the Group has recommended a revised formulation to replace the existing rule 11 of the CCS (Conduct) Rules, 1964 and it was felt that this would be adequate since any failure on the part of a Government servant to abide by the provisions of the Conduct Rules becomes misconduct within the meaning of those rules and he becomes liable for punishment.

The Committee of Secretaries may like to take a view on this aspect also. It might be added that a provision for penalty might be necessary in the

event the proposed Act is to cover private bodies also

D. Appellate Machinery (Cl. 15 of the Bill)

The Working Group has proposed the use of the machinery under the Consumer Protection Act, 1986. For this purpose Cl. 15 of the Bill stipulates that an appeal against the decision of the reviewing authority will be considered and disposed of as a complaint under the Consumer Protection Act, 1986. The intention was to avoid setting up a separate machinery which would entail heavy costs as well as time on the one hand and to avoid dilatory legal processes attending ordinary legal proceedings on the other. Another factor that was kept in mind was the need to make the appellate remedy available as close to citizen as possible - not beyond the level of the district.

Secretary, Department of Consumer Affairs was specifically requested to comment on this aspect and the issue was also discussed with him. While agreeing to the recommendation in principle, he pointed out the serious deficiencies in the functioning of the forums in various States. He mentioned that there were persistent shortages of judges, supporting staff and infrastructural facilities despite funding by the Central Government. He also stated that though the time complaints under the Consumer Protection Act are expected to be disposed of in 90 days, in actual practice there are arrears of over 2.5 lakh cases some of which go back to the year 1992. Considering that the forums are unable to effectively cope with the existing work load there are grave doubts as to whether they would be able to cope with the additional workload that would be generated under the proposed Freedom of Information Act which inter alia, requires appeals to be disposed of in 30 days. Therefore, if the recommendation of the Working Group is to be accepted, it would be necessary to augment the machinery under the Consumer Protection Act and

under the Consumer Protection Act and for this purpose adequate budgetary support will have to be provided.

The other issue arising out of this recommendation is that the whole hierarchy of appeals under the Consumer Protection Act would come into play. Under that Act, appeal against the decision of the District Forum lies to the concerned State Commission and futher to the National Commission. Appeal against the National Commission's orders lies to the Supreme Court. This may entail dilatory proceedings. Justice Sawant was of the view that this could be avoided by prescribing that the decision of the District Forum would be final. According to him, in the event the decision of the District Forum was unacceptable either to a public authority or to a party, they would have the recourse of petition to the High Court under Art. 226 of the Constitution.

While it is true that an individual can invoke Art. 226 to approach the High Courts, it appears doubtful whether the Government can invoke this jurisdiction. If not, the Government may be left with no further remedy against the orders of the District Forums. A viable option could be to provide a direct appeal from the orders of the District Forum, under the proposed Freedom of Information Act, to the High Court.

Another related aspect of this is the penalty for non-compliance with the order of a District Forum. In terms of S. 27 of the Consumer Protection Act, 1986, a person who fails to comply with the order of the District Forum, the State or National Commission as the case may be is punishable with imprisonment for a term which shall not be less than one month but which may extend to three years or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees, or with both. In terms of the proviso of this Section, however, the District Forums and State

or National Commissions have the discretion to impose lesser sentence or fine

The Committee of Secretaries may like to consider whether in respect of orders under the proposed Freedom of Information Act that may be passed by the District Forums, the above provision should be made applicable in toto or whether a penalty in the form of an appropriate fine alone would be preferable.

The Committee of Secretaries may like to take a view on the above issues.

E. Special Provision for Custodial Institutions

The Right to Information Bill prepared by the Press Council has a specific provision in respect of custodial establishments, including jails, police lock-ups, mental asylums, women's homes, beggars' homes etc.. which requires such establishments to appoint visitors committees comprising independent citizens and to give such committees full access to the establishments and their records at all times of day and night There is no similar provision the Freedom of Information Bill proposed by the Working Group.

The view has been expressed by many, including Justice Sawant, that a similar provision needs to be specifically incorporated in the proposed Freedom of Information Act in view of continuing complaints of human rights abuses in such institutions. The Committee of Secretaries may please consider this suggestion too.

6.1 It may also be relevant to mention that a reliable understanding of the efficacy of the various provisions of the proposed Act can perhaps be arrived at only on the basis of the experience gained once it comes into operation. An important function assigned to the Freedom of Information Councils is the review of the functioning of the Act. Some amendments to the Act can perhaps be considered in the light of such reviews.

6.2 The Working Group has also recommended amendment to Rule 11 of the CCS (Conduct) Rules, 1964. They have given two formulations vide Annexures D & E of their Report to substitute rule 11 of the CCS (Conduct) Rules and have also recommended that similar amendments may be made to the corresponding rules governing the All-India Services and certain other services. The formulation in Annexure D has been recommended for immediate consideration, that in Annexure E has been recommended for adoption after the proposed Freedom of Information Act comes into force.

6.3 The existing Rule 11 of CCS (Conduct) Rules has often been assailed on the ground that it inhibits disclosure even of information which can and should legitimately be shared with public. The recommendation seeks to give a positive dimension to the provision to promote openness and transparency while disallowing disclosure of classified information, trade or commercial secrets and information which might infringe on privacy of individuals.

6.4 While most Ministries/Departments have supported the recommendation, a view has also been expressed that it would not be desirable to allow every Government servant to be the outlet of information. It might be mentioned in this context that the proposed rule requires Government servants to provide information in the performance of their duties in good faith. The explanation below the rule also clarifies that the rule does

not authorise unauthorised communication of classified information or communication of information for improper gain. The apprehension may, not therefore, be entirely well founded

The Committee of Secretaries may like to consider the recommendation of the Working Group in this regard.

Other Recommendations

7.1 As far as the other recommendations are concerned, as already mentioned, the Ministry of Home Affairs has been requested to process the recommendations relating to the Official Secrets Act, 1923, the Code of Criminal Procedure, 1973 and the Manual of Departmental Security Instructions relating to classification of information. Similarly, the Legislative Department has been requested to process the recommendations relating to the Indian Evidence Act, 1872 and the Code of Civil Procedure, 1908. They may be requested to expedite the necessary action

Administrative Impact and Financial Implications

7.1 There remains the question of operationalising the freedom of information and the financial impact of the proposed Act.

7.2 As far as measures necessary for operationalising the Act are concerned, it would be necessary to frame rules as well as draft detailed guidelines and instructions This would include guidelines for the appointment of Public Information Officers and their functioning. The intention is that, as far as possible, a citizen should not have to go beyond the District level for getting access to information. It would also be necessary to provide adequate training.

7.3 A Consultant is being engaged for recommending measures for operationalising the freedom of information. Broadly, the terms of reference include devising of procedures and preparation of detailed administrative instructions and guidelines for grant of access to information as well as classification of information and systems improvements for easy retrieval and communication of information.

7.4 Similarly, action is also being taken to identify and engage a consultant for framing of rules for the Act for the Central Government as well as model rules for the States.

7.5 As regards the workload that would be generated, it is difficult to make an accurate estimate of the likely demand for information. There is however no doubt that it would be substantial. The experience in other countries indicates that a fairly significant proportion of users of freedom of information legislation are commercial organisations and organised interest groups and, of course, the media. The experience in our context is likely to be the same. The number of individual requests can be reduced if the maximum possible information is made available by the concerned agencies suo motu. This aspect will be borne in mind while devising the detailed guidelines and administrative instructions.

7.6 It is also not possible to estimate the costs with any degree of accuracy since they can be assessed only when we have some data about the likely demand for information. Of course, a part of the costs would be offset by the fees that can be prescribed. While the intention is that as far as possible the existing manpower should be utilised, some creation of posts to deal with the additional workload generated may be unavoidable. Individual

Ministries/Depts can take up such proposals with the Ministry of Finance. As far as the augmentation of the machinery under Consumer Protection Act is concerned the necessary budgetary support can be extended through the Department of Consumer Affairs. It may also be mentioned that this Department is exploring the possibility of conducting a pilot study to assess the likely impact of the additional workload on the District Forums.

8. Summing up, the Committee of Secretaries is requested to consider the Freedom of Information Bill, 1997 proposed by the Working Group on Right to Information and Promotion of Open and Transparent Government. While doing so, they are requested to consider specifically the issues indicated in paras 6.1 above. They are also requested to consider the recommendation for amendment to CCS (Conduct) Rules, 1964 referred to in paras 6.2 to 6.4 above.

9. This Note has the approval of Secretary (Personnel).

(Harinder Singh)
Joint Secretary to the Govt. of India

New Delhi
Dated the 25th July, 1997.

/

SECRET

Copy No 16

No. 1/97/3/97-CA.V
GOVERNMENT OF INDIA/BHARAT SARKAR
CABINET SECRETARIAT/MANTRIMANDAL SACHIVALAYA
RASHTRAPATI BHAVAN
*****

74/AS(AR&T)/97/vip
08-8-97

New Delhi, dated 6th August, 1997

Subject:- Right to Information and Transparency - regarding.

The minutes of the meeting taken by the Cabinet Secretary at 4.30 P.M. on 29th July, 1997 in the Committee Room of Cabinet Secretariat on the above subject, are circulated herewith.

(Encl: Doc.No.CD(CA-V)-92/1997)

(BIJOY CHATTERJEE)
Joint Secretary

35(E)

To

1. Shri Arvind Varma, Secretary, D/o Personnel & Training.
2. Shri K. Padmanabhaiah, Home Secretary.
3. Dr. V.K. Agarwal, Secretary, Deptt. of Legal Affairs.
4. Shri N.N. Mookerjee, Secretary, Deptt. of Consumer Affairs.
5. Dr. N.C. Saxena, Secretary, Deptt. of Rural Development.
6. Shri M. Ravindra, Chairman, Railway Board.
7. Shri Ajit Kumar, Defence Secretary.
8. Shri N.P. Nawani, Secretary, M/o Information & Broadcasting.
9. Shri A.V. Gokak, Secretary, Deptt. of Telecommunications.
10. Shri C. Ramachandran, Secretary, Deptt. of Expenditure.
11. Shri R.U.S. Prasad, Secretary, Deptt. of Post.
12. Shri P.R. Dasgupta, Secretary, Deptt. of Education.
13. Shri K.L. Mohanpuria, Secretary, Legislative Department.
14. Shri S. Narendra, Principal Information Officer.
15. Dr. N. Seshagiri, D.G., NIC, Planning Commission.
16. Dr. P.S.A. Sundaram, Addl. Secy., Deptt.of AR&PG.

Copy along with enclosure, forwarded to :

Shri N.N. Vohra, Principal Secretary to P.M.

(BIJOY CHATTERJEE)
Joint Secretary

Internal Circulation(only one copy):

CS/SECY(C)/AS/JS(BC)

163

VKJ
all copies

conclusion of the conference reflected a broad consensus among the Chief Ministers that a legislation on 'right to information' should be enacted as early as possible. It was also suggested that while making this legislation, due care should be taken for protecting the confidentiality of any information whose disclosure would be against public interest.

2. It was mentioned that copies of the report of the Working Group were subsequently sent to all States/Union Territories for their comments. No responses have, however, been received. Separately, the report was circulated to the Ministries/Departments of the Central Govt. Responses have been received from 22 Ministries/Departments which have broadly supported the recommendations of the Group. Some of the Ministries have also made certain observations which have been reflected in the back-ground note. It was suggested that the COS may consider the proposed Bill before it is submitted to the Cabinet.

3. During the course of the discussions, the following observations were made -

3.1. Public Authority as defined in the draft Bill included governmental bodies or organisations substantially funded or controlled by the govt. Justice P.B. Sawant, Chairman of the Press Council of India had suggested that the definition of Public Authority should also include private bodies such as commercial firms and NGOs as their activities were quite often injurious to public interest. It was felt that implementational difficulties may crop-up in case the law is extended to private bodies also. It was agreed that for the present, the Bill should be limited only to governmental bodies or organisations substantially funded or controlled by the government as stipulated in the draft.

3.2. The exemptions from disclosure as listed out in Clause-9 of the Bill were reviewed. It was felt that the provision in sub-clause (i) was in order. However, it was suggested that there should be a list of the specific types of information excluded under this sub-clause.

3.3. As regards Clause-9 (ii), a suggestion was made that such information could be treated as classified on a case by case basis. It was agreed that the consultant who is proposed to be engaged by DOPT to frame rules etc., may be asked to look into this aspect of classification.

3.4. The provision in Clause-9 (iii) was observed to be in order. A suggestion was made that there could be a provision to prepare a White Paper on each subject at an appropriate time. However, a contrary view was expressed that preparation of a White Paper cannot be deemed to be a right of a citizen.

SECRET

RT
20 copies.

164

Contd...

dissatisfied with the decision, he could prefer an appeal to, say, the Distt. magistrate in case of district level matters, Chief Secretary/Secretary, Public Grievances in case of State level matters, Secretary (Coord.) in case of Central Government matters. A person dissatisfied with decisions within the Government, could still have the option to invoke the writ jurisdiction of the High Court. Since it is basically the exemption aspect in the proposed law which is justiciable, it was felt that there should be a clear system of classification with reference to the exemptions listed out in clause 9 of the Bill so that litigations are avoided as far as possible. However, there should be some categories of information, viz. Defence and Security matters in respect of which the classification done by the concerned authority should be final and privilege claimed in case writ jurisdiction is invoked.

3.10. A point was raised regarding the adequacy, accuracy and quality of information. It was observed that under this law, a citizen would be entitled to receive information as available with the govt. No citizen can demand additional information to be collected by the govt. and supplied to him.

3.11. A view was expressed that it would not be desirable to allow every govt. servant to be a supplier of information. Instead, there should be an official spokesman in every office who may be authorised to furnish all information except those exempted from disclosure. It was agreed that the suggestion should be examined.

3.12. An observation was made that the proposed Bill does not include a provision for penalty as it may expose the government and its functionaries to penalties imposed by courts. Moreover, it may generate resistance and resentment among the employees thereby adversely affecting implementation of the law. The Working Group, however, recommended that an amendment could be made in the Conduct Rules so that any failure on the part of a govt. servant to abide by the provisions of this law would become a mis-conduct within the meaning of the Conduct Rules for which he would be liable for punishment. It was agreed that the suggestion of the Working Group may be accepted. In this context, the proposed amendment to Rule 11 of CCS (Conduct) Rules, 1964 was observed to be in order.

4. In conclusion, the COS observed that the proposed Freedom of Information Bill, 1997 as drafted by the Working Group, was generally in order subject to the above observations. It was agreed that another meeting of the COS could be held after fifteen-days for taking a final view. Thereafter, the matter could be further processed by DOPT for obtaining the approval of the Cabinet.

****

SECRET

RT
20 copies.

165

SECRET

Copy No 19

F.No.34011/1/(s)/97-Estt.(B)

Department of Personnel and Training

New Delhi,dated Aug.19,1997

Subject: Right to Information and Transparency - regarding.

Attention is invited to Cabinet Secretariat's notice F.N. 1/97/3/97-CAV dated August 19, 1997 for the meeting on the above subject to be held at 3.30 P.M. on August 21, 1997 in the Committee Room of the Cabinet Secretariat, Rashtrapati Bhawan, New Delhi.

2. The agenda paper for the aforesaid meeting is enclosed.

(Harinder Singh)
Joint Secretary

To

1. Shri K. Padmanbhiah, Home Secretary
2. Dr. V.K. Agarwal, Secretary, Department of Legal Affairs.
3. Shri K.L. Mohanpuria, Secretary, Legislative Department.
4. Shri N.N. Mookerjee, Secretary, Department of Consumer Affffairs.
5. Dr. N.C. Saxena,Secretary, Department of Rural Department
6. Shri M. Ravindra, Chairman, Railway Board.
7. Shri Ajit Kumar, Defence Secretary.
8. Shri N.P. Nawani, Secretary, M/o Information and Broadcasting

166

Secret
Copy No. 2 8

F.N. 34011/1(s)/97-Estt.(B)
Department of Personnel and Training.
New Delhi,

August 19, 1997.

Subject: Right to Information and Transparency - regarding

This Department's Note of even number dated July 25, 1997 was considered by the Committee of Secretaries in its meeting held on July 29, 1997. This supplementary Note addresses the issues that arose during the deliberations as reflected in the minutes circulated vide Cabinet Secretariat's communication No 1/97/3/97-C A V dated Aug. 8, 1997.

2 At the outset, it may be mentioned that it was decided in the meeting that the scope of the Bill may remain restricted to governmental bodies and bodies substantially funded or controlled by the Government. Thus the definition of "public authority" may remain as stipulated in the Bill.

3 The major issues that require re-examination in the light of the discussions in the meeting relate to the exemptions from disclosure contained in Clause 9 of the Bill and the proposed appellate remedy contained in Clause 15 of the Bill Comments on these are given below.

Exemptions from disclosure (Please see paras 3.2 to 3.8 of the minutes).

4 1 Clause 9(1) : It was suggested that there should be a list of the specific types of information exempted under this provision (vide para 3.2 of the minutes of the last meeting).

It is submitted that the exemption clauses have necessarily to be generic and inclusive in nature and it may not be possible to list out exhaustively the kinds of information that is exempted. Such a provision would be inflexible and would not take into account changing circumstances. It would operate adversely against the public authorities in their efforts to protect from disclosure information which may require to be protected but which may not find specific mention in the Act. However, an illustrative list can be incorporated in the provision for the sake of clarity and for broadly indicating the nature of information exempted With this in view, the following can be inserted below Cl 9 (1)

"Without prejudice to the generality of this provision, such information may include information relating to

(a) operations, strategy and tactics of the Defense forces, paramilitary forces and other organisations concerned with the security of India,

(b) intelligence, plans and operations for suppression of subversive activities;

(c) weapons, weapon systems and related equipment, including those under development,

(d) codes and cryptographic systems;

(e) scientific and technical matters of strategic importance to the security of the State;

(f) diplomatic correspondence,

(g) strategy and plans to be adopted for international negotiations,

(h) information obtained from foreign governments, their agencies or international organisations on condition of confidentiality "

4.2. Cl. 9(ii) - The observation of the Committee of Secretaries regarding classification on a case by case basis, vide para 3.3 of the minutes, has been noted and the Consultant would be requested to examine this aspect specifically

4.3 Cl. 9(iii) - There was a suggestion for making a provision for requiring publication of White Papers at the appropriate times (vide para 3.4 of the minutes)

It is submitted that the provisions of Cl.16 of the Bill take care of some of the concerns expressed - albeit to a very limited extent and only in respect of matters which are likely to affect the general public. As far as the post-decisional scenario is concerned, the provisions of Cl.4(3) require the disclosure of the relevant facts and analyses when any major policy is announced. It is felt that the Government can independently consider adopting a suitable code of practice in this regard but it may not at this stage be made a statutory requirement.

4.4. Cl. 9(iv) - A view was expressed during the meeting that this clause was too restrictive and would have the effect of shutting out most of the information in public authorities. The contrary view was also expressed that it would not be desirable to expose internal notings etc. since it would adversely affect free and frank expression of views and objective decision making. It was decided that the provision should be toned down to exclude the notes portion of the documents and other

168

information in the nature of advice etc (vide para 3 5 of the minutes)

It is submitted that this provision is akin to similar provisions in the legislation in other countries Further, under Clause 4 (3) of the Bill, there is a clear obligation on the public authorities and their officers to give reasons for decisions The specific details of the nature of information exempted could be spelt out in the rules or in the executive instructions However, in view of the concerns expressed in this regard, the following formulation is suggested which may substitute this provision

"(iv) Information in the nature of advice, opinions, recommendations or minutes for the purposes of the deliberative processes in a public authority, contained in intra-departmental or inter-departmental papers, including information subject to legal professional privilege

Provided that this exemption shall not apply to the reasons required to be given for administrative or adjudicative decisions under Section 4 (3)

Provided further that this exemption shall not apply to the reports of scientific and technical experts, including their opinions, on scientific and technical matters or to information that is factual."

4 5 Cl. 9(ix) - The Committee of Secretaries felt that this provision should be suitably modified to prevent public authorities from denying information to citizens unreasonably (vide para 3 7 of the minutes)

The existing provision has been criticised by voluntary agencies and the media as being too wide and vague and that is why its deletion was suggested It is felt that the criticism is justified and the provision deserves to be deleted However, in case it is felt that it ought to be retained in a modified form, the following formulation is suggested for the consideration of the Committee:

"(ix) Information the disclosure of which cannot reasonably be said to be related to any public activity or in which the public has no direct interest "

Appellate Remedy (Please see para 3 9 of the minutes)

5 1 The main issues that arose were

The machinery under the Consumer Protection Act may not prove to be a feasible appellate forum in view of the serious deficiencies in its functioning at present and there are huge

arrears pending It is thus unable to cope well even with the existing workload and the apprehension is that the forums would be unable to cope with the additional workload.

- The provisions in the Consumer Protection Act for successive appeals may delay release of information It may be desirable to provide a simplified executive procedure instead of a multi-tiered appellate machinery and a person dissatisfied with the outcome of the departmental remedy could still have recourse to the writ jurisdiction of the High Courts.
- In respect of certain categories of information, such as defense and security matters, the classification done by the concerned authority should be final and privilege claimed in case writ jurisdiction is invoked

5 2 As already mentioned in the Note dated July, 25, the recommendation of the Working Group for using the machinery under the Consumer Protection Act, 1986, was primarily with a view to providing an independent and efficacious redressal forum to the citizens as close as possible to their places of residences The machinery under the Consumer Protection Act was preferred to the normal judicial machinery in view of the costs and time consuming nature of judicial procedures and in view of the arrears in Courts It was also felt that the total number of cases going in appeal to the district forums may not be too large in view of the filtering mechanism provided in the form of an internal review of departmental nature

5 3 With reference to the suggestion to provide for departmental remedy in the form of appeal to the District Magistrate in the case of district level matters, to the Chief Secretary in the case of State level matters and to Secretary (Coord.) in the case of Central Government matters, it is submitted that the Bill, vide Cl 14, already provides for a departmental remedy. A second appeal, of a departmental nature above this level, is unlikely to inspire public confidence.

5 4 In considering an appellate remedy the following aspects are of cardinal importance:

- The appellate forum should be an independent one in order that it enjoys credibility and public confidence Experience in other countries also suggests that the strength of freedom of information legislation is widely perceived as deriving from the provision of an independent appellate body to which citizens can take recourse against governmental decisions.
- It should be available as close as possible to the affected citizens. This is particularly

important for a vast country like ours, the bulk of whose citizens lack the resources to travel over great distances in search of a remedy

- Finally, since in information related matters, time is of the essence, the remedy should be efficacious not only in terms of cost but also in terms of time taken. The normal judicial processes tend to be dilatory and expensive

5.5. These were the factors that had weighed with the Working Group when it recommended the use of the machinery under the Consumer Protection Act, which is available at the district level.

5.6 The suggestion that the affected persons may have recourse only to the writ jurisdiction of the High Courts after the departmental remedy would leave the above concerns unaddressed. It would also invite criticism since persons with meagre resources would effectively be left without an independent remedy.

5.7. In case it is not considered desirable or feasible to entrust this function to the machinery under the Consumer Protection Act, there would appear to be only two alternatives, namely,

- Set up an independent machinery under the proposed Freedom of Information Act; or
- Provide for appeal to the Civil Courts.

5.8 The former alternative does not appear feasible in view of the costs involved - since, ideally, it would be necessary to create such machinery at the district level. Besides, it is not possible to make a reliable assessment of the likely workload at this stage and as such it would be premature to consider a new machinery.

5.9 The second alternative is feasible but the question of delays and difficulties arising from lengthy legal procedures and expenses for the litigants becomes important while considering it. Also, the freedom of information legislation is a specialised field and it is desirable that a degree of expertise is developed over a period of time. Considering that the machinery under the Consumer Protection Act is focussed on redressal of consumer grievances and some of its members are persons with background and experience in the fields of public affairs and administration, among others, its potential to develop expertise appears to be greater.

5.10. As far as the question of avoiding a multi-tier appellate mechanism is concerned, a solution can be found, as suggested in the Note for Committee of Secretaries dated July 25, 1997,

by providing for a direct appeal to the High Court, under the provisions of the proposed Freedom of Information Act, avoiding the hierarchy of the State Commissions and the National Commission This would have the twin advantage of making a remedy available at the district level and avoiding a multi-tiered hierarchy of appeals

5 11. The other concern expressed in this context is whether the decisions taken at very high levels of the Government, particularly those in respect of very sensitive information, should be allowed to be questioned in the District Forums It may be noted that bulk of the information deserving the highest category of classification usually resides in the Ministries/Departments of the Government In case it is felt that the appeal against the decisions, in internal review, to refuse access to such information should lie to a body higher than the District Forums, it could be provided that the appeal against a decision taken by the concerned authority, in a Ministry/Department of the Central or a State Government, would lie to the State Commission while appeal against decisions taken in the attached/subordinate or other field level offices would lie to the concerned District Forums. Further appeal, in either case, may be to the High Court.

5 12 Consistent with the above proposals it may be necessary to insert a suitable machinery provision in the proposed Freedom of Information Act as the use of the entire provisions of the Consumer Protection Act, 1986 may not be appropriate. For instance, it may be desirable to provide for only fines, and not imprisonment, by way of penalty, for enforcement of the orders of the District Forums or the State Commissions This may also necessitate the amendment of the Consumer Protection Act. Action in this regard would be taken separately in consultation with Department of Consumer Affairs and Ministry of Law.

5 13 In the light of the foregoing, it is felt that it would be appropriate to use the machinery under the Consumer Protection Act as the forum of first appeal in the modified manner indicated above

5 14 It was also suggested during the meeting that the decision in respect of certain categories of information, such as information relating to defense and security matters, should be made final and privilege claimed in Courts

It may be difficult to provide specifically that even Courts may not have access to certain

categories of records while adjudicating upon claims for privilege since the law on privilege has been laid down in a number of cases. It has generally been held in judicial decisions that the Courts are entitled to peruse the record in question where they are not satisfied with the affidavit filed on behalf of Government. Incidentally, this is also the spirit of the amendment proposed to Section 123 of the Indian Evidence Act, 1872. In these circumstances it may be preferable to let the normal law relating to evidence apply to the proposed Freedom of Information Act as well.

With this end in view, the proviso to Cl. 15 (3) of the Bill, which provides that no document or record shall be withheld from the perusal of the appellate authority, can be considered for deletion.

The question regarding adequacy, accuracy and quality of information. (Please see para 3.10 of the minutes)

6.1. It is agreed that no citizen can demand information beyond what is available in the public authorities. This point is covered in the report of the Working Group and also in Clause 10 of the Bill.

The question whether there should be an official spokesman in each office (Please see para 3.11 of the minutes).

7.1. This question arose in the context of the amendment to rule 11 of the CCS (Conduct) Rules, 1964, recommended by the Working Group. The concern expressed was that it would not be desirable to let every Government servant be the supplier of information. It may be noted that the proposed amendment speaks of providing of information, by a government servant, in the performance of his duties, in good faith (emphasis added). It would not seem to imply that a government servant would be under the obligation to supply all sorts of information. Since the duty of helping requesters to gain access to information has been cast on the Public Information Officer, it would be he who would primarily have to discharge the functions under the Act. It may not, therefore, be necessary to appoint a separate official spokesman in each office. Such functions ... be entrusted to the Public Information Officers.

8. In the light of these clarifications, it is submitted that the Committee of Secretar...

please consider endorsing the Freedom of Information Bill, 1997, subject to the amendments mentioned above The Ministry of Home Affairs may be requested to simultaneously process the amendment to the Official Secrets Act, 1923, Code of Criminal Procedure, 1973 and the Manual of Departmental Security Instructions and the Legislative Department may be requested to process the amendments to the Indian Evidence Act, 1872 and the Code of Civil Procedure, 1908.

9 It may be mentioned that, in answer to a Question in the Lok Sabha, the Prime Minister has given the assurance that the Government would be making the effort to introduce the Bill in the Winter session of the Parliament

10 This Note issues with the approval of Secretary (Personnel).

(Harinder Singh)
Joint Secretary.

New Delhi
Dated Aug. 19, 1997

174

SECRET 144

F.N. 3/4011/19S0/97 - Estt. (B).

Department of Personnel & Training
New Delhi.
****

Subject: Right to Information and Transparency - regarding.
****

Reference is invited to Cabinet Secretariat's communication No. 1/97/3/97-CA.V dated Aug. 29, 1997 containing the minutes of the meeting of the Committee of Secretaries on the above subject held on Aug. 21, 1997.

F/A 1

2. Para 2 (c) of the minutes mentions that a view was expressed, in the context of of the proposed formulation of Cl. 9(iv) read with Cl. 4(3), that it was not necessay to provide for giving reasons for each and every major policy decision, as other fora such as the Parliament, the State Legislatures and the Press etc. are available for eliciting such information and debating policy issues. Further, in the area of personnel management, while criteria for promotion, transfer etc. should be openly declared, the opinions of DPC/selection committee members and ACRs should be kept confidential as their disclosure would affect the free and frank expression of opinion. It was decided that Secretary (Personnel) and Addl. Secretary (Administrative Reforms) would work out a suitable amendment to incorporate these safeguards and the draft will be shown to the Cabinet Secretary before finalisation.

3. This note is being submitted to the Cabinet Secretary pursuant to the above decision of the Committee of Secretaries.

4. It is submitted that the intention behind the principle of *suo motu* disclosures enshrined in Cl. 4 (3) is twofold. First, there is an obligation to

175

disclose the reasons for a decision to the affected persons. Secondly, there is an obligation to share with the public at large the background and basis of decisions that may affect them - though, admittedly, what constitutes a "major" policy or decision could itself become a matter of contention.

5. Both these elements, it is felt, constitute fundamental aspects of openness and transparency. In a sense, they constitute the very soul of the Bill and ought to be retained, in a suitably modified form to make the provisions more practicable, if necessary. As for the obligation to disclose the reasons for decisions to the affected persons is concerned, it is felt that it should be the cornerstone of an open and transparent administration even in the absence of any law relating to freedom of information. Therefore, the provision in the Bill is but an acknowledgement of this necessity. It is needless to add that the Government's openness, to the utmost extent possible, must also extend to its employees as openness has widely been acknowledged as an essential ingredient of an effective human resource management policy. And the provision requiring a public authority, to share with the public the relevant information relating to major policy decisions is a reflection of the changing nature of the democratic governance in the modern context which envisages a fuller, more meaningful and effective public participation in decision making and a more direct accountability to the people. It needs to be noted that the obligation in this regard is <u>post decisional</u> and does not go so far as to require pre-decisional consultations with the community at large through publication of papers in the nature of White Papers and it can be argued that it does not fully serve the cause of decision making with a full participation of the stakeholders.

including members of the public, in decisions of major importance. That is an ideal which might be incapable of immediate attainment, but one which must be striven for in the long run.

6. The apprehension that is often expressed in this context is that even if reasons are communicated, the persons concerned may raise questions about the adequacy of the information supplied and entangle the authorities in endless controversies on this score. The answer to this is that the Freedom of Information Act is not the remedy to any perceived injury or wrong arising from a decision. It is about disclosure of information and the obligation under this Act would be discharged once the reasons for a particular decision are furnished. The affected persons would be free to seek remedies that the appropriate statutes or rules provide.

7. Finally, it is our expectation that the provisions for suo motu disclosure would substantially and effectively bring down the number of individual requests for information thus reducing the workload involved in furnishing information under the proposed legislation. Therefore, they are desirable even from an administrative point of view.

8. It is, therefore, felt that the Bill should contain the above provision in a form that would retain their essence while steering clear of avoidable controversy. The following revised formulation for Cl. 4 (3) is accordingly submitted for consideration.

> *"4(3) It shall also be the duty of the concerned officers of a public authority to give reasons for decision -. whether administrative or adjudicative - to those affected and to disclose the relevant*

177

factual details of important decisions or policies that affect the general public, when such decisions or policies are announced." (The amended portion underlined).

8. Further, to make it absolutely clear that the above obligation does not extend to furnishing information that is covered by any of the exemptions contained in Clause 9, the main Clause 9 may be rephrased as follows:

> *"9. Exemption from disclosure of Information: Notwithstanding anything contained in this Act, information covered by any of the following categories shall be exempted from disclosure under the provisions of this Act:"* (the amended portion underlined).

9. So far as personnel management is concerned, the relevant exemption clause is Cl. 9 (vii) of the Bill which exempts from disclosure information whose disclosure would prejudicially affect the management of services under a public authority. Things like ACRs, DPC assessment papers etc. would get covered under this exemption. This clause thus adequately covers the concerns expressed in this regard. If necessary for the sake of clarity, it can be slightly modified to specifically cover personnel matters. It may read:

> *"(vii) information the disclosure of which will prejudicially affect the effective management of personnel under, and operations of, public authorities;"* (the amended portion underlined).

10. In this Department's note of even number dated Aug. 19, 1997, the following formulation for Cl. 9 (iv) was suggested:

"(iv) information in the nature of advice, opinions, recommendations or minutes for the purposes of the deliberative process in a public authority, contained in intra-departmental or inter-departmental papers, including information subject to legal professional privilege.

Provided that this exemption shall not apply to reasons required to be given for administrative or adjudicative decision required to be given under Section 4 (3).

Provided further that this exemption shall not apply to reports of scientific or technical experts, including their opinions, on scientific and technical matters or to information that is factual."

11. In the light of the foregoing discussion, it is for consideration whether the first proviso in the above formulation may be deleted and the formulation approved accordingly.

12. The Cabinet Secretary may kindly consider the above proposals. A separate Note covering the above, and the other issues arising from the discussions during the meeting held on Aug. 21,1997 is being circulated for the consideration of the Committee of Secretaries for the meeting to be held on Sept. 17, 1997.

o/c (ARVIND VARMA)
Secretary (Personnel)
September 12 , 1997

Cabinet Secretary

factual details of important decisions or policies that affect the general public, when such decisions or policies are announced." (The amended portion underlined).

6. Further, to make it absolutely clear that the above obligation does not extend to furnishing information that is covered by any of the exemptions contained in Clause 9, the main Clause 9 may be rephrased as follows:

> *"9. Exemption from disclosure of Information: Notwithstanding anything contained in this Act, information covered by any of the following categories shall be exempted from disclosure under the provisions of this Act:"* (the amended portion underlined).

9. So far as personnel management is concerned, the relevant exemption clause is Cl. 9 (vii) of the Bill which exempts from disclosure information whose disclosure would prejudicially affect the management of services under a public authority. Things like ACRs, DPC assessment papers etc. would get covered under this exemption. This clause thus adequately covers the concerns expressed in this regard. If necessary for the sake of clarity, it can be slightly modified to specifically cover personnel matters. It may read:

> *"(vii) information the disclosure of which will prejudicially affect the effective management of personnel under, and operations of, public authorities;"* (the amended portion underlined).

10. In this Department's note of even number dated Aug. 19, 1997, the following formulation for Cl. 9 (iv) was suggested:

Secret/Most Immediate

Department of Personnel & Training.

New Delhi, dated the 12th September, 1997

Subject: Right to Information and Transparency - regarding

*****

Reference is invited to Cabinet Secretariat's communication No 1/97/3/97 - CA V dated 9th September, 1997 on the above subject intimating that the next meeting of the Committee of Secretaries , on the above subject, will be held at 6 00 P M on the 17th September, 1997 (Wednesday) in the Committee Room of the Cabinet Secretariat, Rashtrapati Bhawan, New Delhi

2 The background paper for the meeting is enclosed

(Harinder Singh)
Joint Secretary

To

1. Shri K. Padmanabhaiah, Home Secretary.
2. Dr. V.K. Agarwal, Secretary, Department of Legal Affairs
3. Shri N.N Mookerjee, Secretary, Department of Consumer Affairs
4. Dr. N C Saxena, Secretary, Department of Rural Development.
5. Shri M Ravindra, Chairman, Railway Board
6. Shri Ajit Kumar, Defence Secretary.
7. Shri C.R. Kamalnathan, Secretary, M/o Information & Broadcasting
8. Shri A V Gokak, Secretary, Department of Telecommunications
9. Shri C. Ramachandran, Secretary, Department of Expenditure
10. Shri R U.S Prasad, Secretary, Department of Post
11. Shri P.R Dasgupta, Secretary, Department of Education

181

Secret

Copy No.

F.N. 34011/1(S)/97-Estt.(B)
Department of Personnel and Training.
New Delhi.

Dated the 12th ~~August~~ September, 1997.

Subject: Right to Information and Transparency - regarding

Reference is invited to the Cabinet Secretariat's communication No. 1/97/3/97-CA V dated 29th August, 1997 containing the minutes of the meeting of the Committee of Secretaries, held on Aug 21, 1997, on this Department's note of even number dated Aug 19, 1997 on the above subject and their notice bearing the same number dated 9th September, 1997 intimating that the next meeting of the Committee of Secretaries would be held on the 17th September, 1997 at 6 00 P M. in the Committee Room of the Cabinet Secretariat, Rashtrapati Bhavan, New Delhi

2 Comments on the issues discussed and observations of the COS mentioned in the minutes are given below

Application of the proposed Act to PSUs.

Observation of the COS:

3 1 Notwithstanding the provisions of Clauses 9 (vi) and 9 (viii), Public Sector Undertakings, other than public utilities working in a monopolistic environment, should be excluded from the legislation so that they are not placed at a disadvantage vis-vis their competitors in the private sector (para 2 (a) of the minutes)

182

Comment

3 2 It might be mentioned in this context that one of the most prominent points of criticism voiced in various public forum has been the exclusion of private sector from the purview of the legislation If even public sector undertakings, albeit only of a certain kind, are excluded from the scope of the legislation, there is likely to be considerable criticism

3 3 If such bodies are to be excluded from the legislation, it can be done either by having a separate provision in the Bill making it inapplicable to identified bodies or by suitably amending the definition of "public authority" vide Clause 2 (g) of the Bill Both the alternatives would appear to have their own problems Considering the large number of PSUs in the Central as well as State sectors, specific identification of bodies would be an extremely time consuming process, as it would involve extensive consultations with the State governments and a large number of Ministries/Departments of the Central Government Further, a provision empowering the government to exclude certain bodies from the purview of the legislation would be apt to be regarded as vesting excessive discretion with the government Even the decisions of the government in individual cases might themselves become the subject matter of controversy. Therefore, this does not appear to be a feasible option

3 4 On the other hand, it appears difficult to arrive at definition of "public authority" which will draw a clear line of demarcation between organisations in the public sector which are primarily commercial entities operating in a commercial environment and others One way would appear to be to exclude companies registered under the Companies Act It is, however, not clear whether this would ensure the distinction that is sought to be made since there would be a large number of statutory organisations which might be functioning in competitive markets

3 5 Thus, whichever way one approaches the issue, there are serious difficulties in providing for selective application of the proposed Act to PSUs

3 6 As a matter of general principle, PSUs should fall within the ambit of the legislation in view of their public ownership At the same time care has to be taken to ensure competitive neutrality in regard to statutory obligations In view of the difficulties in arriving at a satisfactory classification of

PSUs, the only possible option would appear to be to provide adequate safeguards in the legislation It is felt that the provisions of Clauses 9 (vi) and (viii) provide such safeguards In order to make the safeguards even more clear, the main provision of Cl 9 (vi) can be suitably rephrased to exempt from disclosure information whose disclosure would impair the competitive position of a public authority as indicated below

> *"(vi) information the disclosure of which would prejudicially affect the Government's ability to manage the economy; or would prejudicially affect the legitimate economic and commercial interests or the competitive position of a public authority; or would cause unfair gain or loss to any individual or organisation "* (amendment underlined)

Exemption for information under Clause 9 (ii) of the Bill.

Observation of the COS:

4 1 The Bill should specifically provide that the Secretary of the Ministry should finally decide on the question of disclosure of information which could affect Centre-State relations with reference to Cl 9(ii) of the Bill (para 2 (c) of the minutes)

Comment:

4 2 It may be difficult to make a specific provision to this effect solely with reference to Cl 9 (ii) Such a provision would also not accord well with general scheme of the Bill It is felt that this aspect can be taken care of by way of internal delegation which can be reflected in the administrative instructions

The obligation under Clause 4 (3) read with Cl. 9 (iv) and 9 (vii) of the Bill.

Observation of the COS:

5 1 In the context of Cl 9 (iv) read with Cl 4 (3), it should not be necessary to provide for

reasons for each and every major policy decision as other fora such as the Parliament, the State legislatures and the Press etc are available for eliciting information and debating policy issues Similarly, in the area of personnel management, while criteria for promotion, transfer etc should be openly declared, the opinions of DPC selection committee members and ACRs should be kept confidential as their disclosure would affect the free and frank expression of views (para 2(e) of the minutes)

Comment.

5 2 It is submitted that the intention behind the principle of *suo motu* disclosures enshrined in Cl 4 (3) is twofold First, there is an obligation to disclose the reasons for a decision to the affected persons Secondly, there is an obligation to share with the public at large the background and basis of decisions that may affect them - though, admittedly, what constitutes a "major" policy or decision could itself become a matter of contention

5 3 Both these elements, it is felt, constitute fundamental aspects of openness and transparency. In a sense, they constitute the very soul of the Bill and ought to be retained, in a suitably modified form to make the provisions more practicable, if necessary As far the obligation to disclose the reasons for decisions to the affected persons is concerned, it is felt that it should be the cornerstone of an open and transparent administration even in the absence of any law relating to freedom of information Therefore, the provision in the Bill is but an acknowledgement of this necessity It is needless to add that the Government's openness, to the utmost extent possible, must also extend to its employees as openness has been widely been recognised as an essential ingredient of an effective human resource management policy And the provision requiring a public authorityt to share with the public the relevant information relating to major policy decisions, is a reflection of the changing nature of the democratic governance in the modern context which envisages a fuller, more meaningful and effective public participation in decision making and a more direct accountability to the people. It needs to be noted that the obligation in this regard is post decisional and does not go so far as to require pre-decisional consultations with the community at large through publication of papers in the nature of White Papers and it can be argued that it does not fully serve the cause of decision making

with a full participation of the stakeholders, including members of the public, in decisions of major importance That is an ideal which might be incapable of immediate attainment, but one which must be striven for in the long run

5 4 The apprehension that is often expressed in this context is that even if reasons are communicated, the persons concerned may raise questions about the adequacy of the information supplied and entangle the authorities in endless controversies on this score The answer to this is that the Freedom of Information Act is not the remedy to any perceived injury or wrong arising from a decision It is about disclosure of information and the obligation under this Act would be discharged once the reasons for a particular decision are furnished The affected persons would be free to seek remedies that the appropriate statutes or rules provide

5 5 Finally, it is our expectation that the provisions for suo motu disclosure would substantially and effectively bring down the number of individual requests for information thus reducing the workload involved in furnishing information under the proposed legislation Therefore, they are desirable even from an administrative point of view

5 6 It is, therefore, felt that the Bill should contain the above provisions in a form that would retain their essence while steering clear of avoidable controversy The following revised formulation for Cl 4 (3) is accordingly submitted for consideration

> *"4(3) It shall also be the duty of the concerned officers of a public authority to give reasons for decision - whether administrative or adjudicative - to those affected and to disclose the relevant factual details of important decisions or policies that affect the general public, when such decisions or policies are announced."* (The amended portion underlined)

5 7 Further, to make it absolutely clear that the above obligation does not extend to furnishing information that is covered by any of the exemptions contained in Clause 9, the main Clause 9 may be rephrased as follows

9 Exemption from disclosure of information

Notwithstanding anything contained in this Act, information covered by any of the following categories shall be exempted from disclosure under the provisions of this Act (the amended portion underlined)

5 8 So far as personnel management is concerned, the relevant exemption clause is Cl 9 (vii) of the Bill which exempts from disclosure information whose disclosure would prejudicially affect the management of services under a public authority Things like ACRs, DPC assessment papers etc. would get covered under this exemption This clause thus adequately covers the concerns expressed in this regard If necessary for the sake of clarity, it can be slightly modified to specifically cover personnel matters It may read

"(vii) information the disclosure of which will prejudicially affect the effective management of personnel under, and operations of, public authorities;" (the amended portion underlined)

5.9. In this Department's note of even number dated Aug 19, 1997, the following formulation for Cl 9 (iv) was suggested

"(iv) information in the nature of advice, opinions, recommendations or minutes for the purposes of the deliberative processes in a public authority, contained in intra-departmental or inter-departmental papers, including information subject to legal professional privilege.

Provided that this exemption shall not apply to reasons required to be given for administrative or adjudicative decision required to be given under Section 4 (3).

Provided further that this exemption shall not apply to reports of scientific or technical experts, including their opinions, on scientific and technical matters or to information that is factual."

5 10 In the light of the foregoing discussion, it is for consideration whether the first proviso in the

above formulation may be deleted and the formulation approved accordingly

Appellate Forum

Observation of the COS:

6.1 The appeal against the decision of the Head of Department, in internal review, should not lie to the Consumer Forums but to the District Magistrates in the case of district level matters and to the Chief Secretary/Secretary, Public Grievances in State Level matters and to Secretary (Coordination) in the case of Central Government level matters. Beyond this, it would be open to a dissatisfied person to invoke the writ jurisdiction of the High Courts or the Supreme Court (para 2 (g) of the minutes)

Comment:

6.2 At the outset it is pointed out that the stage of appeal, in the scheme the Bill, is the third stage - the first one being the decision of the Public Information Officer and the second the departmental remedy in the form of a review application to the concerned Head of Department or some other prescribed authority. Thus the remedy suggested above would virtually be a second appeal of a purely departmental character.

6.3 As already pointed out in this Department's previous note dated Aug.19, 1997, a critical element that needs to be considered in this context is credibility. A purely departmental machinery is unlikely to enjoy the requisite degree of credibility in the eyes of the public and, therefore, an independent appellate machinery would appear to be a fundamental requirement of the scheme of the Bill. The other vital aspect, having regard to the conditions of life of the majority of our citizens, particularly in the rural areas, is the need for an inexpensive redressal and easy accessibility to the forum that provides the redressal. Even though the option of invoking the writ jurisdiction of High Courts would still remain, it would hardly be an efficacious remedy for the ordinary citizen who

would lack the resources to avail of it Effectively, therefore, it would only be available to individuals or organisations in possession of adequate resources A provision of the nature suggested would, therefore, be apt to regarded as substantially diluting the effectiveness and credibility of the legislation

6 4 It is also submitted that the administrative arrangement as suggested may pose a number of practical difficulties In a number of cases, the Heads of Departments, both in the Central and State Government offices would be senior in rank to District Magistrates In such a situation it would clearly be undesirable to make their decisions subject to appeal to the District Magistrates In case it is finally decided to have only departmental remedy even for appeal, it would be much better to provide that the appeal shall lie to the Central Government or the State Government, as the case may be, or to such other authority as may be prescribed It would then be open to the concerned government to specify the authority that shall act as the appellate authority

6 5 In the light of the discussion above, it is submitted that in case it is felt that it would neither be feasible to assign this task to the District Consumer Forums or State Commissions, because of their diverse inadequacies, nor would it be feasible to create a separate machinery, in the form of, say, a Tribunal, the possibility of vesting the appellate jurisdiction in the Civil Courts will have to be seriously considered It is true that the judiciary today is labouring under the burden of enormous arrears However, this problem is engaging the Government's attention at the highest level as reflected in the Conference of Law Ministers held in June - July this year It may be possible to prescribe summary procedures and time limits for the disputes under the proposed Freedom of Information Act and also to set up special benches, where necessary, by extending the required financial support

6 6 In order to ensure that the appeals are dealt with at a sufficiently high level in the judiciary, this function could be assigned to District Judges

6 7 The Committee of Secretaries may, therefore, please reconsider this issue.

Sections 123 and 124 of the Indian Evidence Act.

Observation of the COS:

7 1 The proposed revision of S 123 and 124 of the Indian Evidence Act should be reviewed to prevent opening of floodgates for production of unpublished official records in the courts and, particularly in respect of security matters covered by Cl 9 (1), the law should provide that no Courts below the High Courts shall summon record in respect of which privilege is claimed on grounds covered by Cl 9 (1) (para 2 (h) of the minutes)

Comment:

7 2 It is submitted that it would be legally difficult to make a provision of this nature since the law on privileges has been laid down in a number of cases and the trend of the judicial decisions has been that the Courts are entitled to peruse the documents in question, where they are not satisfied with the affidavits filed, to decide upon the claim of privileges Besides, the amendment recommended for the Code of Civil Procedure and the Code of Criminal Procedure is specifically for providing an appeal direct to the High Court against a decision of a subordinate Court on the question of privilege There would thus be adequate safeguard to secure the interests of the Government In this Department's note dated Aug 19, 1997, it was recommended that the proviso below Cl 15 (3), which stipulates that no document or record should be withheld from the perusal of the appellate authority, should be deleted With its deletion as recommended, it would be ensured that the normal provisions of the Evidence Act would come into play

7 3 In any case, the Indian Evidence Act falls within the purview of the Legislative Department who have already been requested to process the recommendations of the Working Group in this regard They may be requested to consider the suggestion while finalising their proposals in this regard

Certain other issues.

8 1 Apart from the above issues certain other suggestions have also emerged from prominent persons in public life and the legal fraternity Some of these are mentioned below

Nomenclature

8 2 It has been suggested that the Act should be entitled "Right to Information Act" and the provisions of Cl 3 should refer to the right to information rather than "freedom of information" The Working Group had preferred the present title for the Bill since, according to them, the right to information had already received judicial recognition as a facet of the fundamental right to free speech and expression and the purpose in enacting the Freedom of Information Act was primarily to provide a statutory framework for that right They, therefore, felt that the expression "freedom of information" more fully reflected the spirit and intent in the proposed legislation

8 3 It might be mentioned that the legislation already passed by Tamil Nadu and Goa refers to right to information Similarly, in the discussions in public media and the Parliament also references are usually made to the right to information

8 4 The Committee of Secretaries may like to take a view on this

Special Provisions for Custodial Institutions :

8 5 The Right to Information Bill prepared by the Press Council has a specific provision in respect of custodial establishments, including jails, police lock-ups, mental asylums, women's homes, beggars' homes etc , which requires such establishments to appoint visitors committees comprising independent citizens and to give such committees full access to the establishments and their records at all times of day and night There is no similar provision the Freedom of Information Bill proposed by the Working Group

8 6 The view has been expressed by many, including Justice Sawant, that a similar provision needs to be specifically incorporated in the proposed Freedom of Information Act in view of continuing complaints of human rights abuses in such establishments This suggestion has been

reiterated by a number of speakers in a recent seminar held at Hyderabad which attended by a number of luminaries, including Justice Sawant

8.7 This issue was mentioned in this Department's Note dated July 25, 1997 for the meeting of the Committee of Secretaries held on July 29, 1997. However, no final view in the matter was taken

8.8 The Committee of Secretaries may please consider this suggestion too

A separate time limit for disclosure of information relating to life or liberty

8.9 The view has been expressed the time of 30 days for compliance with requests for information is too long where it relates to an individual's life or liberty. The Press Council's Bill lays down the time limit of 48 hours for release of such information. The Committee of Secretaries may like to consider if a similar provision may be made in the Freedom of Information Bill, 1997

The Freedom of Information Councils to submit annual reports.

8.10 It has been suggested that the National and State Councils envisaged under Cl. 19 and 21 should be required to submit annual reports to be laid on the Table the Parliament and the State Legislatures respectively along with a report by the Government on the action taken on their recommendations. The suggestion may be considered for acceptance

Proceedings of the Parliament and the State Legislatures.

8.11 The definition of "public authority" covers administrative offices of the Parliament and the State legislatures. A view has been expressed that the Act should cover the information relating to proceedings of the Parliament and the State legislatures, which are in any case open to public and the definition of public authority as proposed in the Bill might result in denial of such information. The suggestion that has been made in this context is that the expression "public authority" should refer to Parliament and the State Legislatures and not merely to their administrative offices. The Committee of Secretaries may like to take a view on this aspect also

9 A number of other suggestions have also been received from various sources which relate mainly to the drafting aspects This would be taken into account at the stage of vetting of the Bill by the Legislative Department

10 This Note issues with the approval of Secretary (Personnel)

(Harinder Singh)
Joint Secretary

New Delhi
Dated the 12th August, 1997

(1)

SECRET
CABINET SECRETARIAT

DOC NO.CD(CA.V)-97 1997

MINUTES OF THE MEETING OF COMMITTEE OF SECRETARIES

Venue COMMITTEE ROOM. CABINET SECRETARIAT. RASHTRAPATI BHAVAN

Date of Meeting: 21.8.1997

Time of Meeting: 3.30 P.M.

PRESENT

Shri T.S.R. Subramanian, Cabinet Secretary.
Shri S.P. Jakhanwal, Secretary(Coord.), Cabinet Secretariat.
Shri Arvind Varma, Secretary, Deptt. of Personnel & Training.
Shri N.N. Mookerjee, Secretary, Deptt. of Consumer Affairs
Dr. N.C. Saxena, Secretary, Deptt. of Rural Development.
Shri Ajit Kumar, Defence Secretary.
Shri A.V. Gokak, Secretary, Deptt. of Telecommunications
Shri P.R. Dasgupta, Secretary, Deptt. of Education
Shri R.C.S. Prasad, Secretary, Deptt. of Posts
Shri V.S. Mathur, Spl. Secretary, Ministry of Home Affairs
Shri V.K. Agarwal, Member(Staff), Railway Board.
Dr. N. Seshagiri, DG, NIC, Planning Commission.
Shri Pawan Chopra, Addl. Secretary, Cabinet Secretariat
Dr. P.S.A. Sundaram, Addl. Secretary, Deptt. of A.R. & P.G.
Shri V.K. Majotra, Addl. Secretary, Min. of Information & Broadcasting
Shri Bijoy Chatterjee, Joint Secretary, Cabinet Secretariat.
Shri Mano Ranjan, Joint Secretary, Cabinet Secretariat.
Shri K.N. Chaturvedi, JS & Legal Adviser, Legislative Deptt.
Shri Ajay Sinha, Joint Secretary, Deptt. of Legal Affairs.
Shri D. Swarup, Joint Secretary, Deptt. of Expenditure.
Shri Y.G. Parande, Director, DOPT.

SECRET

SK. 26 COPIES

194

SECRET

- 2 -

Subject: Right to information and Transparency - regarding.

.....

The COS in its meeting held on 29th July, 1997 had deliberated upon the report submitted by the Working Group on Right to Information and Promotion of Open and Transparent Government and the proposed Bill on Freedom of Information. On the basis of the observations made in that meeting, D/o Personnel & Training had since further examined the matter and circulated their comments in a background note dated 19th August, 1997 which was considered in the meeting.

2. During the course of the discussions the following observations were made -

(a) It was felt that notwithstanding the provisions in Clauses 9 (vi) and (viii), public sector undertakings, other than public utilities working in a monopolistic environment should be excluded from the purview of the legislation so that they are not placed at a disadvantage vis-à-vis their competitors in the private sector. It was agreed that Secretary (Personnel) and Additional Secretary, D/o Administrative Reforms and Public Grievances will formulate a suitable amendment to this effect.

(b) The proposed illustrative list of the types of information exempted from disclosure under Clause 9(i) of the Bill was found to be in order

(c) On the question of exemption from disclosure of information which could prejudicially affect Centre-State relations [ref. clause 9 (ii)], it was felt that the Bill should provide that the Secretary of the

SECRET

SK. 26 COPIES

195

concerned Ministry/Department should finally decide on the classification of such information.

(d) The observations made by DOPT regarding clause 9(iii) were noted.

(e) In the context of the proposed formulation of clause 9(iv) read with clause 4(3), a point was made that it was not necessary to provide for giving reasons for each and every major policy decision, as other fora such as Parliament, State legislatures, local bodies and the press are available for eliciting such information and debating policy issues. Moreover, in the area of personnel management, it was felt that the Govt. should be obliged to inform about the criteria followed in promotions, transfers etc. However, opinion of DPC members, selection committee members should remain privileged as disclousure would adversely affect free and frank experssion of opinion. This also applied to ACRs. It was agreed that Secretary, Personnel and Additional Secretary, Administrative Reforms and Public Grievances will workout a suitable amendment to incorporate these safeguards. A draft of the amendment will also be shown to the Cabinet Secretary before finalisation.

(f) It was agreed that clause 9(ix) could be deleted.

(g) On the question of the appellate remedy, a view was expressed that while the first appeal could lie with the Head of the Department, in case a requester of information is still dissatisfied, it would be desirable that his second appeal is considered by a Consumer Court as proposed in the Bill and not by another administrative authority. On this, however, the COS reiterated the view expressed in the previous meeting that an appeal against the decision of the Head of the Department should lie before a District Magistrate in the case of district-level matters and before a Chief Secretary/Secretary, Public Grievances in the case of

state level matters. In the case of Central Govt. related matters, the second appeal could lie before the Secretary, Coordination. If a person was still dissatisfied the remedies under writ jurisdiction of High Courts, Supreme Court were availble.

(h) A view was expressed that the proposed revision in Sections 123 and 124 of the Indian Evidence Act, 1872 should be reviewed so that it does not open the flood-gates for production of unpublished official records in the courts, particularly in respect of security matters, where the law should provide that no courts below a High Court should summon records on which privilege is duly claimed on grounds listed at 9(i).

3. It was agreed that discussions on the Bill would be continued in another meeting of the COS to be fixed after 10 days.

****

SK. 26 COPIES SECRET

197

T.K.A. NAIR

सचिव
प्रधान मंत्री कार्यालय

SECRETARY
PRIME MINISTER'S OFFICE

September 2, 1997

Dear [illegible],

During the course of his intervention in the discussions in the two Houses of Parliament at the Special Golden Jubilee Session, the Prime Minister made the following statements :

i) Recommendations of the Standing Committee on the Lok Pal Bill, introduced in the Lok Sabha on 13th September, 1996, are under consideration of the Government. A revised Bill taking into account the recommendations of the Committee will be introduced in the forthcoming Session of Parliament.

ii) As part of the drive against corruption, a special effort has been made to speed up the issue of sanction for prosecution in respect of public servants involved in corruption cases. The Government of India has brought down the number of cases from 141 at the end of March, 1997 to 79 at present. All Secretaries to the Government of India have been given strict instructions to clear the backlog within fifteen days and to ensure that all fresh cases are decided in a month's time.

iii) There has been concern about the quality of investigation and follow-up of corruption cases in the Courts. Measures to improve the

प्रधान मंत्री कार्यालय, साउथ ब्लाक, नई दिल्ली-110011 फोन +91 (11) 3015944 फैक्स +91 (11) 3016857 & 3019545
Prime Minister's Office, South Block, New Delhi-110 011 Tel. +91 (11) 3015944 Fax No. +91 (11) 3016857 & 3019545

present state of affairs including the setting up of an institutional mechanism in the Government is also being finalised. Government is taking steps to review and streamline the existing vigilance procedures in consultation with the State Governments so as to ensure that corruption cases are disposed expeditiously and in a time bound manner. A Conference of the Heads of Anti Corruption Bureaux of States and the Chief Vigilance Officers of various Public Sector Undertakings has been fixed for 4th and 5th September, 1997. This will be followed-up by a Conference of the Chief Ministers.

iv) Government had constituted a Working Group under the chairmanship of Shri HD Shourie on Right to Information. We intend introducing the Right to Information Bill in the next Session of Parliament.

2. May I request you to take immediate follow-up action to ensure timely implementation of these announcements and keep us informed about the progress.

With regards,

Yours sincerely,

(T.K.A. Nair)

Shri Arvind Varma
Secretary
Department of Personnel
New Delhi

1999

F N 34011/1(s)'97 - Estt (B)
DEPARTMENT OF PERSONNEL AND TRAINING
ESTABLISHMENT DIVISION
*****

Subject : Right to Information - regarding

Addl Secretary (S&V) may kindly refer to his d.o. letter No 371/45/97 - AVD III dated Sept. 10, 1997 regarding submission of fortnightly reports to the Prime Minister's Office

2. This Division is concerned with the processing of the recommendations of the Working Group on Right to Information and Promotion of Open and Transparent Government, which had, inter alia, given a draft Freedom of Information Bill, 1997 for the consideration of the Govt.

3. The Report of the Working Group was circulated to all the State/U.T Governments and all the Ministries/Deptt.s of the Central Government. Comments have since been received from most of the Ministries/Deptts. of the Central Government and a few of the State/U.T. Governments.

4. The Bill was also placed before the Committee of Secretaries which has met twice, on July 29 and August 21, 1997, to discuss it. The next meeting of the Committee of Secretaries on the subject is scheduled for Sept. 17, 1997.

5. Further action to process the draft Bill for the Cabinet's approval would be taken after the decision of Committee of Secretaries is available.

(Harinder Singh)
Joint Secretary (E)
September 16, 1997

AS(S&V)

200

आर० के० उप्पल
अपर सचिव
R. K. Uppal
Under Secretary

भारतीय प्रेस परिषद्
PRESS COUNCIL OF INDIA
फरीदकोट हाउस (भू-तल), कोपरनिकस मार्ग, नई दिल्ली - 110001
Faridkot House (Gr. Floor), Copernicus Marg, New Delhi-110001
Phone 3381661
Fax 011-3386003

Dated July 28,1997

Dr. P.S.A.Sundram,
Additional Secretary (AR&T).
Department of Administrative
Reforms & Public Grievances,
Government of India,
Sardar Patel Bhavan,
Sansad Marg,
New Delhi

Sir,

I am directed by Hon'ble Justice P.D.Sawant, Chairman, Press Council of India to forward to you two copies of the note of The Central Working Group Bill on Right to Information.

Yours faithfully,

R Uppal

(R.K.UPPAL)
Under Secretary

201

The Central Working Group Bill on Right to Information

by Justice P.B.Sawant *

A perusal of the draft Bill prepared by the Working Group appointed by the Central Government on Right to Information and promotion of open and transparent government shows that while it has made some important improvements in the model draft prepared by the Press Council of India, it reneges on some vital aspects of information which ought to be available to the people, and cheaply and quickly, if the access to information is to serve its purpose which is to safeguard the interests of the society.

First the improved features. The Bill brings within its purview, the administrative offices of all Courts. There is no reference to them in the bill prepared by the Press Council of India since it has taken the definition of the State as given in Article 12 of the Constitution for the purposes of the Part III thereof in which Article 19(1)(a) occurs. The Bill also provides for National and State Councils For Freedom of Information the object of which is to promote freedom of information, and for the purpose, to review the operation of the Act, the administrative arrangements and procedures to secure the access to information, to undertake research and documentation of the management of information with a view to improve them, and to advise government

on all matters related to the freedom of information. These are welcome modifications, since they enlarge the area of the access to information and seek to review and improve the mechanism to secure it.

At the same time, the Bill has sought to deny access to the major sources of information affecting the interests of the society, to prolong the remedy against the refusal of information, and to avoid imposing penalty for delayed and wrong supply of information.

It has confined the access to information only to administrative offices of the parliament and state legislature and excluded the access to their proceedings. The Press Council of India bill specifically provides that all information which may be disclosed to the legislature shall be made available to the citizen. Not only there is no such provision in the present bill, but by shutting out an access to their proceedings, it is made difficult to know which information was disclosed to them. If the intent of the proposed Act is not to exclude the proceedings of the legislatures, the words "parliament and State Legislatures" in the definition of "public authority" may be shifted and inserted in between "Territories" and "local bodies".

The second and the most important source of information which is sought to be blocked, is the information from the public and private bodies, including companies, corporations, trusts, firms, societies and co-operative societies unless they are substantially funded or controlled by the government. This distinction between bodies substantially controlled and funded by the government and others, is unintelligible and irrelevant for the access to information. If the object of the Act is to give access to all institutions whose activities affect the interests and welfare of the people, it is immaterial whether the interests are affected by the private or public institutions substantially or otherwise controlled and funded by the government. At present, an equally if not more important role in economy and economic development, social, cultural, educational, environmental and communicational fields is played by the private bodies. With liberalisation, free market economy and globalisation, the private bodies are bound to play increasingly important role correspondingly reducing the role of the government and public authorities. Their activities will increasingly affect the interests of the people in a major way.

From pre-page:

authority" would appear to be the simpler one from the administrative point of view. The difficulty, however, lies in arriving at a definition that excludes only bodies which are primarily engaged in commercial activities in a competitive environment and not others. A major part of this difficulty arises from the possibility that, in many cases, the operations of such bodies may straddle both competitive and monopolistic environments; while some of the operations might be undertaken in a monopolistic environment, in respect of other operations, a PSU or a similar body might be operating in a commercially competitive environment. Presumably, most of the PSUs which are in the commercial field would be companies registered under the Companies Act, and the relevant clause, i.e. Cl. 2 (g) (i), specifying the definition of "public authority" could be amended to specifically exclude companies registered under the Companies Act along the following lines:

> *" (g) "public authority" includes:*
> *(i) the Government of India, the Government of each of the States/Union Territories, local bodies, statutory bodies and other bodies owned, substantially funded or controlled by the Government of India or the Government of a State/Union Territory and the administrative offices of the Supreme Court, High Courts, subordinate Courts and of Parliament and State Legislatures. but does not include a company registered under the Companies Act."*

Consequently, Cl. 2 (g) (ii) will also have to be suitably amended to remove references to a company.

11. It is, however, far from certain whether the above definition would ensure exclusion of all PSUs which operate in a commercial, competitive environment since there may be

United Nations Development Programme
संयुक्त राष्ट्र विकास कार्यक्रम

IND/95/006(59)X

24 August 1997

Dear Mr. Arora,

IND/95/006 : Capacity Building for Civil Services, Administrative Reforms and Training in the Centre and the States

Please refer to DEA's letter No.F.6/3/94-UT dated 13 August 1997 clearing the candidature of Dr. Madhav Godbole for appointment as consultant on Operationalising the Freedom of Information Act under the above project.

Since DEA has cleared the candidature of Dr. Godbole, please go ahead with his appointment and let us know the duration of his consultancy assignment indicating the starting and ending dates.

With best regards.

Yours sincerely,

Tilak R. Meehan
Assistant Resident Representative
Governance and Institutional Development

Mr. A.K. Arora
Joint Secretary
Department of Personnel & Training
Block 11, 2nd Floor
CGO Complex
Lodi Road
New Delhi 110 003

Copy issued to [illegible] (Tel. No. 573213)

A copy of DEA's letter dated 13.8.97 has been sent separately to DOPT. May kindly see for suitable action in the matter.

27/8/97
(T.R. Verma)

DOPT (Sh. P.G. Parandekar, Director)
North Block, New Delhi

Estate, Post Box No [illegible], New Delhi - 110 003, India
Telephone: 4629477 Telex: 31661UNDP IN Fax: 91-11-4627612 E-Mail: [illegible] Cable: UNDEVPRO New Delhi

207

SECRET

COPY NO. 1

CABINET SECRETARIAT

DOC. NO.CD(CA.V)-105/1997

MINUTES OF THE MEETING TAKEN BY CABINET SECRETARY

Venue: COMMITTEE ROOM, CABINET SECRETARIAT, RASHTRAPATI BHAVAN

Date of Meeting: 23.9.1997

Time of Meeting: 12.00 Noon

PRESENT

Shri T.S.R. Subramanian, Cabinet Secretary.
Shri S.P. Jakhanwal, Secretary(C), Cabinet Secretariat.
Shri Arvind Varma, Secretary, Deptt. of Personnel & Training.
Shri Ajit Kumar, Defence Secretary.
Shri N.N. Mookerjee, Secretary, Deptt. of Consumer Affairs.
Shri C.R. Kamalanathan, Secretary, Min. of Information & Broadcasting.
Shri A.V. Gokak, Secretary, Deptt. of Telecommunication.
Shri K.L. Mohanpuria, Secretary, Legislative Department.
Shri Shanti Narain, Member(Traffic), Railway Board.
Shri S. Narendra, Principal Information Officer.
Shri V.S. Mathur, Special Secretary, Ministry of Home Affairs.
Dr. N. Seshagiri, DG, NIC, Planning Commission.
Shri Pawan Chopra, Addl. Secretary, Cabinet Secretariat.
Shri M.V. Iyer, Addl. Secretary, Deptt. of Expenditure.
Dr. P.S.A. Sundaram, Addl. Secretary, Department of AR & PG.
Shri V.S. Saxena, Sr.DDG(Vig.), Department of Post.
Shri Mano Ranjan, Joint Secretary, Cabinet Secretariat.
Shri Ajay Sinha, Joint Secretary & L.A., Deptt. of Legal Affairs.
Shri Rajeev Kher, Director, Cabinet Secretariat.
Shri Y.G. Parande, Director, Deptt. of Personnel & Training.

SECRET

SK. 20 COPIES

..2/..

208

Subject: Right to Information and Transparency - regarding.

The Committee of Secretaries (COS) had, in its meeting held on August 21, 1997, discussed this subject and the minutes were circulated on August 29, 1997. The Deptt. of Personnel & Training (DOP&T) has, thereafter, circulated a note dated September 12, 1997, in compliance of these minutes. The COS discussed this note of DOP&T and made the following observations.

2. The main issue is to institute a mechanism of deciding whether a particular information can be given to a questioner or not. While most of the information in public offices is of a nature that can be given out, there is some information based on classified documents which has to be withheld in the public interest. After detailed discussion, it was agreed that the process of classifying a document is the crux of the matter and therefore it has to be done wholly within the Governmental hierarchy.

3. In this context, the following features could be incorporated in the proposed Bill and its associated rules/instructions:-

a) There will be strict parameters for classifying a document.

b) This exercise will be carried out at the top levels in a public office, which need to be identified, for example, the Collector in a district, Departmental Secretary in the State Secretariat and a designated Joint Secretary in each of the Central Ministries.

c) Classification can be changed with the permission of the appropriate authority, and with the passage of time.

d) The Public Information Officer will only deny classified information to a questioner. An appeal filed by a questioner against such classification could lie with the highest authority that approved the classification. A second appeal could lie with the next superior authority. In addition, the Writ jurisdiction of the High Court can be available to the questioner.

4. It was clarified that a record will be deemed to have been created only after the process of decision making had been completed. This should be provided for through rules. A questioner will only have the right to ask for information based on a record that has been created.

5 The revised formulation for Clause 9(vi), as below, was considered appropriate :-

"9(vi) information the disclosure of which would prejudicially affect the Government's ability to manage the economy; or would prejudicially affect the legitimate economic and commercial interests or the competitive position of a public authority; or would cause unfair gain or loss to any individual or organisation." (amendment underlined).

6. The formulation proposed for the following Clauses were agreed with minor modifications as under:-

"4(3) It shall also be the duty of the concerned officers of a public authority to give reasons for decision - whether administrative or adjudicative - to those affected and to disclose the relevant factual details when announcing important decisions or policies that affect the general public." (amendment underlined).

"9. Exemption from disclosure of information:

Notwithstanding anything contained in this Act, information covered by any of the following categories shall be exempted from disclosure under the provisions of this Act:" (amended portion underlined)

"9(vii) information the disclosure of which will prejudicially affect the management of personnel under and operations of public authorities;" (amended portion underlined).

"9(iv) information in the nature of advice, opinions, recommendations or minutes for the purposes of the deliberative processes in a public authority, contained in intra-departmental or inter-departmental papers, including information subject to legal professional privilege.

Provided further that this exemption shall not apply to reports of scientific or technical experts, including their opinions, on scientific and technical matters or to information that is factual."

7. Cabinet Secretary desired that a Committee chaired by Secretary (Personnel) should draft the Bill and the Cabinet Note by October 15, 1997, also outlining the

SECRET
4 ..

consequential changes in different Acts such as the Official Secrets Act, the Indian Evidence Act, the Cr.PC, etc. The Members of the Drafting Committee will be as follows.-

1. Shri V.K. Agarwal, Law Secretary
2. Shri K.L. Mohanpuria, Secretary, Legislative Department
3. Shri P.S.A. Sundaram, Addl. Secretary, Deptt. of AR&PG

Shri Mano Ranjan, Joint Secretary, Cabinet Secretariat will also be associated with the Committee.

.....

SECRET

211

SECRET

Copy No.

No. 34011/1(S)/97-Estt.(B)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel & Training

.....

New Delhi, the 17th October, 1997.

NOTE FOR THE CABINET

Subject : Legislative proposal for Freedom of Information and amendments to related Acts and Rules.

1.0 This Note is submitted to seek the approval of the Cabinet for the introduction of the Freedom of Information Bill in the forthcoming winter session of Parliament. It represents the fulfilment of the assurance contained in the Common Minimum Programme of Government, as well as the announcement made by the Prime Minister in the course of his speech on the 50th Independence Day.

1.1 The Note is based on the recommendations of the Working Group on Right to Information and Promotion of Open and Transparent Government, which was constituted, under the Chairmanship of Shri H.D.Shourie, vide this Department's Office Memorandum No. 34011/1(S)/97-Estt (B) dated January 2, 1997. Among other things, it was asked to examine the feasibility and need of either a full fledged Right to Information Act or its introduction in a phased manner to meet the needs of open and responsive Government and to examine the Rules framework with particular reference to Conduct Rules and Manual of Office Procedure with a view to introducing greater transparency and openness in Government working. The Group submitted its report on May 21, 1997 a copy of which is attached to this Note as Annexure I.

Department of Personnel & Training

BACKGROUND:

2.1 There is a worldwide trend in democratic countries to have legislation for assuring to the citizens the right of access to information of the public authorities as part of the effort to promote openness, transparency and accountability in the administration and to ensure greater participation of the people in decision making. Transparency is seen as a vital element of good governance advocated by agencies and citizen groups alike. Democracy today embraces a concept which goes beyond the traditional view of the accountability of the Executive to the Legislature in a Parliamentary democracy and incorporates equal accountability of the administration to the people in terms of accessibility ,standards of performance and service delivery. In our country also there have been demands for the past many years for greater transparency and openness in the functioning of the Government. The Official Secrets Act, 1923 is seen as inconsistent with this spirit. It is widely recognized that secrecy and lack of openness in functioning are major contributors to corruption and abuse of authority. Thus, right to information forms an important element of the programme for effective and responsive administration and Civil Service Reforms initiated by the Government. In terms of the Common Minimum Programme , the Government is committed to bring forward a Bill on Freedom of Information.

2.2 This issue was also discussed during the Chief Ministers' Conference on "Effective and Responsive Government" held on May 24, 1997. A Statutory Scheme, based on the deliberations of the Working Group, had been circulated to the participants for consideration during the conference. The conference statement adopted at the conclusion of the meeting reflects the consensus among the Chief Ministers that a legislation for Right to Information should be enacted by Government of India as early as possible. Meanwhile, Tamil Nadu and Goa have already enacted legislation for Right to Information.

2.3 In the 38th Report on the demands for grants of the Ministry of Personnel, Public Grievances and Pensions, the Parliamentary Standing Committee on Home Affairs has recommended that the Ministry should take up measures for an early enactment of a legislation for the right to information.

2.4. In answer to a Lok Sabha Starred Question, the Prime Minister has given as assurance that the Bill on Freedom of Information, pursuant to the recommendations of the Working Group, will be introduced in the Winter session of the Parliament. Copies of the report of the Shourie Committee are also being placed before the two Houses of Parliament.

REPORT OF THE WORKING GROUP:

3.1 The Report of the Shourie Working Group is based, among other things, on a study of the freedom of information legislation in some other countries. The Group also took into consideration the Right to Information Bill, 1996 which was prepared by the Press Council of India under the Chairmanship of Justice P.B.Sawant.

3.2. The Group took note of the fact that even though the "right to know" has been judicially recognized as a facet of the fundamental right to free speech and expression enshrined in Article 19 (1) of the Constitution, there is no specific law which assures the public access to information. It expressed the view that such a law is not only feasible, but also vitally necessary. Further, such law should be based on the broad principles that disclosure of information should be the rule and secrecy the exception, the exceptions should be clearly defined and there should be an independent mechanism for adjudication of disputes between the citizens and the public authorities.

Department of Personnel & Training

3.3 The important recommendations of the Group are :

- The Group has recommended the enactment of "Freedom of Information Act" by the Parliament. For this purpose it has provided the "Freedom of Information Bill, 1997" which is at Annexure A to the Report. The Group has expressed the view that, there being no specific entry in this regard in any of the lists in the Seventh Schedule to the Constitution, this item will fall within the purview of the residuary entry, i.e. entry No. 97, in List I of the Seventh Schedule and, thus, within the legislative competence of the Parliament. It has recommended enactment of the legislation by the Parliament also on the ground that it would ensure uniformity of application throughout the country.

- The Group has also recommended consequential amendment to Section 5 of the Official Secrets Act , 1923 which is at Annexure B of the Report.

- Amendments have also been proposed to Sections 123 and 124 of the Indian Evidence Act, 1872, the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973. The proposed amendments are at Annexure C of the Report.

- It has also recommended amendment to Rule 11 of the CCS (Conduct) Rules , 1964 and the corresponding Rules for other Services including the All India Services. The draft amendments recommended by the Working Group are at Annexures D and E of the Report.

- Amendments have also been proposed by the Group to the Manual of Departmental Security instructions dealing with classification of information.

The recommendations in this regard are contained in Annexure F to the Report.

3.4 In the context of its Freedom of Information Bill, 1997, the Group has also emphasized the need to develop modern information management systems and special training programmes for bringing about the necessary attitudinal change and for developing the necessary skills and aptitude among the employees.

Freedom of Information Bill, 1997, as prepared by the Working Group:

4.1. The salient features of the Bill drafted by the Working Group are:

(1) It applies to "Public Authorities" which have been defined to include the Central as well as State/Union Territories Governments, bodies owned or substantially controlled or funded by them and the administrative offices of the Courts and the Legislatures and local bodies [Cl.2(g)].

(2) It casts an obligation on public authorities to grant access to information and to publish certain categories of information. It also casts an obligation on the concerned officers to disclose reasons for decisions to those affected and to disclose the relevant facts and analyses when major policies or decisions are announced [Cl.4].

(3) The Bill lays down the machinery for the grant of access to information. The public authorities are required to appoint Public Information Officers whose responsibility it is to deal with requests for information and also to assist persons seeking information [Cl.5].

(4) A time limit of 30 days, extendable by another 30 days for reasons to be recorded, has been prescribed for compliance with requests for information under the Act. In case no decision is communicated within this period, the request would be deemed to have been refused [Cl.5,6,7 and 8].

(5) Certain categories of information has been exempted from disclosure. These categories include information the disclosure of which would be prejudicial to the sovereignty and integrity of India, conduct of international and Centre-State relations, Cabinet documents, internal notes and correspondence containing opinions, advice, minutes etc. for the deliberative processes in a public authority. They also include information the disclosure of which would prejudicially affect law enforcement. Clause 9 of the Bill sets out the detailed categories of exempted information.

(6) A request for information can be refused on certain other grounds also, such as if it is too general or is of such a nature that it would involve a disproportionate diversion of resources or if it is available in published documents available for sale. This is subject to the condition that if request is being refused as being too general, the Public Information Officer is required to assist the requester, as far as possible, to reframe the request in such a manner as would facilitate compliance with it [Cl. 10].

(7) Fees can be prescribed for grant of access to information. These, however, can be waived if the disclosure is in the larger public interest [Cl. 11].

(8) The Bill also incorporates the principle of severability. That is, if a document contains both exempted and non-exempted information, and if the non-exempted information can be reasonably segregated from the

exempted information, access may be granted to such information [Cl. 12].

(9) On a request of information being refused, the applicant can seek a review of the decision from the Head of Department or such other authority as may be prescribed -- the time limit for disposal being 30 days [Cl.14].

(10) An appeal can be filed against the decision of the reviewing authority. For the purpose of appeals, the Bill proposes to utilise the machinery under the Consumer Protection Act, 1986 as the appellate forum [Cl. 15].

(11) The Bill seeks to give the Act an overriding effect over all other laws which may be inconsistent with its provisions [Cl. 18].

(12) The Bill also envisages the setting up of Freedom of Information Councils at the Central and State Levels. The functions of these Councils include the review of the functioning of the Act and to undertake research and documentation on the subject [Cl.19, 20, 21 and 22].

(13) The proposed legislation would prevail over Central and State Legislations as regards access of public to information is concerned.

CONSULTATION WITH STATE GOVERNMENTS AND MINISTRIES/ DEPARTMENTS OF THE CENTRAL GOVERNMENT:

5.1. Copies of the Report of the Working Group were sent by this Ministry to all States/ Union Territories for their comments. Responses have so far been received from 7 State Governments/ Union Territories. The responses have generally been favourable. It may also be mentioned that the statutory scheme prepared on the basis of deliberations in the Working Group had been circulated

for discussions during the Chief Ministers' Conference held on May, 24, 1997 and had received the broad approval of the Conference. It was, however, felt that, while formulating the legislation, due care must be taken to protect the confidentiality of information, whose disclosure would be against the public interest.

5.2 As far as Ministries/ Departments of the Central Government are concerned, responses have so far been received from 45 Ministries/ Departments. These Ministries/ Departments have broadly supported the recommendations of the Group. Some of the Ministries have, however, pointed out that the proposed Freedom of Information Act will entail considerable administrative work owing to high demand for information and the litigation that might ensue. Concern has also been expressed by some about the possibility of misuse of the Act by different interest groups. An apprehension has been expressed that, at least initially, information which may be required to be kept secret, may be released due to lack of adequate appreciation on the part of officers of the intricacies of the provisions of the proposed Act.

5.3 Questions have also been raised as regards the feasibility of the provision for appeals (Cl. 15 of the Bill) which envisages the use of the machinery under the Consumer Protection Act, 1986 as the appellate forum under the proposed Freedom of Information Act. The apprehensions in this respect are mainly twofold. First, the performance of these forums in redressal of complaints under the Consumer Protection Act itself leaves much to be desired as they seem to suffer from absence of the full complement of the forums at district level and state level and chronic shortages in terms of manpower premises and material resources. They are already labouring under the burden of arrears and are unable to dispose of cases within the statutory period. Secondly, in some cases, the decision to withhold information may have to be taken at a very high level in the

Government and it may not be appropriate to vest the District Forums with appellate powers over such decisions.

5.4 Another apprehension that has been expressed is with regard to the inclusion of Public Sector Undertakings (PSUs) in the definition of "Public Authority" in the Bill. The point that has been made is that PSUs operating in a competitive commercial environment will be at a disadvantage vis-a-vis their competitors in the private sector since the latter are not covered by the proposed legislation.

REACTIONS FROM THE MEDIA AND OTHER SECTIONS OF SOCIETY:

6.1. The Report has been generally welcomed in the articles appearing in the newspapers and magazines. Informal discussions have been held with experts in the field and social activists etc. and the Chairman, Press Council of India, who have also generally expressed themselves in support of the recommendations of the Working Group barring criticism in respect of certain aspects of the Bill formulated by the Working Group. The significant points of criticism which have emerged from these discussions and seminars organised in Hyderabad and Delhi are briefly indicated below:

- The criticism regarding Clause 9 relating to exempted categories of information is that there are too many exemptions and they would frustrate the objectives of openness and transparency in Government. In particular, Clause 9 (ix) has been assailed as giving excessively wide and unfettered discretion to officers to refuse access to information.

- Under the Bill, the definition of the term "Public Authority" (Cl.2 (g) of the Bill) has been restricted to the Government and bodies owned, substantially controlled or funded by the Government. This leaves out private firms and multinationals whose activities often impinge on public interest as they cause pollution etc. The definition of Public Authorities should be expanded to cover such private bodies also.

- There is no penal provision in the Bill. The absence of a penal provision would make the legislation toothless as there would be no sanction against public authorities or their officers who withhold information or furnish false information in violation of the provisions of the Act or its spirit.

- The absence of a specific provision in respect of the custodial institutions and for furnishing information on Life and Liberty in 48 hours. It may be mentioned in this context that the Right to Information Bill submitted by the Press Council has a provision which requires the appointment of Visitor's Committees and grant of access to such Committees at all times and for giving information on Life and Liberty in 48 hours.

- With regard to the appellate function, while there appeared to be no objection in principle to vesting this function in the machinery under the Consumer Protection Act, 1986, the apprehension was expressed that the glaring deficiencies in that machinery would prevent timely disposal of appeals and unless effective steps were taken to improve the functioning of District Forums etc., the appellate remedy might not be as effective steps as would be desirable and it may be desirable to let the appeals lie to the judiciary at the district level.

- The Act should specifically provide for representation of diverse interests of society in the Freedom of Information Councils.

Views of the Committee of Secretaries:

7.1 The report of the Working Group was placed before the Committee of Secretaries. The Committee broadly endorsed the Freedom of Information Bill, 1997 recommended by the Working Group subject to certain important modifications.

7.2. With regard to the applicability of the proposed legislation, the Committee agreed that it would not be desirable to extend its scope to private bodies such as commercial firms in view of the implementational difficulties that might crop up. The Committee was, therefore, of the view that the Bill for the present should be limited only to governmental bodies or organisations substantially funded or controlled by the Government as in the Bill recommended by the Working Group.

7.3. The Committee was not in favour of the recommendation to use the machinery under the Consumer Protection Act, 1986 as the appellate forum under the proposed Freedom of Information Bill for the reasons referred to earlier. The Committee felt that this would not be an efficacious proposition in view of the existing deficiencies in the functioning of these Forums in various States; also that, in view of the huge arrears in the civil courts, it would be undesirable to vest this jurisdiction in the courts. The view was that it would be preferable to provide a simplified executive procedure of a departmental character for appeals, since the ultimate objective from the citizen's point of view was to secure a locally accessible, convenient and least costly forum for appeal against rejection of the

request for information. The appellate remedy in civil courts will lead to delay, cost and inconvenience to citizens. A similar view has been taken in the context of the Tamil Nadu Act.

7.4 With regard to the criticism relating to the absence of penal provisions in the Bill, the Committee was of the view that it would not desirable to provide for a penalty in the Bill as it might generate resistance and resentment among employees thereby adversely affecting the implementation of the law. It would involve the administration in avoidable prosecution of cases in the court. In this context, it was felt that the recommendation of the Working Group for amendment to Rule 11 of the CCS (Conduct) Rules, 1964 would take care of the concerns expressed in this regard as the delinquent employees can be punished for misconduct.

7.5. The Committee also decided upon certain changes in the exemption clauses in order to make their scope clearer, protect confidentiality of classified information etc. while deleting Clause 9 (ix) of the Bill.

REVISED FREEDOM OF INFORMATION BILL, 1997:

8.1 The draft Freedom of Information Bill, 1997, given by the Working Group has, accordingly, been revised with the help of the Legislative Department and placed at Annexure II to this Note. It may be pointed out that a number of suggestions made for changes in the Bill can be implemented more appropriately through the Rules under the Act and administrative instructions.

8.2 The Freedom of Information Bill, 1997 (Annexure II) is broadly the same as the Bill recommended by the Working Group. However, certain provisions of

the Working Group Bill have been modified in the light of decisions taken in the Committee of Secretaries and the apprehensions expressed with regard to certain vital aspects relating to the security of the country. Apart from this, certain verbal changes have been made in the Bill in order to ensure greater clarity and to avoid possible interpretational difficulties. The substantive changes are briefly summed up below :

- While the definition of public authority has been retained, the two Houses of Parliament , State Legislatures, the Supreme Court, High Courts and the courts under them, and the Constitutional authorities like Election Commission, Comptroller and Auditor General of India, and the Union Public Service Commission have been brought specifically under the purview of the Act. While the Parliament, Legislatures and the Courts would be subject to the jurisdiction of the competent authority such as the Speaker and the Chief Justice, the Government would notify the competent authorities in respect of the Constitutional authorities, as well as independent institutions like the Reserve Bank of India.

- The revised Bill provides for a two-tier appellate remedy of a purely departmental character at different levels to be determined by the Appropriate Government with no recourse to courts. However, any person dissatisfied with the outcome of a departmental appeal would still have recourse to the writ jurisdiction of the High Courts under the normal law of the land.

- The revised Bill contains a new provision for enabling the Central Government to exclude specified intelligence and security organisations from the purview of the proposed Act by inclusion of such organisations

in the Schedule to the Act. This has been done taking into consideration the security requirements of the country. The present schedule includes, in respect of the Central Government, the Intelligence Bureau, the R&AW, the Directorate of Revenue Intelligence, the Directorate of Enforcement, the Central Bureau of Economic Intelligence and the Narcotics Control Bureau. This list is based on the advice given by the Home Ministry after consulting the I.B. The C.B.I. has not been included in the schedule since the areas of operation to be exempted for C.B.I are already provided in the exemption clause. The State Governments would be asked to specify the exact names of intelligence and security organisations in the States, which are to be included in the schedule. The Central Government may make additions or deletions in the schedule.

- Clause 9 (ix) of the Working Group's Bill has been deleted.

- The provision for deemed refusal contained in Clause 8 of the Working Group Bill has been deleted in view of the apprehension expressed that it might prove to be counter productive.

- A specific duty has also been cast, in the revised Bill, upon the National and State Freedom of Information Councils to submit annual reports to the Central Government and the State Government, respectively, who are required to lay such reports before the Parliament and the State Legislatures, respectively.

- It has been advised by the Law Ministry that, from the legal and operational point of view, the State Governments may be vested with powers to amend the Rules framed under the Act. However, provision

will be made to enable the Central Government to prescribe the initial set of Rules governing various provisions mentioned under the Act for adoption with suitable changes by State Governments.

Legislative competence of the Parliament:

9.1. The Working Group has specifically examined this aspect and has taken the view that the Parliament is competent to enact the legislation under entry 97 in List I of the Seventh Schedule to the Constitution. It also felt that in order to ensure uniformity of application a Central Act was preferable. However, since the residuary power of the Parliament does not extend to the State of Jammu & Kashmir, the present legislation will not apply to that State. The State Government will be advised to enact a similar legislation with appropriate changes with due regard to local conditions.

9.2. It may be mentioned that the States of Tamil Nadu and Goa have separately enacted legislation on right to information. The legislative competence of the States to enact such a law is a matter of doubt and it is unclear under which provisions of the Constitution the Governments of Tamil Nadu and Goa have enacted their respective laws. On the other hand, since the subject does not specifically figure in any of the lists in the Seventh Schedule, there appears to be far stronger basis for holding that it falls within the legislative competence of the Parliament and once the law is enacted, it would automatically apply to the State governments and other public authorities in the state sector. After the Bill is enacted, these two States will be advised to consider action for adopting the Central legislation and repeal of the existing legislation in the interest of avoiding legal complications.

Secret

Department of Personnel & Training

Other recommendations of the Working Group:

10.1. As far as the other recommendations of the Working Group are concerned, the Ministry of Home Affairs has been requested to process the recommendations regarding amendments to the Official Secrets Act, 1923, Manual of Departmental Security Instructions and Code of Criminal Procedure, 1973. The Ministry of Home Affairs is processing for Government's approval the recommendations relating to the Official Secrets Act, 1923, Code of Criminal Procedure, 1973 and the Manual of Departmental Security Instructions. It is hoped that Ministry of Home Affairs would obtain the approval of the Cabinet for necessary legislative amendment and introduce the amending Bills simultaneously with the present Bill. The Legislative Department has been requested to process the recommendations in respect of amendments to the Indian Evidence Act, 1872 and the Code of Civil Procedure, 1908. It may, however, be mentioned that, with the jurisdiction of the courts being barred in the proposed Freedom of Information Bill, the Working Group's recommendations relating to amendments to the Indian Evidence Act, 1872, Code of Civil Procedure, 1906 and Code of Criminal Procedure, 1973 would cease to have a direct relevance to the Freedom of Information Bill and a view on these recommendations can be taken independently.

10.2. As far as the amendment to Rule 11 of the CCS (Conduct) Rules and other similar rules is concerned, the Department of Personnel is separately processing the proposed amendment for the approval of the Government.

Administrative and Financial Implications:

11.1. It is true that the Bill, once enacted, will generate a certain amount of administrative work arising from requests for information. However, since it

envisages supply only of existing information and does not require the creation of new records solely for its purpose, bulk of the requests which will require compliance would relate to information that is already being compiled in various agencies. Besides, a large amount of information is expected to be disclosed, *suo motu*, under its provisions, which is expected to reduce the load of individual requests for information. No insurmountable administrative difficulties are therefore anticipated, as seen from their field level experience in different States with transparent administration and provision of information to the public on public distribution system, employment exchange, housing facilities etc. On the contrary, the law may have a beneficial effect in course of time as it would necessitate improvements in the management of information in various agencies. The process of storage and release of information will be facilitated by progressive computerisation of Government operations, and the access of the public to information on public service terminals, internet etc.

11.2 It does not require to be stated that it would be necessary to provide adequate training to employees in training institutions or in their work environment to bring about the necessary change in their attitudes and to equip them with the required skills if the proposed law is to be successfully implemented. It would be necessary for this purpose to develop suitable training packages.

11.3 Similarly, it would also be necessary to devise detailed administrative instructions for ensuring proper implementation of the proposed Act, including clear provisions and rules for the classification of different types of records, over and above the existing Manual of Departmental Security Instructions, to cover all the transactions. A similar effort will have to be undertaken in the State, and the level of appellate authorities with the competence to decide on the classification

of records will be prescribed by the appropriate Government. With this in view, the Department of Personnel is separately initiating action for devising measures for operationalising the proposed Act. It is intended that detailed guidelines and instructions on the procedures for release of information, classification of information and other related matters such as appointment of Public Information Officers would be drawn up by the time the Bill is enacted, so that the benefits of the legislation are available to the public immediately after enactment of the Bill.

11.4. Action is also being initiated to frame rules for the purposes of the Act. Apart from the Central Government, the State Governments also have the powers to frame rules under the Bill. The Act provides that the initial set of rules relating to different provisions, apart from other required rules to enable the implementation of the Act, will be notified by the Central Government on a uniform basis. In the case of State Governments, they may make suitable modifications in the rules according to local circumstances, subject to conformity with the legal provisions and directions from the Central Government.

11.5. As far as financial implications are concerned, it is not possible to accurately estimate the possible expenditure that the legislation might entail. It is expected that the various agencies would be appointing some of their existing officers as the Public Information Officers for the purpose of this Act or redesignating the publicity or information officers as Public Information Officers. Only in a few cases it might be necessary to create additional posts for this purpose. Thus, the manpower requirement arising from the legislation is expected to be met from within the existing sanctioned strength of the various agencies at the Central and State level, or within the existing budget. As regards the material resources in terms of computers and other office equipment, it may be stated that there are in any case ongoing programmes for computerisation of operations in

various agencies, and the requirement arising from legislation would ordinarily be met by these programmes.

11.6 The creation of a certain number of posts, particularly for the proposed Councils for Freedom of Information would be inevitable. So far as the State Governments are concerned, this expenditure will have to be met by them from within their budget. The Central Government will have to make budget provision for the National Council and its Secretariat. It may also be mentioned that a portion of the likely expenditure would be offset by the recovery of fees for supply of information. A nodal Cell for the finalisation of rules and instructions, guiding the States, and reporting progress to Government has to be set up in the Ministry of Personnel, Public Grievances & Pensions. This Cell will be headed by a Joint Secretary to Government with two Deputy Secretaries, two Senior Analysts and two fully staffed sections, stenographic assistance etc. The details of staff requirements are provided in the Annexure III. Detailed proposals for the constitution of the National Council and for providing the necessary financial and material resources will be separately submitted after the enactment of the Bill.

12. The provisions of the draft Bill were discussed extensively in a number of meetings of the Committee of Secretaries, and subsequently in a Core Group headed by Secretary(Personnel). The views and concerns of the relevant Ministries such as the Ministries of Home Affairs, Defence, Finance, External Affairs and the Departments of Consumer Affairs and Public Enterprises, as well as those of intelligence agencies, have been taken into account while finalising the provisions of the Bill, and in the formulation of the Cabinet Note. In view of this, and the urgency of bringing the matter before the Cabinet, the advance views of these Ministries on this Note have not been obtained and they have been requested to express their views, if any, during the meeting of the Cabinet.

Secret

Department of Personnel & Training

13. However, the Note as well as the proposed Bill have been seen and concurred in by the Legislative Department and the Department of Legal Affairs, and have the approval of the Minister of State for Law & Justice.

14. A statement of implementation schedule is attached (Appendix).

15. The Prime Minister as the Minister in charge of the Ministry of Personnel, Public Grievances & Pensions has approved the submission of this Note to the Cabinet for its approval.

16. In the above background, the approval of the Cabinet is sought for introduction of the Freedom of Information Bill, 1997 as in Annexure II in the Parliament during the forthcoming winter session of the Parliament.

(HARINDER SINGH)
Joint Secretary to the Government of India

New Delhi, Dated October 17, 1997.

231

SECRET

APPENDIX

No. 34011/1(3)/97-Estt.(B)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel & Training

.....

STATEMENT OF IMPLEMENTATION SCHEDULE

SUBJECT:- Right to Information and Transparency-legislative proposal for Freedom of Information and amendments to related Acts and Rules.

Gist of decision required	Projected benefits/results	Time schedule for manner of implementation/reporting to Cabinet Secretariat.
Approval of the draft "Freedom of Information Bill" and its introduction in the forthcoming Winter Session of Parliament.	Enactment of the proposed Bill will promote openness, transparency, accountability and a greater participation of people in decision making in the administration consistent with our democratic set up. It will also represent the fulfilment of the assurance of the Government in terms of the Common Minimum Programme and the promise made by the Prime Minister in his speech on the 50th Independence Day.	After approval of the Cabinet, the Bill will be introduced, as soon as possible, in the forthcoming Winter Session of Parliament.

232

F.No. 34011/1(3)/97-Estt.(B)

(HARINDER SINGH)
JOINT SECRETARY TO THE GOVERNMENT OF INDIA.

Dated the 17th October, 1997

SECRET

Statement of Legislative Measures and Policy Statements arising out of the Prime Minister's speech in the Lok Sabha/Rajya Sabha during the Special Session of Parliament and Address on August 15, 1997.

Sl. No.	Legislative Measures/Policy Statements	Present Status	PM's Review on 4-11-1997
1.	Passing of Lok Pal Bill during the next Session. ..the Lok Pal Bill was introduced in the Lok Sabha on the 13th September, 1996. The Bill was referred to the Standing Committee of Parliament on Home Affairs which has since submitted its report. The recommendations of the Standing Committee are under consideration of the Govt. A revised Bill, taking into account the recommendations of the Committee, will be introduced in the forthcoming Session of Parliament. Let us hope this law will be a significant step towards cleaning our polity and the evil of corruption. *(from the speech in the Lok Sabha on 1-9-1997)* ..The Lok Pal Bill will be presented in the next session of Parliament and this will act as another watch tower on official deals. *(from the Address on Independence Day)* (Minister of State in the Ministry of Personnel, Public Grievances & Pensions.)	The Lok Pal Bill was introduced in the Lok Sabha on 13.9.96 and referred to the Department- related Parliamentary Standing Committee on Home Affairs. The Committee's recommendations were received on 9.5.97. Draft Cabinet Note has been approved by PM for submission to the Cabinet.	The matter, in the first instance, will be placed before a GOM comprising HM, Law Minister, and Minister of Parliamentary Affairs and one more minister, along with possible alternatives including those mentioned by PM. Thereafter, the issues will be discussed in an all-party meeting, before the draft is placed before the Cabinet. This exercise will be done quickly so as to enable the bill to be introduced in the Winter Session.

2.	**Introduction of Right to Information Bill** .Regarding transparency, the Govt constituted a Working Group under the Chairmanship of Shri H.D.Shourie on Right to Information. We intend introducing the Right to Information Bill in the next Session of Parliament. *(from the speech in Lok Sabha on 1-9-1997)* ..the foremost issue is of transparency. You may be aware that a few days back a committee under the chairmanship of Shri H.D.Shourie was set up which has given some recommendations for Right to Information. We are almost ready with it. <u>We will bring the Bill during the next session.</u> *(from the speech in Rajya Sabha on 1-9-1997)* [Minister of State in the Ministry of Personnel, Public Grievances & Pensions.]	Govt had constituted a Working Group under the Chairmanship of Shri H.D. Shourie on the Right to Information and promotion of open and transparent Govt. Cabinet Note on the bill was considered by the Cabinet on 20-10-1997 and the matter referred to a GOM. GOM has been constituted on 23-10-1997. The Bill will be ready for introduction in the Winter Session 1997 of the Parliament.	It was informed that another meeting of GOM had been scheduled for 12-11-1997. After this meeting the draft will be finalised for submission to the Cabinet before the Winter Session begins.
3.	**Laying of a comprehensive Civil Aviation Policy before Parliament for a discussion.** ..Nor shall I talk about Civil Aviation because I think Civil Aviation is a very important segment of our development and soon, I think very soon, a new civil aviation policy will come before this House for discussion. *(from the speech in the Rajya Sabha on 1-9-1997)* [Minister of Civil Aviation]	Two policy documents "National Civil Aviation Policy" and "Policy on Airport Infrastructure" have been submitted to MOS/Minister for Civil Aviation. It will, thereafter, be considered in the COS before finally placing before the Cabinet for approval.	The "Policy on Airport Infrastructure" was reportedly ready for submission to the Cabinet. It will be placed before the Cabinet in its next meeting. The "National Civil Aviation Policy", which was reportedly under consideration of the Minister of Civil Aviation, will be finalised and placed before the Cabinet in its meeting after a week.

File 3

D.O.No34011/1(S)/97-Estt(B) (Pt.)

भारत सरकार
कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय
नई दिल्ली-110001
GOVERNMENT OF INDIA
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES
AND PENSIONS
NEW DELHI-110001
June 3, 1997

ARVIND VARMA
सचिव
SECRETARY
Tele. : 3014848
Fax : 3012432

Dear Secretary

3 JUN 1997

You would be aware that the Central Government had appointed a Working Group on *"Right to Information and Promotion of Open and Transparent Government"* under the Chairmanship of Shri H.D. Shourie. The Group was asked to examine, among other things, the need and feasibility of a Right to Information Act and to examine the administrative/rules framework with a view to promoting openness and transparency in the Government.

2. The Working Group submitted its report to the Government on May 21, 1997, a copy of which is enclosed. This report was circulated to the participants during the Conference of Chief Ministers on *"Effective and Responsive Administration"*, held on May 24, 1997. There was a broad consensus in support of a legislation for freedom of information during the Conference. The decision taken in the Conference is reflected in para 7.2 of the Conference Statement which reads:

"The Government of India would take immediate necessary steps, in consultation with State Governments, for examining the report of the Working Group on Right to Information, and for introducing in Parliament before the end of 1997 a legislation for Freedom of Information, and amendments to the relevant provisions of the Official Secrets Act, 1923 and the Indian Evidence Act. Endorsing the proposals made in the Action Plan, some of the State Governments indicated the need to include provisions which would ensure that the misuse of provisions under this Right do not lead to embarrassment of the Governments. While some of the States have already initiated steps to provide the Right to Information, others would also undertake a similar exercise."

Contd. . . . 2

3. I would request you to have the report examined and send to us your views/comments on the recommendations of the Working Group.

4. Since the decision in the Chief Ministers' Conference was that the necessary legislation would be introduced in the Parliament before the end of 1997, we would need a very early response from your side. I shall, therefore, be grateful if your reply reaches us latest by June 30, 1997.

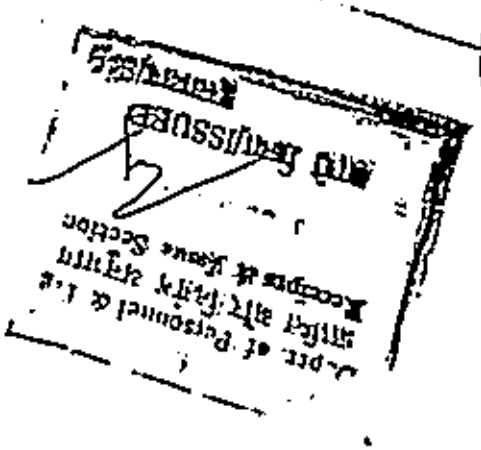
With regards,

Yours sincerely,

(ARVIND VARMA)
c/c

All Secretaries to the Govt. of India
(As per list enclosed)

69



3606/Est.(B)/97
27-6-97

Pawan Chopra
Additional Secretary
☎ : 3012697

मंत्रिमण्डल सचिवालय
राष्ट्रपति भवन, नई दिल्ली
CABINET SECRETARIAT
RASHTRAPATI BHAVAN
NEW DELHI

3

D.O. No. A.60011/4/97-Ad.I

June 25, 1997.

Dear Shri Varma

Kindly refer to your D.O letter No. 34011/1(S)/97-Estt(B) (Pt.) dated the 4th June, 1997 regarding the Freedom of Information Bill, 1997 and the proposed amendments to the Official Secrets Act, 1923, Indian Evidence Act, 1872, Code of Civil Procedure, 1908, Code of Criminal Procedure, 1973, CCS (Conduct) Rules, 1964 and the Manual of Departmental Security Instructions.

2. The report of the Working Group on right to Information and Promotion of open and transparent Government headed by Shri H.D. Shourie has been examined in the Cabinet Secretariat and we have found the proposed enactments / amendments / revision in order except that an explicit mention of the papers relating to Committee of Secretaries and decisions thereon and Transaction of Business Rules should properly be inserted in Section 9(iii) of the proposed Freedom of Information Bill, 1997. We are in general agreement of the proposed amendments and revisions suggested by the Working Group in so far as existing enactments and Rules are concerned.

With regards

Yours sincerely

(Pawan Chopra)

Shri Arvind Varma
Secretary,
Ministry of Personnel,
Public Grievances & Pensions,
North Block,
New Delhi.

3

3603/Secy/Estt/97
27.6.97

भारत सरकार
शहरी कार्य और रोजगार मंत्रालय
शहरी रोजगार और गरीबी उपशमन विभाग
Government of India
Ministry of Urban Affairs and Employment
Department of Urban Employment and Poverty Alleviation

D.O.No. O-17038/13/97-H.II

J.P.Murty
Joint Secretary (HEPA)
Tele.No. 3017665

नई दिल्ली-110011, तारीख 199
Dated New Delhi-110011, the 199

June 26th, 1997

4367/JS(E)/97
27/6

Dear Sir,

Kindly refer to your D.O. letter No. 34011/1(S)/97-EStt. (B) (Pt.), dated 3.6.97 regarding the Report of the Working Group on "Right to Information and Promotion of Open and Transparent Government."

2. We have gone through the Report and are broadly in agreement with the recommendations of the Working Group.

With regards,

Yours sincerely,

(J.P.Murty)

JS(E)

Shri Arvind Varma,
Secretary to Government of India,
Ministry of Personnel & Public
Grievances and Pensions,
Sardar Patel Bhavan,
Sansad Marg,
New Delhi.

4

अन्तरिक्ष विभाग
अन्तरिक्ष भवन न्यू बी ई एल रोड
बंगलूर - 560 094 भारत
तार. SPACE टेलेक्स { 0845-2499 DOS IN / 0845-2326 ISRO IN
दूरभाष : 334474

GOVERNMENT OF INDIA
DEPARTMENT OF SPACE
ANTARIKSH BHAVAN, NEW BEL ROAD
BANGALORE - 560 094 INDIA
GRAMS : SPACE TELEX { 0845-2499 DOS IN / 0845-2326 ISRO IN
Telephone : 334474

S.Prabhakaran,
Additional Secretary

D.O.No.6/3(3)/96-V

June 27, 1997

Dear Shri. Arvind Varma,

This has reference to your D.O. letter No.34011/1/(S)/97 -Estt (B) dated June 3, 1997 seeking views/comments on the Report of the Working Group Set up on " Right to Information and Promotion of Open and Transparent Government .

2. We have had the Report and the proposed amendments to relevant provisions of Official Secrets Act, Indian Evidence Act , CCs (Conduct) Rules and the Manual of Departmental Security Instructions examined. I have the following comments to offer:

2.1 The Government in considering the proposed Freedom of Information Bill which while aiming to achieve the objective of transparency and openness in the Government's functioning and ensuring and the safeguarding the Indian Citizens Right to Information, ought to balance the issue, in protecting the bonafide interest of custodians of any confidential or secret matters in the Government as all such information that cannot be revealed at a certain point of time, in national interest are only kept away from the public. In legislating the proposed bill this balancing by protecting the bonafide interests of the custodians of the Government in genuine cases may become necessary.

2.2 In the proposed bill the Appeal powers have been vested with the various Consumer Forum under the Consumer Protection Act 1986. Whether this level of the Appellate Body would be appropriate as refusal to public information by the Government ought not to be common feature and the rare exceptions would have been decided so at very Senior levels in the Governments.

2.3 It is for the nodal Ministry/Department like the MHA/Department of Personnel to consider the proposed amendments to the Acts & Rules mentioned in para 2 above. We have no comments in considering the proposed amendments to the Acts & Rules in Annexures B to F.

3. Secretary, DOS has seen.

With regards,

Yours sincerely,

(S.Prabhakaran)

Shri Arvind Varma,
Secretary
Ministry of Personnel ,
Public Grievances &Pension
New Delhi

3673/Estt(B)/97
30.6.97

DR. A.E. MUTHUNAYAGAM
SECRETARY

भारत सरकार
महासागर विकास विभाग
महासागर भवन, ब्लाक 12, सी.जी.ओ. कम्पलैक्स,
लोदी रोड, नई दिल्ली-110 003

GOVERNMENT OF INDIA
DEPARTMENT OF OCEAN DEVELOPMENT
'MAHASAGAR BHAVAN', BLOCK-12, C.G.O COMPLEX,
LODHI ROAD, NEW DELHI-110 003

DO No.DOD/25/15/97-Estt.
Dated:27.06.97

Dear Shri Verma,

Please refer to your DO letter No.34011/1(S)/97-Estt(B) (Pt.) dated 3rd June, 1997 enclosing a copy of the Report submitted by the Working Group on "Right to Information and promotion of Open and Transparent Government".

2. We have gone through the contents of the report and the amendments proposed in various Acts and rules. The recommendations are welcome steps towards promotion of openness and transparent Government.

With regards.

Yours sincerely,

(A.E. Muthunayagam)

Shri Arvind Verma,
Secretary,
Ministry of Personnel, Public
Grievances and Pensions,
North Block,
New Delhi-110 001.

Phone : 00-91-11-4360874 ☐ Gram : MAHASAGAR ☐ Telex : 31-61984 DOD IN. ☐ Fax No. 00-91-11-4362644/4360336

सचिव
SECRETARY

J.A. CHOWDHURY,
Tel. 3382349.

भारत सरकार
खाद्य और उपभोक्ता मामले मंत्रालय
शक्कर और खाद्य तेल विभाग
नई दिल्ली-110001
GOVERNMENT OF INDIA
MINISTRY OF FOOD & CONSUMER AFFAIRS
DEPTT. OF SUGAR & EDIBLE OILS
KRISHI BHAVAN, NEW DELHI-110001

D.O.No.5-2/97-P&C/65/97

July 2, 1997.

Dear Sh. Verma,

Please refer to your D.O. letter No.34011/1/(s)/97-Estt.(B) dated 28.1.97 & 3.6.97, regarding comments of this Ministry on the Report of the Working Group on Right to Information and Promotion of Open and Transparent Government.

2. This Department has no area which needs to be demarcated as 'Classified'. Therefore, no category of information needs to be withheld from the public.

With regards,

Yours sincerely,

(J.A. CHOWDHURY)

Shri Arvind Varma,
Secretary,
Ministry of Personnel, P.G. & Pensions,
North Block,
New Delhi-110 001.

D.O.No.8-3/97-INV.

सचिव
Secretary to the Govt. of India
Director General, Post &
Chairman, Postal Services Board

डाक विभाग
संचार मंत्रालय, डाक भवन, संसद मार्ग,
नई दिल्ली-110001
Department of Post
Ministry of Communications
Dak Bhavan, Sansad Marg,
New Delhi-110001

Dear Shri Varma,

2 July 97

Please refer to your D.O. letter No.34011/1 (S)/97-Estt.(B)(Pt.) dated 3rd June 1997 regarding report of Working Group on "Right to Information and Promotion of Open and Transparent Government".

2. The Postal Services Board has considered the recommendations made in the above report and agrees with them with the following modifications:-

(i) Under para 9 (vi) under sub-para (a) an item may be added to incorporate postal tariff.

(ii) Under para 9(vii), DPC proceedings, inquiries, disciplinary proceedings etc., may also be included.

A review of Indian Post Office Act, 1898, is under consideration.

With regards,

Yours sincerely,

(R.U.S. Prasad)

Shri Arvind Varma
Secretary
Ministry of Personnel, Public
Grievances & Pensions
North Block
New Delhi - 110 001.

No.A-33025/13/97-Admn
Government of India
Ministry of Food Processing Industries
Panchshoel Bhawan, Khel Gaon Marg
New Delhi - 110 049

JULY 04, 1997

OFFICE MEMORANDUM

Sub : Right to Information & Promotion of Open and Trnasparent Government.

The undersigned is directed to refor to DO letter No.34011/1(s)/97-Estt(B)(Pt) dated June 03, 1997 from the Secretary Department of Personnel & Training regarding "Right to Information and Promotion of Open & Transparent Government" and to say that the report has been examined and views/comments of this Ministry ontho recommendations of the Working Group are as under:-

(i) There are no two opinions about the need for openness and transparency in government functioning. In democracy, participation of people in areas affecting their life is necessary. Such participation can be ensured only if people have information about the government business transacted. This can be ensured through access to information about the government functions. In the present context of the role of the government which is more a welfare state, it is necessary that the public have access to information relating to the functioing of the agencies affecting their lives. Presently people have to deal with Government agencies especially at cutting edge, face lot of problems as Government actions are shrouded in secrecy. Hence, the proposal for enacting Freedom of Information Act, is supported.

(ii) The provisions of the proposed Right to Information Bill appear to cover all important aspects and the Bill is supported.

(iii) The other amendments proposed in Official Secret Act, the Indian Evidence Act, CCS Conduct Rules and the Manual of Office procedure are necessary to ensure that the Right to Information is implemented in true spirit and are supported.

02 This issues with the approval of Secretary(FPI).

[A.K. GOYAL]
Deputy Secretary to the Government of India

SHRI HARINDER SINGH,
Joint Secretary (E),
M/o Personnel, Publico Grievances & Pensions,
North Block,
New Delhi.

9

3550/Secy/97
20-6-97.

सचिव
भारत सरकार
जल संसाधन मंत्रालय
SECRETARY TO THE GOVERNMENT OF INDIA
MINISTRY OF WATER RESOURCES
SHRAM SHAKTI BHAWAN, RAFI MARG
नई दिल्ली-११०००१
New Delhi - 110001

माता प्रसाद
MATA PRASAD
Tel. 371 0305

4321/35(E)/97
24/6

D.O.No.10/3/97-PP

June 18, 1997

Dear Shri Varma,

This is with reference to your d.o. letter No.34011/1/(S)/97-Estt.(B)(Pt.) dated 3.6.1997 regarding the report of the Working Group on "Right to Information and Promotion of Open and Transparent Government".

There is no gain saying the fact that an open, transparent and accountable government is sine qua non for a vibrant democracy. In this context right to know and freedom of information become important. We feel that the freedom of Information Bill of which a draft is appended with your above referred d.o. letter and the principles on which it is based are unexceptionable. The proposal for amendment of the Official Secrets Act, Indian Evidence Act and Rule 11 of Civil Service (Conduct) Rules are also welcome suggestions. I am happy to note that some issues we had raised earlier with reference to your d.o. letter No.34011/1(S)/97-Estt.(B) dated 29.1.1997 about right to information have been addressed in the proposed bill.

2327/AS(AR&PG)/97
24/6

A

A great deal of the purpose will be served by improving the format of Annual Reports of the Ministries and various Organisations under them if these could include more explicity than at present information relating to functions and responsibilities of these agencies, a description of their decision making process and the legal and administrative framework within which these authorities work. Similarly small informative booklets about the functioning of public authorities could be published and suitably placed at the reception counters of offices for members of public to take away.

I would also like to share my apprehension with you that initially we may have a high demand for information and even a lot of litigation to enforce this right. A lot of time, energy and effort will have to be expended by public agencies to cope with the rush for access to information.

255/97/Bills
20.6.97

With kind regards,

Yours sincerely,

(Mata Prasad)

AS(AR&PG)
pl. put up
m.s. A' to
Secretary
23/6

Shri Arvind Varma,
Secretary,
Ministry of Personnel, Public Grievances & Pensions,
North Block,
New Delhi.

JS(E)

934(S)/97-Pers(B)
23/6/97

m.s
24/6

D(R)

Copy forwarded to
Spl.Secy(AR&PG). [Sh. R. Verma, US(V)]
for action on 'A' above.

DS(RM)

to

भारत सरकार
GOVERNMENT OF INDIA
रसायन और उर्वरक मंत्रालय
MINISTRY OF CHEMICALS & FERTILIZERS
उर्वरक विभाग
DEPARTMENT OF FERTILIZERS
नई दिल्ली-११० ००१
NEW DELHI-110 001

S.K. DASH,
DIECTOR (ADMN.)
TELE:3389839 OFF.

Most Immediate.

D.O. No. 26011/4(1)/97-GC

दिनांक / Dated July 4, 1997

Dear Shri Parande,

Please refer to d.o. letter No. 34011/1(A)/97-Estt.(B) (Pt.) dated June 3, 1997 from Shri Arvind Varma, Secretary, Personnel wherein he had forwarded the Wroking Group's Report on Right to Information and Promotion of Open and Transparent Government for this Department's comments.

2. We have examined the report and we are in agreement with the recommendations of the Group. The recommendations of the Working Group to provide freer access to the public to seek information as a matter of right and enacting a legislation to make this right justiceable, will help in making the administration more responsive and accountable for their acts. We are also generally in agreement with the provisions of the proposed Draft Bill, which have been well conceived and are fairly comprehensive. However, we feel that problem may arise with regard to the meeting the requirment of Section 4 (2) (iii). Under this, general public is given access to the 'norms' of performance and 'completion of physical and financial target' vis-a-vis actual 'achievement'. This may be fine when it comes to seeking information against the norms set by FICC or information in respect of MOU signing companies which have physicaly financial targets fixed for them by the Government. For non-MOU signing companies, this is an internal arrangement and they may be reluctant to share it for the fear of criticism and litigation. This may then give rise to a tendency by the public sector undertakings to understate their targets.

3. We have also a suggestion to offer with regard to the 'authority' recommended for classification under Hannual of Departmetal Security Instruction by the Group. As the accent of the proposed recommendations is on sharing more and more of information, we feel that the authority for classification may continue to be the same as it is under the existing arrangements.

With regards,

Yours sincerely,

Saroj Kumar Dash
(S.K. DASH)

Shri Y.G. Parande,
Director,
Deptt. Of Personnel, Public
Grievances & Pensions,
North Block,
NEW DELHI.

12

सचिव
Secretary

भारत सरकार
भारी उद्योग विभाग
उद्योग मंत्रालय
नई दिल्ली-110011
GOVERNMENT OF INDIA
DEPARTMENT OF HEAVY INDUSTRY
MINISTRY OF INDUSTRY
NEW DELHI-110011

DO.No.A-45011/11/97-Admn.(Pt.)
July 4, 1997

Dear Shri Varma,

Kindly refer to your D.O. letter No.34011/1(S)/97-Estt(B)(Pt.) dated 3.6.1997 forwarding therewith a report of the Working Group on 'Right to Information and Promotion of open and transparent Government' for our comments/views.

2. As the amendments proposed by the Working Group are in line with the object of bringing in transparency in the Government, we are in agreement with the same.

With regards.

Yours sincerely,

(Prabir Sengupta)

Shri Arvind Varma
Secretary
Ministry of Personnel & Public
Grievances & Pension
North Block
New Delhi.

34537/C-7(Pt)1
8/7

डा. आर. चिदम्बरम्
अध्यक्ष
Dr R. Chidambaram
CHAIRMAN

भारत सरकार
परमाणु ऊर्जा आयोग
GOVERNMENT OF INDIA
ATOMIC ENERGY COMMISSION

12

D.O. No. 1/4/97-SCS/185

July 4, 1997

1403/DHC(2)/97
11/7

Dear Secretary,

Please refer to your d.o. letter no. 34011/1(S)/97-Estt.(B) dated 3 June 1997 forwarding copy of the Report of the Working Group on "Right to Information and Promotion of Open and Transparent Government."

2. We are in broad agreement with the suggestions of the Working Group and the general consensus in the Government on these suggestions would be acceptable to us.

2501/97-AMG(S)
1/7/97
4490/JS(E)/97
9/7

With regards,

Yours sincerely

R. Chidambaram
6.7.97

(R. Chidambaram)

JS(E)

Shri Arvind Varma
Secretary
Ministry of Personnel, Public
Grievances & Pensions
New Delhi - 110 001

14

अनुशक्ति भवन, छत्रपति शिवाजी महाराज मार्ग, बंबई-400 039 दूरभाष: + (91) (22) 202 2543, तार: एटमर्ग, टेलेक्स: 011-82355-एटम-IN, फैक्स: + 91 (22) 2048476
Anushakti Bhavan, Chhatrapati Shivaji Maharaj Marg, Bombay-400 039, India
Tel.: + (91) (22) 2022543, Fax: + (91) (22) 2048476, Telex: 011-82355-ATOM-IN, Grams: ATOMERG

डॉ. ई. ए. एस. शर्मा
DR. E.A.S. SARMA

सचिव
SECRETARY

भारत सरकार
GOVERNMENT OF INDIA
विद्युत मंत्रालय
MINISTRY OF POWER
शक्ति भवन, रफी मार्ग
SHRAM SHAKTI BHAVAN, RAFI MARG
नई दिल्ली - 110001
New Delhi - 110001

D.O.No. 11/1/97-IWS

July 5, 1997.

Dear Shri Varma,

Please refer to your D.O. letter No. 34011/1/(S)/97-Estt.(B)(Pt) dated 3.6.97 regarding the report of the Working Group on 'Right to Information and Promotion of Open and Transparent Government'.

2. We are generally in agreement with the recommendations made by the Working Group.

3. To operationalise these recommendations, we need to identify documents that could be made public as a matter of routine. As far as this Ministry is concerned, it is felt that all documents could be made public, except those relating to tender evaluation, proposals regarding international co-operation and bilateral assistance in the field of power development, the minutes of D.P.C. meetings and police verification reports in respect of appointments, Notes for Cabinet, COS, etc.

4. To provide wider access to the public, it would be necessary to utilise media such as NICNET/Internet. To some extent this is already being done by several Government Depts. as important policy statements and other material have been placed on NICNET.

5. Subject to well-defined conditions, it is for consideration whether all information in Government would perhaps be made available to the public, say, after the lapse of 10 years.

With regards,

Yours sincerely,

(E.A.S. SARMA)

Shri Arvind Varma,
Secretary,
Ministry of Personnel, Public Grivances & Pension,
New Delhi

श्यामल घोष, सचिव
SHYAMAL GHOSH
SECRETARY

भारत सरकार
इलेक्ट्रॉनिकी विभाग
इलेक्ट्रॉनिक्स निकेतन, 6, सी.जी.ओ. कॉम्प्लेक्स,
नई दिल्ली-110003
GOVERNMENT OF INDIA
DEPARTMENT OF ELECTRONICS
ELECTRONICS NIKETAN, 6, CGO COMPLEX,
NEW DELHI-110 003
TEL. : 4364041 FAX : (011) 4363134

D.O. No.M-13022/1/93-MS(O&M) Dated : 07.07.97

Dear Shri Varma,

Kindly refer to your d.o. No. 34011/1(S)/97-Estt.(B), dated 3.06.97 seeking comments of the Department of Electronics(DOE) on the Report of the Working Group on 'Right to Information and Promotion of Open Transparent Government'.

2. Role of the Department of Electronics (DOE), a scientific and technical (S&T) organization, is essentially promotional in nature and no specific statute is being implemented by it. The organisational goals of the Department are (i) to bring the benefits of electronics to every walk of life, and (ii) to play a catalytic role to make the Indian electronics industry a global player. For achieving the above objectives, our strategies include (i) supporting technology development, and (ii) setting up of critical infrastructure.

3. The convergence of technologies namely, Information Technology, Telecommunication and Entertainment (audio and video) has and would help in storage of information both text and multi-media, present and analyse timely in different way/format suitable to the circumstnces for variety of purposes, simultaneously at number of places. This would result in creation of Information Infrastructure which may bring far reaching changes in the lives of people in the country. Presently, National Information Infrastructure (NII) is a growing phenomenon worldwide. Infact, it should be the endeavour of each Department of Government to create a Web-Site, which would be accessible globally. In this Web-Site all essential information of public interest should be included, which should be updated as frequently as may be necessary. This single step will go a long way in bringing transparency and dissemination of essential information widely.

Contd..2/-

4. DOE is specifically focusing on setting up of NII. In view of this, we feel that for deriving maximum benefits from these new technological trends, statutory changes would be required in the context of NII and computerisation in Government, particularly relating to issues like Electronic Commerce. These measures may include enactment of proper legislation in the form of Cyber Law for according legal validity to any data, information, document stored and/or retrieved through the computers. In addition, appropriate amendments would also be required in the existing Acts/Laws, such as, (i) the Evidence Act, 1872, (ii) the Negotiable Instrument Act, (iii) the Indian Penal Code, 1860 (to deal with the computer complaints such as cheating etc.), (iv) the Banker's Book Evidence Act, 1891, and (v) the Foreign Trade Act/EFT, etc.

5. The Report of the Working Group under reference has also empahsised on specific administrative measures, inter-alia, 'thrust on computerisation of operations of the government and extensive use of computers for dissemination of information to public' with an aim to make the proposed 'Freedom of Information Act' more effective. In view of this and also to enhancing efficiency, transparency, and account-ability in the functioning of the Government, we feel that the statutory changes indicated in Para-4 above would also be necessary.

With regards,

Yours sincerely

(SHYAMAL GHOSH)

Shri Arvind Varma,
Secretary,
M/o Personnel, Public Grievances,
and Pensions,
North Block, New Delhi.

17

योजना आयोग
योजना भवन
नई दिल्ली-११०००१
PLANNING COMMISSION
YOJANA BHAVAN
NEW DELHI-110001

K.Srinivasan
Pr. Adviser (Adm. & PC)
Tel. No. 3714388

D.O. No.34/08/97-IWS

July 8, 1997

Dear Shri Varma,

Please refer to your D.O. letter No. 34011/1(S)/97-Estt.(B) (Pt.) dated 3rd June, 1997, addressed to Member-Secretary, Planning Commission seeking Commission's views/comments on the recommendations of the Working Group set up by the Central Government on "Right to Information and Promotion of open and Transparent Government".

We have gone through the recommendations made by the Working Group and convey Commission's concurrence to the recommendations and further action to be taken by the Government as suggested by the Working Group.

This issues with the approval of Deputy Chairman, Planning Commission.

With regards,

Yours sincerely,

(K. Srinivasan)

Shri Arvind Varma,
Secretary,
Ministry of Personnel, PG & Pensions,
North Block,
New Delhi.

D.P. TRIPATHI
सचिव रेलवे बोर्ड
Secretary, Railway Board

भारत सरकार
रेल मंत्रालय, (रेलवे बोर्ड)
नई दिल्ली - 110001
GOVERNMENT OF INDIA
MINISTRY OF RAILWAYS
(RAILWAY BOARD)
NEW DELHI-110001

3896/कि(क्रिसी)
10-7-97

D.O No. 97/O&M/65

New Delhi, dt.9 /7/97

Dear Shri Varma,

Kindly refer to your D.O No.34011/1(S)/ 97-Estt.(B) (Pt.) dated 3/6/1997 addressed to Chairman Railway Board forwarding a copy of the Report of the Working Group on "Right to Information and Promotion of Open and Transparent Government".

2. This Ministry has no objection to the passage of the proposed Freedom of Information Bill- 1997 by the Government. We will take necessary action in the matter on receipt of further guidelines from the Ministry of Personnel, Public Grievances and Pensions.

14/7/97 DIL(A) 14/7

45 SO/JS(E)/97
11/7

With kind regards,

Yours sincerely,

D.P. Tripathi

(D.P.Tripathi)

Shri Arvind Varma,
Secretary,
Ministry of Personnel,
Public Grievances and Pensions,
New Delhi.

11/7/97

DO(PM)

3x3(9)/97-Estt(B)
14/7/97

Hon'ble Sec/B/97
15-7-97

कृषि मंत्रालय
कृषि और सहकारिता विभाग
कृषि भवन, नई दिल्ली-110 001

Ministry of Agriculture
Department of Agriculture & Cooperation
Krishi Bhavan, New Delhi-110 001

सचिव, भारत सरकार
SECRETARY
Government of India

D.O.No.11013/10/97-G.C.

July 14, 1997

Dear Arvind,

Kindly refor to your d.o. letter No.34011/1(S)/97-Estt(B)(Pt) dated the 3rd June, 1997 and our response to the 'Report of the Working Group on Right to Information and Promotion of Open and Transparent Government' and especially to 'Freedom of Information Bill, 1997.

2. We generally agree with the draft of the proposed "Bill". However, the provision of adjudication of appeals against the public and government authorities under the Consumers Protection Act, 1986 in respect of supply of information, may lead to plethora of litigations which should be avoided.

3. As regards proposed amendments to the Official Secrets Act, 1923, Indian Evidence Act, 1872 and CSS(Conduct) Rules, 1964 etc., we concur with the proposals.

With regards,

Yours sincerely,

Rajan

(K. Rajan)

Shri Arvind Verma,
Secretary,
Ministry of Personnel, Public Grievances and Pensions,
North Block,
New Delhi-110 001.

20

No. 41052/Ka. गा०/92
17/7/1997

L-619/75(E)/97
21/7

D.O. No.5-4/97-AC Coll/s(Fcd)

B. K. TAIMNI

सचिव
SECRETARY

भारत सरकार
खाद्य और उपभोक्ता मामले मंत्रालय
खाद्य और नागरिक पूर्ति विभाग
कृषि भवन, नई दिल्ली-110001
GOVERNMENT OF INDIA
MINISTRY OF FOOD & CONSUMER AFFAIRS
DEPTT. OF FOOD & CIVIL SUPPLIES
KRISHI BHAVAN, NEW DELHI-110001

July 17, 1997

Dear Sh Verma

Please refer to your D.O. letter No.34011/1(S)/97-Estt (B)(Pt) dated 3.6.1997 regarding our views/comments on the report of the working group appointed by the Govt. under the Chairmanship of Shri H.D. Shourie.

2. We have no specific comments to offer on the report.

Yours sincerely,

(B.K. Taimni)

Shri Arvind Varma,
Secretary,
Ministry of Personnel, Public
Grievances and Pensions,
New Delhi.

1576(S)/1997(B)/21/7

27(S)/97-SHCB
22/7/97

E-Mail b. k. taimni @ food nic. in ★ Tel. No. 91-11-338 2437 ★ Fax 91-11-338 3179

21

SNo 21 (RJ

25

MINISTRY OF HOME AFFAIRS
(RTI&P SECTION)

Subject : Right to Information and Promotion of open and transparent Government.

Reference MHA O.M. No.[illegible] dated the 11th June, 1997 on the above subject.

2. We have already communicated our views on the Right to Information and Promotion of open and transparent Government vide our D.O. No. [illegible] dated 16.7.97 (copy enclosed). We have nothing further to add with regard to the views of the Working Group on Right to Information and Promotion of Open and Transparent Government and Freedom of Information Bill appended thereto.

3. This issues with the approval of [illegible]

2.8.97(m-Enter)
23/8/97

(S)

[illegible]

RS (RTI), MHA - Shri A.K. Narayan
[illegible]

22

SN. 22 (R)

26

MOST URGENT

GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS
(FOREIGN DIVISION-II)
****

Subject : Grant of Indian Citizenship and Issuance of Passport to Foreigners of Indian Origin (Regarding).

Reference Office Memorandum No. [illegible] dated the 13th February, 1997 on the subject.

[illegible]

(V.K. [illegible])
UNDER SECRETARY (FMA)

US (D-II), FMA - (SHRI A.K. MARWAHA)
FMA U.O. NO.24021/33/97-HR&C, DATED 19.2.1997

23

SNo 29(R)

MINISTRY OF HOME AFFAIRS
(N. E. Division)

Subject: Right to Information.

Reference is invited to IS-I Division's OM No. 11/21011/21/97-IS(US D.II) dated 10/11 June, 1997 seeking comments on a report prepared by the Working Group on the Right to Information. Comments of the NE Division are as follows:-

(i) NE Division supports in principle the aims and objectives of the proposed Freedom of Information Bill.

(ii) The Right to Information is most relevant at the cutting-edge level, i.e., at the point where the public comes into contact with Government agencies such as driving licence, ration card, passport, electricity/water supply connection, land allotment, housing, school/college/university admissions etc. These and similar areas should be the thrust of the proposed Freedom of Information Bill.

(iii) Matters relating to Defence and Internal Security should be excluded from the scope of the proposed Freedom of Information Bill in the national interest.

(iv) In case copies of documents are requested for, there should be a provision for levying appropriate fees so as to avoid frivolous requests and unnecessary government expenditure. However, the procedure for deposit of fees and issue of documents should be simple.

(v) In large projects/schemes of direct public relevance, it should be made mandatory to display the estimated cost, name of the construction agency and scheduled time of completion. It should also be made mandatory for the construction and financing agency to provide a certain portion of their [illegible] for public information.

(vi) Scope of the Consumer Protection Act, 1986 should be appropriately extended to include disputes regarding Right to Information.

(vii) Training and reorientation of employees is an

contd....2

24

essential pre-requisite and should form part of the Act and Rules.

(viii) Politeness and courtesy by government employees to the public should also constitute an integral part of the proposed Freedom of Information Bill.

(D. S. Poonia)
Director (HE)

JS (IS-I), MHA
MHA U.O. No. 2731/97-HE(WR), dt. 26.6.97

D.O. No.15039/52/97-Pig. Cell

SNo.25(R)

P.K. JALALI
TELE: 3012514

संयुक्त सचिव
गृह मंत्रालय
भारत सरकार
नार्थ ब्लाक, नई दिल्ली-110001
JOINT SECRETARY
MINISTRY OF HOME AFFAIRS
GOVERNMENT OF INDIA
NORTH BLOCK, NEW DELHI-110001

Dated, the 26th June, 1997

Dear Shri Prakash,

Kindly refer to your Office Memorandum No.II/21011/21/97-IS(US DII) Dated the 10th June, 1997 regarding the Right to Information and promotion of open and transparent Government.

2. The exemptions from disclosure of information provided in section 9 of the Bill should ensure that the public functionaries are able to discharge their functions without any fear and transparency does not lead to weakening of Administration or give an opportunity to the unscrupulous elements to exploit the freedom for partisan purposes. However, it is felt that the provision relating to filing of appeal before a judicial/quasi-judicial body like Consumer Courts need to be reviewed. It would be more appropriate to have a designated Central Govt. body like Committee of Secretaries or the Cabinet Secretariat for this purpose.

With regards,

Yours sincerely,

(P.K. JALALI)

Shri Shashi Prakash,
Joint Secretary (IS-I),
Ministry of Home Affairs,
NEW DELHI.

26

MOST IMMEDIATE

No.II/21011/21/97-IS(US D.II)
GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS
(IS.I DIVISION)
****

New Delhi, the 21st July, 1997

OFFICE MEMORANDUM

SUBJECT : Action of Working Group on Right to Information and Promotion of Open and Transparent Government.

.....

The undersigned is directed to refer to the d.o. letter No.13011/1(a)/97-Estt(B)(Pt) dated 17th June, 1997 from Shri Arvind Varma, Secretary, Ministry of Personnel, Public Grievances and Pensions to the Secretary of this Ministry on the subject noted above and to say that Shri P.H. Nair, Deputy Inspector General, C.B.I., New Delhi has sent his personal views on Section 9 and 10 of the proposed Bill on Right to Information. A copy of which is enclosed for use and finalising the proposed Bill.

(A.K. MARWAHA)
UNDER SECRETARY TO THE GOVT. OF INDIA
TELE # 301 5700

Shri Y.G. Parande,
Director,
Department of Personnel & Training,
North Block,
NEW DELHI-110 001.

27



पुलिस उप-महानिरीक्षक
Director General of Police

SN-231(R)

पुलिस उप-महानिरीक्षक का कार्यालय
केन्द्रीय अन्वेषण ब्यूरो
विशेष अपराध प्रभाग
जी. ओ. सी. कम्प्लेक्स, ब्लाक सं. 4
लोधी रोड, नई दिल्ली-110003
Office of the
Dy. Inspector General of Police
CENTRAL BUREAU OF INVESTIGATION
SPECIAL CRIMES DIVISION
C.G.O. Complex, Block No. 4,
Lodhi Road, New Delhi-110003
Telephone : 4361615
Telex No. 31-24113-CBI-IN
Fax. No.

D.O. No. 1263/2/C/DIG/SCD/214/97
Dated/Dated 24th June 1997

Dear Shri Prakash,

Please refer to the copy of the report relating to the proposed bill on Right to Information. On going through the same, I have the following comments to offer.

A- In the proposedBill, Section 9 deals with exemptions from disclosure. Various areas of exemption have been listed out. In this context, it may be noted that when we send letters Rogatory to other countries for execution in many countries, an undertaking from the Govt.of India is being called for. In Bofors case, Govt. of India had filed a written undertaking that the documents and information received through execution of Letters Rogatory will be utilized only for the purpose of investigation and not for anything else. Such situations also need to be covered under Section 9 of the proposed Act.

B- Section 10 where the grounds of refusal are given, the following situations also need to be envisaged

i) If the request is malafide perse (say, knowing that the documents called for does not exist and the request is made for having thorough search conducted in the Archives so as to expose the invaluable materials available there), in such a situation, there is a need to screen the request to ensure that there is no malafide before it is acted upon, as it would save time, energy and man-power.

ii) Materials which have archaeological value and are worth being considered as National Treasure, also need not be considered open for publication.

contd...p/2

c- In Sections 14 and 15, the time limit prescribed is 30 days. It should be made explicit as to when the time limit starts, viz. the date of receipt etc., should need to be clarified.

Hope you may find these comments useful. Please note that these are my personal views on the matter.

With kind regards,

Yours sincerely,

(P.K. Nair)

Shri S.Prakash,
Joint Secretary (IS-I) MHA
New Delhi.

MOST IMMEDIATE

No.II/21011/21/97-IS(US D.II)
GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS
(IS.I DIVISION)
****

New Delhi, the 21st July, 1997

OFFICE MEMORANDUM

SUBJECT : Action of Working Group on Right to Information and Promotion of Open and Transparent Government.
.....

The undersigned is directed to refer to the d.o. letter No.13011/1(s)/97-Estt(B)(Pt) dated 17th June, 1997 from Shri Arvind Varma, Secretary, Ministry of Personnel, Public Grievances and Pensions to the Secretary of this Ministry on the subject noted above and to say that this Ministry is taking necessary action on the decision and implemental action on the amendments to the Section 5 of the Official Secrets Act, 1923 and certain changes in the Manual of Departmental Security Instructions.

2. It is noted that the Department of Personnel & Training is taking action on the recommendations of the Working Group relating to Freedom of Information Bill and amendments to CCS (Conduct) Rules. Substantive responses on the issue of Right to Information have been received from the following quarters, copies of which are enclosed for use in finalising the proposed Freedom of Information Bill and amendments to CCS (Conduct) Rules :

(i) Intelligence Bureau;
(ii) Budget Division, Deptt. of Economic Affairs, Ministry of Finance;
(iii) Ministry of Information and Broadcasting;
(iv) Department of J&K Affairs;
(v) Different Divisions of this Ministry such as North-East Division, Union Territory Division, Police Division, O&M and Vigilance Division.

(A.K. MARWAHA)
UNDER SECRETARY TO THE GOVT. OF INDIA
TELE # 301 5700

Shri Y.G. Parando,
Director,
Department of Personnel & Training,
North Block,
NEW DELHI-110 001.

30

S.No.3(R)

(52)

D.O.No.15(29)-B(R)/97

34

S.C. PANDEY
DEPUTY SECRETARY (BUDGET)
TELR: 301 4045.

New Delhi 2nd July, 1997

Dear Sir,

Kindly refer to your D.O. letter No.11-21011/49/97-IS US (D.II) dated 18th June, 1997 in continuation of Secretary's D.O. letter No.34011/1(S)/97-Estt.(B) (Pt.) dated 3rd June, 1997 regarding the report of the Working Group on "Right to Information and Promotion of Open and Transparent Government".

2. The comments of this Department on the report of the Working Group are enclosed herewith.

3. This has the approval of the Finance Secretary.

With kind regards,

Yours sincerely,

(S.C. Pandey)

Shri Shashi Prakash,
Joint Secretary,
Ministry of Home Affairs,
North Block,
NEW DELHI.

31

4(53)

35

Ministry of Finance
Department of Economic Affairs
Budget Division

of the Secretary of Economic Affairs

Sub: Comments on the Report of the Working Group on "Right to Information and Promotion of Open and Transparent Government"

1. We generally welcome the tenor of the Report which is intended to further open up the functioning of the Government to public gaze without compromising with public interest, which is a laudable objective for a democracy as a tool of enforcing accountability. However, we wish sound a note of caution and draw attention to some areas which, in our view, require a fresh look.

2. By accepting the proposals of the Working Group, we would seem to be shifting from one extreme to the other extreme and this will create a lot of practical problems. We may note that information will not be sought only from Deputy Secretaries, Directors and Joint Secretaries in the Central Secretariat at Delhi but also from a large number of offices across the length and breadth of the country. Officers in these offices will necessarily take a lot of time in understanding the implications of the clauses of the proposed Freedom of Information Bill 1997. In the interegnum, there could be situations where entire files may be made available to individuals seeking information and photocopies of relevant portions of information may be made available to the public. It is again not clear in what manner will records be made available to the public, duly catalogued and indexed.

3. On the administrative side, Government servants themselves would in some form or the other want information on the proceedings of the Departmental Promotion Committees and the panels prepared by such a Committee. If these are made available to the public, this could lead to litigation if a Government official has been superceded.

4. Further, there could be requests from offices for additional staff for handling the work relating to supplying information to the public. It would also throw a lot of work on the existing officials in the offices who will have to devote time in preparing catelogued and indexed records as well as making them available to the members of the public through the Public Information Officer or otherwise. Even now, there are practical problems in getting even routine information by one Wing of the Government from another.

5. Commercial information of limited duration is more important and sensetive. The economic information handled by Departments like DEA is such that its pre-mature disclosure would be prejudical to the public interest.

32

5. These apprehensions need to be carefully analysed and addressed so that the functioning of the Government is not thrown out of gear due to sudden shift to the other extreme of accessibility of information to public. It is necessary to undertake in depth review of similar legislation in major other countries to draw lessons relevant to us.

6. Our comments on the specific contents of the Report are as follows:-

7. Annexure-A of the Working Group's Report contains a draft of Freedom of Information Bill 1997. Our comments on the Bill are as follows:-

•Clause 2(d) of the Bill defines "Information" in a rather loose manner. "Any material" is very wide as it is purports to "include" any "document or record". The information is not only what is scattered in plethora of official documents but also what can be derived from such information by compilation, collation etc. We feel that the definition needs to be made specific.

•Clause 4(3) of the Bill casts a duty to disclose relevant facts and analyses when major policies or decisions are announced and to give reasons for decisions - whether administrative or adjudicative - to those affected by the decision. The "relevant facts and analyses" are not always reduced to writing. This may create problems.

•Clause 7(3) provides that the access to information shall be ordinarily provided in the form in which it is sought unless it would disproporationately divert the resources of a public authority or would be detrimental to the safety or preservation of the document in question. This stipulation is rather vague and liable to misuse unless such denial is approved at a sufficiently high level.

•Clause 9 of the Bill lists out various categories of information which would be exempt from disclosure under the proposed Act. Clause 10 of the Bill lists out various grounds for refusal of access to information. It would be pertinent to compare these grounds with the grounds on which a Parliament Question is eligible for admission(vide Rules of Procedures and Conduct of Business in Lok Sabha/Rajya Sabha) Extracts of Rule 41 of the Rules for Lok Sabha are enclosed. Can a citizen have a right to access to information which is wider than than the right of an MP to ask question from a Minister? The Report of the Working Group has not touched upon this specific aspect.

•Clause 10 provides that a Public Information Officer may refuse access to information where the request relates to information that is required by law or convention to be published at a particular time or the request relates to information that is contained in published material available for sale. It would be desirable to extend the coverage of this provision to the input data /records used in

37 (55)

compiling the published document. Thus, for example, the input material for Budget documents, monthly or annual accounts, Audit Reports etc. would not be available for public scrutiny. This provision is a must at least during a transition period which is required to enable the Government to meet the huge information requirements, hopefully with the aid of modern information technology. Disclosure of input or intermediate data going in the compilation of a published data may create avoidable confusion and controversy, especially if it is known to be provisional nature and subject to further reconciliation, checking and correction.

•Clause 11 contemplates levy of fee to cover the cost of providing access. The fee may be waived where the disclosure can be said to be in the larger public interest. This is rather vague. Who will be competant to take this decision needs to be specified.

•Clause 11 contemplates legal redress to a person who has been denied access to information to which he is eligible to get access under the proposed Act. It would be desirable to postpone the implementation of this privision for a certain transition period which is required to enable the Government to meet the huge information requirements. It is not uncommon to contemplate in an Act that different provisions of the Act may come into force from different dates notified by the Government. It is pertinent to mention here that section 18 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971 provides for C&AG's right to access to Government records without specifying any legal remedy under the Act for Government's failure to provide such access. A transition period during which no legal redress would be available is administratively desirable.

8. Annexure-B of the Working Group's Report contains a draft amendment to Section 5 of the official Secret Act, 1923. We agree with the proposed amendment provided it is carried out as a part one alongwith passing of Freedom of Information Act and not as a stand alone measure.

9. Annexure-C of the Working Group's Report contains draft amendments to the Indian Evidence Act CPC and CrPC. The main purpose of the amendment is to give wider powers to courts and restrict the use of existing provisions of claiming privilege from production of records in court in public interest, while at the same time disallow unauthorised use of unpublished official records as evidence in any court. It would be useful to add a provision that any information received by a citizen from "Public Information Officer" under the provisions of the proposed Freedom of Information Act will be admissible evidence.

10. Annexure-D and E of the Working Group's Report contains draft amendments to CCS Conduct Rules. The proposed amendment in Annexure-D seeks to cast a duty on all Government servants to

34

17

provide full and accurate information, except certain specified type of information, to a member of public or any organisation. It would not be proper to let every Government servant be an outlet of information. It may create confusion and may cast unbearable burden on the time and resources of individual Government servant. Hence, we do not support Annexure-D. However, Annexure-E is acceptable since the scheme of the Bill provides citizen's right to access through "Public Information Officer".

11. Annexure-F of the Working Group's Report contains draft amendments to Manual of Departmental Security Instructions. At page 31 of the Report, a revised classification has been suggested for top secret/secret/confidential which is as vague as the existing one.

12. This has the approval of Finance Secretary.

(S. C. Pandey)
Deputy Secretary (Budget)

D.O. 51(9)/97-Ins.I

भारत सरकार Government of India
वित्त मंत्रालय Ministry of Finance
वित्तीय सेवाएं विभाग Department of Economic Affairs

39

Vinod Dhall,
Additional Secretary (Ins.)
Tel. 462-1135
FAX. 462-9439

Lok Nayak Bhavan
नई दिल्ली / New Delhi, 17-7-1997

Dear Shri Varma,

Please refer to your D.O. letter No. 34011/1/(S)/92-Estt.(B) (Pt) dated the 15th July, 1997 regarding the comments on the Report of the Working Group on Right to Information and Promotion of Open and Transport Government.

2. We have called for the comments from the insurance companies on the subject; the comments from some of these companies are still awaited and are being followed up. The views of the Insurance Division will be communicated before the 25th July, 1997.

With regards,

Yours sincerely,

Vinod Dhall

(Vinod Dhall)

Shri Arvind Varma,
Secretary,
Ministry of Personnel, Public Grievances and Pensions,
New Delhi.

36

सत्यमेव जयते

कल्याण कुमार वक्शी
K. K. BAKSI
Tel. : 3382683

FAX : 3384918

सचिव
भारत सरकार
कल्याण मंत्रालय
नई दिल्ली
SECRETARY
GOVERNMENT OF INDIA
MINISTRY OF WELFARE
NEW DELHI

July 16, 1997.

Dear Arvind,

Please refer to your D.O.No.34011/1(S)/97-Estt.(B)(Pt) dated 3rd June, 1997 and a copy of the report of the Working Group on Rights to Information and Promotion of Open and Transparent Government. I have carefully gone through the report of the Working Group.

2. It is indeed a commendable step. It has rightly been pointed out by the Working Group that it is a right that evolves with the maturing of the democratic form of governance. Meaningful participation of people in major issues affecting their lives is the essence of democracy. This participation is not possible if people totally lack information or have inadequate information about the way Government business is transacted. People's participation will also ensure transparency and openness. However, there would be areas where disclosure of information may affect the sovereignity and integrity of India, security of the State, conducting of international relations, etc. The Working Group has attempted to clearly define the information which needs to be exempted from disclosure under the provisions of the proposed Act. The exemptions are reasonable restrictions on the right to information.

3. I would, however, like to make a few comments on some of the aspects.

(1) The title of the Bill: The title of the Bill is 'Freedom of Information Bill'. In the USA and Australia, the same title has been adopted. However, "Right to Information Bill" perhaps would be more expressive. The word freedom implies "state of being able to act without hindrance or restraint, liberty of action etc.". The word Right, on the other hand, implies "a legal or moral entitlement" - in this case, legal entitlement. In other words, it also implies an obligation on the part of the other person to act; in the present instance, to provide information asked for. In the Constitution of India, under the Part-III - Fundamental Rights, Article 19(1) talks of the citizens' right to freedom of speech and expression. Right to information is part of the Fundamental Right to freedom of speech and expression. Therefore, either we can use the word 'Right to Freedom of Information Bill' or 'Right to Information Bill'. I would suggest the latter expression.

..../-

(ii) Appellate Authority. The district forum, the State Commission or the National Commission, as established under the Consumer Protection Act, 1986, have been proposed to be appellate authorities against the decision of reviewing authority. It has also been provided that no document or record shall be withheld from the perusal of the appellate authority.

I have the following comments to make:

(a) The district forum, the State Commission or the National Commission have been established under the Consumer Protection Act, 1986, for entirely different purpose. Appeals arising out of the exercise of right to information would involve quite different nature of work including different kinds of evidence etc. Secondly, at the district level, quite a large number of district forums have many vacancies. It is learnt that for want of adquate funds, they are not functioning properly. How far they would be able to cope with the additional responsibility is an issue which needs to be looked into.

(b) It has also been provided that no document or record should be withheld from the perusal of the appellate authority. It may be mentioned here that appellate authorities are the district forum at the district level, the State Commission at the State level or the National Commission at the national level. These consist of both officials and non-official members. There could be sensitive matters relating to defence and internal security matters which cannot be given to the members of district forum or the State Commission or in many cases even National Commission for perusal. I, therefore, feel that a decision regarding whether a document or record can be withheld from the perusal of the appellate authority should be left to a competent authority to be declared by the Government of India and the State Government as the case may be or as prescribed under the law for various classes/categories of documents, various levels of authorities at the district, State and national level may have to be declared competent authorities who would decide as to which document or record should be withheld from the perusal of the appellate authority.

(c) Capacity building : It is a fact that presently Government organisations are not adequately equipped to.

With kind regards,

Yours sincerely,

(K.K. Bakshi)
4/7/98

38

Shri Arvind Varma,
Secretary,
Ministry of Personnel, Public Grievances & Pensions,

4330/Cvt.I/97
29-7-97

BJ Hand 62

M.H.K. SARDANA
JOINT SECRETARY
TEL.NO.6516077

भारत सरकार
विज्ञान और प्रौद्योगिकी मंत्रालय
विज्ञान और प्रौद्योगिकी विभाग
टेक्नोलाजी भवन, नया महरौली मार्ग, नई दिल्ली-110016
GOVERNMENT OF INDIA
MINISTRY OF SCIENCE & TECHNOLOGY
Department of Science & Technology
Technology Bhavan, New Mehrauli Road, New Delhi-110016

DO No..... Dy.No.2502/JS(A)/97 Date.....25.7.1997

Dear Shri Varma,

Kindly refer to your D.O. No.34011/1/(S)/92-Estt.(B)(Pt) dated 15.7.97 addressed to Secretary, Department of Science & Technology regarding recommendations of the Working Group on Right to Information & Promotion of Open & Transparent Government.

2. The comments of this Department have already been furnished to you vide this Department's O.M. of even number dated 24.6.1997 (copy enclosed).

2380/97-Estt(B)
TS/7/97
4340/JS(E)/97
29/7
1539/97/Admn 30/7/97

With regards,

Yours sincerely,

M.H.K. Sardana

(M.H.K. SARDANA)

Shri Arvind Varma,
Secretary,
Ministry of Personnel,
Public Grievances & Pensions,
North Block,
New Delhi.

JS(E) 29/7/97
DS(RH)
DS(RH) 30/7
39

भारत सरकार
विज्ञान और प्रौद्योगिकी मंत्रालय
विज्ञान और प्रौद्योगिकी विभाग
टेक्नोलाजी भवन, नया महरौली मार्ग, नई दिल्ली-110016

GOVERNMENT OF INDIA
MINISTRY OF SCIENCE & TECHNOLOGY
Department of Science & Technology
Technology Bhavan, New Mehrauli Road, New Delhi-110016

तार/Telegram : SCIENCTECH
दूरभाष/Telephone : 662135, (EPABX) 667373
टेलेक्स/Telex : 73381, 73317, 73280
फैक्स/Fax : 661682, 6863847 6862418, 664567

Dy. No: 2502/JS(A)/97

June 24, 1997

OFFICE MEMORANDUM

Subject: Report of the Working Group on Right to Information and Promotion of Open and Transparent Government.

The undersigned is directed to refer to D.O. letter No.34011/1(S)/97-Estt(B)(Pt) dated the 3rd June, 1997 of Secretary, Ministry of Personnel, Public Grievances and Pensions on the above mentioned subject.

2. The Report of the Working Group and the draft legislation proposed by the Working Group have been examined in the Department of Science and Technology.

3. The objectives of the report in providing flow of information to the public in the context of accountability of the public servants and also of the judicial recognition in a democratic set up are un-exceptionable.

4. Clause-9 relating to 'Exemption from disclosure of Information' has been studied carefully in the Department. The Department feels that the wording of the Clause is too general and can be interpreted in a manner so as to defeat the very purpose of the freedom of information. The exemptions need to be defined more precisely as far as practicable. This Clause on the other hand specifically excludes any protection to reports of scientific or technical experts, including their opinion on scientific or technical matters. The Department feels that making it obligatory to Government to disclose scientific or technical reports on a request being made may not always be conducive to the public interest, security and business interest which are sought to be protected in other provisions of this Clause. Therefore, the Department feels that the proviso at Sub-Clause(iv) to Clause-9 may be deleted and the discretion left with the public authorities to decide upon the merit in each case. For example, Government may have no objection in making available completed scientific reports in which different comments/views have been taken into account.

5. The legislation being suggested by the Working Group would involve additional demands on the resources of the Department which would require supplementation in finance and also in man-power. Therefore, Government may consider making an appropriate assessment of the man-power and financial requirements of different agencies before such a legislation is brought in force to ensure that implementaion of the legislation takes place immediately and serves the purpose for which it is intended.

40

6. The Department presumes that the Ministry of Personnel would finally bring out a Cabinet Note for obtaining the decision of the Government in the matter when the Department would have an opportunity to express its opinion further.

(M.M.K.Sardana)
Joint Secretary to the Govt. of India

Shri Arvind Varma,
Secretary,
Ministry of Personnel, Public Grievances
and Pensions,
North Block,
New Delhi.

4356/Secy/97
29-7-97

45

योगेन्द्र नारायण
सचिव
YOGENDRA NARAIN
SECRETARY
Tel 3714938
Fax 3716656

भारत सरकार
Government of India
जल, भूतल परिवहन मंत्रालय
MINISTRY OF SURFACE TRANSPORT
ट्रांसपोर्ट भवन, Transport Bhawan
1, संसद मार्ग, 1, Parliament Street
नई दिल्ली-110001
New Delhi-110001

D.O.No.2771-R/Secy/SFT/97-R

July 28, 1997.

Dear Arvind,

Please refer to your D.O. letter No.34011/1(S)/97-Estt(B)(Pt.) dated 15.7.1997 and earlier letter dated 3.6.1997 inconnection with the comments on the recommendations of the Working Group on Right to Information and Promotion of Open and Transparent Government.

4235/JS(E)/97
29/7

2. As this Ministry is a part of the Government we would generally go alongwith what is decided for the other Ministries. Our only suggestion would be that when rules are framed on the Freedom of Information Act we may also be heard. I would also suggest that the Public Information Officer who would render assistance to the persons requiring information should have adequate staff under him to ensure that the information is supplied in time.

2752/Estt-R(A)/97
31/7/97
29-7-97

JS (E)

Yours sincerely.

(Yogendra Narain)

Shri Arvind Varma,
Secretary,
Ministry of Personnel,
Public Grievances and Pensions,
North Block,
New Delhi.

DS(R)
30/7

DD (RM)

42

4350/SW/P/97
29-7-97

विश्वनाथ आनंद
VISHWANATH ANAND

सचिव
पर्यावरण एवं वन मंत्रालय
भारत सरकार
SECRETARY
MINISTRY OF ENVIRONMENT & FORESTS
GOVERNMENT OF INDIA

D.O.No.I-34011/14/92-IWSU

July 28, 1997

Dear Shri Varma,

Please refer to your D.O.No.34011/1(S)/97-Estt.(B) (Pt.) dated the 3rd June, 1997 regarding furnishing of comments on the Report of the Working Group on Right to Information and Promotion of Open and Transparent Government.

2. The draft 'Freedom of Information Bill, 1997' has been studied in this Ministry and some comments are indicated in the enclosed note.

With regards,

Yours sincerely,

(Vishwanath Anand)

Shri Arvind Varma
Secretary
Ministry of Personnel, Public Grievances and Pensions
Sardar Patel Bhawan
Sansad Marg
New Delhi - 110 001

सी.जी.ओ. कॉम्प्लेक्स, लोधी रोड, नई दिल्ली-110003 फोन : +91 (11) 4361896, 4360721 फैक्स : +91-(11) 4361838
C.G.O. Complex, Lodi Road, New Delhi-110003 Tel. : +91 (11) 4361896, 4360721 Fax No. +91-(11) 4361838
E-Mail : anand@envfor.delhi.nic.in E-Mail : nrcd@giasd01.vsnl.net.in

43

Enclosure with D.O. No.I-34011/14/92-IWSU dated 28.07.1997.

MINISTRY OF ENVIRONMENT & FORESTS

Subject:- Comments of the Ministry of Environment and Forests on the draft 'Freedom of Information Bill, 1997'.

1. The clause 9 deals with exemption from disclosure of information. As per clause 9(iv), information in the nature of internal working papers, such as, inter-departmental notes, recommendations, or minutes for the purposes of deliberative processes in the public authority is exempted from disclosure. However, a proviso has been made under this sub-clause that this exemption shall not apply to reports of scientific or technical experts including their opinion on scientific or technical matters or information that is factual. It is felt that this proviso should be deleted. It is pertinent to point out that the question of disclosure of the reports of the experts was examined earlier in this Ministry. At that time it was observed that there would be a sensitivity about the reports of the experts on research proposals because the adverse comments on a research proposal, if made public, could be misused against the scientists whose proposal has been adversely commented upon by an expert to harmhis reputation. Moreover, at times contradictory reports on Environmental and Forests Clearance matters could generate avoidable controversies and agitation. On account of this fact we may not agree for the proviso made in clause 9(iv).

2. The Ministry of Environment and Forests do not have any comments to offer on the remaining clauses of the Bill.

44

भारत सरकार
मानव संसाधन विकास मंत्रालय
(महिला एवम् बाल विकास विभाग)
GOVERNMENT OF INDIA
MINISTRY OF HUMAN RESOURCE DEVELOPMENT
(DEPARTMENT OF WOMEN & CHILD DEVELOPMENT)
SHASTRI BHAWAN, NEW DELHI-110001

ASHA DAS
SECRETARY
TEL 3383586 (FAX 3381495/3381800)

D.O.No.F.22-25/97-Admn.

July 29, 1997

Dear Arvind.

Please refer to your d.o. letter No.34011/1(S)/97-Estt.(B) (Pt.) dated 3.6.1997 regarding the recommendation of Working Group on Right to Information and Promotion and Transparent Government." Given the Department's role and responsibilities which is one of advocacy for women and children issues, both within Government, NGO and the Civil society, the recommendation of the Working Group is fully endorsed.

I may, however, add that the proposal is very timely and relevant as free flow and exchange of information on gender and related issues is very important for bringing about an attitudinal and behavioural change in the family - specially the men and older women towards the needs of women and children. This would go a long way in providing the right climate and environment for the empowerment and development of women and children of the country in a just and equitable manner.

With best wishes.

Yours sincerely,

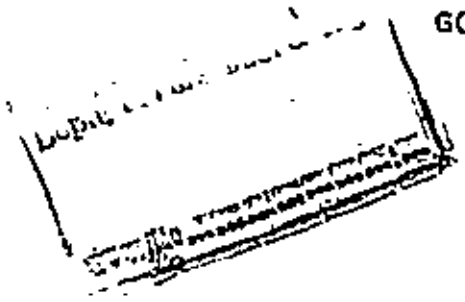
(ASHA DAS)

Shri Arvind Verma
Secretary
Ministry of Personnel, Public Grievances
and Pensions
North Block, New Delhi.

तार : कोल संख्या _____
Gram : COAL No. A-60011/13/97-Admn.

भारत सरकार
कोयला मंत्रालय
GOVERNMENT OF INDIA
MINISTRY OF COAL

49



शास्त्री भवन, नई दिल्ली, दिनांक _____
Shastri Bhavan, New Delhi, the July 23, 1997

ESH/13

The Secretary,
Deptt. of Personnel & Training,
North Block,
New Delhi.

Reference: Your D.O.No.34011/1(S)/97-Estt.(B)(Pt.), dated June 3, 1997 and D.O.No.34011/1(S)/92-Estt.(B)(Pt.), dated July 14, 1997.

***

Sir,

The views/comments of the Ministry of Coal are attached herewith.

Yours faithfully,

Dy(Rem)

(G.B. Mukherji)
Joint Secretary

46

Even though the Working Group vide para 3.2 has expressed an opinion that the impact of a law on the Right to Information would not be costly in terms of public time and money, there is a genuine apprehension that in the initial stages, a large part of office time will be spent in furnishing information, at the expense of the prescribed work. This apprehension is in spite of the provision at clause 10(i) of the draft Bill which relates to single questions of a general nature rather than a large number of requests from all corners of the country. It is suggested that a yardstick of reacting to public requests for information, for every officer, should also be set. Admitting that any yardstick cannot take into account the various shades of complicity of information, at least a yardstick will allow persons not to be overwhelmed by requests for information, at the expense of other work/duties.

2. The definition of "information" and "freedom of information" is large enough to include both the decision making process as well as the final decision [2(c) and (d) of the Bill]. Theoretically, it is, therefore, possible for an interested member of the public to follow the case at every stage of the decision till final decision. For administrative convenience, it is suggested that such requests for information should be limited from one person for one item of information.

3. The Act does not differentiate between a citizen and a public servant. While this is correct, there should be some safeguard to ensure that a public servant does not utilise this Act for following his own case in the manner indicated in the above para. It is not clear whether the provisions of clause 9(iv) and (vi) can be used for refusing information in such cases.

4. Clause 4(iii) of the draft Bill prescribes the setting up of "norms for performance of activities". One is aware that in Government functioning, there is little relationship between the time available and the allocated work load. This is the reason why some members of staff are always busy in "fire fighting operations", thereby neglecting routine but prescribed, procedural work. Whenever additional schemes or programmes are contemplated in Government or emphasised, the same existing staff are expected to perform those new functions: neglecting some earlier prescribed items of work. Hence, it would be presumed that in setting up and publishing the "norms of performance" the priority-wise work for each staff member can be indicated. Routine and non-priority work should, therefore, have very relaxed norms of performance.

47

5. Clause 7(1) speaks about the fees to be paid by the person seeking information. Instead of leaving this decision to each Ministry, it is suggested that the DOPT may prescribe uniform fees on the following basis:

(a) On application (to cover administrative costs, search time and postage).

(b) Cost of stationery/photo copying, etc at the rate of rupees per page.

With such guidelines the application of clause 14(4) may also reduce.

6. Para 6.1 of the Report of the Working Group has stressed upon the need to "build capacity in its systems to cope with the expected demand for information". This is a crucial need and hopefully, the introduction of the freedom of information Bill/Act, without first preparing the system to respond to the expected demand, will not be putting the cart before the horse. Most Ministries in Government do not have a clear cut job and responsibility description throughout the entire staff hierarchy. Though theoretically, there is an organisation for setting up working norms, there is no relationship with the work load of most staff members vis-a-vis the time available to them for working. Essential records, even if maintained are not updated. Old records are either not destroyed or systematically archived for future reference. Production of material and documentation is generally inefficient. Most staff members have not been attitudenally motivated to use modern office equipment and so on. Therefore, bringing about a serious change in the administrative system and the re-orienting the attitude and ethos of the employees would be an essential pre-requisite for the success of the Information Bill/Act. The office notes at page 6/N refer to this crucial issue and laments the fact that earlier Committees have suggested such reforms and yet the position has not at all improved. Hence, this serious deficiency must be recognised in assessing the success of the information Bill and of the connected measures that are being suggested on administrative reforms, citizens charter, etc.

7. As per the Bill, each public authority will have a "Public Information Officer". It is hoped that the Government will not order that each Ministry will assign this responsibility to an existing staff member but will authorise the creation and filling up of a post for this purpose. It is suggested that the officer may be of the level of an Under Secretary,

since he/she will not only have to ensure that the required information sought by the public is made available, but will also have to play a crucial role in bringing about system improvement.

8. Finally, it is suggested that a citizen should have as much right to seek information from the private sector as from Government/Government owned undertakings, etc. Laying the onus of providing information only to the public sector, even though the activities of many private institutions have a great influence on the general public, appears to be discriminating.

अनिल विनायक गोकाक

A. V. GOKAK

Tel 3719898
3032787
Fax 3711514

अध्यक्ष दूरसंचार आयोग
सचिव, दूरसंचार विभाग
महानिदेशक, दूरसंचार
भारत सरकार
संचार भवन, 20 अशोक रोड
नई दिल्ली-110001

Chairman, Telecom Commission
Secretary, Deptt. of Telecommunications
Director General, Telecommunications
Government of India
Sanchar Bhavan, 20 Ashoka Road
New Delhi-110001

56

4404/Estt/(B)/97
20-7-97
4322/JS(E)197
31/7

DO No Ch(TC)/97/271-D
July 30, 1997

Dear Shri Varma,

Please refer to the correspondence resting with your DO letter No 34011/1(S)/92-Estt.(B)(Pt) dated 15th July, 1997 in regard to the Report of the Working Group on "Right to Information and Promotion of Open and Transparent Government."

2. We generally agree with the provisions of the draft "Freedom of Information Bill, 1997", the proposed amendments to other Acts/Rules and with the recommendation of the Working Group for entrusting the task of comprehensive identification and review of the Central as well as State laws - which may impinge on freedom of information - to an expert body like the Law Commission.

With regards,

31/7/97 (Monday)
31/7
98KS)/97-ES(A)(B)
1/8/97

Yours sincerely,

(AV Gokak)

Shri Arvind Varma
Secretary
Ministry of Personnel, Public Grievances
& Pensions
North Block, New Delhi

30.7.97
JE(E)
DD(RM)

57

गोविन्द रा० पटवर्धन
संयुक्त सचिव
भारत सरकार
कृषि मंत्रालय
(पशुपालन एवम् डेयरी विभाग)
कृषि भवन, नई दिल्ली-110001
दूरभाष : 3382354
फैक्स : 3386674

G. R. PATWARDHAN
Joint Secretary
Government of India
Ministry of Agriculture
Department of Animal Husbandry
& Dairying
Krishi Bhawan, New Delhi - 110001
Tel. No. : 3382354
Fax No. : 3386674

D.O.No.12034/1/97-Admn.I

July 28, 1997

Respected Sir,

Kindly refer to your D.O. No. 34011/1(s)/97-Estt(B)(Pt.) dated the 3rd June, 1997 regarding submission of views/comments on Working Group Report on 'Right to Information and Promotion of Open and Transparent Government' addressed to Shri Yogesh Chandra, Secretary(AHD).

2. The Report has been examined in the Department which agrees with the views expressed by the Working Group as also its recommendations.

With regards,

Yours sincerely,

(G.R. Patwardhan)

Shri Arvind Varma,
Secretary,
Ministry of Personnel,
Public Grievances & Pensions,
North Block, New Delhi.

सचिव
SECRETARY
सूचना और प्रसारण
INFORMATION & BROADCASTING
भारत सरकार
GOVERNMENT OF INDIA

D.O.No.5/1/96-Press(Vol.II)

नई दिल्ली-१, तारीख १९९
Dated New Delhi-1, the August 4, 1997.

Dear Sh. Verma,

Please refer to your D.O. letter No. 34011/1(6)/92-Estt.B(Pt.) dated 15.7.1997 regarding the Report of the Working Group on Right to Information and Promotion of Open and Transparent Government.

The Government may accept the Report of the Working Group on Right to Information and Promotion of Open and Transparent Government; the following recommendations in the Report may require another look:

(a) In light of the amendments proposed to be brought about to the Departmental Security instructions, the necessity of amendment to Rule 11 of CCS (Conduct) Rules, 1964 as the existing rule only prohibits 'UNAUTHORISED' communication.

(b) There appears to be conflict between clause 5 of the draft Bill and use of 'every Government servant' in proposed amendment in Conduct Rules (Annexure E of the Report.

It may be reasonably ensured that the information is sought from Public Authority only when it is genuinely required by the persons seeking information.

With regards.

Yours sincerely,

(N. P. Nawani)

Shri Arvind Verma
Secretary
Ministry of Personnel, Public Grievances & Pensions
NOrth Block
NEW DELHI.

4523/Estt(B)/97
5/8/97

6

सत्यमेव जयते

श्रीमती शान्ता शास्त्री
SMT. SHANTA SHASTRY
Tel.: 3715564
Fax : 011-3327660

सचिव भारत सरकार
स्वास्थ्य एवं परिवार कल्याण मंत्रालय
भारतीय चिकित्सा पद्धति एवं होमियोपैथिक विभाग
रेड क्रोस भवन, नई दिल्ली - 110001
SECRETARY TO GOVERNMENT OF INDIA
MINISTRY OF HEALTH & FAMILY WELFARE
DEPTT. OF ISM & HOMOEOPATHY
RED CROSS BUILDING, NEW DELHI - 110001

D.O.No. Z.28015/27/97-P&C
Dated 1st August, 1997

Dear Shri Verma,

Kindly refer to your D.O. letter No. 340aa/1(s)/97-Estt. (B)(Pt.) dated the 3rd June, 1997 forwarding therewith the Report submitted by the Working Group on "Rights to Information and Promotion of Open and Transparent Government".

I am enclosing herewith a note incorporating the views/comments of my Department.

With regards,

Yours sincerely,

Shanta

(Shanta Shastry)

Shri Arvind Varma,
Secretary
Ministry of Personnel, Public Grievances
and Pensions,
New Delhi-110001.

53

The Department of Indian Systems of Medicine and Homoeopathy has been established in March 1995. There are 2 statutory bodies namely the Central Council for Indian Medicine and the Central Council of Homoeopathy. The main job of these Councils is to lay down minimum standards of education, norms for educational institutions of Indian Systems of Medicine and Homoeopathy and to register the practitioners of each system of medicine under their purview.

There are 4 Central Research Councils namely, Central Council for Research in Ayurveda and Siddha, Central Council for Research in Homoeopathy, Central Council for Research in Unani Medicine and Central Council for Research in Yoga and Naturopathy. These are the bodies engaged mainly in research. However, the Central Council for Research in Yoga and Naturopathy also releases grant in aid to private organisations of Yoga and Naturopathy.

The Government has also set up National Institute for Ayurveda at Jaipur, for Homoeopathy at Calcutta, for Naturopathy at Pune, for Unani Medicine at Bangalore and for Yoga in Delhi. The National Institute for Unani Medicine and the National Institute of Yoga are yet to be operationalised. There is a public sector undertaking called Indian Medicine and Pharmaceutical Company Limited, registered under the Company's Act. This organisation manufactures Ayurveda and Unani Medicines at present. The supplies of drugs are limited to only Government hospitals, dispensaries.

There are 2 Drug Testing Laboratories namely the Pharmaceutical Laboratory for Indian Medicine and the Homoeopathy Pharmacopoeia Laboratory. These are located at Ghaziabad and are attached offices of this Department. In addition to the statutes relating to the Central Councils and the memorandum and articles of the Association of the

Research Societies and the National Institutes.

The Department is also concerned with the Drugs and Cosmetics Act 1940 and rules thereunder. It is also concerned with the magic remedies Act. Against this background the views, comments of the Department on the report of the Working Group on Rights to Information and Promotion of Open and Transparent Government are given below:-

(1) There is a substantial amount of research work being undertaken directly through subordinate organisations such as the Councils, Institutes and as also sponsored research through semi-government organisations/NGOs etc. This work and results arising there of are the intellectual property rights of the Department / Organisation/ individual concerned. This information must be withheld till patent in this regard are registered.

(2) The Department employs a number of doctors. The information confided in by the patient to the doctor and the advice tendered by the doctor to the patient should be treated as confidential. Professional ethics bind doctors to confidentiality with respect to patient records.

(3) Individuals / organisations apply to the Department for various purposes. Information enclosed with these applications could be of confidential nature and should not be divulged to another party without obtaining the approval of the applicant.

(4) Applicant seeking information should not be given incomplete information because portrayal of incomplete information may result in distortion of facts and consequent mis-information.

53

(5) Extracts of the opinions expressed by officials should not be given because:-

(a) it would in future militate against the giving of free and frank views of the officials concerned: and

(b) may attract individual/public ire against the officials concerned.

(6) Personal information pertaining to officials such as ownership of property/property transactions should not be disclosed.

M.P. BEZBARUAH
Tel: 3711792, 3717890
Fax: 3717890

सचिव
पर्यटन विभाग
भारत सरकार
नई दिल्ली
SECRETARY
DEPARTMENT OF TOURISM
GOVERNMENT OF INDIA
NEW DELHI

65

D.O. No: 911/Secy(T)/97

July 10, 1997

Dear Shri Varma

Please refer to your d.o. letter No. 34011/1/(S)/97-Estt(B)(Pt.) dated the 9th June, 1997 regarding Right to Information and Promotion of Open and Transparent Government. This Department supports the recommendations of the Working Group.

with regards

Yours sincerely,

(M.P. BEZBARUAH)

Shri Arvind Varma,
Secretary,
Government of INdia,
Ministry of Personnel Public Grievances
and Pensions,
New Delhi.

57

दूरभाष : 011-4361481
Tel 011-4362772
फैक्स 011-4361481
Fax : 011-4362772
Cable RENEWABLE
केबल : रिनीउएबल
टेलेक्स 31-61653-DNES-IN
Telex : 31-61653-DNES-IN
E Mail addr : secmnes@x400.nicgw.nic.in

सत्यमेव जयते

सचिव
अपारम्परिक ऊर्जा स्त्रोत मंत्रालय
SECRETARY
MINISTRY OF NON-CONVENTIONAL
ENERGY SOURCES
ब्लाक नं 14, केन्द्रीय कार्यालय परिसर
लोदी रोड, नई दिल्ली-110 003
BLOCK NO.14, C.G.O. COMPLEX
LODI ROAD, NEW DELHI - 110 003

अशोक पार्थसारथि
A. PARTHASARATHI

D.O. No.439/SNES/97/3376

July 15, 1997

Dear Shri Varma,

Kindly refer to your letter dated 15th July, 1997 asking for our views/ comments on the Report of the Working Group on Right to Information and Promotion of Open and Transparent Government.

We have no particular comments to make on the Report of the Working Group.

With best wishes,

Yours sincerely,

(A. Parthasarathi)

Shri Arvind Varma
Secretary
Ministry of Personnel, Public Grievances and Pensions
North Block
New Delhi - 110 001.

58

57

F.No.15(29)-B(R)/97
Government of India
Ministry of Finance
Department of Economic Affairs
(Budget Division)

New Delhi, dated the 6th August, 1997

OFFICE MEMORANDUM

Subject:- Furnishing of comments/views on the recommendations of the working Group on "Right to Information and Promotion of Open and Transparent Government"- regarding.

The undersigned is directed to refer to Secretary, Pension, Public Grievances and Pensions d.o. letter No. 34011/1(S)/92-Estt.(B) (Pt.) dated 15.7.1997 addressed to Secretary, Finance on the subject cited above. The comments of this Department on the Report of the Working Group have already been sent vide DS (Budget)'s d.o. letter of even number dated 2.7.1997 (copy enclosed) to Shri Shashi Prakash, Joint Secretary, M/O Home Affairs, New Delhi.

2. The comments of Insurance Division of this Department on the Report of the Working Group are enclosed.

3. This has the approval of Finance Secretary.

Encl: As above.

(S.D. Paul)
Under Secretary to the Government of India

Ministry of Personnel, Public Grievances and Pensions,
(Shri Rakesh Malhotra, DO)
NEW DELHI.

59

Annexure I

COMMENTS OF INSURANCE DIVISION ON FREEDOM OF INFORMATION BILL, 1997.

1. Presently, Insurance sector is nationalised and private companies are not allowed to conduct insurance business in India. However, as per the announcement made by the Finance Minister in his Budget Speech, a segment of insurance business will be thrown open to the private sector. The Bill, in its present form will be applicable only to the public sector companies and not to the private companies. It is apprehended that if the private sector companies are not covered under the above Bill, nationalised companies will be placed at a disadvantageous position vis-a-vis the private companies because while on the one hand public sector companies will be required to part with certain information, such binding will not be on the part of private companies. This may not ensure a level field playing between the public and private companies.

2. There is a provision in the Bill for charging fees for private information. It is suggested that fee structure should take into account the cost and also be adequate to discourage frivolous request for information.

60

3. Life Insurance Corporation of India has commented that in sub-clause (ii) of clause (g) of Section 2, which defines the term "public authority", it has been stated that the expression, company, corporation, trust, firm, society and co-operative society shall have the same meaning as assigned to them in the respective Acts under which they are registered. Since a Corporation is not registered under any Act but is established by or under an encactment, it is felt by LIC that the phrase, "under which they are registered" should be modified to read as "by or under which they are established".

5. LIC has also suggested that Sub-clause (ii) of clause (g) of Section 2 provides that "a company, corporation, trust, firm, society and co-operative soceity substantially funded or controlled by the Government" shall be a "public authority". Since many a company is owned by the Government, the phrase, "substantially funded or controlled by the Government" should read as "owned or substantially funded or controlled by the Government".

6. LIC has also suggested that under Section 4, sub-section (1) requires every "public authority" to grant access to information to any citizen requesting for such access. Since under Section 3 it is provided that subject to the provisions of the Act, every citizen shall have the freedom to seek information

from a public authority, what the public authority under Section 4 is obliged to grant the citizen is "information" and not "such access". In view of this, the phrase in sub-section (i) of Section 4, "to any citizen requesting for such access" should read as "to any citizen requesting for such information".

7. LIC has further suggested that under Section 6, oral request should not be accepted by the Public Information Officers. Further, in order to ensure that the provisions of the Act are not misused, the requestor should also be made to state in the application for access to information the purpose for which he is seeking the information from the public authority.

8. LIC has also suggested that sub-section 2 of section 7 should be amended to provide that a refusal to give access to information should be communicated within 30 days of the receipt of the request or within the extended period stipulated under the first proviso to sub-section (1).

9. LIC has sought clarification in respect of Section 23 which deals with the power to make rules by the appropriate authority. The term, "appropriate Government" has been defined under clause (a) of section 2 to include a State Government also. Since the Freedom of Information Bill, 1997 is a central legislation, it is not clear whether Section 23 envisages the making of rules by the State Governments also as "appropriate Governments". 'It is also not clear as to what would happen in the event of a conflict between the rules made by the Central Government and the State Government as both are "appropriate Governments" under Section 23 of the Act.

63

DRAFT

Annexure - II

Legal/Cor./8(2)4

Shri C.S. Rao,
Joint Secretary (Insurance),
Government of India,
Ministry of Finance,
Insurance Division,
Department of Economic Affairs,
Lok Nayak Bhavan,
3rd Floor, 'A' Wing,
Khan Market,
New Delhi - 110 003.

Dear Sir,

Re: Report of the Working Group on Right to Information and Promotion of Open and Transparent Government.

Ref: Our letter ref:Legal/Cor./8(2)4 dated 20th June, 1997.

Kindly refer to the communication resting with our above letter.

2. We had the Report of the Working Group on Right to Information and Promotion of Open and Transparent Government and the accompanying Freedom of Information Bill, 1997 examined by our Legal Department. Our comments on the Bill are as follows:-

3(a) i. Section 2(g) defines, by way of an inclusive definition, the term "public authority". It is not known whether this definition applies to such constitutional authorities like the Election Commission, Public Service Commissions etc.

ii. Below sub-clause (ii) of clause (g) of Section 2, which defines the term "public authority", it has

64

2-

been stated that the expression, company, corporation, trust, firm, society and co-operative society shall have the same meaning as assigned to them in the respective Acts under which they are registered. Since a Corporation is not registered under any Act but is established by or under an enactment, we feel that the phrase, "under which they are registered" should be modified to read as "by or under which they are established".

iii. Sub-clause (ii) of clause (g) of Section 2 provides that "a company, corporation, trust, firm, society and co-operative society substantially funded or controlled by the Government" shall be a "public authority". Since many a company is owned by the Government, the phrase, "substantially funded or controlled by the Government" should read as "owned or substantially funded or controlled by the Government".

(b) Under Section 4, sub-section (1) requires every "public authority" to grant access to information to any citizen requesting for such access. Since under Section 3 it is provided that subject to the provisions of the Act, every citizen shall have the freedom to seek information from a public authority, what the public authority under Section 4 is obliged to grant the citizen is "information" and not "such access". In view of this, the phrase in sub-section (1) of Section 4, "to any citizen requesting for such access" should read as "to any citizen requesting for such

65

information".

(c) Sub-section (2) of Section 4 requires each public authority to publish periodically information relating to sub-clauses (i) to (vi). However, the method of such publication has not been mentioned.

(d) Sub-section (3) of Section 4 requires the concerned officers of a public authority to give reasons for decisions to those affected and to disclose the relevant facts and analyses when major policies or decisions are announced. The Act does not indicate as to what are these "major policies or decisions".

(e) Section 5 provides for appointment of Public Information Officers in the offices of each public authority. It is not known as to whether only one Public Information Officer is required to be appointed or the public authority is required to have such Officers in each of its, at times several hundred offices, as in the case of the LIC.

(f) The proviso to Section 6 requires the Public Information Officers ("PIO") to accept even an oral request for access to information. Since the information that may be required to be given to the requester may be important in very many ways and may affect the rights and interests of even third parties, we are of the view that oral request should not be accepted by the PIO. Further, in order to ensure that the provisions of the Act are not misused, the requestor should also be made to state in the

application for access to information the purpose for which he is seeking the information from the public authority.

(g) Section 7(2) provides that where the PIO decides to refuse access, such decision shall be taken within 30 days of the receipt of the request and it shall be communicated to the requester in writing. Section 8 provides that where a decision on a request for access to information is not communicated to the requestor within 30 days, or within the extended period, the request shall be deemed to have been refused with all attendant consequences. We are of the opinion that in view of the provisions of Section 8, sub-section (2) of Section 7 should be amended to provide that a refusal to give access to information should be communicated within 30 days of the receipt of the request or within the extended period stipulated under the first proviso to sub-section (1).

(h) Section 13 provides that where a public authority intends to disclose information relating to or supplied by a third party, which information has been consistently treated as confidential by such third party, a notice is to be given to such third party of the intended disclosure and asking him for his say in the matter. Since under Section 3 the right to access to information from a "public authority" is only subject to the provisions of the Act and the Act does not have an overriding effect, we feel that an unilateral decision by the PIO to disclose information

relating to or supplied by a third party without his specific consent may land the PIO in litigation.

(i) Section 15 of the Act deals with Appeals and it provides that the appeal shall be considered and disposed of as a consumer complaint under the Consumer Protection Act, 1986. It may be stated here that the jurisdiction of a District Forum, a State Commission or the National Commission are territorial and pecuniary in the case of a District Forum, territorial, pecuniary, appellate and revisional in the case of a State Commission and pecuniary, appellate and revisional in the case of the National Commission. This would mean that the valuation of the subject matter of the complaint is an essential ingredient for determining the pecuniary jurisdiction of the appellate body. Since it is difficult to place a pecuniary value on the information sought for by a requestor, difficulties will arise in the matter of deciding the appellate body under Section 15 of the Act. We, therefore, feel that Section 15 of the Act is vague.

(j) Section 23 deals with the power to make rules by the "appropriate Government". The term, "appropriate Government" has been defined under clause (a) of Section 2 to include a State Government also. Since the Freedom of Information Bill, 1997 is a central legislation, it is not clear whether Section 23 envisages the making of rules by the State Governments also as "appropriate Governments". It is also not clear as to what would happen in the event of a

conflict between the rules made by the Central Government and the State Government as both are "appropriate Governments" under Section 23 of the Act.

Yours faithfully,

ripcar.txt\janaki\yr\n

69

भारतीय लोक प्रशासन संस्थान
इन्द्रप्रस्थ एस्टेट, रिंग रोड, नई दिल्ली-110 002 • दूरभाष : 331 7309 (9 लाइनें)
INDIAN INSTITUTE OF PUBLIC ADMINISTRATION
INDRAPRASTHA ESTATE, RING ROAD, NEW DELHI-110 002
GRAMS ADVISTT • FAX : 011-331-3914 • PHONES : 331-7309 (9 LINES)

July 25, 1997

Dear Dr. Sundaram,

As promised, I enclose my suggestions and comments on the proposed right to information bill. Some of the comments being offered were perhaps already made during our discussion at the IIPA. I state them again in order to reiterate them.

I think it would be good idea to organise three or four meetings, with a maximum of 20 participants in each, including serving and retired administrators, political figures, academics, lawyers, activists and NGO representatives, and other concerned citizens, to discuss some of the major issues outlined in my enclosed note. I have spoken about this to WWF-India and they are willing to organise such meetings, provided some financial support is available. I was wondering whether your ministry might be in a position to meet the costs, especially of outstation participants, in order to enlarge the scope of the discussion.

It would also be a good idea to contact institutions and NGOs in other cities and regions and to request them to organise in-depth discussions on the proposed bill. The suggestions emanating from such discussions could be compiled and made available to your ministry for further consideration. In any case, apart from the ideas that might emerge, the process itself would be valuable and in keeping with the spirit of the Right to Information Bill.

I look forward to your responses on these various suggestions.

With regards,

Yours sincerely,

Shekhar Singh

Dr. P.S.A. Sundaram, IAS
Additional Secretary (AR&T)
Ministry of Personnel, P.G. & Pensions
Government of India
Deptt. of Admn. Reforms & Public Grievances
Sardar Patel Bhavan, Sansad Marg
New Delhi 110001

FAX: 011-3732133

Comments on the proposed Freedom of Information Bill

Shekhar Singh

Indian Institute of Public Administration

A. **There are four major issues pertaining to the proposed bill that need further debate.**

1. Whether notes on files and papers and correspondence containing advice, opinions, recommendations and minutes should be exempted from the perview of the proposed bill, as proposed in Sections 9(iii) and 9(iv)? I think there are clearly pros and cons to this proposal and before a final view is taken there should be greater discussion. Perhaps a compromise could be evolved which takes care of the apprehensions on both sides.

2. Whether the bill should provide freedom of information to the citizen from only the government and its agencies, and only through them to the corporate sector and non-government agencies, or whether a citizen should have a direct right to information in relation to the corporate sector and others? Personally, I think there is great merit in channelising the right to information through the government and its agencies and insisting that all documents and information, for which the citizen's right to information can be legitimately exercised, be collected from entities outside the government, including the corporate sector, by the government as a part of their on-going regulatory functions. Where information asked for is not a part of what is being so collected, the government can make a special demand for such information. In the latter case where the citizens have demanded of the government information about entities outside the government which is not being collected by the government, but is yet considered to be fit for provision to the citizens, the government must consider including such types information in what is being regularly collected by the government.

   There are atleast four reasons why it might be desirable to channelise all information through the government:

functionaries who are not so inclined. This is primarily because there is almost no penalty attached to the non-provision of legitimate information, for the delay in providing information, or for providing incomplete or false information. Therefore, the question of providing for stringent penalties, perhaps in the form of personal fines, needs to be seriously considered. Otherwise the act may remain toothless.

Admittedly, this needs to be weighed against the resistance that would perhaps be generated within the government system if such penalties were to be provided for, and against the practical difficulties in judging the guilt of the accused functionaries. This point, therefore, also needs an in-depth discussion

4. The wisdom and practicability of vesting the power to hear appeals, under the right to information bill, with the consumer courts, also needs to be discussed. It has to be determined whether this is the best available option, and whether, in any case, it is an adequate option or some new institutional structure needs to be considered.

B. Listed below are some of the detailed points regarding the draft bill:

1. Perhaps calling it the "Right" to information bill would better describe the spirit and letter of the proposed act.
2. Delete the phrase "consistent with public interest" from para 1, line 2. It is unnecessary and could lead to future complications and be interpreted as a basis for delimiting the scope of the act.
3. In 2 (h), the last four words "and a public authority" do not clearly convey what is meant.
4. The term "grant access to information," used in 4 (1) - third line and elsewhere, has not been defined earlier. It needs to be defined.
5. In clause 7 (1) there must be some provision for providing, within 24/48 hours, information which relates, or could relate, to the life or liberty of a person, or could be relevant to avert a calamity.
6. Also, under 7 (1) there should be some safeguard, regarding payment of fees etc., specifying that the fee so fixed is reasonable and where the person requesting the information is not willing or able to pay the cost of copying the

government and its agencies are functioning properly and according to the law, and to ensure their own safety and well being.

11. At the end of 9 we need to add: "However, nothing would be so excluded if its exclusion is aimed at hiding from the public information about illegal activities of individuals or agencies, except for a limited time period where the disclosure of such information can be prejudicial to an ongoing investigation or proceeding, including a legal proceeding, provided further that if access to information is denied on such a plea then a time frame of when the information would be made public must be specified, and must not exceed 6 months in the first instance. Though the time frame can be further extended, for 6 months or less each time, detailed reasons must be given for each such extension "

12. Information whose withholding might negatively affect the life and/or well being of citizens must be made public, as an obligation of the state and without being specifically asked to do so, except where, in the opinion of the appropriate authorities, the making public of such information at a particular time might itself be prejudicial to human life and/or well being. In such a case, the information must be made public at the earliest possible opportunity after such a danger has passed, along with the reasons for not making it public earlier.

13. Where the timely making public of some information is clearly in public interest and its withholding and delay clearly against it, there must be an obligation on the government agencies to make such information public, through the printed and electronic media and through other appropriate means, without being asked to do so. There could be many instance where such proactive action is required of the government, and those that readily come to mind are when levels of pollution are dangerously high, or regarding location of hazardous units, warnings about severe weather conditions, warnings about other potential calamities, etc. I enclose a copy of a petition that some of us submitted to the Supreme Court. This and some other points are covered in detail there, and could be considered.

D.O. No. C.11021/1/97-Admn

महेश प्रसाद मोदी
M. P. MODI
Tel 3746725
3735074
FAX 011 3732135
011 3365160
011 3732067

सचिव भारत सरकार
कार्यक्रम कार्यान्वयन विभाग
सरदार पटेल भवन, नई दिल्ली-110001
SECRETARY TO GOVERNMENT OF INDIA
DEPARTMENT OF PROGRAMME IMPLEMENTATION
SARDAR PATEL BHAVAN, NEW DELHI-110001

July 25, 1997

Please refer to your demi-official letters No.34011/1(3)/97-Estt.(B)(Pt.) dt.3.6.1997 and 15.7.1997 requesting for comments on the Report of the Working Group on "Right to Information and Promotion of Open and Transparent Government".

2. We generally agree with the recommendations of the Working Group. You may also refer to my demi-official letter of even number dated 21st May, 1997(copy enclosed) regarding transparent administration.

Yours sincerely,

(M.P. Modi)

Shri Arvind Varma,
Secretary,
Ministry of Personnel, Public Grievances & Pensions,
North Block,
New Delhi - 110 001.

Encl: as above

D.O.No.3-11021/1/97-Imn.

(Issued)

मदन प्रसाद मोदी

M. P. MODI

Tel [illegible]

FAX 011-[illegible]
011-3365160
011-[illegible]

भारत सरकार
सचिव कार्यान्वयन विभाग
सरदार पटेल भवन, नई दिल्ली-110001
SECRETARY TO GOVERNMENT OF INDIA
DEPARTMENT OF PROGRAMME IMPLEMENTATION
SARDAR PATEL BHAVAN, NEW DELHI-110001

May 21, 1997

Please refer to your demi-official letter No. 34011/1(s)/97-Estt.(B) dated May 7, 1997 regarding steps for transparent administration.

2. As you are aware, the Department of Programme Implementation is a very small Department and does not have any attached/subordinate office. The Department is concerned with monitoring of implementation of Central Government Projects including those of public sector undertakings, monitoring of basic infrastructure sectors, monitoring of Common Minimum Programme/Basic Minimum Services and relase of funds for Member of Parliament Local Area Development Scheme (MPLADS). The information maintained by this Department is available to the general public. Of course, matters relating to Cabinet, Annual Confidential Reports of officers/staff and papers relating to disciplinary action, etc., are not disclosed to the public or to unauthorised persons. As and when Government rules and procedures on these matters are changed, these can be made available to the public.

3. The security grading of the papers/information in the Department is made on the basis of instructions contained in the Manual of Office Procedure or instructions issued by the Department of Personnel and Training from time to time. Whatever instructions are issued by the Ministry of Personnel, Public Grievances and Pensions in this regard, shall be followed.

Yours sincerely,

(M.P. Modi)

Shri Arvind Varma,
Secretary,
Ministry of Personnel, Public
Grievances and Pensions,
North Block, New Delhi

735

4234/July/1997
24/7/97

भारत सरकार
रक्षा मंत्रालय
नई दिल्ली 110011
GOVERNMENT OF INDIA
MINISTRY OF DEFENCE
NEW DELHI 110011

D.O. No. 2761/D(B&C)/2168/SDPS/97

सचिव (रक्षा उत्पादन एवं पूर्ति)
Secretary (Defence Production & Supplies)

24 July 1997

Dear Shri Varma.

This is in the context of your D.O. No. 34011/1(S)/92-Estt. (B) (Pt) dated 15 July 1997 seeking our views/comments on the recommendations of the Working Group on "Right to Information and promotion of Open and Transparent Government". We have had the report of the Working Group gone into and we are of the view that the suggested Freedom of Information Bill and other necessary amendments to existing law/rules constitute steps in right direction to make the Government functioning transparent to the people. In the realm of Defence Production excepting the information on research, development, drawing and designs of weapons/ammunition and details relating to future plans in this regard, we may have no reservations in disclosing information on other aspects.

2. Present Acts/Rules and conduct rules applicable to different services will need a thorough revision so that sharing information with public is encouraged rather than the denial of information to public as is the rule of the day today. Implementation of such a legislation would require retraining of Government officials so as to bring out attitudinal change at a fast pace. In the transition period, there may be obstacles such as litigations, etc. and, therefore, reorienting forces will need to be strong enough to overcome any complacence or reverting back to the old practices on the part of key officials. Setting up a review machinery to keep a constant watch and suggest remedial measures may be a necessity for the successful implementation of such a legislation.

With regards.

4771/JS(E)/97
25/7

Yours sincerely,

T.S. Vijayaraghavan

Shri Arvind Varma,
Secretary,
Ministry of Personnel, Public Grievances
and Pensions,
New Delhi- 110 001.

7-6

BHASKAR BARUA
Tel. No.3382897

सचिव
SECRETARY

भारत सरकार
मानव संसाधन विकास मंत्रालय
युवा कार्यक्रम और खेल विभाग
नई दिल्ली-110 001
GOVERNMENT OF INDIA
MINISTRY OF HUMAN RESOURCE DEVELOPMENT
DEPARTMENT OF YOUTH AFFAIRS & SPORTS
NEW DELHI-110 001

D.O. No.F.2-9/96.Cdn.

July 23, 1997

My dear Arvind.

Please refer to your D.O. No.34011/1(S)/92.Estt.(B) dated 3rd June and the reminder of 15th July 1997. I am enclosing my views as follows :-

It is indeed necessary, as recommended by the Conference of Chief Secretaries held on 20th November 1996, to introduce greater transparency and openness in the functioning of the government and public bodies. Our entire system of governance is now shrouded in mystery. There is no easy access to public records, even ones, such as land records which relate to rights of members of the society, and there is a big hiatus in communication between government officials and members of public. This leads to : (a) lack of accountability (b) corruption (c) harrassment by government officials and (d) delays in processing matters. An air of apathy pervades the entire system. The administration is not certainly "citizen-centered", which should be the aim, as recommended by the Chief Secretaries conference.

2. The idea that the citizens of this great country, whether in urban or rural areas, should be provided with maximum, wide-spread and easy access to information relating to their governance through modern means of communication is welcome. We accept that there should be complete transparency in government operations and the trend of undue emphasis on secrecy in not providing information should be reversed. Details regarding the government schemes, information on government tenders, procurement procedures and benefits to be given under various government schemes, should be possible to be accessed by members of the public very easily. Publication of result scores, for admissions to various courses at colleges etc. and for recruitment, should invariably be widely adopted as a normal course.

3. Information should be made available to the public suo-motu in almost all cases. Information relating to functions and responsibilities of various organisations, their decision-making processes, should be made available, as also the relevant procedure, rules and regulations etc.

Contd. ... 2/-

77

4. However, equally important is to lay bare the actual functioning of the government. Making provision for dissemination of routine information, such as relating to schemes, rules etc, although laudable in itself, may be perceived to be merely paying lip-service to openness. While the goal is to make information available to "one & all" the "one & all" should also include concerned members of the government. The tendency at present of one arm/member of the government being treated as an outsider in respect of matters vitally affecting it/him as if another arm of the same machinery which is to take decision is in a superior position, and keeping the process as a mystery under the cover of confidentiality is not conducive to morale. How a common citizen is expected to be well informed about the functioning of the government, when even members of the government are kept ignorant of considerable parts of this process, is a question to be pondered over.

5. To make all this exercise meaningful, the following steps are suggested:-

(a) All files, except those marked "Secret" for reasons of national security, should be accessible to the people. The Official Secrets Act should be amended accordingly. Steps should be taken to provide for a 'Right to Information' Act. Obviously , files cannot be accessed while a matter is under consideration. But after a reasonable period, say after one year, all files, except those classified as 'secret' for national security, shall be accessible. Files marked as 'secret' on grounds of national security alone, should be accessible after a longer period, say twenty years.

(b) Steps should be taken to simplify all procedures so that the common people can effectively deal with such day-to-day problems they face in life in which the government has a role to play.

(c) Immediate steps should be taken to ensure more openness in administration.

(d) Accountability should be fixed for every decision taken so that the erring officials could be brought to book easily.

(e) Anti-Corruption Tribunals should be set up and operated in a manner so that people can easily bring to their notice instances of corruption among officers.

Contd. ... 3/-

(f) Effective and fool-proof mechanisms should be evolved to obviate harrassment by government officials.

(g) It should be mandatory for the officers to give prompt replies to the letters from the members of the public. Categories should be specifically identified where if a final reply is not given within a certain time frame, it should be presumed that the Government's approval has been granted.

(h) Necessary steps should be taken to fix an upper time limit for processing each category of files, and officers who do not honour the time limit should be dealt with severely.

(i) Matters affecting day-to-day life of the common man should be given top priority in the offices.

(j) Steps should be taken, on a priority basis, to ensure that copies of documents such as land records are available to everyone, on demand, without payment of fees.

(k) Necessary facilities and infrastructural support should be given to the individuals. The interaction between the bureaucracy and the NGOs should be encouraged at all levels.

With warm regards,

Yours sincerely,

(Bhaskar Barua)

Shri Arvind Varma,
Secretary,
Ministry of Personnel, Public Grievances & Pensions,
North Block,
NEW DELHI - 110 001.

79

160

डॉ. ई. ए. एस. शर्मा
DR. E.A.S. SARMA

सचिव
SECRETARY

भारत सरकार
GOVERNMENT OF INDIA
विद्युत मंत्रालय
MINISTRY OF POWER
शक्ति भवन, रफी मार्ग
SHRAM SHAKTI BHAWAN, RAFI MARG

D.O.No. 11/1/97-IWS

नई दिल्ली - 110001
New Delhi - 110001

July 5, 1997.

Dear Shri Varma,

Please refer to your D.O. letter No. 34011/1/(S)/97-Estt.(B)(Pt) dated 3.6.97 regarding the report of the Working Group on 'Right to Information and Promotion of Open and Transparent Government'.

2. We are generally in agreement with the recommendations made by the Working Group.

3. To operationalise these recommendations, we need to identify documents that could be made public as a matter of routine. As far as this Ministry is concerned, it is felt that all documents could be made public, except those relating to tender evaluation, proposals regarding international co-operation and bilateral assistance in the field of power development, the minutes of D.P.C. meetings and police verification reports in respect of appointments, Notes for Cabinet, COS, etc.

4. To provide wider access to the public, it would be necessary to utilise media such as NICNET/Internet. To some extent this is already being done by several Govqrnment Depts. as important policy statements and other material have been placed on NICNET.

5. Subject to well-defined conditions, it is for consideration whether all information in Government would perhaps be made available to the public, say, after the lapse of 10 years.

With regards,

Yours sincerely,

Send with

(E.A.S. SARMA)

Shri Arvind Varma,
Secretary,
Ministry of Personnel, Public Grivances & Pension,
New Delhi

Issued
7/7.

80

D.O.No.A.45011/3/97-Estt.I

भारत सरकार
स्वास्थ्य एवं परिवार कल्याण मंत्रालय
नई दिल्ली - 110011
GOVERNMENT OF INDIA
MINISTRY OF HEALTH & FAMILY WELFARE
(DEPARTMENT OF HEALTH)
NEW DELHI - 110011

P. P. CHAUHAN
Secretary
Tel. : 3018863

22 July, 1997

Dear [illegible],

Kindly refer to your d.o.letter No.34011/1(S)/97-Estt (B) (Pt.) dated 3.6.1997 forwarding therewith copy of the report submitted by the Working Group on "Right to Information and Promotion of Open and Transparent Government" under the Chairmanship of Shri H.D.Shourie and seeking the views/comments of this Ministry on the recommendations made by the Working Group.

The proposal has been examined carefully in the Ministry.

The proposed legislation entitled "The Freedom of Information Bill" is no doubt well intentioned as it will make it incumbent on Government functionaries as well as policy makers to record reasons for decisions. This should reduce arbitrary or discretionary exercise of authority. We agree that if used in a positive manner the objectives of the Bill will sub-serve the public interests.

However, the Bill and the proposed amendments do not appear to visualise the possibility of officers within the system misusing the provisions to settle disputes with each other by getting public persons to demand information which could ultimately undermine discipline, pry into the private affairs of officers and bring into controversy the internal notings of officers. This would militate against free expression of views, healthy disagreements, arguments and counter-arguments - all of which call for thorough examination of issues.

We have enough instances where the forum of public interest litigation has been used to cite whole files from the Ministry in a distorted manner. You would appreciate that if such files can be procured openly by the public for perusal, ostensibly for a public cause, which is not difficult to convey, it would be hard to contain matters relating to personnel management and discipline.

Further, the areas in which information should be withheld from the general public have already been identified and conveyed to you vide my d.o.letter of even number dated 17.4.1997. Our view is that we should not share information on vital policy matters and sensitive issues with the public lest it should be misused by an individual or group under the garb of "transparent and responsive administration". Our Ministry is already facing a number of bitter and proxy court cases in the names of Public Interest Litigations. As such the suggestion made by me in my letter dated 17.4.1997 may kindly be kept in mind while taking policy decisions on the Report of H.D.Shourie Committee.

In conclusion, I would like to state that while we are, in principle, in agreement with the proposed new legislation and the modifications sought to be introduced in the provisions of existing important enactments, Rules and Manuals, such as the Officials Secret Act, the Indian Evidence Act etc., great care must be taken to ensure that sensitive and confidential information especially pertaining to personnel, vigilance, disciplinary and establishment matter is barred from unnecessary public or court scrutiny in larger public interest. In this context, you may like to consider introducing a specific provision for excluding right to such information, indicating reasons for the same, so as to prevent courts from forcing Government to part with such information.

With regards,

Yours sincerely,

(P.P.Chauhan)

Shri Arvind Varma,
Secretary,
Ministry of Personnel, Public Grievances &
Pensions,
North Block,
New Delhi-110 001.

4174/Sec/B/97
23-7-97

D.O.No. 23(17)/97-CPU

भारत सरकार
नागरिक पूर्ति विभाग
कृषि भवन
नई दिल्ली-110001

GOVERNMENT OF INDIA
DEPARTMENT OF CIVIL SUPPLIES
KRISHI BHAWAN
NEW DELHI-110001

सत्यमेव जयते

एन॰ एन॰ मुखर्जी
सचिव

N. N. MOOKERJEE
SECRETARY

July 22, 1997

Dear Sir Verma,

Kindly refer to your D.O. letter No. 34011/1(S)97-Estt.(B)(Pt.) dated 3rd June, 1997 regarding the recommendations of the Working Group on the Right to Information and Promotion of Open and Transparent Government along with the proposed Freedom of Information Bill, 1997. We have gone through the report as well as the proposed Bill. Our observations/comments on the proposed Bill are enclosed herewith.

While we welcome the proposed Bill namely Freedom of Information Bill, 1997 in order to promote openness, transparency and accountability in administration, we are not in favour of inducting consumer courts into the process as given in Clause 15 of the Bill, primarily for the reason that the existing consumer courts are already over burdened, unable to adhere to the time schedule prescribed in the Consumer Protection Act and have fallen into the trap of the normal civil courts culture.

I may mention here that the complaints received under the Consumer Protection Act, which are required to be disposed of within a period of 90 days as far as possible from the date of first notice received by the opposite party and

Contd..2..

83

within 150 days where testing of commodities is involved, are not being disposed of within the stipulated periods primarily due to the large number of pending cases in these courts. In fact, they are already taking an average of 2 to 3 years to dispose of complaints; in many courts even the cases of 1992 have not been disposed of. Despite consistent efforts to strengthen the infrastructure and remove the difficulties of the consumer courts, this Department has not been in a position so far to achieve the desired results and disposals are taking longer than the stipulated time frame mentioned in the Act. We are already facing lots of pressure from the public/consumers/consumer organisations/adverse media coverage/Parliament Questions etc. due to the ineffective functioning of the consumer courts arising from the non-availability of the Presidents/Members, inadequate infrastructure facilities etc.

The pendency position in the consumer courts is alarming as over 2.5 lakh cases are pending all over the country. The summary position of inflow/disposal of cases in the consumer courts since inception is as under:-

	Cases Filed	Cases Disposed	Cases Pending	Reported Upto
National Commission	11,346	7,459	3,977	31.4.97
State Commissions	1,01,473	60,993	40,480	6.5. 97
District Fora	8,15,066	6,06,645	2,08,430	6.5.97
Total	9,27,885	6,75,097	2,52,887	

Contd...3..

In view of the above, it will be extremely difficult for the consumer courts to shoulder any additional burden and to dispose of complaints emanating from citizens who have been denied access to information, that too within a period of 30 days. In case the consumer courts are forced to handle complaints from the public relating to refusal of information, the original work of the consumer courts will be very badly hampered, thereby causing hardships to the consumers for whom the courts were primarily set up. In this connection, you may like to consider the provisions of the Tamil Nadu Right to Information Act, 1997, according to which any person aggrieved by an order of the competent authority or any person who has not received any order from the competent authority within thirty working days may appeal to the Government or to such other authority as may be notified by the Government, subject to such rules as may be prescribed.

With regards,

Yours sincerely,

(N N MOOKERJEE)

Shri Arvind Varma
Secretary
Ministry of Personnel, Public
Grievances & Pension,
North Block, NEW DELHI

85

D.O. No. 15(3)/97-Admn.

D.R. TIWARI

संयुक्त सचिव
संसदीय कार्य मंत्रालय
संसद भवन
नई दिल्ली-110001
JOINT SECRETARY
MINISTRY OF PARLIAMENTARY AFFAIRS
87, PARLIAMENT HOUSE
NEW DELHI-110001

Dated 6th August, 1997

Dear Sri Singh,

Please refer to D.O. No. 34011/1(5)/97-Estt. (B) (Pt) dated 3rd June, 1997 from Secretary, Ministry of Personnel, Public Grievances and Pensions to Secretary, Ministry of Parliamentary Affairs regarding recommendation of the working group on "Right to Information and Promotion of open and Transparent Government" regarding introduction of Freedom of Information Bill, 1997.

The Ministry of Parliamentary Affairs functions basically as a co-ordinating agency between the Government and the two Houses of Parliament, having no direct link with the general public. However, there is no area of information that is not open to the public. The recommendations apparently appear reasonable for implementation.

This Ministry has no other comments to offer on the recommendation of the working group.

With kind regards,

Yours sincerely

(D.R. TIWARI)

To

Shri Harinder Singh, — in care
Joint Secretary (Establishment),
Room No. 111, (c/o Personnel)
North Block,
New Delhi.

भारत सरकार
GOVERNMENT OF INDIA
रसायन और उर्वरक मंत्रालय
MINISTRY OF CHEMICALS & FERTILIZERS
रसायन और पेट्रोरसायन विभाग
DEPARTMENT OF CHEMICALS & PETROCHEMICALS
नई दिल्ली-११०००१
NEW DELHI-110001

M M SRIVASTAVA
DIRECTOR(CHEMICALS)
Tel & Fax. 3382176.

DO No.20015/12/97-IWSG

August 11, 1997

Dear Shri Harinder Singh,

This has reference to the comments of the Department on the recommendations of the Working Group on "Right to Information & promotion of open and transparent Government" under the Chairmanship of Shri H D Shourie. As earlier stated in our communication of even No. dated 19th May, 1997, we would like to mention that the Deptt. of Chemicals & Petrochemicals does not handle subjects relating to any public utility and does not have direct interface with the public at large. The Department is concerned with matters relating to policy planning, development and regulation of chemicals, petrochemicals and pharmaceutical industries. However, a number of steps have been taken to ensure dissemination of information to the public at large. In this connection, I would like to state that a Facilitation Centre has been set up jointly with the Department of Fertilizers in which the following information has been made available to the public at large for promoting greater transparancy in the functioning of the Department of Chemicals & Petrochemicals:

1. Drug pricing – The information in respect of the prices fixed for various bulk drugs/formulations under the DPCO, 1995 in respect of the various pharmaceutical products would be made available.

2. Public Grievances.

3. Aggregate data on import chemicals, petrochemicals and pharmaceutical items.

4. Export of important chemicals.

5. Industrial policy/procedures for licensing

6. Modifications in the drug policy.

87

The Department has also constituted an Expert Group with Secretary, Deptt. of Chemicals & Petrochemicals as the Chairman and representatives from the Indian Chemical Manufacturers Association and a Consumer Group. This Expert Group will

review the existing law, regulations and procedures which have become outdated and suitably reorient and modify those which require substantial changes.

As far as the recommendations of the Working Group on the right to information and promotion of open and transparent Government is concerned, the Department is generally in broad agreement with the major recommendations. However, it is felt that in order to make the Govt. system more transparent and responsive, action has to be taken for the modernisation,making available the latest tools and equipments, proper training of the personnel at all levels,making attitudal changes, etc. As far as the recommendation of the Group on the CCS(Conduct) Rules is concerned, it is stated that the authority who is supposed to provide information to the public requires to be designated in every Department/Ministry and every individual may not be made responsible for providing information to any member of the public or any organisation, as it may sometmes create anomalous or embarrassing situation.

With regards

Yours sincerely,

(M M Srivastava)

Shri Harinder Singh,
Joint Secretary(Estt),
Ministry of Personnel,Public Grievances
And Pensions,
Deptt. of Personnel & Training,
Room No.111, North Block,
New Delhi.

सत्यमेव जयते

सचिव
SECRETARY

M.D. ASTHANA
TEL: 373 2150
FAX: 334 4689

भारत सरकार
योजना मंत्रालय
सांख्यिकी विभाग
सरदार पटेल भवन, संसद मार्ग
नई दिल्ली-११० ००१

Government of India
Ministry of Planning, Department of Statistics
Sardar Patel Bhavan, Sansad Marg
New Delhi-110 001

D.O.NO. A-60011/8/97-Coord,
September 22, 1997

Dear Shri Varma,

Kindly refer to your d.o. letter No. 34011/1(S)/97-Estt.(B)(Pt.) dated 3 June 1997 requesting us to offer our comments/views on the recommendations of the Working Group on "Right to Information and Promotion of Open and Transparent Government". We generally agree with the view point of the Group to promote more and more openness and transparency in the functioning of the Government. We have carefully gone into the draft of the provisions of the 'Freedom of Information Bill, 1997' (Annex-A)and our comments with respect to its certain sections and sub-sections are as follows :

(i) Data collected is the property of the public and, unless withheld for reasons of State security, the same should be made available to the public. The determination of State security perceptions should vest with the prescribed authority which should be defined in the proposed Bill. No other ground, including that of Centre-State relationship and relationships with foreign countries, should be cited as reason for withholding information. This refers to sub-section (i) and (ii) of section 9 of the Bill.

(ii) The format for supply of data should be the same as the one in which the data is collected by the Department. Any re-arrangement of the data should be the responsibility of the user. This refers to sub-section (iii) of section 7 of the Bill. This is being suggested as otherwise the Government agencies will be forced to do processing of data which will be of no use to the Government.

(iii) Data relating to an individual or on individual unit should not be given, and confidentiality in this regard should be fully ensured. It would otherwise violate the assurance given at the time of data collection to clients and would affect the process of data collection itself.

(iv) In the proviso to section 6 of the Bill, the provision for entertaining oral requests for information should be deleted. It has the potential of being abused and avoidable litigations.

(v) The proviso to sub-section (iv) of section 9 should be deleted as the exemption should be extended to scientific/technical reports etc.

(vi) Sub-section (iii) to section 10 appears to be redundant and may be deleted, as the access to information should not be refused on the ground that information is contained in published material available for sale.

(vii) In case the information is collected from a third party and treated as confidential by that party, its confidentiality should be adequately safeguarded, especially with respect to Industrial Establishments and even householders which/who can be very sensitive about certain types of information. This refers to section 13 of the Bill.

2. The definition of 'Official Secret' given in the Explanation under Section 5 of the Official Secrets Act, 1923 (Annex B), as proposed to be amended, is too wide-ranging and, to a large extent, may nullify the whole purpose of the Act itself. Under this provision, access to information can be denied by stretching the definition to cover virtually all types of information.

3. The stipulation that a review of 'validity of classification of a document' after a period of 20 years, in the amendments proposed to be made in the Manual of Departmental Security Instructions (Annex F) is adequate. For any continued classification beyond that period, it should be reviewed by an appropriate authority.

4. We have no comments to offer on the revisions proposed to be made in Section 123 and 124 in the Indian Evidence Act, 1972 and in Rule 11 of CCS(Conduct) Rules, 1964.

5. I regret that I could not send you the requisite information within the stipulated time.

With regards,

Yours sincerely,

(M.D. ASTHANA)

Shri Arvind Varma
Secretary
Department of Personnel & Training
North Block
New Delhi.

90

7127/35(E)/97

22/8

भारत सरकार
शहरी कार्य और रोज़गार मंत्रालय
शहरी विकास विभाग
GOVT. OF INDIA
MINISTRY OF URBAN AFFAIRS AND EMPLOYMENT
DEPARTMENT OF URBAN DEVELOPMENT

सचिव
SECRETARY

D.O.No.F-23011/1/97-Coord.

नई दिल्ली-110011, तारीख
Dated New Delhi-110011, the

21st August, 1997

Dear Shri Varma,

Please refer to your D.O. letter No.34011/1(S)/97-Estt(B)(Pt.) dated 3rd June, 1997 regarding the report of the working group on "Right to Information and Promotion of Open and Transparent Government". I am enclosing herewith the comments of the Department of Urban Development for your perusal.

2. You may like to consider these comments for incorporation in the proposed Bill on Right to Information.

With regards,

Yours sincerely,

(N. P. Singh)

Encl:- As above.

Shri Arvind Varma,
Secretary (Personnel),
Ministry of Personnel, Public
Grievances and Pensions,
North Block,
New Delhi-110 001.

91

MINISTRY OF URBAN AFFAIRS AND EMPLOYMENT
(Department of urban Development)

Comments on the recommendations of the Working Group on Right to Information and Promotion of Open and Transparent Government.

1. Clause 18 of the proposed Freedom of Information Bill regarding the provisions of the Act having overriding effect over others laws has serious implications and needs to be deleted. Special laws should over-ride the general ones in this respect.

2. Though the sharing of the information with the Public is a welcome step, the draft Bill seems to put too many restrictions on sharing of information which may defeat the usefulness and purpose of the Bill. Exemptions from disclosure of information are too many Clauses like "information the disclosure of which would not subserve any public interest" can be interpreted in different ways leading to reviews and appeals. Exemption clauses should be made more specific.

3. To ensure that Government and the public authority does not become liable for any third party damages, a provision in the law should be included to put the burden of third party damages on the requester of the information.

4. A provision to establish the "locus standi" of the requester and the "purpose" for which the information is sought should be incorporated in the proposed bill.

5. A provision specifying certain classes of cases where the Govt. or public authority can withhold information keeping in view the circumstances or the nature of the information should be incorporated and it must be clearly indicated that no appeal/revision would lie against it.

6. Jurisdiction of Civil/Criminal Courts should be barred.

7. Experiences in administering similar legislations in similarly placed countries may be kept in view, while formulating the proposed legislation. There should be a provision for constant feedback on, and review of, the effectiveness of implementation of the proposed legislation.

92

DR. N. C. SAXENA
SECRETARY

भारत सरकार
ग्रामीण क्षेत्र और रोज़गार मंत्रालय
ग्रामीण विकास विभाग
247 'A' विंग, निर्माण भवन, नई दिल्ली-110011
फोन नं० 3017687, 3017699; फैक्स नं० : 3017584

Government of India
Ministry of Rural Areas and Employment
Department of Rural Development
247 'A' Wing, Nirman Bhavan, New Delhi-110011
Tel. No. 3017687, 3017699; Fax No. : 3017584

July 25, 1997

D.O.No.A-60012/17/96-Estt.I

Dear Arvind,

Kindly refer to your D.O. letters No.34011/1(S)92-Estt(B)(Pt.) dated 15.7.1997 addressed to Secretary(REPA) and Secretary(RD) regarding Report of the Working Group on Right to Information and Promotion of Open and Transparent Government.

2. The Report of the Working Group has been examined in the Ministry. The proposed Freedom of Information Bill, 1997 in the Report have adequate and workable provisions for empowering citizens with the right to seek information relating to functions and responsibilities of Government organisations and functionaries. This Ministry, therefore, welcomes the Bill and will look forward to be actively involved in its implementation.

with regards,

Yours sincerely,

Saxena 25/7

(N.C. Saxena)

Shri Arvind Varma
Secretary,
Ministry of Personnel, Public Grievances
And Pensions,
North Block,
New Delhi.

93

F.No.6 (105)/97-CDN
Government of India
Ministry of Industry
Department of Industrial Policy & Promotion
(Coordination Section)

******

6688/SW&B/97
25-10-97

New Delhi, the 23rd Oct.97

OFFICE MEMORANDUM

31(1)35(E)197
29/10

Subject:- Report of the Working Group on Right to Information and Promotion of Open and Transparent Government- comments regarding.

*****

7

The undersigned is directed to refer to Ministry of Personnel/Public Grievances and Pension's D.O.No. 34011/1(S)/97-Estt.(B)(Pt) dated 14th July, 1997 on the above subject and to say that the views/comments of this Deptt. in respect of the Freedom of Information, Bill, 1997 are as under:-

1. Given the obligation on public authorities in (clause 4) and methodology to be adopted in supplying information as explained in clause 5, 6, and 7, it seems irrelevant to incorporate point 3 of clause 7.

2. This Deptt. support clauses 8 and 9.

3. Clause 10, which elaborates the grounds for refusal of access to information may be done away with as it would provide too much of discretionary power to one person or a group of persons without fixing equal amount of responsibility on them.

4. Clause 11 regading fee is an appropriate addition to the Act not only because this would make the public seeking information understand the value of the same but also could be used as an alternative form of tax. However, the sub-clause regarding waiver of fees for disclosure of information in larger public interest may be done away with as the term "Larger Public Interest" has not been defined clearly in the recommended Bill.

5. Clause 12 may be done away with as it does not stand in the face of Clause 11.

94

6. As regards clause 13, it may be stated that it goes against norms to disclose information which relates to or has been supplied by a third party and also has been consistently treated as confidential by such third party.

7. This Deptt. support clauses 14 and 15 which deal with internal review of decisions.

8. Clause 16 regarding publication of information about any project or activity initiated, for information of general public and pensons to be affected is supported.

9. Clause 17, regarding protection of action taken in good faith against prosecution or other legal proceedings has scope for manaouverability as it talks not only of anything done in good faith but also of things intended to be done in good faith under the provisions of this Act. Therefore, this clause is not supported.

10. Clause 18, which provides this Act with over-riding effects, notwithstanding anything inconsistence therewith contained in any other law for the time being in force is welcomed as this would provide the Act under consideration with teeth.

11. This Deptt. supports clauses 19, 20, 21, and 22 which talk about different fora to which appeal should be filed.

12. Clauses 23 and 24 talk of the statutory provisions and the general powers to make rules for implementing this Act. These are essential clauses.

13. The Working Group on Right to Information and Promotion of Open and Transparent Government have also recommended amendments in a few Acts like the Official Secrets Act, 1923, Indian Evidence Act, 1872(along with insertion in the Court of Civil Procedure, 1908 and the Cour of Criminal Procedure, 1973) and the CCS (Conduct) Rules, 1964. As these amendments become necessary for the birth of "Freedom of Informamtion Act" this Deptt. support these amendments in principle.

This issues with the approval of Secy.(IP&P).

(Dhiraj Mathur)
Director
Tele: 3014218

To
Ministry of Personnel, Public
Grievances and Pensions
(Shri Arvind Varma, Secretary)
New Delhi-11 0001.

S.S. NAZIMUDAR
JOINT SECRETARY
Tel. No. 3387250

No.

WITH COMPLIMENTS
GOVERNMENT OF INDIA
MINISTRY OF MINES
नई दिल्ली-110001, दिनांक
New Delhi-110001, the 27th June, 1997

Dear Subaran

Please refer to D.O. letter No.34011/1(s)/97-Estt(B) dated 7th May, 1997 from Secretary, Ministry of Personnel, Public Grievances and Pensions addressed to Secretary, Ministry of Mines regarding steps for Transparent Administration.

2. The illustrative list of records which can be shared with the public enclosed to Secretary, Personnel's letter dated 7th May, 1997 is relevant for the Ministry of Mines and as well as the organisation including PSUs and we agree that this list can be adopted as the list of items that can be made public. In addition, list of items as in the Annexure to this letter has been identified for sharing with the public.

3. Instructions have also been issued to the organisation including PSUs under this Ministry to initiate steps for providing greater access to information in their organisation and give wide publicity, to the efforts made in this direction.

4. As regards training to promote greater openness and more [illegible] responsive public dealings, this Ministry have [illegible] to Secretary(Personnel) vide Secretary(Mines)'s d.o.letter of even number dated 5th March, 1997. Relevant extracts is reproduced below:-

"Institutional training may not be of much use in promoting openness in the minds of individual employees. The practical way of promoting greater openness can be examples set by the Heads of any office/organisation. For example, if Secretary of a Ministry/Department, while responding to the queries made by a visitor on a subject pertaining to his Ministry/Department, may accidentally call his subordinate officer present and during the discussion Secretary may refer to any information to the visitor which his subordinates think may sensitive in nature and should not be passed on to outsiders. This will give clear signal to the subordinate officers that their minds-set of being secretive is not relevant. It should be left to the individual officer to evolve his own modality to impress upon his subordinates the need to be open in public dealings. In fact, such a practical approach would make the subordinates realise the irrelevance of being secretive. A formal training course alone would not be of much use."

Yours sincerely,

(S.S.Nazimudar)

Dr. P.S.R. Subaran,
Additional Secretary(Estt.),
Ministry of Personnel, Public Grievances and Pensions,
New Delhi.

96

No.A.60012/2/97-PLY
Government of India
Ministry of Health & Family Welfare
Department of Family Welfare
.....

Nirman Bhavan, New Delhi
Dated 30th July, 1997.

OFFICE MEMORANDUM

Subject: Action Taken Note on the "Report of the Working Group on Right to Information and Promotion of Open and Transparent Government".

.....

The undersigned is directed to refer Ministry of Personnel, Public Grievances and Pensions D.O.letter No.34011/1(S)/97-Estt(B)(Pt). dated 3rd June, 1997 addressed to Secretary(Family Welfare) on the above subject and to send herewith comments of this department on Draft "Freedom of Information Bill, 1997".

(C.R.K.Nair)
Assistant Commissioner (Policy)

Secretary,
Ministry of Personnel, Public Grievances
and Pensions,
North Block,
New Delhi.

DEPARTMENT OF FAMILY WELFARE

COMMENTS ON DRAFT 'FREEDOM OF INFORMATION BILL, 1997'

Clause 3 of the Bill confers the freedom to seek information on 'citizens'. The term 'citizens' has not been defined in this Bill, but is generally construed to mean individuals. This Department gets a number of requests for information from activist groups, NGOs etc., which do not come under the definition of 'citizens'. The Bill needs to be clear on whether the freedom to seek information/right to information would be available to groups, organisations etc. also.

Clause 9 deals with the exemption from disclosures under the provision of the Act. Of these, Clause 9(x) is the one which concerns this Department substantially, as medical records etc. maintained by various levels of health facilities cannot be disclosed in the interest of protecting privacy. This Clause contains the word 'unwarranted'. Inclusion of the word 'unwarranted' would require the Public Information Officers to adjudicate whether a certain request for information constitutes unwarranted invasion of privacy. The word 'unwarranted' should, therefore, be deleted so that all invasions of privacy is prohibited.

Under the same Clause, protection against invasion of privacy is afforded only to an 'individual'. Health matters, particularly reproductive health related matters, may concern the privacy of not only individuals, but of couples, families and groups. This Clause may have to expand the protection against invasion of privacy to couples, families and groups, in addition to individuals.

The Bill contains an overriding Clause No.18. This Clause is likely to affect the protection granted to Intellectual Property Rights under the laws pertaining to

Copyright, patents etc., for instance, a manufacturer of a drug or vaccine or contraceptive may submit confidential information to the Department for the purpose of clinical trials etc., and disclosure of this information would infringe the Intellectual Property Rights of the manufacturer. Clause 9 of the Bill therefore needs to incorporate a sub-clause protecting Intellectual Property Rights.

The Bill does not provide exemption from disclosure in respect of information concerning the service matters of Government employees. Disclosure of service matters, which may often include personal information, needs to be exempted against requests from third parties, unless the disclosure is in the public interest.

Clause 21 provides for Councils in States, but does not provide for Councils in Union territories. Particularly in Delhi, an Union territory Council would be essential.

By Hand

(19)

R.S.Jassal,
Joint Secretary (P&C)

Telefax : 3011752

भारत सरकार
रक्षा मंत्रालय
रक्षा विभाग
नई दिल्ली
GOVERNMENT OF INDIA
MINISTRY OF DEFENCE
DEPTT. OF DEFENCE
NEW DELHI

D.O.NO. 3103/JS(P&C)

04 June, 1997
July

Dear Shri Shashi Prakash,

Please refer to your D.O. letter NO.II-21011/49/97-IS US(D.II) dated 18th June, 1997 regarding definition of Official Secret in the proposed amendment of Section 5 of the Official Secrets Act, 1923.

2. From the point of view of the Ministry of Defence, the definition should be further fine-tuned in keeping with the long term requirements of security and advances in modern technology. The new formulation proposed with the additions highlighted and the deletions put in parenthesis is as follows:-

"For the purpose of this Section, 'Official Secret' means any information or item the disclosure of which is likely to prejudicially effect the sovereignty and integrity of India, the security of the State including defence preparedness, friendly relations with foreign States, economic, commercial, scientific and technological matters having a bearing on (relating to) national security and strategic interests of India including any secret code, password, sketch, plan, model, article, note, document or electronic media containing any of the above (in relation to a prohibited place)."

3. The words "or item" have been included to cover sensitive technologies with sensitive information imbedded in them. The words "having a bearing on" is more broad than "relating to". The definition was restricted to national security whereas it should also take into account the long-term "strategic interests" of India. The phrase "electronic media containing any of the above" is meant to include computer floppies, discs, tapes and any other invention that may emerge in this broad category.

1

4. It is presumed that after different Ministries have been consulted further legal opinion will be taken on the final formulation.

With regards,

Yours sincerely,

(R S Jassal)

Shri Shashi Prakash,
Joint Secretary,
Ministry of Home Affairs,
North Block,
New Delhi 110001.

No.38- 32/97-Establishment
Government of India.
Ministryof Agriculture.
Department of Agricultural Research and Education.
Krishi Bhavan, New Delhi.

Dated: June 30, 1997.

Office Memorandum

Subject: Recommendations of the Working Group on "Right to Information and Promotion of Open and Transparent Government."

The undersigned is directed to refer to Deptt. of Admn. Reforms and Public Grievances D.O. letter No.34011/1(S)/97-Estt(B)(Pt) dated 3.6.97 on the subject noted above and say that the report of the Working Group on "Right to Information and Promotion of Open and Transparent Government" has been examined and this Department agrees with the recommendations of the Working Group.

(R.P. Saroj)
Under Secretary to the Government of India.

Deptt. of Admn. Reforms and
Public Grievances.
Sardar Patel Bhavan.
New Delhi.

विदेश सचिव
विदेश मन्त्रालय, नई दिल्ली-११० ०११
FOREIGN SECRETARY
MINISTRY OF EXTERNAL AFFAIRS
NEW DELHI-110 011

No. 12398/FS/97

November 19, 1997

Subject: Freedom of Information Bill, 1997

Dear Shri Verma,

Please refer to your D.O. No. 34011/1[S]/97-ESTT[B] of October 17, 1997 regarding the Draft Bill on Freedom of Information to be introduced in the Winter Session of 1997 of the Parliament.

2. We have gone through the draft bill and the Cabinet note as approved for submission to the Cabinet by the Prime Minister. We are satisfied that concerns on disclosure of information on sensitive and international subjects, particularly those relating to conduct of international relations, scientific and technical matters of strategic importance to the security of India, codes of cryptographic systems; diplomatic correspondence and plans for strategy for international negotiations as well as information in the nature of trade/commercial secrets have been adequately covered in the Exemption Clause.

3. We have no further observations/comments to offer on the draft bill.

With regards,

Yours sincerely,

(K. Raghunath)

Shri Arvind Verma,
Secretary,
Ministry of Personnel, Public Grievances & Pension,
New Delhi.

103

K C SAHA
Tele: 301 98??

संयुक्त सचिव
भारत सरकार
पूर्ति विभाग
नई दिल्ली - 110011
JOINT SECRETARY
GOVERNMENT OF INDIA
DEPARTMENT OF SUPPLY
NEW DELHI-110011

DO No.I-11019/5/97-O&M

12 Nov 97

Dear Sir,

Please refer to your d.o. No.34011/1(S)/97-Estt.(B) dated 28.10.97 regarding report of the Working Group on "Right to Information and Promotion of Open and Transparent Government" constituted under the chairmanship of Shri H.D. Shourie.

2. The report of the Working Group forwarded with Secretary (Personnel)'s d.o. dated 3rd June, 1997 has been examined in consultation with our attached office, namely, DGS&D, and subordinate office, namely, National Test House.

3. We are in agreement with the basic recommendation of the Working Group as made in the report. The Department had earlier furnished its comments on "Right to Information" for the Working Group constituted on "Right to Information" vide d.o. letter of even number dated 10th March, 1997 (copy enclosed for ready reference). In view of the provisions of the Draft Bill (including exemption clauses), the proposed Bill in its present form is acceptable to us and meets our present objectives.

With regards,

Encl: As above.

Yours sincerely,

Saha
[K C SAHA] 12.11.97

Dr P S A Sundaram
Additional Secretary (AR&T)
Deptt. of Admv. Reforms & PG
Sansad Marg
New Delhi

S.No. 4 (Yours)

9)

K.C. SAHA
Tele 301 9877

DO No.I-11019/5/97-O&M
dated 10 Mar 97

Dear Shri Singh,

Please refer to d.o. letter No.34011/1(S)/97-Estt(B) dated January 29, 1997 from Shri Arvind Varma, Secretary (Personnel), addressed to Secretary, Department of Supply, requesting for information in respect of the Working Group constituted on 'Right to Information'. I am desired to inform that the Department of Supply does not administer any Act or Law. Its functions are, however, guided as per the provisions of the Manual of Office Procedure for Supplies, Inspection and Disposals (MOPSID) based on General Financial Rules. It has three attached/or subordinate offices, viz., Directorate General of Supplies & Disposals (DGS&D), New Delhi; National Test House (NTH), Calcutta; and office of Chief Controller of Accounts (CCA), New Delhi.

2. In the context of the functioning of these three organisations, the question of 'Right to Information' has been addressed and our comments are given below.

3. DGS&D floats tenders for concluding Rate Contracts. At present, when a specific firm approaches DGS&D for ascertaining the reasons for non-acceptance of quotations, it is normally made known to the firm. Whether this intimation can be made a general rule rather than exception, is being examined in consultation with DGS&D.

4. While processing the tender documents, Quality Assurance Wing of DGS&D, in deserving cases, checks the method of production, verify the capacity, conducts inspection of goods at pre-despatch as well as post delivery stages. In case they note any deficiencies, these are normally made known to the concerned firms. However, the reasons are not made known to

103

others who are not directly concerned with the transaction, as otherwise, communication of such information may affect the commercial interest of specific firms and lead to avoidable litigation and breach of confidentiality. The desirability of making known the evaluation criteria of quotations to the bidders at an appropriate stage, is presently engaging our attention. This is being taken up with DGS&D for resolving the issue in the context of 'Right to Information'.

5. NTH recives samples from firms for testing. Samples are tested and reports of their success or failure are furnished to the concerned firms only. The reports are not made available to the third party. This practice seems to be reasonable since testing report of firms, if made available to the third party, can be utillsed against that firm. Even otherwise, when a firm submits a sample for testing it is a contractual obligation on the part of the NTH to submit the report of success or failure to the firm only.

6. CCA makes payment of bills for supplies made against Rate Contracts of the Central Ministries/Departments. A bill which is not in order, is returned to the firm for rectification. When a bill is withheld beyond reasonable period, CCA office does not communicate to the firms the reasons for such delay. CCA is being requested to examine the desirability of communicating the reasons for delay.

Yours sincerely,

[K. C. Saha]

Shri Harinder Singh
Joint Secretary (Establishment)
Ministry of Personnel, Public Grievances & Pensions
Room No.111, North Block
New Delhi

No.J-25011/54/97-Gen
Government of India
Ministry of Petroleum & Natural Gas

New Delhi, the 20th November,1997

OFFICE MEMORANDUM

Subject:-Report of the Working Group on Right to Information and Promotion of Open and Transparent Government.

The undersigned is directed to refer to Ministry of Personnel, Public Grievances & Pensions' d.o. letter No.34011/I(S)/97-Estt.(B)(Pt), dated 3rd June,1997 on the above subject and to state that the Ministry of Petroleum & Natural Gas has no comments to offer.

(Harpal Singh)
Under Secretary to the Govt.of India

Ministry of Personnel,
Public Grivances and Pensions
North Block,
NEW DELHI.

107

सचिव
Secretary

भारत सरकार
उद्योग मंत्रालय
(औद्योगिक विकास विभाग)
उद्योग भवन, नई दिल्ली-११००११
Government of India
Ministry of Industry
(Deptt. of Industrial Development)
Udyog Bhawan, New Delhi-110011

D.O.No.5(14)/97-GIC

November 21, 1997

Dear Shri Varma,

Kindly refer to your D.O. letter No.34011/1(S)/97-Estt.(B), dated 5.5.97 and 3.6.97, etc. regarding action plan for transparent administration.

2. As a part of this Department's endeavour toward bringing about transparency in its functioning, an Information Facilitation Counter has been set up effective 30.6.97. The counter, which is easily accessible, provides information in respect of a wide spectrum of activities being performed by the Department. Information regarding the institutions attached to this Department like National Institute of Design, National Productivity Council and Quality Council of India is also being provided through the Facilitation Counter.

3. The Department also adminsters the National Renewal Fund. Its aim is to provide a social safety net for rationalised labour so as to protect the interests of the workers affected by technology upgradation, modernisation and industrial restructuring. Under this programme, several Employee Assistance Centres (EACs) are also in operation. Details of the functioning of these Centres etc. can be obtained from the Facilitation Counter.

4. Further, in order to make the various rules, laws & regulations administered by the Department, more citizen friendly, a review exercise has been undertaken in consultation with Law Ministry. An expert Group has been constituted under the chairmanship of Secretary(ID) to review the Explosives Act (1884), Indian Boilers Act (1923) and the laws relating to Intellectual Property.

5. An exercise was also taken up to review the Patent Rules, 1972. For this, a Committee was consituted of representatives from user agencies & patent attorneys etc. The revision is being considered within the framework of the existing legislation. A separate

.....2/-

exercise has also been taken up to re-engineer work practices in the Patent Office in order to streamline their functioning and to accelerate the process of grant of Patents.

6. A proposal has been initiated to amend the Indian Boilers Act, 1923. The proposal has been introduced in the Parliament through the Indian Boilers (Amendment) Act, 1994.

7. Seminars, workshops, etc. are being organised by institutions like National Institute of Design, National Productiviy Council, etc. serve as a source of information to the people. These programmes also help to build awareness in the country on subjects like quality, productivity, etc.

8. I am also enclosing a note on the above for your perusal.

With regards,

Yours sincerely,

(P.G. MANKAD)

Shri Arvind Varma,
Secretary,
Ministry of Personnel,
Public Grievances & Pensions,
NEW DELHI.

वाणिज्य सचिव
भारत सरकार
नई दिल्ली-110011
COMMERCE SECRETARY
GOVERNMENT OF INDIA
NEW DELHI-110011

No. 5/3/97-Welfare

December 1, 1997

Dear Dr Sundaram

Please refer to your d.o. letter No. 34011/1(S)/97 Estt.(S) dated 28th October 1997 regarding views/comments of this Ministry on the Report of the Working Group on Right to Information and Promotion of Open and Transparent Government.

On the above, I would like to state that Ministry of Commerce is already following a high degree of transparency in its working. However, there are still some areas on which complete transparency cannot be followed. This could be gathered from the comments of this Ministry, a note on which is enclosed herewith for your consideration.

I would request you to finalise the provisions of the Bill on Right to Information after taking into account the above views of this Ministry.

With regards,

Yours sincerely,

(P.P. PRABHU)

Dr. P.S.A. Sundaram,
Additional Secretary (AR&T),
Department of Administrative Reforms &
Public Grievances,
Sardar Patel Bhawan,
New Delhi.

Note on Ministry of Commerce's views on Right to Information Bill

On the basis of comments/suggestions received from various Divisions of this Ministry the point-wise views of this Ministry on the Working Group's Report on Right to Information Bill are as under:

1. ECONOMIC DIVISION: The trade data is published by the Directorate General of Commercial Intelligence & Statistics (DGCI&S), Calcutta after compilation and this is available to the public on sale. However, the individual responses i.e., Export/Importer information may not be for public use.

2. TRADE POLICY DIVISION": It would be better if a sub-clause "(d) International negotiations or contracts at a Government-to-Government level" could be added to clause 9(vi) as a means of extra and explicit clarification.

3. TERRITORIAL DIVISION: Territorial Divisions in this Ministry have limited public dealing, except on resolution of issues faced by Indian exporters; after the event, the contents of the report would have limited applicability. Export promotional measures however require public oriented activities. The contents of the Report/Proposed Act, in such a situation, may not really be applicable in the context in which it is being framed as the efforts of this Ministry would be aimed at reaching the maximum percentage of the exporting fraternity.

4. CONTENTS & PROCEDURAL ISSUES: The proposed Bill provides that appeals against refusal of access to information should be considered as complaints under the Consumer Protection Act, 1986. However, the performance of the District Forums or the State Commissions under the Consumer Protection Act has been quite uneven across the country. Though the proposal is no doubt well intended to provide judicial relief in such cases, in the fractured politics of today, there is also a justified apprehension that this may lead to undue litigation by interested parties. Hence, it would be better if such appeals are initially heard by the Revenue Divisional Commissioners if they relate to District level offices or by a Committee of Secretaries at the State level if they relate to State level offices. A second appeal against such orders can lie with a designated judicial court. A similar dispensation can be provided for at the Central Government level.

...2

5. In order to implement the proposed Freedom of Information Act effectively, the following procedural/administrative proposals may be considered:-

i) Government may commission an Office Manual under the Proposed Act incorporating the relevant provisions of the Manual of Departmental Security instructions, Manual of Office Procedures, the text of the proposed Act, the relevant provisions of the CCS (Conduct) Rules, 1964, etc. This Manual should be provided to all officers.

ii) One of the basic constraints in most Government offices in providing access to information is the difficulty in retrieval of office records. This is mainly due to the fact that procedures for consignment, destruction and storage of office records are not being followed properly. A Task Force may be set up in each Department to update this process. The procedures for storage of records in the record rooms should be reviewed and updated to allow for easy access and retrieval.

भारतीय रिज़र्व बैंक
Reserve Bank of India
प्रशासन और कार्मिक प्रबंध विभाग
केन्द्रीय कार्यालय, केन्द्रीय कार्यालय भवन, शहीद भगतसिंह मार्ग, मुंबई-400001.
Department of Administration & Personnel Management,
Central Office, Central Office Building, Shahid Bhagat Singh Marg, Mumbai-400001.

E-Mail Address : rbidapm@bom3.vsnl.net.in
फैक्स/Fax : 022-267 1415
टेलीफोन/Telephone : 266 16 02
टेलेक्स/Telex : 011-82455 RBI IN
011-82318 CURN IN
011-84222 RBCO IN
तार/Telegram : / "RESERVBANK"

हिन्दी आसान है, इसका प्रयोग बढ़ाइए

DAPM No. ३१३ /07.28.03/98-99

November 13, 1998

Dr.P.S.A. Sundaram,
Addl.Secretary (AR&T)
Department of Administrative Reforms
and Public Grievances,
Government of India,
Sardar Patel Bhavan,
Sansad Marg,
New Delhi - 110 001.

Dear Sir,

Action Plan for Effective and Responsive Government
- Freedom of Information Bill, 1997

In continuation of our letter DAPM No.161/07.28.03/97-98 dated 28th September 1998 we forward herewith for your consideration a list of specific areas relating to our Department of Banking Supervision which we feel would need exception from disclosure under the provisions of the proposed Freedom of Information Bill, 1997.

Yours faithfully,

(J.N.Majalkar)
Assistant General Manager

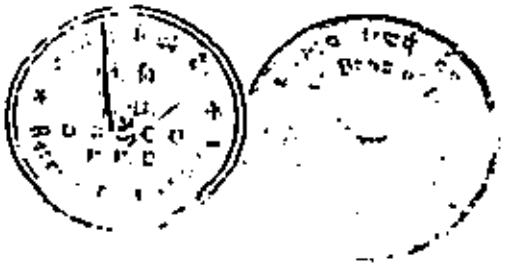
Encl. 1 (2 sheets)

bill/4

RESERVE BANK OF INDIA
DEPARTMENT OF BANKING SUPERVISION

Freedom of Information Bill, 1997 - Specific areas which need exemption from disclosure

Sr No.	Item of information	Exemption/modification required
1(a)	Reports in respect of inspection of banks conducted under section 35 of Banking Regulation Act,1949.	Specific exemption clause should be incorporated.
(b)	Reports in respect of inspection of banks for specific purposes under sections22(3),37(2),38(4),44(1),44-A, 44-B and 45Q	- do -
(c)	Special Investigation Reports (Special scrutinies, Portfolio appraisals of overseas branches of Indian banks, Internal notes on processing of reports, Minutes/proceedings of supervisory discussion with CEO, Agenda notes placed before the BFS, any correspondence relating to Inspection etc.)	- do
(d)	Details of findings of investigation/inspections/scrutinies of assessment made by RBI on the All India Financial Institutions(FIs)	- do
(e)	Details of all important/confidential notings, NPAs of individual FIs, correspondence/communication on policy matters.	- do -
2.	Secret / Confidential Circulars / instructions to banks / financial institutions	Specific exemption clause should be incorporated.
3.	Under the BASLE Concordat regarding the minimum supervisory standards, information is required to be exchanged, generally based on Memorandum of Understanding to be signed or on a need basic, between Parent country's and the Host country's supervisory authorities. Such information may contain sensitive data/reports on banks etc.	Clause No.9(I)could be suitably expanded to specifically include regulatory/supervisory authorities of the financial system in other countries.



112

	and their disclosure is bound by the MoU and the stipulations/conditions made by the information supplier.	
4.	Reports of scientific or technical experts, including their opinion on scientific or thchnical matters or information that is factual – vide clause 9(iv) para - 2	Should also be covered as exempted as these reports/opinion would lead to supervisory policy decisions and could cause premature disclosure.



113

DEPARTMENT OF INDUSTRIAL DEVELOPMENT

NOTE ON ACTION PPLAN
FOR
EFFECTIVE AND RESPONSIVE ADMINISTRATION

The Department administers following items of work :-

- National Renewal Fund
- Intellectual Property Rights
- Central Boilers Board

1. NATIONAL RENEWAL FUND

- The aim of the National Renewal Fund (NRF) is to provide a social safety net for rationalised labour so as to protect the interests of the workers affected by technology upgradation, modernisation and industrial restructuring.

- The objectives of NRF include providing assistance to cover the costs of retraining and redeployment of rationalised work force, compensation of the rationalised work force and the employment generation scheme.

- Presently the NRF is assisting primarily the implementation of Voluntary Retirement Scheme (VRS) in the Central Public Sector Units and also workers retraining schemes through the network of Employee Assistance Centres (EACs).

- During the Eighth Plan, a sum of Rs.1703.17 crores has been released for implementing VRS which has benefited 1,05,745 workers in the Central PSUs.

2. INTELLECTUAL PROPERTY RIGHTS

- Three Central Legislations relating to Intellectual Property Rights namely the Patent Act, 1970, The Trade and Merchandise Marks Act, 1958 and The Designs Act, 1971 and its associated rules are administered through the Office of the Controller General of Patents, Design & Trade Marks (CGPDTM).

- Patents Office exists at four location : Calcutta, Mumbai, Chennai and New Delhi for patents and designs. Besides, the Patent Information System (PIS) is at Nagpur. A UNDP assisted project for modernisation of PIS had been completed in 1996. The office has been provided with modern equipments such as computers, CD-ROM and on line access to external and internal data bases.

- The Trade Marks Registry are set up at five locations : Ahmedabad, Calcutta, Chennai, Delhi and Mumbai.

114

- The Government has taken several steps to upgrade and modernise the Trade Marks Registry under a UNDP assisted project with technical assistance of WIPO. The modernisation would enable grant of registration certificate in a shorter period. Further strengthening of the capabilities of Trade Marks Registry is under way.

- An inter-ministerial Committee on the TRIPS Agreement, headed by Secretary (ID), has been constituted to examine the relevant Acts, Rules and Procedures in the field of Intellectual Property Rights (IPRs) and to suggest necessary legislative and administrative measures. An exercise has also been undertaken to review and revise the Patent Rules, 1972. A separate exercise has also been taken up to re-engineer work practices in the patent office to streamline their functioning and to accelerate the entire process of grant of patents.

3. CENTRAL BOILERS BOARD

- The Board is a statutory authority under the Indian Boilers Act, 1953. The enforcement of the Act is responsibility of both the State and Union Governments because the subject "Boiler" is listed in the Concurrent List of the Constitution of India.

- The Board accords recommendation to various organisations and firms for manufacture and self certification of the boiler components in terms of the Indian Boiler Regulations.

- In order to make the regulations under the Boilers Act, 1923 more citizen friendly, a proposal has been initiated to amend the Act. The proposal has been introduced in the Parliament through the Indian Boilers (Amendment) Act, 1994.

File 4

(3) F.34011/1(S)/97-Estt.(A)

SECRET

Copy No. 8...

CABINET SECRETARIAT

Doc.No.CD(TS)-98/1997

MINUTES OF THE MEETINGS OF COMMITTEE OF SECRETARIES

Venue	:	Committee Room, Cabinet Secretariat, Rashtrapati Bhavan.
Date of Meeting	:	24.11.97 and 27.11.97
Time of Meeting	:	4.30 P.M. and 11.30 A.M.

P R E S E N T

(*Attended only on 24.11.1997)

Shri T.S.R.Subramanian, Cabinet Secretary.
Shri S.P.Jakhanwal, Secretary(C), Cabinet Secretariat.
Shri N.K.Singh, Secretary, Department of Revenue.
Shri B.P.Singh, Home Secretary.
Shri C.R.Kamalanathan, Secretary, Min. of Information & Broadcasting
Shri Arvind Varma, Secretary, Deptt. of Personnel & Training.
Shri Pawan Chopra, Addl. Secretary, Cabinet Secretariat.
*Shri P.M.Nair, Addl. Secretary, Ministry of Defence.
*Shri Indrajit Khanna, Addl. Secretary, Ministry of Finance.
Shri S.K.Misra, Joint Secretary, Cabinet Secretariat.
Shri R.S.Jassal, Joint Secretary, Ministry of Defence.
Shri S.Sundareshan, Joint Secretary, Ministry of Finance.
Shri A.Sinha, Joint Secretary & LA, Deptt. of Legal Affairs.
Shri Rajeev Kher, Director, Cabinet Secretariat.
Shri Y.G.Paresh, Director, Deptt. of Personnel & Training.

...2.

SECRET

A.P.
11 Copies

Subject : Amendment to Section 5 of the Official Secrets Act, 1923.

.....

A proposal for amendment of Section 5 of the Official Secrets (OS) Act, on the basis of the suggestion of the Working Group on 'Right to Information and promotion of Open and Transparent Government', was submitted by Ministry of Home Affairs to the Cabinet in its meeting on 1.11.1997. The Cabinet decided that the matter may, in the first instance, be considered by the Committee of Secretaries. It is in pursuance of this direction of the Cabinet that meetings of the COS were held on 24.11.1997 and 27.11.1997 in which a note received from MHA on the subject (Doc. No.F.No.11/21011/49/97-IS(USD.II) was considered.

2. On behalf of MHA, it was explained that the amendment proposed by the Ministry of Section 5 of the OS Act, was as recommended by the Working Group mentioned above except for a minor verbal change. Section 5, as it is at present, does not define official secrets; the proposed amendment seeks to define 'Official Secrets'.

3. On behalf of Ministry of Defence, it was stated that the present definition should cover, apart from 'information', 'items' the disclosure of which was likely to affect security; the security of State should specify inclusion of 'Defence preparedness' and it should provide for economic, commercial, scientific and technological matters having a bearing on national security to be withheld on 'Strategic interests of India'. The Ministry also was in favour of 'electronic media' containing any of the above to be treated as official secret. The general feeling, however, was that the amendments proposed were redundant. It was pointed out that the present formulation of 'Official Secrets' included 'article'; the security of the State covered Defence preparedness and hence no specific mention of these was necessary. Similarly, national security in a broad sense included 'strategic interests' and 'electronic media' was a very wide term to be classified as official secret. It was also pointed out that the objective of the present exercise could not be to make access to information more restrictive than it was at present.

...3.

A.P.
11 Copies

4. It was observed that the proposed definition of Official Secrets included 'economic, commercial, scientific and technological matters relating to national security' and thus excluded commercial technological information unrelated to national security. There could be vital economic or commercial information the disclosure of which could seriously affect public interest while these may be broadly unrelated to national security. Critical information relating to on-going commercial negotiations by the Government/its agencies was cited as an example. It was felt that the definition of Official Secrets should cover such information.

5. The general view was that the proposed amendment is part of the recommendations of the Working Group on 'Right to information' and hence it would be in the fitness of the things to relate the definition of 'official secrets' to the proposed Freedom of Information Act as suggested by the Working Group. What should be classified as official secrets should flow from the provision of this legislation because only some of such information the disclosure of which may not be insisted on as a right under the proposed law, could be treated as official secrets. It was accordingly observed that official secrets would be part of such information as is exempted from disclosure to citizens as part of the freedom of information enshrined in the proposed law. It was observed that even all such information need not necessarily constitute official secrets and only such of these information may be official secrets which are classified as such. It was accordingly felt that the position as to whether a provision for classification of information has been made in the proposed law regarding freedom of information should be ascertained.

6. In the second meeting of the COS, held on 27.11.97, a draft formulation of 'Official Secrets' as part of the amended Section 5 of the OS Act, as prepared by Ministry of Law, was considered. It was clarified that the proposed law on freedom of information did not contain any provision regarding classification of information. During discussion, one view was that any linkage between the definition of Official Secrets with the proposed Freedom of Information Act might make the provision more justiciable; in fact, classification of information itself could then be subjected to judicial scrutiny which could render maintenance of secrecy of even exempted information difficult. The contrary view was that the process of classification itself would have to be provided legislative cover in view of the

...4.

provisions of proposed F.O.Z Act and, to the extent possible, also made non-justiciable. The general feeling was that without the power of classification itself being part of law, withholding of information may not be legally sustainable.

7. In this connection, it was observed that Section 8 of the proposed Right to information Act, which dealt with information exempted from the provision of the Act, and hence from access to the public, was an enabling provision and hence Government could decide what information to withhold and what not. The process of classification and legal cover to this process may have to be provided in the Official Secrets Act or in the Rules made under the Act while the Act itself could devolve the power to classify such information on competent authorities.

8. It was accordingly recommended that in place of the definition of 'Official Secrets' in the amended Section 5 of the OS Act as proposed by Ministry of Home Affairs, the definition may be to the effect that 'Official Secrets' means any information which is exempted from disclosure under the provisions of the Freedom of Information Act and classified as such under the Rules made under this (OS) Act. The Section should also include the power of the Government to classify such exempted information.

9. Ministry of Home Affairs was accordingly requested (i) to prepare this revised formulation and get it vetted by Ministry of Law; (ii) to prepare the Rules under Official Secrets Act, laying down procedure for classification of information referred to in Section 8 of the proposed Freedom of Information Act, (iii). It was also decided that in Section 8 (3) of this Act, not only information in the nature of Cabinet papers but also the Rules of Procedure relating to Cabinet matters should be exempted from disclosure.

10. It was agreed that the re-formulated Section 5 as also the draft Rules would be placed by Ministry of Home Affairs before the Committee of Secretaries in its next meeting to be held shortly. Department of Personnel and Training was requested to take action with regard to item (iii) in para 9 above.

RT
11 copies.

4

CS-645/Subj:B/97
24-10-97

SECRET MOST IMMEDIATE

COPY NO....9..

No.501/3/1/97-Cab.
GOVERNMENT OF INDIA (BHARAT SARKAR)
CABINET SECRETARIAT (MANTRIMANDAL SACHIVALAYA)

New Delhi, the 23rd October, 1997.
1 Kartika, 1919(S).

Subject:- Legislative proposal for Freedom of Information and amendments to related Acts and Rules.

The Cabinet, at its meeting held on the 20th October, 1997, considered the note dated 17.10.97 (CD-740/97) from the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, and decided that the matter may, in the first instance, be considered by a Group of Ministers comprising of Minister of Home Affairs, Minister of Petroleum and Natural Gas, Minister of Industry and Minister of State (Independent charge) of the Ministry of Law and Justice. The GOM may specially consider the views of Departments/Ministries which were unable to convey their comments to the Ministry of Personnel.

2. The Group of Ministers is hereby constituted with the following composition:-

Shri Indrajit Gupta,
Minister of Home Affairs.
Shri Janeshwar Mishra,
Minister of Petroleum and
Natural Gas.
Shri Murasoli Maran,
Minister of Industry.
Shri Ramakant D. Khalap,
Minister of State (Independent charge)
of the Ministry of Law and Justice.

3. The Group of Ministers will consider the matter as contained in the aforesaid note and finalise its recommendations most expeditously so that the same can be placed before the Cabinet for an early decision and follow up action to give effect to the decision.

4. The Group of Ministers will be serviced by the Department of Personnel and Training.

(D.M.M. Rao)
for Cabinet Secretary
Tele:3015802

To

Shri Indrajit Gupta, Minister of Home Affairs.
Shri Janeshwar Mishra, Minister of Petroleum and Natural Gas.
Shri Murasoli Maran, Minister of Industry.
Shri Ramakant D. Khalap, Minister of State (Independent charge) of the Ministry of Law and Justice.

RB SECRET 5

30 Copies. ...2/-

Copy forwarded, for information, to:-

Secretary to the President.
Secretary to the Vice-President.

(D.M.M. Rao)
Deputy Secretary to the Cabinet

Copy also forwarded, for information, to:-

Principal Secretary to the Prime Minister.
Secretary to the Prime Minister.

(D.M.M. Rao)
Deputy Secretary to the Cabinet

Copy also forwarded, for information, to :-

Secretary, Department of Personnel and Training.
Secretary, Department of Legal Affairs.
Secretary, Legislative Department.
Secretary, Ministry of Home Affairs.
Secretary, Department of Public Enterprises.
Secretary, Department of Expenditure.
Secretary, Department of Defence.
Foreign Secretary.
Finance Secretary.
Secretary, Department of Consumer Affairs.

(D.M.M. Rao)
Deputy Secretary to the Cabinet

RB
30 Copies.
c:gom-inf/486

Secret
Copy No.

No. 34011/1(S)/97 - Estt. (B)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel and Training
.....

New Delhi, the 27th October, 1997.

NOTE FOR THE GROUP OF MINISTERS

Subject: Legislative proposal for Freedom of Information and amendments to related Acts and Rules.

1.1. This Department had submitted a proposal seeking the approval of the Cabinet for the introduction of the Freedom of Information Bill in the forthcoming winter session of Parliament. The proposal was placed before the Cabinet in its meeting held on October 20, 1997 and it was decided that the matter would first be considered by the Group of Ministers. This Note is accordingly being submitted to the Group of Ministers for their consideration. It may be mentioned that the proposal represents the fulfilment of the assurance contained in the Common Minimum Programme of Government, as well as the announcement made by the Prime Minister in the course of his speech on the 50th Independence Day.

1.2. The Note is based on the recommendations of the Working Group on Right to Information and Promotion of Open and Transparent Government, which was constituted, under the Chairmanship of Shri H.D.Shourie, vide this Department's Office Memorandum No. 34011/1(S)/97-Estt (B) dated January 2, 1997. Among other things, it was asked to examine the feasibility and need of either a full fledged Right to

Information Act or its introduction in a phased manner to meet the needs of open and responsive Government and to examine the Rules framework with particular reference to Conduct Rules and Manual of Office Procedure with a view to introducing greater transparency and openness in Government working. The Group submitted its report on May 21, 1997 a copy of which is attached to this Note as Annexure I.

BACKGROUND:

2.1. There is a worldwide trend in democratic countries to have legislation for assuring to the citizens the right of access to information of the public authorities as part of the effort to promote openness, transparency and accountability in the administration and to ensure greater participation of the people in decision making. Transparency is seen as a vital element of good governance advocated by agencies and citizen groups alike. Democracy today embraces a concept which goes beyond the traditional view of the accountability of the Executive to the Legislature in a Parliamentary democracy and incorporates equal accountability of the administration to the people in terms of accessibility ,standards of performance and service delivery. In our country also there have been demands for the past many years for greater transparency and openness in the functioning of the Government. The Official Secrets Act, 1923 is seen as inconsistent with this spirit. It is widely recognized that secrecy and lack of openness in functioning are major contributors to corruption and abuse of authority. Thus, right to information forms an important element of the programme for effective and responsive administration and Civil Service Reforms initiated by the Government. In terms of the Common Minimum Programme , the Government is committed to bring forward a Bill

on Freedom of Information.

2.2. This issue was also discussed during the Chief Ministers' Conference on "Effective and Responsive Government" held on May 24, 1997. A Statutory Scheme, based on the deliberations of the Working Group, had been circulated to the participants for consideration during the conference. The conference statement adopted at the conclusion of the meeting reflects the consensus among the Chief Ministers that a legislation for Right to Information should be enacted by Government of India as early as possible. Meanwhile, Tamil Nadu and Goa have already enacted legislation for Right to Information.

2.3. In the 38th Report on the demands for grants of the Ministry of Personnel, Public Grievances and Pensions, the Parliamentary Standing Committee on Home Affairs has recommended that the Ministry should take up measures for an early enactment of a legislation for the right to information.

2.4. In answer to a Lok Sabha Starred Question, the Prime Minister has given an assurance that the Bill on Freedom of Information, pursuant to the recommendations of the Working Group, will be introduced in the Winter session of the Parliament. Copies of the report of the Shourie Committee are also being placed before the two Houses of Parliament.

ORT OF THE WORKING GROUP:

The Report of the Shourie Working Group is based, among other things, on a [illegible] the freedom of information legislation in some other countries. The Group also

took into consideration the Right to Information Bill, 1996 which was prepared by the Press Council of India under the Chairmanship of Justice P.B. Sawant.

3.2. The Group took note of the fact that even though the "right to know" has been judicially recognized as a facet of the fundamental right to free speech and expression enshrined in Article 19 (1) of the Constitution, there is no specific law which assures the public access to information. It expressed the view that such a law is not only feasible, but also vitally necessary. Further, such law should be based on the broad principles that disclosure of information should be the rule and secrecy the exception, the exceptions should be clearly defined and there should be an independent mechanism for adjudication of disputes between the citizens and the public authorities.

3.3. The important recommendations of the Group are :

- The Group has recommended the enactment of "Freedom of Information Act" by the Parliament. For this purpose it has provided the "**Freedom of Information Bill, 1997**" which is at **Annexure A** to the Report. The Group has expressed the view that, there being no specific entry in this regard in any of the lists in the Seventh Schedule to the Constitution, this item will fall within the purview of the residuary entry, i.e. entry No. 97, in List I of the Seventh Schedule and, thus, within the legislative competence of the Parliament. It has recommended enactment of the legislation by the Parliament also on the ground that it would ensure uniformity of application throughout the country.

- The Group has also recommended consequential amendment to Section 5 of the Official Secrets Act , 1923 which is at **Annexure B** of the Report.

- Amendments have also been proposed to Sections 123 and 124 of the Indian Evidence Act, 1872, the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973. The proposed amendments are at **Annexure C** of the Report.

- It has also recommended amendment to Rule 11 of the CCS (Conduct) Rules, 1964 and the corresponding Rules for other Services including the All India Services. The draft amendments recommended by the Working Group are at **Annexures D and E** of the Report.

- Amendments have also been proposed by the Group to the Manual of Departmental Security instructions dealing with classification of information. The recommendations in this regard are contained in **Annexure F** to the Report.

3.4. In the context of its Freedom of Information Bill, 1997, the Group has also emphasized the need to develop modern information management systems and special training programmes for bringing about the necessary attitudinal change and for developing the necessary skills and aptitude among the employees.

Freedom of Information Bill, 1997, as prepared by the Working Group:

4.1. The salient features of the Bill drafted by the Working Group are:

(1) It applies to "Public Authorities" which have been defined to include the Central as well as State/Union Territories Governments, bodies owned or substantially controlled or funded by them and the administrative offices

of the Courts and the Legislatures and local bodies [Cl.2(g)].

(2) It casts an obligation on public authorities to grant access to information and to publish certain categories of information. It also casts an obligation on the concerned officers to disclose reasons for decisions to those affected and to disclose the relevant facts and analyses when major policies or decisions are announced [Cl.4].

(3) The Bill lays down the machinery for the grant of access to information. The public authorities are required to appoint Public Information Officers whose responsibility it is to deal with requests for information and also to assist persons seeking information [Cl.5].

(4) A time limit of 30 days, extendable by another 30 days for reasons to be recorded, has been prescribed for compliance with requests for information under the Act. In case no decision is communicated within this period, the request would be deemed to have been refused [Cl.5,6,7 and 8].

(5) Certain categories of information has been exempted from disclosure. These categories include information the disclosure of which would be prejudicial to the sovereignty and integrity of India, conduct of international and Centre-State relations, Cabinet documents, internal notes and correspondence containing opinions, advice, minutes etc. for the deliberative processes in a public authority. They also include information the disclosure of which would prejudicially affect law enforcement. Clause 9 of the Bill sets out the detailed categories of exempted information.

(6) A request for information can be refused on certain other grounds also, such as if it is too general or is of such a nature that it would involve a disproportionate diversion of resources or if it is available in published documents available for sale. This is subject to the condition that if request is being refused as being too general, the Public Information Officer is required to assist the requester, as far as possible, to reframe the request in such a manner as would facilitate compliance with it [Cl. 10].

(7) Fees can be prescribed for grant of access to information. These, however, can be waived if the disclosure is in the larger public interest [Cl. 11].

(8) The Bill also incorporates the principle of severability. That is, if a document contains both exempted and non-exempted information, and if the non-exempted information can be reasonably segregated from the exempted information, access may be granted to such information [Cl. 12].

(9) On a request of information being refused, the applicant can seek a review of the decision from the Head of Department or such other authority as may be prescribed - - the time limit for disposal being 30 days [Cl.14].

(10) An appeal can be filed against the decision of the reviewing authority. For the purpose of appeals, the Bill proposes to utilise the machinery under the Consumer Protection Act, 1986 as the appellate forum [Cl. 15].

(11) The Bill seeks to give the Act an overriding effect over all other laws which may be inconsistent with its provisions [Cl. 18].

(12) The Bill also envisages the setting up of Freedom of Information Councils at the Central and State Levels. The functions of these Councils include the review of the functioning of the Act and to undertake research and documentation on the subject [Cl.19, 20, 21 and 22].

(13) The proposed legislation would prevail over Central and State Legislation as regards access of public to information is concerned.

CONSULTATION WITH STATE GOVERNMENTS AND MINISTRIES/ DEPARTMENTS OF THE CENTRAL GOVERNMENT:

5.1. Copies of the Report of the Working Group were sent by this Ministry to all States/ Union Territories for their comments. Responses have so far been received from 7 State Governments/ Union Territories. The responses have generally been favourable. It may also be mentioned that the statutory scheme prepared on the basis of deliberations in the Working Group had been circulated for discussions during the Chief Ministers' Conference held on May, 24, 1997 and had received the broad approval of the Conference. It was, however, felt that, while formulating the legislation, due care must be taken to protect the confidentiality of information, whose disclosure would be against the public interest.

5.2. As far as Ministries/ Departments of the Central Government are concerned, responses have so far been received from 45 Ministries/ Departments.

These Ministries/ Departments have broadly supported the recommendations of the Group. Some of the Ministries have, however, pointed out that the proposed Freedom of Information Act will entail considerable administrative work owing to high demand for information and the litigation that might ensue. Concern has also been expressed by some about the possibility of misuse of the Act by different interest groups. An apprehension has been expressed that, at least initially, information which may be required to be kept secret, may be released due to lack of adequate appreciation on the part of officers of the intricacies of the provisions of the proposed Act.

5.3. Questions have also been raised as regards the feasibility of the provision for appeals (Cl. 15 of the Bill) which envisages the use of the machinery under the Consumer Protection Act, 1986 as the appellate forum under the proposed Freedom of Information Act. The apprehensions in this respect are mainly twofold. First, the performance of these forums in redressal of complaints under the Consumer Protection Act itself leaves much to be desired as they seem to suffer from absence of the full complement of the forums at district level and state level and chronic shortages in terms of manpower premises and material resources. They are already labouring under the burden of arrears and are unable to dispose of cases within the statutory period. Secondly, in some cases, the decision to withhold information may have to be taken at a very high level in the Government and it may not be appropriate to vest the District Forums with appellate powers over such decisions.

5.4. Another apprehension that has been expressed is with regard to the inclusion of Public Sector Undertakings (PSUs) in the definition of "Public

Authority" in the Bill. The point that has been made is that PSUs operating in a competitive commercial environment will be at a disadvantage vis-a-vis their competitors in the private sector since the latter are not covered by the proposed legislation.

5.5. A statement briefly indicating the views of the State/Union Territories Governments and Ministries/Departments of the Central Government, who have sent their responses on the the Report of the Working Group till now, is attached as Annexure II.

REACTIONS FROM THE MEDIA AND OTHER SECTIONS OF SOCIETY:

6.1. The Report has been generally welcomed in the articles appearing in the newspapers and magazines. Informal discussions have been held with experts in the field and social activists etc. and the Chairman, Press Council of India, who have also generally expressed themselves in support of the recommendations of the Working Group barring criticism in respect of certain aspects of the Bill formulated by the Working Group. The significant points of criticism which have emerged from these discussions and seminars organised in Hyderabad and Delhi are briefly indicated below:

- The criticism regarding Clause 9 relating to exempted categories of information is that there are too many exemptions and they would frustrate the objectives of openness and transparency in Government. In particular, Clause 9 (ix) has been assailed as giving excessively wide and unfettered discretion to officers to refuse access to information.

- Under the Bill, the definition of the term "Public Authority" (Cl.2 (g) of the Bill) has been restricted to the Government and bodies owned, substantially controlled or funded by the Government. This leaves out private firms and multinationals whose activities often impinge on public interest as they cause pollution etc. The definition of Public Authorities should be expanded to cover such private bodies also.

- There is no penal provision in the Bill. The absence of a penal provision would make the legislation toothless as there would be no sanction against public authorities or their officers who withhold information or furnish false information in violation of the provisions of the Act or its spirit.

- The absence of a specific provision in respect of the custodial institutions and for furnishing information on Life and Liberty in 48 hours. It may be mentioned in this context that the Right to Information Bill submitted by the Press Council has a provision which requires the appointment of Visitor's Committees and grant of access to such Committees at all times and for giving information on Life and Liberty in 48 hours.

- With regard to the appellate function, while there appeared to be no objection in principle to vesting this function in the machinery under the Consumer Protection Act, 1986, the apprehension was expressed that the

glaring deficiencies in that machinery would prevent timely disposal of appeals and unless effective steps were taken to improve the functioning of District Forums etc., the appellate remedy might not be as effective steps as would be desirable and it may be desirable to let the appeals lie to the judiciary at the district level.

- The Act should specifically provide for representation of diverse interests of society in the Freedom of Information Councils.

Views of the Committee of Secretaries:

7.1 The report of the Working Group was placed before the Committee of Secretaries. The Committee broadly endorsed the Freedom of Information Bill, 1997 recommended by the Working Group subject to certain important modifications.

7.2. With regard to the applicability of the proposed legislation, the Committee agreed that it would not be desirable to extend its scope to private bodies such as commercial firms in view of the implementational difficulties that might crop up. The Committee was, therefore, of the view that the Bill for the present should be limited only to governmental bodies or organisations substantially funded or controlled by the Government as in the Bill recommended by the Working Group.

7.3. The Committee was not in favour of the recommendation to use the

machinery under the Consumer Protection Act, 1986 as the appellate forum under the proposed Freedom of Information Bill for the reasons referred to earlier. The Committee felt that this would not be an efficacious proposition in view of the existing deficiencies in the functioning of these Forums in various States; also that, in view of the huge arrears in the civil courts, it would be undesirable to vest this jurisdiction in the courts. The view was that it would be preferable to provide a simplified executive procedure of a departmental character for appeals, since the ultimate objective from the citizen's point of view was to secure a locally accessible, convenient and least costly forum for appeal against rejection of the request for information. The appellate remedy in civil courts will lead to delay, cost and inconvenience to citizens. A similar view has been taken in the context of the Tamil Nadu Act.

7.4 With regard to the criticism relating to the absence of penal provisions in the Bill, the Committee was of the view that it would not desirable to provide for a penalty in the Bill as it might generate resistance and resentment among employees thereby adversely affecting the implementation of the law. It would involve the administration in avoidable prosecution of cases in the court. In this context, it was felt that the recommendation of the Working Group for amendment to Rule 11 of the CCS (Conduct) Rules, 1964 would take care of the concerns expressed in this regard as the delinquent employees can be punished for misconduct.

7.5. The Committee also decided upon certain changes in the exemption clauses in order to make their scope clearer, protect confidentiality of classified information etc. while deleting Clause 9 (ix) of the Bill.

REVISED FREEDOM OF INFORMATION BILL, 1997:

8.1. The draft Freedom of Information Bill, 1997, given by the Working Group has, accordingly, been revised with the help of the Legislative Department and placed at **Annexure III** to this Note. It may be pointed out that a number of suggestions made for changes in the Bill can be implemented more appropriately through the Rules under the Act and administrative instructions.

8.2. The Freedom of Information Bill, 1997 (Annexure III) is broadly the same as the Bill recommended by the Working Group. However, certain provisions of the Working Group Bill have been modified in the light of decisions taken in the Committee of Secretaries and the apprehensions expressed with regard to certain vital aspects relating to the security of the country. Apart from this, certain verbal changes have been made in the Bill in order to ensure greater clarity and to avoid possible interpretational difficulties. The substantive changes are briefly summed up below :

- While the definition of public authority has been retained in essence, it has been rephrased to cover more clearly the two Houses of Parliament , State Legislatures, the Supreme Court, High Courts and the courts under them, and the Constitutional authorities like Election Commission, Comptroller and Auditor General of India, and the Union Public Service Commission within the provisions of the proposed Act. While the Parliament, Legislatures and the Courts would be subject to the jurisdiction of the competent authority such as the Speaker and the Chief

Justice, the Government would notify the competent authorities in respect of the Constitutional authorities, as well as independent institutions like the Reserve Bank of India.

- The revised Bill provides for a two-tier appellate remedy of a purely departmental character at different levels to be determined by the appropriate government or the competent authority, as the case may be, with no recourse to courts. However, any person dissatisfied with the outcome of a departmental appeal would still have recourse to the writ jurisdiction of the High Courts under the normal law of the land.

- The revised Bill contains a new provision for enabling the Central Government to exclude specified intelligence and security organisations from the purview of the proposed Act by inclusion of such organisations in the Schedule to the Act. This has been done taking into consideration the security requirements of the country. The present schedule includes, in respect of the Central Government, the Intelligence Bureau, the R&AW, the Directorate of Revenue Intelligence, the Directorate of Enforcement, the Central Economic Intelligence Bureau and the Narcotics Control Bureau. This list is based on the advice given by the Home Ministry after consulting the I.B. The C.B.I. has not been included in the schedule since the areas of operation to be exempted for C.B.I are already provided in the exemption clause. The State Governments would be asked to specify the exact names of intelligence and security organisations in the States, which are to be included in the schedule. The Central Government has been empowered to make additions or deletions in the schedule.

- Clause 9 (ix) of the Working Group's Bill has been deleted.

- The provision for deemed refusal contained in Clause 8 of the Working Group Bill has been deleted in view of the apprehension expressed that it might prove to be counter productive.

- A specific duty has also been cast, in the revised Bill, upon the National and State Freedom of Information Councils to submit annual reports to the Central Government and the State Government, respectively, who are required to lay such reports before the Parliament and the State Legislatures, respectively.

- It has been advised by the Law Ministry that, from the legal and operational point of view, the State Governments may be vested with powers to amend the Rules framed under the Act. However, provision will be made to enable the Central Government to prescribe the initial set of Rules governing various provisions mentioned under the Act for adoption with suitable changes by State Governments.

Legislative competence of the Parliament:

9.1. The Working Group has specifically examined this aspect and has taken the view that the Parliament is competent to enact the legislation under entry 97 in List I of the Seventh Schedule to the Constitution. It also felt that in order to ensure uniformity of application a Central Act was preferable. However, since

the residuary power of the Parliament in this respect does not extend to the State of Jammu & Kashmir, the present legislation will not apply to that State. The State Government will be advised to enact a similar legislation with appropriate changes with due regard to local conditions.

9.2. It may be mentioned that the States of Tamil Nadu and Goa have separately enacted legislation on right to information. The legislative competence of the States to enact such a law is a matter of doubt and it is unclear under which provisions of the Constitution the Governments of Tamil Nadu and Goa have enacted their respective laws. On the other hand, since the subject does not specifically figure in any of the lists in the Seventh Schedule, there appears to be far stronger basis for holding that it falls within the legislative competence of the Parliament and once the law is enacted, it would automatically apply to the State governments and other public authorities in the state sector. After the Bill is enacted, these two States will be advised to consider action for adopting the Central legislation and repeal of the existing legislation in the interest of avoiding legal complications.

Other recommendations of the Working Group:

10.1. As far as the other recommendations of the Working Group are concerned, the Ministry of Home Affairs has been requested to process the recommendations regarding amendments to the Official Secrets Act, 1923, Manual of Departmental Security Instructions and Code of Criminal Procedure, 1973. The Ministry of Home Affairs is processing for Government's approval the recommendations relating to the Official Secrets Act, 1923, Code of Criminal Procedure, 1973 and

the Manual of Departmental Security Instructions. It is hoped that Ministry of Home Affairs would obtain the approval of the Cabinet for necessary legislative amendment and introduce the amending Bills simultaneously with the present Bill. The Legislative Department has been requested to process the recommendations in respect of amendments to the Indian Evidence Act, 1872 and the Code of Civil Procedure, 1908. It may, however, be mentioned that, with the jurisdiction of the courts being barred in the proposed Freedom of Information Bill, the Working Group's recommendations relating to amendments to the Indian Evidence Act, 1872, Code of Civil Procedure, 1906 and Code of Criminal Procedure, 1973 would cease to have a direct relevance to the Freedom of Information Bill and a view on these recommendations can be taken independently.

10.2. As far as the amendment to Rule 11 of the CCS (Conduct) Rules and other similar rules is concerned, the Department of Personnel is separately processing the proposed amendment for the approval of the Government.

Administrative and Financial Implications:

11.1. It is true that the Bill, once enacted, will generate a certain amount of administrative work arising from requests for information. However, since it envisages supply only of existing information and does not require the creation of new records solely for its purpose, bulk of the requests which will require compliance would relate to information that is already being compiled in various agencies. Besides, a large amount of information is expected to be disclosed, *suo motu*, under its provisions, which is expected to reduce the load of individual

requests for information. No insurmountable administrative difficulties are therefore anticipated, as seen from their field level experience in different States with transparent administration and provision of information to the public on public distribution system, employment exchange, housing facilities etc. On the contrary, the law may have a beneficial effect in course of time as it would necessitate improvements in the management of information in various agencies. The process of storage and release of information will be facilitated by progressive computerisation of Government operations, and the access of the public to information on public service terminals, Internet etc.

11.2. It does not require to be stated that it would be necessary to provide adequate training to employees in training institutions or in their work environment to bring about the necessary change in their attitudes and to equip them with the required skills if the proposed law is to be successfully implemented. It would be necessary for this purpose to develop suitable training packages.

11.3. Similarly, it would also be necessary to devise detailed administrative instructions for ensuring proper implementation of the proposed Act, including clear provisions and rules for the classification of different types of records, over and above the existing Manual of Departmental Security Instructions, to cover all the transactions. A similar effort will have to be undertaken in the State, and the level of appellate authorities with the competence to decide on the classification of records will be prescribed by the appropriate Government. With this in view, the Department of Personnel is separately initiating action for devising measures for operationalising the proposed Act. It is intended that

detailed guidelines and instructions on the procedures for release of information, classification of information and other related matters such as appointment of Public Information Officers would be drawn up by the time the Bill is enacted, so that the benefits of the legislation are available to the public immediately after enactment of the Bill.

11.4. Action is also being initiated to frame rules for the purposes of the proposed Act. Apart from the Central Government, the State Governments also have the powers to frame rules under the Bill. The Bill provides that the initial set of rules relating to different provisions, apart from other required rules to enable the implementation of the Act, will be notified by the Central Government on a uniform basis. In the case of State Governments, they may make suitable modifications in the rules according to local circumstances, subject to conformity with the legal provisions and directions from the Central Government.

11.5. As far as financial implications are concerned, it is not possible to accurately estimate the possible expenditure that the legislation might entail. It is expected that the various agencies would be appointing some of their existing officers as the Public Information Officers for the purpose of this Act or redesignating the publicity or information officers as Public Information Officers. Only in a few cases it might be necessary to create additional posts for this purpose. Thus, the manpower requirement arising from the legislation is expected to be met from within the existing sanctioned strength of the various agencies at the Central and State level, or within the existing budget. As regards the material resources in terms of computers and other office equipment, it may be stated that there are in any case ongoing programmes for computerisation of operations in

various agencies, and the requirement arising from legislation would ordinarily be met by these programmes.

11.6 The creation of a certain number of posts, particularly for the proposed Councils for Freedom of Information would be inevitable. So far as the State Governments are concerned, this expenditure will have to be met by them from within their budget. The Central Government will have to make budget provision for the National Council and its Secretariat. It may also be mentioned that a portion of the likely expenditure would be offset by the recovery of fees for supply of information. A nodal Cell for the finalisation of rules and instructions, guiding the States, and reporting progress to Government has to be set up in the Ministry of Personnel, Public Grievances & Pensions. This Cell will be headed by a Joint Secretary to Government with two Deputy Secretaries, two Senior Analysts and two fully staffed sections, stenographic assistance etc. The details of staff requirements are provided in the **Annexure IV**. Detailed proposals for the constitution of the National Council and for providing the necessary financial and material resources will be separately submitted for appropriate approvals after the enactment of the Bill.

12. The provisions of the draft Bill were discussed extensively in a number of meetings of the Committee of Secretaries, and subsequently in a Core Group headed by Secretary(Personnel). The views and concerns of the relevant Ministries such as the Ministries of Home Affairs, Defence, Finance, External Affairs and the Departments of Consumer Affairs and Public Enterprises, as well as those of intelligence agencies, have been taken into account while finalising the provisions of the Bill.

13. The proposed Bill has been seen and concurred in by the Legislative Department and the Department of Legal Affairs, with the approval of the Minister of State for Law & Justice.

14. In the above background, the Group of Ministers are requested to consider the Freedom of Information Bill, 1997, as in **Annexure III**, and give their recommendations for submission of the proposal to the Cabinet to seek their approval for introducing of the Bill in the forthcoming Winter session of the Parliament.

15. This Note has been approved by Secretary (Personnel).

(HARINDER SINGH)

Joint Secretary to the Government of India

New Delhi, Dated October 25, 1997.

ANNEXURE - II

Comments of the Central Ministries/Departments on the Report of the Working Group including Bill on Freedom of Information.

S.No.	Name of the Ministry/Department	Comments
A		
1.	Cabinet Secretariat	All these Ministries/Departments are broadly in agreement with the recommendations of the Working Group including the Bill on Freedom of Information.
2.	Department of Biotechnology (Ministry of Science & Technology.	
3.	Department of Urban Employment and Poverty Alleviation, (Ministry of Urban Affairs and Employment).	
4.	Department of Ocean Development.	
5.	Department of Sugar & Edible Oils, (Ministry of Food & Consumer Affairs).	
6.	Ministry of Food Processing Industries,	
7.	Ministry of Water Resources.	
8.	Department of Heavy Industry (Ministry of Industry).	
9.	Atomic Energy Commission.	
10.	Department of Electronics.	
11.	Planning Commission.	
12.	Ministry of Railways, (Railway Board)	
13.	Department of Women & Child Development, (Ministry of Human Resource Development).	
14.	Department of Telecom.	

	S.No.	Name of Ministry/Department	Comments
	15.	Department of Agriculture & Cooperation (Ministry of Agriculture).	All these Ministries/Departments are broadly in agreement with the recommendations of the Working Group including the Bill on Freedom of Information.
	16.	Department of Animal Husbandry & Dairying (Ministry of Agriculture).	
	17.	Ministry of Tourism	
	18.	Department of Programme Implementation.	
	19.	Department of Youth Affairs & Sports (Min. of Human Resource Development).	
	20.	Ministry of Parliamentary Affairs.	
	21.	Department of Chemicals & Petrochemicals (Ministry of Chemicals & Fertilizers).	
	22.	Department of Rural Development (Ministry of Rural Areas & Employment).	
B.	23.	Department of Food & Civil Supplies (Ministry of Food & Consumer Affairs).	
	24.	Ministry of Surface Transport.	No specific comments on the Report/Bill on Freedom of Information.
	25.	Ministry of Non-Conventional Energy Sources	
C.	26.	Department of Space	Have advised that in legislating the proposed Bill, care should be taken to protect the bonafide interes of the custodians of the Government in genuine cases Considering that the decision to refuse information would be taken at a very senior level, the Departmen has expressed apprehensions whether the Consumers Fo would be an appropriate Appellate Body.

S.No.	Name of the Ministry/Department	Comments
27.	Department of Posts	Clause 9 of the Bill may be suitably amended so as to exempt from disclosure any information relating to postal tariff, DPC proceedings, disciplinary proceedings, etc.
28.	Department of Fertilizers (Ministry of Chemicals & Fertilizers).	Are in agreement with the recommendations of the Working Group. The Department is also generally in agreement with the Bill on Freedom of Information except clause 4(2)(iii) as they feel that for non-MOU signing companies, norms of performance and completion of targets vis-a-vis the actual achievement is an internal arrangement and such companies may be reluctant to share information on this subject for fear of criticism and litigation.
29.	Ministry of Power	Generally in agreement with the recommendations of the Working Group. Ministry, however, feels that documents relating to tender evaluation, proposals regarding international cooperation and bilateral assistance in the field of power development, DPC minutes and police verification reports in respect of appointments, Cabinet Notes, etc. should be exempted from disclosure.
30.	Ministry of Home Affairs	Have in general supported the Bill on Freedom of Information However, the Ministry are of the view that matters relating to Secret Service Funds, internal security and defence should be exempted from disclosure and that the exemptions provided in clause 9 should not lead to a weakening of administration or give an opportunity to unscruplous elements to exploit the freedom for partisan purposes. Also it would be appropriate to have a designated Central Govt. Body as an Appellate Authority instead of Consumer Forums/ Courts.

S.No.	Name of Ministry/Department	Comments
31.	Department of Economic Affairs (Ministry of Finance).	While welcoming the tenor of the Report, the Department are of the view that there would be practical problems in providing the information besides leading to increased litigation in service matters. Further, the provisions of clause 9 and clause 10 should be reviewed so as to ensure that an ordinary citizen does not have a right to access to information wider than that of an M.P. Also, it would be deisrable to postpone for some time the provisions relating to legal redressal in cases of refusal of information. The Insurance Division has suggested that (i) the private sector should be brought under the Bill to ensure a level field; (ii) clause 2(g)(ii) should be modified to read as "by which they are established" instead of "under which they are registered"; (iii) provision for "oral request" under clause 6 should be deleted (iv) the time period during which the decision to refuse informatic is to be communicated, should be modified to cover the extended period also.
32.	Ministry of Welfare	Have commended the Report. The Ministry have, however, suggested that the Bill should be titled as "Right to Information Bill" and there should be a separate authority to decide as to which documen record should be witheld from Appellate Authority. Also, the Dist Forum/Consumer Forum would not be an appropriate Appellate machine in view of the large number of cases already pending with them.
33.	Department of Science & Technology (Ministry of Science & Technology).	The Ministry, while lauding the Report, have requested for deletio of proviso to column 9(iv) of the Bill and provision of extra fund to meet the cost of providing information.
34.	Ministry of Environment & Forests.	Request for deletion of proviso to column 9(iv) as disclosure of reports of scientific or technical experts might cause harm to individuals reputation besides generating avoidable controversies and agitations.
35.	Ministry of Coal.	Apprehend the prescribed work would suffer due to increase in load arising out of req-uests for information. Hence, the need for increase in staff. The Ministry also advocates for the private sector to be brought under the proposed Act.

S.No.	Name of the Ministry/Department	Comments
36.	Ministry of Information & Broadcasting	Have recommended acceptance of the Report of the Working Group. Having regard to clause 5 of the Bill, and the proposed amendment of Conduct Rules, the Ministry has sought clarification whether responsibility for furnishing information will be that of Public Information Officer or the departmental officer hand-ling the subject.
37.	Department of Defence Production & Supplies(Ministry of Defence).	Have supported the recommendations of the Working Group and Bill on Freedom of Information. Suggest information on research, development and designs of weapons/ammunition and details on future plans in this regard, may be placed in the category of exemptions.
38.	Department of ISM & Homeopathy (Ministry of Health & F.W.)	Have suggested the exemption of following areas from disclosure:- (i) results of research work till they are patented; (ii) information confided in by patient to doctor; (iii) information/bio-data furnished by individuals/organisations in their applications; (iv) extracts of opinions expressed by officials; (v) personal information pertaining to officials.
39.	Department of Health (Ministry of Health & F.W.)	Have supported the Bill on Freedom of Information. However, advise against sharing of information on vital policy matters and sensitive issues, private affairs of personnel, disciplinary proceedings and establishment matters.
40.	Department of Civil Supplies	While welcoming the Bill on Freedom of Information, the Department has advised against the use of Consumer Courts as Appellate authorities in view of the already high pendency with these Courts. Have questioned the applicability of the Bill to J & K, pointed the discrepancy of the term "requester" as contained in clause 6 of the Bill with the term "consumer" under Section 2 of the Consumer Act, pointed out that the Consumer Act will not be attracted if services are provided free, suggest inclusion of a provision in clause 14 for deemed refusal, have pointed the difficulties/inadequacies of the designate Appellate body.
1.	Ministry of Surface Transport	Suggest inclusion of Universities recognised by UGC under the proposed Bill and giving statutory powers to Public Information Officers to call for records/files.

S.No.	Name of the Ministry/Department	Comments
42.	Department of Statistics (Ministry of Planning).	Have supported the recommendations of the Working Group. Are of the view that Centre-State relationship and relationship with foreign countries cannot be made a ground for witholding information, suggest placing personal information in the exempted category, deletion of provision for "oral request", deletion of proviso to clause 9(iv). deletion of clause 10(iii) and safeguarding information of the Third Party.
43.	Department of Urban Development (Ministry of Urban Affairs & Employment).	Clause 18 of the Bill has serious implications and needs to be deleted. Exemption clauses are too many. Provision should be made to put the burden on the "requester" for Third Party's damages. Jurisdiction of Civil/Criminal Courts should be barred.

Comments of the State Governments/Union Territories on the Report of the Working Group, including Bill on 'Freedom of Information'.

S.No.	Name of State/Union Territories	Comments
1.	Union Territory of Daman & Diu and Dadra & Nagar Haveli.	The Administration has already taken some decisions to make records, Government publications, rules, regulations and decision making process open to public
2.	Government of Punjab.	Have agreed in principle to the Bill on Freedom of Information. The State Government, however, suggests that the powers of Appellate Authority under clause 19 may be vested with the Civil Courts.
3.	Union Territory of Lakshadweep	Entirely support of the Freedom of Information Bill.
4.	Government of Haryana	Support the Freedom of Information Bill. However, keeping in view that an unfettered right to information is likely to adversely affect Government functioning besides increased litigation, the State Government have suggested that instead of a provision for "appeal", the "requester" may be provide the remedy of review whose decision should be final.
5.	Union Territory of Chandigarh	Generally agree to Freedom of Information Bill. However the Administration have suggested that instead of access being provided to information, the access should be provided to documents/files to cut short avoidable administrative work. The State Administration are also of the view that the duties of Public Information Officers be assigned to a Serving Officer instead of creating a separate institution.

S.No.	Name of State/Union Territories	Comments
6.	Union Territory of Pondicherry	Agree with the recommendations of Working Group, including the Freedom of Information Bill.
7.	Government of Uttar Pradesh	Have constituted a Task Force to examine the Freedom of Information Bill.
8.	Government of Sikkim	Full support the Freedom of Information Bill.

Secret
Copy No. 10

No.34011/1(s)/97-Estt.(B)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Personnel & Training
*****

New Delhi, Nov. 5, 1997.

Minutes of the meeting of Group of Ministers held on October 28, 1997 at 10.30 A.M. in the Chamber of the Minister of Home Affairs.

Present

1. Shri Indrajit Gupta, Minister of Home Affairs.
2. Shri Janeshwar Mishra, Minister of Petroleum & Natural Gas.
3. Shri Ramakant D. Khalap, Minister of State (Independent charge) of the Ministry of Law & Justice.

In Attendance

1. Shri K. Padmanabhaiah, Home Secretary.
2. Shri B.P. Singh, Officer on Special Duty, Ministsry of Home Affairs.
3. Shri K.L.Mohanpuria, Secretary, Legislative Department.
4. Dr. P.S.A. Sundaram, Additional Secretary, Department of Administrative Reforms & Public Grievances.
5. Shri Pawan Chopra, Additional Secretary, Cabinet Secretariat.
6. Shri A. Sinha, Joint Secretary, Department of Legal Affairs.
7. Shri Y.G. Parande, Director, Department of Personnel & Training.

Department of Personnel and Training **Secret**

Subject: Legislative proposal for Freedom of Information and amendments to related Acts and Rules.

The Cabinet in its meeting held on October 20, 1997 had decided that this Department's proposal on the above subject should first be considered by Group of Ministers comprising the Minister for Home Affairs, Minister of Petroleum & Natural Gas, Minister of Industry and Minister of State (Independent Charge) of the Ministry of Law & Justice.

2. The Home Minister took a meeting of the Group of Ministers on 28th October, 1997 at 10.30 A.M.

3. The background of the Department of Personnel's proposal seeking the approval of the Cabinet for introduction of the proposed Freedom of Information Bill in the forthcoming Winter session of the Parliament, was noted by the Group of Ministers. It was also noted that the Law Ministry had endorsed the present formulation of the Bill. As far as the views of the State governments were concerned, it was mentioned that though only very few formal responses had been received in response to Department of Personnel's letter seeking State governments' comments/views on the Report of the Working Group chaired by Shri. H.D. Shourie, a statutory scheme based on the deliberations of the Working Group chaired by Shri H.D. Shourie had been circulated for discussions during the Conference of Chief Ministers held on May 24, 1997 and it had received the broad approval of the Conference. The Group of Ministers was also apprised of the deliberations on the issue in the Committee of Secretaries. In particular, they noted:

- the proposed definition of "public authority", vide Clause 2(g) of the Bill, which covers bodies established or constituted by or under the Constitution, by any law made by the appropriate Government and includes bodies owned controlled or substantially funded by the Government. Thus the proposed legislation would cover public sector undertakings.
- the decision to cover Supreme Court, High Courts and Courts under them, Parliament and

State Legislatures, but with the competent authority exercising the necessary powers under the proposed Act.

- the obligations of making suo motu disclosures by the public authorities including the obligation to give reasons for decisions and to publish facts concerning important decisions, policies or projects as are likely to affect the general public, vide Clause 4 of the Bill
- the provisions of Clauses 8 and 9 of the Bill setting out exemptions from disclosure of information and the grounds for refusal of access to information in certain situations.
- the two-tier appellate remedy of a purely departmental character, as distinct from the recourse to consumer forums or the ordinary judicial machinery, and the bar to the jurisdiction of the Courts, vide Clauses 12 and 27 of the Bill.
- the exclusion of certain intelligence and security organisations from the proposed Act vide Clause 28 of the Bill.
- the non obstante clause (Cl. 26) in the Bill.

4. A point was made that the proposed Act may generate additional workload for releasing information to the public and as such it might be necessary to make an assessment of such additional workload by consulting all Ministries/Departments. It was explained in this context that the proposed Act only envisaged disclosure of available information and did not envisage the creation of any records which were not operationally required. Therefore, bulk of the information that may be sought would already be available in the public authorities, including district level offices which catered to most demands of the common man. While it was difficult make an accurate estimate of the possible impact in terms of additional workload or finance, the expectation was that the Act may not lead to insuperable difficulties and most public agencies should be in a position to meet the manpower requirements from within their resources. Further, there was a built in safeguard providing for rejection of requests which were too general in nature or which would involve disproportionate diversion of the resources of a public authority vide Clause 9 of the Bill. This was noted by the Group of Ministers. The general principle was that whatever information could be made available to the Parliament/State Legislatures should be available freely to the general public.

5. A concern was expressed that the public sector undertaking operating in a competitive environment might be at a disadvantage vis-a-vis their private sector competitors since the former would be within the ambit of the proposed Act while the latter would not be. It was mentioned that this aspect had already been considered at length by the Committee of Secretaries and, as a result of those discussions, the relevant exemption clause had been modified to specifically exempt from disclosure information which might prejudicially affect the competitive position of a public authority vide Cl. 8 (10). Further, trade or commercial secrets and information having a commercial value which was likely to be prejudicially affected by disclosure also was exempted under the provisions of Cl. 8 (12). In any case, the final decision on the requests for information would be taken within the administration. This was noted by the Group of Ministers.

6. It was agreed that the Act should take care of the urgency to release information of daily interest to the common man and the urgency to withhold strategic information. A point was also made that apart from the information already exempted under the proposed Act, it may be necessary to safeguard certain other information which would have strategic implications for the country's economic security. This included information relating to matters such as bio diversity and natural resources such as geological data. It was decided that the relevant exemption clauses would be suitably modified to take care of this concern. The proposed amendment to the Official Secrets Act, 1923 would also take care of this.

7. A point was also made that there should be adequate safeguards against unwarranted disclosures particularly in regard to sensitive matters having a bearing on national security including economic security. It was mentioned that the Department of Personnel was taking measures to draw up detailed administrative guidelines for the guidance of the officers in public authorities in order to ensure the maximum possible uniformity in approach on the one hand and to minimise the errors in decisions on the other. The proposed guidelines would also cover the aspect of classification of information which would ensure that information deserving classification alone would be appropriately classified while information which did not require classification would be available for wide dissemination. In this context it was also felt that the exemption for Cabinet papers should be

modified to specifically cover papers in the Cabinet Secretariat relating to deliberations of the Committee of Secretaries since these often formed an inextricable part of the Cabinet's decision-making process. It was decided that the relevant clause would be suitably modified.

8. The existing provision in the Bill, for appeals of a purely departmental character and the absence of an external machinery for scrutiny of decisions, may invite public criticism as being detrimental to the credibility of the proposed Act, as noted by the Group of Ministers. However, it was also noted that the deficiencies in the working of the courts as well as the district consumer forums (which the Working Group chaired by Shri Shourie had suggested as the appellate forum), in the form of massive arrears and chronic shortages of manpower etc., would appear to undermine the effectiveness of either of these forums as appellate forums under the proposed Act even from the point of view of cost, speed of disposal and convenience to the public. On the other hand, departmental appeals would be far more economical and cost effective for the appellants, especially for most of the information at the district level, as they would not entail expenses such as lawyer's fees, court fees etc. For a person dissatisfied with the outcome of his appeal, the writ jurisdiction of the High Courts would still be available. In view of this and also considering that the proposed legislation was a new kind of legislation, requiring a break with the present administrative culture, it was felt that it might be better to review the situation after gaining some experience with the Act.

9. It was decided, in view of the above, that a specific provision may be added to the Bill to provide for a review of the functioning the Act at the end of a specified period, say 10 years.

10. It was also decided that the Chairmen of the National and State Freedom of Information Councils should be eminent personalities from public life rather than Ministers.

11. The Group of Ministers also felt that in view of the commitment of the Government as reflected in the Common Minimum Programme, the proposed legislation should clearly reflect the desire to provide as much information as possible to the public, within strictly enforced time limits.

Therefore, this should find an appropriate reflection either in the preamble to the proposed Act or in the Statement of Objects and Reasons of the Bill.

12. The Group of Ministers was also informed that a reminder had been sent to the Ministries/Departments whose responses to the recommendations of the Working Group on Right to Information and Promotion of Open and Transparent Government, chaired by Shri H.D. Shourie, were still awaited in view of the direction of the Cabinet that the Group of Ministers should specially consider their comments. These Ministries had been given time till the 31st October, 1997 to furnish their comments and informed that in the event no responses was received by that date it would be presumed that they have no comments to offer. The responses received would be placed before the Group of Ministers in their next meeting. The Group decided to finalise their deliberations very soon so as to enable the Cabinet to decide on the proposal to introduce the Bill in the Winter session the Parliament.

SECRET
Copy No.

No. 34011/1(s)/97-Estt.(B)
Department of Personnel & Training

New Delhi, the 11th Nov., 1997

NOTE FOR THE GROUP OF MINISTERS

Subject: Legislative proposal for Freedom of Information and amendments to related Acts and Rules.

*****

Reference is invited to this Department's Note of even number dated November 5, 1997, on the above subject communicating the Minutes of the meeting of the Group of Ministers held on October 28, 1997.

2. As was indicated during the meeting, a communication was sent to all Ministries/Departments whose views/comments on the Report of the Working Group chaired by Shri H.D. Shourie had not been received. Responses have been received only from a few of these Ministries/Departments. As far as others are concerned, it may be presumed that they have no specific comments to offer.

3. A brief summary of the views/comments of the various Ministries/Departments who have responded so far is contained in the statement attached as **Annexure I** to this Note. As already indicated in paras 5.2 to 5.4 of this Department's Note of even number dated October 27, 1997, for the Group of Ministers, the main concerns expressed have been with regard to the administrative work arising from high demand for information and litigation that might ensue, the possibility of the misuse of the Act by different interest groups, the possible disadvantage that might arise for the public sector undertakings vis-a-vis their private sector competitors and the appellate remedy i.e the

machinery under the Consumer Protection Act, 1986 that has been recommended by the Working Group.

4. All these concerns have already been taken note of in the deliberations of the Committee of Secretaries while finalising the draft Bill.

5. Apart from the above another concern that has been expressed by some of the Departments is with regard to the provision which seeks to give an overriding effect to the proposed legislation. The view expressed in this regard is that it may not be desirable to provide an overriding effect considering the large number and complexity of various laws which might impinge on disclosure of information and the uncertainty as to the consequences of such a provision.

6. The Working Group had consciously considered this aspect and decided to recommend an overriding effect to the proposed legislation for two main reasons. First, it felt that the proposed legislation should be the bench mark for decisions on disclosure of information. Secondly, it also took note of the possibility of the effect of the legislation being substantially diluted by recourse to enactment or amendments in laws on diverse subjects within the legislative competence both of the Central as well as the State Governments.

7. The Group of Ministers may like to take a view on this aspect.

8. In the light of the decisions taken in the last meeting of the Group of Ministers, Clauses 7 (1), 8(1) and 8 (3) have been slightly revised as indicated below:

> 7(1) : On receipt of a request under Section 6, the Public Information Officer shall, as expeditiously as possible, and in any case within 30 days of the receipt of the request, either provide the information requested for or reject the request for any of the reasons specified in Sections 8 and 9:
>
> Provided that where it is decided to provide the information on payment of any further fee

representing the cost of providing the information, he shall send an intimation to the person making the request, giving the details of the fees determined by him, requesting him to deposit the fees and the period intervening between the despatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of 30 days referred to above.

8(1) (1). Information having a bearing on the strategic interests of the State such as geological data relating to natural resources and information relating to bio-diversity.

8(3). Information in the nature of Cabinet papers including papers prepared for submission to Cabinet or submitted to Cabinet and records of the Cabinet Secretariat such as records containing the deliberations of the Committee of Secretaries, other than the documents whereby such decisions are published.

9. The revision of Clause 7 (1) is in view of the need to provide information requested for as expeditiously as possible and to emphasize that the stipulated period is only the outer limit for furnishing information. The revision in Clause 8 (1) is in view of the concern expressed in the Group of Ministers' meeting, held on Oct. 28, with regard to sensitive information on natural resources and bio-diversity. The revision in Clause 8 (3) is for specifically covering the records of Cabinet Secretariat including minutes of Committee of Secretaries meeting as was decided by the Group of Ministers in the meeting of Oct. 28th.

10. With regard to the decision that the proposed Act should contain a specific provision for review of its operation at the end of a specified period, two alternatives could be considered. First, the review could be entrusted to a Committee of Members of Parliament, to be constituted for this purpose. Alternatively, the National Council for Freedom of Information could be placed under a specific duty to conduct a comprehensive review at the end of a specified period and to report to the Government. One of the following formulations could be adopted for insertion at an appropriate place

in the Bill:

> On expiry of the period of .... years from the date of commencement of the Act, the functioning of the Act shall be reviewed by a Committee of Members of Parliament, to be constituted by the Speaker of the House of People, in consultation with the Chairman of the Council of States.
>
> Or
>
> (1) On expiry of the period of five years from the commencement of the Act, the National Council shall undertake a comprehensive review of the functioning of the Act and submit a report thereon to the Central Government.
>
> (2) The Central Government shall cause the report submitted under sub-section (1) to be laid on the Table of each House of Parliament, together with a statement indicating the action taken thereon.

11. It may also be mentioned that Shri George Fernandes, M.P. Lok Sabha has sent a Notice for introduction of the Right to Information Bill, 1997 as a Private Member's Bill in the Lok Sabha. This Bill is the same one that was finalised in the National Workshop on Right to Information held on Sept. 3-4, 1997, at the National Institute of Rural Development, Hyderabad. It is based on the Press Council's Right to Information Bill, 1996 and some of the provisions borrowed from the Freedom of Information Bill, 1997 recommended by the Working Group chaired by Shri H.D. Shourie. The major aspects in which it differs from the Freedom of Information Bill under Government's consideration are indicated briefly below:

- The term "Public Authority" covers private sector as well.
- There is a specific provision for appointment of Visitors' Committees for custodial institutions.
- The exemption from disclosure applies only to three categories of information:

  (a) information, the disclosure or contents of which will prejudicially affect the sovereignty and integrity of India, security of the State and friendly relations with foreign States, public order, investigation of an offence or which leads to incitement to an offence;

(b) information relating to personal or other information, the disclosure of which has no relationship to any public activity or in which the public has no interest and would constitute a clear and unwarranted invasion of personal privacy;

© trade and commercial secrets protected by law;

provided that an appeal against the refusal of the information under clause (a) above, will lie to a Board headed by the Cabinet Secretary of the Government of India or the Chief Secretary of State Government as the case may be and the Board shall dispose of the appeal within a period of 30 days from the receipt thereof

- The time limit for supply of information relating to life or liberty of an individual is 48 hours and there is also a stipulation for supply of information either in English or in Hindi or the language of the concerned State.
- Appeals are to lie to the concerned District Judge or to the Principal Judge of a City Civil Court.
- There is a provision for penalties.

12. With regard to some of the major issues mentioned above, the reasons why it has not been found possible to accept them have already been explained in paras 7.2 to 7.4 of this Department's Note of even number dated 27th October, 1997. With regard to the exemption clauses, it is submitted that the formulation given by the Working Group chaired by Shri Shourie more exhaustively sets out the categories of exemptions and strikes a more appropriate balance between the public interest in disclosure and public interest in secrecy. Its provisions are also similar to those of freedom of information laws of advanced democratic countries such as the United States, Canada and Australia as well as the Code of Practice of the United Kingdom. As regards some of the other issues such as Visitors' Committees, language of access to information, shorter time limit for release of information etc., it is felt that these matters should preferably be taken care of either in the rules or in the instructions to be issued for implementation of the proposed Act.

13. The Group of Ministers may kindly give its recommendations on the Freedom of Information Bill, 1997 a copy of which is annexed as **Annexure II**, in the light of the foregoing. Thereafter, the matter will be placed before the Cabinet.

14. This Note has been approved by Secretary (Personnel).

(Harinder Singh)
Joint Secretary (Establishment)

SECRET
MOST IMMEDIATE

No. 34011/1(s)/97-Estt.(B)
Department of Personnel & Training

New Delhi, the 15th Dec., 97
15 DEC 1997

Subject:- Legislative proposal for Freedom of Information and amendments to related Acts and Rules.

*****

Reference is invited to this Department's Note of even number dated December 10,1997 intimating that the next meeting of the Group of Ministers will be held on December 16,1997.

Further to this Department's Note of even number dated November 11,1997, a supplementary Note is enclosed for the consideration of the Group of Ministers.

(Y.G.Parande)
Director

1. P.S. to Home Minister
2. P.S. to Minister of Petroleum & Natural Gas.
3. P.S. to Minister of Industry.
4. P.S. to Minister of State (Independent charge), Ministry of Law & Justice.

Copy to:
15 DEC 1997
1. Shri B.P.Singh, Home Secretary.
2. Dr. V.K.Agarwal, Secretary, Department of Legal Affairs.
3. Shri K.L.Mohanpuria, Secretary, Legislative Department.
4. Dr. P.S.A.Sundaram, Additional Secretary, Department of Administrative Reforms & Public Grievances.
5. Shri Pawan Chopra, Additional Secretary, Cabinet Secretariat.
6. Shri M.Ranjan, Joint Secretary, Cabinet Secretariat.

15 DEC 1997 (Y.G.Parande)
Director

Copy also to PPS to Secretary(P).

PS to JS(F)

Received in Delhi 49

1 DEC 1997
Initial
SECRET

SECRET
COPY NO.

Department of Personnel and Training.

F.N.34011/1(s)/97-Estt.(B).

New Delhi
December 12, 1997

Subject: Legislative proposal for Freedom of Information and amendments to related Acts and rules.

Reference is invited to this Department's Note of even number dated December 10, 1997 on the above subject.

2. As was indicated in para 7 of the Minutes of the meeting of Group of Ministers held on Oct. 28, 1997, circulated vide this Department's Note of even number dated Nov.5, 1997, it was decided that the exemption contained in Cl. 8(3) of the Bill should also cover papers in the Cabinet Secretariat relating to deliberations of the Committee of Secretaries.

3. The Committee of Secretaries, while deliberating on the Home Ministry's proposal for amendments to the Official Secrets Act, 1923, also considered this aspect on Nov.24 and 27, 1997 and it was decided that

> "in Section 8(3) of this Act (Freedom of Information Act), not only information in the nature of Cabinet papers but also the Rules of Procedure relating to Cabinet matters should be exempted from disclosure."

4. In the light of the foregoing, the following revised formulation of Cl. 8(3) of the Freedom of Information Bill, 1997 is for the consideration of the Group of Ministers:

> (3) information in the nature of Cabinet papers, including papers prepared for submission to the Cabinet or submitted to the Cabinet, and rules for procedure relating

to Cabinet matters, other than the documents whereby Cabinet's decisions are published.

5. As regards the decision, referred to in para 2 above, that the papers in the Cabinet Secretariat relating to the deliberations of the Committee of Secretaries should also be covered by the exemption contained in Cl. 8(3), it is submitted that it may perhaps not be entirely appropriate to include this in that clause since all deliberations of Committee of Secretaries do not necessarily relate to matters that are eventually required to be submitted to the Cabinet. The exemption contained in Cl. 8 (4) would appear to be wide enough to cover such information. However, for the sake of certainty and clarity, this sub-clause can be suitably amplified as below:

> (4) information in the nature of advice, including legal advice, opinions, recommendations or minutes for the purposes of deliberative processes in a public authority, contained in intra-departmental or inter-departmental papers, including information relating to the deliberations of Committee of Secretaries in the Cabinet Secretariat.

6. The Group of Ministers may like to consider the suggestions contained in paras 4 and 5 above.

7. This issues with the approval of Secretary (Personnel).

(Harinder Singh)
Joint Secretary.

F.N. 34011/1(s)/97-Estt.(B)

SECRET/MOST IMMEDIATE
D.O.NO.II-21011/49/97-IS US(D.II)

भारत सरकार
GOVERNMENT OF INDIA
गृह मंत्रालय
MINISTRY OF HOME AFFAIRS

The 26th December, 1997.

B.K. HALDER
संयुक्त सचिव
JOINT SECRETARY
Tel: 301 4979

Dear Sir,

In pursuance of the minutes of the meeting of Committee of Secretaries held on 5.12.1997, the issue relating to amendment to Section 5 of the Official Secrets Act, 1923 and the proposed rules should be placed before the Group of Ministers which is looking into the proposed 'Freedom of Information Bill, 1997. **The subject has further been discussed with concerned officers in the Cabinet Secretariat and as per their advice 25 copies of our Draft Cabinet Note** for consideration of the Group of Ministers on the subject - amendment to Section 5 of the Official Secrets Act, 1923, are hereby enclosed.

With regards.

Yours sincerely,

26/12/97

(B.K. HALDER)

Shri Arvind Verma
Secretary
Deptt. of Personnel & Training
North Block
New Delhi.

This may be circulated for consideration of GOM at the next meeting.

26.12.97

JS(E)

29/12

Dir (R)

52

SECRET

COPY NO. 14

F.No.II/21011/49/97-IS(US D.II)
MINISTRY OF HOME AFFAIRS
*****

DRAFT CABINET NOTE FOR CONSIDERATION OF THE GROUP OF MINISTERS.

Subject : Amendment to Section 5 of the Official Secrets Act, 1923.

.....

The issue relating to amendment of Official Secrets Act, 1923 has been under consideration in this Ministry since 1989. This issue was discussed by the Committee of Secretaries at the meeting held on 31.7.1995 and it was observed that though the existing provisions of the Official Secrets Act provide for action against disclosures of information which is likely to affect the security of the State, the sovereignty of the nation, friendly relations with other States as well as the documents relating to defence and intelligence matters, yet the information relating to financial, economic, commercial interests of the State is not covered under the existing provisions. It was suggested that certain additional specific categories of information such as those relating to the financial, economic and commercial interests of the State or relating to scientific and technological research undertaken should also be protected. Thus the need arose for amendment of the Official Secrets Act on account of the fact that Section 5 of the said ct has very wide scope and is amenable to very wide interpretation since practically any information obtained by a person by virtue of being or having been a Government servant holding or having held a contract with the Government can be covered under the scope of this Section. It is this wide scope and "catch all' nature of Section 5 which has been the target of wide criticism.

Contd..page...2..

53

F.No.II/21011/49/97-IS(US D.II)
MINISTRY OF HOME AFFAIRS

.....

2. The Committee of Secretaries in its meeting held on 31.7.1995 decided to constitute an Inter-Ministerial Group, comprising representatives of Ministry of Home Affairs, Department of Personnel & Training and Ministry of Law. Accordingly, an Inter-Ministerial Group was set up in 1996. This Inter-Ministerial Group recognised that the wide scope and the "catch-all" nature of Section 5 of the Official Secrets Act has been a target of wide criticism and that there was a need to make this Section more specific and less susceptible to subjective decision-making by the Government. The Group, after considering several alternatives, drafted a reformulation of Section 5 which while simplifying the provision also included a specific explanation of the term "Official Secrets" and listing out the categories of information that needed to be protected.

3. A Working Group on "Right to Information and Promotion of Open and Transparent Government" was set up on January 2, 1997, by the Department of Personal & Training under the Chairmanaship of Shri H.D. Shourie, Chairman, Common Cause, and comprising representatives of Supreme Cort, Ministry of Information & Broadcasting, Department of Legal Affairs, Railway Board, Department of Posts, Department of Telecommunications, Ministry of Home Affairs and Ministry of Personnel & Training. The Group considered the draft reformulation of Section 5 prepared by the above Inter-Ministerial Group. The Working Group observed that the Official Secrets Act has been regarded in many quarters

.....

as being primarily responsible for the excessive secrecy in Government. Its "Catch-all" nature has invited sustained criticism and demands for its amendments. Section 5 of the Act provides for punishment for unauthorised disclosure of official secrets but omits to define "official secrets'. The Group has proposed an amendment to the Section which incorporates a definition for "Official Secrets" and thus removes its omnibus character. The draft with minor amendments was accepted by the Working Group for the reason that it not only simplified Section 5 but also included a specific definition of the "Official Secrets" which makes mention of the categories of information which is to be protected under the Act. It was felt that this amendment would greatly reduce the wide scope of the existing provision which has been a target of wide criticism. In the revised reformulation of Section 5 of the Official Secrets Act, the definition of "Official Secrets" included interalia, economic, commercial, scientific and technological matters relating to national security. The proposed draft for amendment of Section 5 of the Official Secrets Act as recommended by the Working Group, may please be seen at Annexure I. A comparative chart of existing provision and the proposed draft of amendment as recommended by the Working Group, may kindly be seen at Annexure II.

4. The draft of amendment of Section 5 of Official Secrets Act was circulated to the Ministry of Industry, Ministry of Finance, Ministry of Defence, etc.

5. The Ministry of Finance (Department of Economic Affairs) have welcomed the tenor of the Report which is

intended to further open up the functioning of the Government to public gaze without compromising with the public interest. They have agreed with the proposed amendment provided it is carried out as a package alongwith passing of Freedom of Information Act and not as a stand-alone measure. Ministry of Industry have stated that they have no comments to offer on the amendment to Section 5 of the Official Secrets Act, 1923.

6. Ministry of Defence have stated that that Ministry would like that the definition of the "Official Secrets" should be further fine-tuned in keeping with the long term requirements of security and defence in modern technology. They have suggested amendments in the explanation note in the proposed Amendment to Section 5 of the Official Secrets Act which are as under :

> "For the purpose of this Section, 'Official Secret' means any information **or item** the disclosure of which is likely to prejudicially effect the sovereignty and integrity of India, the security of the State **including defence preparedness**, friendly relations with foreign States, economic, commercial, scientific and technological matters **having a bearing on** (relating to) national security **and strategic interests of India** including any secret code, password, sketch, plan, model, article, note document or **electronic media containing any of the above** (in relation to a prohibited place)."

The modification suggested by the Ministry of Defence are

F.NO.II/21011/49/97-IS (US D.II)
MINISTRY OF HOME AFFAIRS

.....

dealt with seriatim in the succeeding sub-paras :-

(i) The first modification suggested by the Ministry of Defence that after the word information, **"or item"** should also be included, has been considered in this Ministry and it is felt that it has been suggested keeping in view the need to cover sensitive technologies with sensitive information embedded in them. However, this Ministry feels that inclusion of the term "or item" is really not necessary and would be **superfluous** since the term information as contained in the definition is comprehensive and would include any information contained in any form.

(ii) Second modification suggested by Ministry of Defence relates to inclusion of the words **"including defence preparedness"** after the term the security of the State. This amendment, it is felt, is unnecesary because the term **the security of the State** would include, among other things, **defence preparedness.**

(iii) The third amendment suggested by Ministry of Defence in the definition is substitution of the words **"relating to"** by **"having a bearing on"** national security. This has been suggested on account of the fact that this would be more broad-based. There may be no objection to this suggestion.

(iv) Another modification suggested in the definition is the inclusion of the term **"and strategic interest of India"** after the words **"national security"**. This has

.....

been suggested keeping in view the need to take into account long term strategic interests of India. In this regard, it may again be noted that the term **national security** is a generic term and would include the long term **strategic interests of India.** Therefore, specific inclusion of category of strategic interests of India does not appear to be necessary.

(v) The last suggestion made by Ministry of Defence is the inclusion of **"electronic media"** alongwith other categories of the definition. The definition protects any secret code, pass word, sketch, model, article, note or documents in relation to a prohibited place. Since the disclosure of any of these items through any means or method including electronic method would be covered, specific inclusion of electronic media as suggested by Ministry of Defence does not appear to be necessary.

7. In view of the above position, there does not appear to be any need for making any modification in the draft amendment to Section 5 of the Official Secrets Act, as amended by the Working Group excepting that in the Explanation of the "Official Secrets", the words **"relating to"** may be substituted by the words **"having a bearing on"** in view of the broader scope of this term. A copy of the revised Section 5 of the Official Secrets Act, as suggested and agreed to, may kindly be seen at Annexure III.

8. The Ministries of Industry and Finance have also seen and concurred with this Note and except Ministry of Defence,

whose comments have been considered in this Ministry, has partially accepted as stated in paras 6 and 7 of the note.

9. The proposal for amendment to Section 5 of the Official Secrets Act, was placed before the Cabinet. The Cabinet in its meeting held on the 1st November, 1997, considered the note for the Cabinet and decided that the matter may, in the first instance, be considered by a Committee of Secretaries. The Cabinet also directed that Ministry of Home Affairs should, thereafter, bring up the matter again alongwith the recommendations of the Committee of Secretaries.

10. It is in pursuance of this direction of the Cabinet that meetings of the Committee of Secretaries were held on 24.11.1997 and 27.11.1997 in which a note received from MHA on the subject was considered.

11. On behalf of the MHA, it was explained that the amendment proposed by the Ministry of Section 5 of the Official Secrets Act, was as recommended by the Working Group mentioned above except for a minor verbal change. Section 5, as it is at present, does not define official secrets; the proposed amendment seeks to define 'Official Secrets'.

12. On behalf of Ministry of Defence, it was stated that the present definition should cover, apart from 'information', 'items' the disclosure of which was likely to affect security; the security of state should specify inclusion of 'Defence preparendness' and it should provide

for economic, commercial, scientific and technological matters having a bearing on national security to be withheld on 'strategic interests of India'. The Ministry also was in favour of 'electronic media' containing any of the above to be treated as official secret. The general feeling, however, was that the amendments proposed were redundant. It was pointed out that the present formulation of'Official Secrets' included 'article'; the security of the State covered Defence preparedness and hence no specific mention of these was necessary. Similarly, national security in a broad sense included 'strategic interests' and 'electronic media' was a very wide term to be classified as official secret. It was also pointed out that the objective of the present exercise could not be to make access to information more restrictive than it was at present.

13. It was observed that the proposed definition of Official Secrets included 'economic, commercial, scientific and technological matters relating to national security' and thus excluded commercial technological information unrelated to national security. There could be vital economic or commercial information the disclosure of which could seriously affect public interest while these may be broadly unrelated to national security. Critical information relating to on-going commercial negotiations by the Government/its agencies was cited as an example. It was felt that the definition of Official Secrets should cover such information.

14. The general view was that the proposed amendment is part of the recommendations of the Working Group on 'Right to Information' and hence it would be in the fitness of the

things to relate the definition of 'official secrets' to the proposed Freedom of Information Act as suggested by the Working Group. What should be classified as Official Secrets should flow from the provision of this legislation because only some of such information the disclosure of which may not be insisted on as a right under the proposed law, could be treated as official secrets. It was accordingly observed that official secrets would be part of such information as is exempted from disclosure to citizens as part of the freedom of information enshrined in the proposed law. It was observed that even all such information need not necessarily constitute official secrets and only such of these information may be official secrets which are classified as such. It was accordingly felt that the position as to whether a provision for classification of information has been made in the proposed law regarding freedom of information should be ascertained.

15. In the second meeting of the Committee of Secretaies, held on 27.11.1997, a draft formulation of 'Official Secrets' as part of the amended Section 5 of the Official Secret Act, as prepared by Ministry of Law, was considered. It was clarified that the proposed law on freedom of information did not contain any provision regarding classification of information. During discussion, one view was that any linkage between the definition of Official Secrets with the proposed Freedom of Information Act might make the provision more justiciable; in fact, classification of information itself could then be subjected to judicial

.....

scrutiny which could render maintenance of secrecy of even exempted information difficult. The contrary view was that the process of classification itself would have to be provided legislative cover in view of the provisions of proposed F.O.Z. Act and, to the extent possible, also made non-justiciable. The general feeling was that without the power of classification itself being part of law, withholding of information may not be legally sustainable.

16. In this connection, it was observed that Section 8 of the proposed Right to Information Act, which dealt with information exempted from the provision of the Act, and hence from access to the public, was an enabling provision and hence Government could decide what information to withhold and what not. The process of classification and legal cover to this process may have to be provided in the Official Secrets Act or in the Rules made under the Act while the Act itself could devolve the power to classify such information on competent authorities.

17. It was accordingly recommended that in place of the definition of 'Official Secrets' in the amended Section 5 of the Official Secrets Act as proposed by Ministry of Home Affairs, the definition may be to the effect that 'Official Secrets' means any information which is exempted from disclosure under the provisions of the Freedom of Information Act and classified as such under the Rules made under this (Official Secrets) Act. The Section should also include the power of the Government to classify such exempted information.

.....

18. Ministry of Home Affairs was accordingly requested (i) to prepare this revised formulation and get it vetted by Ministry of Law; (ii) to prepare the Rules under Official Secrets Act, laying down procedure for classification of information referred to in Section 8 of the proposed Freedom of Information Act, (iii) it was also decided that in Section 8 (3) of this Act, not only information in the nature of Cabinet papers but also the Rules of Procedure relating to Cabinet matters should be exempted from disclosure.

19. It was agreed that the re-formulated Section 5 as also the draft Rules would be placed by Ministry of Home Affairs before the Committee of Secretaries in its next meeting. Department of Personnel and Training was requested to take action with regard to item (iii) in para 18 above.

20. In continuation of the meetings held on 24.11.1997 and 27.11.1997, the Committee of Secretaries met on 5.12.1997 to discuss the matter regarding amendment to the Official Secrets Act, the draft amendment to the Official Secrets Act as also the draft of the rules proposed to be framed thereunder, prepared by Ministry of Law.

21. After discussion the following recommendations were made:-

i) The draft of the amended Section 5 of the Act was endorsed.

.....

ii) The draft of the proposed new Section 16 of the Act was also endorsed. However, it was recommended that a suitable provision may be made in the sub-section (2) of the Section to the effect that classification made in pursuance of the rules shall be final and shall not be subject to judicial scrutiy.

22. The Committee of Secretaries also suggested that the following modifications may be made in the proposed Rules:-

(a) In Rule 4, 'national interest' may be added to 'national safety or security' in all its clauses.

(b) In the same rule, 'exceptionally grave danger', 'serious damage' and 'cause damage to' occurring in clause (i), (ii) and (iii) may be replaced by 'grave danger', 'damage' and 'adversely effect' respectively.

(c) In Rule 5, a suitable provision may be made to the effect that for the purpose of claiming privilege from disclosure all Cabinet papers shall be deemed to be 'top secret' irrespective of their classification.

(d) Rule 8 may be modified suitably to provide for absolute privilege from disclosure in respect of 'top secret' documents and limited

.....

privilege in case of other classified documents, which may, however, be shown to Supreme Court and High Courts, in pursuance of the procedure to be laid down. The procedure may be drafted and incorporated in the Rules. Ministry of Home Affairs will issue collateral instructions that 'top secret' classification should be given to documents rarely and with utmost care.

23. The Rules shall have prospective application.

24. The proposed provision regarding claim of privilege in respect of documents (Rule 8) may be shown to the Attorney General of India and his opinion obtained before these are finalised.

25. If so required, consequential changes may be made in the Evidence Act.

26. Home Ministry will ensure that in the instructions issued by them, there is adequate provision for restricting access to sensitive premises.

27. It was also recommended that the Group of Ministers, which is looking into the proposed Freedom of Information Bill, may be requested to consider the draft amendment to the Official Secrets Act and the proposed Rules.

.....

28. Now in response to the Minutes of this Meeting of Committee of Secretaries, 'revised formulations' on the issue of Amendment to Section 5 of the Official Secrets Act, 1923, etc., have been drawn-up which are presented in **ANNEXURE-IV under three heads** namely (i) Amendments proposed to Section 5 of the Official Secrets Act, 1923; (ii) Proposed enabling provision in the Official Secrets Act to make rules etc., and (iii) Proposed Official Secret Rules.

29. In this connection, it is also mentioned that as per the directions of the Committee of Secretaries on the point relating to claim of privilege in respect of certain important documents, the subject, as a whole, has been referred to the Attorney General of India in a comprehensive manner and his final opinion is still awaited. In fact, the pin-pointed issue and its possible impact on other relevant aspects in the Official Secrets Act, 1923 has also figured in discussions with the Attorney General of India on 16th December, 1997 (morning). However, the Attorney General of India had clearly felt that he would need time to go through the details and on the lines desired by him, necessary background papers/notes have already been made available to him. In respect of the point relating to consequential changes to be made in the Evidence Act, it has been felt that the issue can be taken-up only on receipt of the opinion of the Attorney General of India. On the aspect of further follow-up action in respect of the point regarding adequate provision for restricting access to sensitive

F.NO. II/21011/49/97-IS (US D.II)
MINISTRY OF HOME AFFAIRS

.....

premises, it has been felt that these will be in the nature of executive instructions to be given appropriate shape after the details in respect of the rules, etc., are agreed to and finalised in proper perspective.

31. The matter is placed before the Group of Ministers for appropriate consideration.

26/12/97

(B.K. HALDER)
JOINT SECRETARY(IS.I)

F.No.II/21011/49/97-IS(US D.II)

NEW DELHI

DATED 26.12.1997

Annexure-X

Amendments Proposed to Section 5 of the Official Secrets Act, 1923

5(1) If any person, having in his possession or control any official secret which has come into his possession or control by virtue of:-

(a) his holding or having held an office with or under government, or

(b) a contract with the government, or

(c) it being entrusted to him in confidence by another person holding or having held an office under or with government, or in any other manner,

(i) communicates, without due authority such official secret to another person or uses it for a purpose other than a purpose for which he is permitted to use it under any law for the time being in force; or

(ii) fails to take reasonable care of, or so conducts himself as to endanger the safety of the official secret; or

(iii) wilfully fails to return the official secret when it is his duty to return it,

shall be guilty of an offence under this Section.

(2) Any person voluntarily receiving any official secret knowing or having reasonable ground to believe, at the time he receives it, that the official secret is communicated in contravention of this Act, he shall be guilty of an offence under this Section.

(3) A person guilty of an offence under this Section shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

Explanation : For the purpose of this Section, 'Official Secret' means any information the disclosure of which is likely to prejudicially effect the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, economic, commercial, scientific and technological matters relating to national security and includes: Any secret code, pass word, sketch, plan, model, article, note or document in relation to a prohibited place.

(c) retains the sketch, plan, model, article note or document in his possession or control when he has no right to retain it, or when it is contrary to his duty to retain it, or wilfully fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof; or

(d) fails to take reasonable care of, or so conducts himself as to endanger the safety of, the sketch, plan, model, article, note, document, secret official code or pass word or information;

he shall be guilty of an offence under this Section.

(2) If any person voluntarily receives any secret official code or pass word or any sketch, plan, model, article, note, document or information knowing or having reasonable ground to believe, at the time when he receives it, that the code, pass word, sketch, plan, model, article, note, document or information is communicated in contravention of this Act, he shall be guilty of an offence under this section.

(3) If any person having in his possession or control any sketch, plan, model, article, note, document or information, which relates to munitions of war, communicates it, directly or indirectly, to any foreign power or in any other manner prejudicial to the safety or interest of the State, he shall be guilty of an offence under this section.

((4) A person guilty of an offence under this section shall be punishable with imprisonment for a term which may extend to three years, or with fine, or both).

(3) A person guilty of an offence under this Section shall be punishable with imprisonment for a term which may extend to three years or with fine or both.

Explanation: For the purpose of this Section, 'Official Secret' means any information the disclosure of which is likely to prejudicially effect the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, economic, commercial, scientific and technological matters relating to national security and includes: Any secret code, pass word, sketch, plan, model, article, note or document in relation to a prohibited place.

SECRET
Annexure - II

AMENDMENTS PROPOSED TO SECTION 5
OF THE OFFICIAL SECRETS ACT, 1923

5(1) If any person, having in his possession or control any official secret which has come into his possession or control by virtue of:-

(a) his holding or having held an office with or under government, or

(b) a contract with the government, or

(c) it being entrusted to him in confidence by another person holding or having held an office under or with government, or in any other manner,

(i) communicates, without due authority such official secret to another person or uses it for a purpose other than a purpose for which he is permitted to use it under any law for the time being in force; or

(ii) fails to take reasonable care of, or so conducts himself as to endanger the safety of the official secret; or

(iii) wilfully fails to return the official secret when it is his duty to return it,

shall be guilty of an offence under this Section.

(2) Any person voluntarily receiving any official secret knowing or having reasonable ground to believe, at the time he receives it, that the official secret is communicated in contravention of this Act, he shal be guilty of an offence under this Section.

(3) A person guilty of an offence under this Section shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

Explanation : For the purpose of this Section, 'Official Secret' means any information the disclosure of which is likely to prejudicially effect the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, economic, commercial, scientific and technological matters having a bearing on national security and includes: Any secret code, pass word, sketch, plan, model, article, note or document in relation to a prohibited place.

ANNEXURE - IV

I. Revised Amendments proposed to Section 5 of the Official Secrets Act, 1923.

5(1) If any person, having in his possession or control any official secret which has come into his possession or control by virtue of:-

(a) his holding or having held an office with or under Government or a judicial office or an office of a commission of inquiry set up under the Commissions of Inquiry Act, 1952 or any other law; or

(b) a contract with the Government; or

(c) it being entrusted to him in confidence by another person holding or having held an office under or with Government, or in any other manner:

(i) communicates without due authority or in violation of Rules, such official secret to another person or uses it for a purpose other than a purpose for which he is permitted to use it under any law for the time being in force; or

(ii) fails to take reasonable care of, or so conducts himself as to endanger the safety of the official secret; or

(iii) wilfully fails to return the official secret when it is his duty to return it,

shall be guilty of an offence under this Section.

(2) Any person voluntarily receiving any official secret knowing or having reasonable ground to

contd....21-

believe, at the time he receives it, that the official secret is communicated in contravention of this Act, he shall be guilty of an offence under this Section.

(3) A person guilty of an offence under this Section shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

Explanation:

For the purpose of this Section 'Official Secret' means any information which is exempt from disclosure under the provisions of the Freedom of Information Act (Act No.) and classified under this Act and the Rules made thereunder.

.....

Contd.... P.. 22—

II. Proposed enabling Provision in the Official Secrets Act, 1923 to make Rules.

16 (1) The Central Government may, by notification, make rules for carrying out the provisions of this Act.

(2) In Particular, and without prejudice to the generality of the foregoing power, such rules may provide for classification and declassification of official secrets, prescribing the authority competent to so classify and declassify and any other matter.

Provided that a classification made by a competent authority shall be final.

(3) Every rule made 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 anyting previously done under that rule.

17(1) No one shall be permitted to give any evidence derived from unpublished official records relating to a matter classified under the Act as 'Top Secret' unless the officer at the level of head of the department concerned has given permission for giving such evidence.

(2) No court other than a High Court or the Supreme Court shall call for or peruse a matter classified

as 'top secret'.

Provided that this prohibition shall not apply to a matter given a lower than top secret grading of classification and the court may decide the claim of privilege in accordance with the prescribed procedure.

.....

Contd.... 24....

grave danger to national safety, security or 'national interest, and shall include all Cabinet papers;

(ii) 'secret' grading, if the disclosure of the same is likely to cause damage to national safety, security or national interest; and

(iii) 'Confidential' grading, if the disclosure of the same is likely to cause adverse effect on national safety, security or national interest.

5. The following authorities shall be competent to classify an official secret:-

Top Secret - An official of an above the rank of Joint Secretary to the Government of India or Secretary and above in case of State Government/UT Administration.

Secret - An official of and above the rank of Deputy Secretary to the Government of India or Joint Secretary and above in case of State Government/UT Administration.

Confidential-An official of and above the rank of Under Secretary to the Government of India or Deputy Secretary and above in case of State Government/UT Administration.

6(1) An 'Official secret' may be classified under these rules for a period upto twenty years at the end of which it shall cease to be a classified official secret unless it has been classified again for any further period.

(2) A classified official secret shall not be declassified before the expiry of the period for which it has been classified except in accordance with the procedure provided in these rules.

7. An 'Official secret' shall be de-classified only upon the competent authority being satisfied that the reasons because of which it had been classified no longer exist. Such reasons may be recorded in writing.

8. Where privilege in respect of 'an official secret' other than a top secret mattter has been claimed, the court or the Commission of Inquiry, as the case may be, shall not decide that claim unless:-

(i) it has given a reasonable opportunity of hearing to the person claiming privilege;

(ii) after passing a speaking order; and

(iii) after giving further reasonable opportunity of seeking judicial remedy against such order, if need be.

.....

SECRET
MOST IMMEDIATE

No. 34011/1(s)/97-Estt.(B)
Department of Personnel & Training

New Delhi, the 2nd Jan.,98 2 JAN 1998

Subject:- Legislative proposal for Freedom of Information and amendments to related Acts and Rules.

*****

The undersigned is directed to refer to this Department's note of even number dated the 26th/29th December,1997 on the above subject and to enclose a copy of the Note for the consideration of the Group of Ministers in the meeting to be held at 11.30 A.M. on 5th January, 1998.

Incidentally, in their report submitted to the Government in May 1997, the Working Group on 'Right to Information' had also recommended certain amendments to section 5 of the Official Secrets Act, 1923 in order to make it consistent with the proposed Freedom of Information Act. The Note of the Ministry of Home Affairs, in pursuance of the above recommendation, was considered by the Cabinet in its meeting held on 1st November,1997 and it was decided that the matter may in the first instance, be considered by a Committee of Secretaries. The Cabinet also directed that Ministry of Home Affairs should, thereafter, bring up the matter again alongwith the recommendations of the Committee of Secretaries. The Committee of Secretaries discussed the matter in its meetings held on 24.11.1997, 27.11.1997 and

5.2.1997 and endorsed the draft of the amended section 5 of the Act. It also recommended that the Group of Ministers, which is looking into the proposed Freedom of Information Bill, may be requested to consider the draft Amendment to the Official Secrets Act and the proposed "The Official Secrets Rules". A copy of the draft Cabinet Note, prepared by the Ministry of Home Affairs on the subject, is also enclosed for the consideration of the Group of Ministers.

(Swarup Nandkeolyar)
Director

1. P.S. to Home Minister
2. P.S. to Minister of Petroleum & Natural Gas.
3. P.S. to Minister of Industry.
4. P.S. to Minister of State (Independent charge), Ministry of Law & Justice.

Copy to:
1. Shri B.P.Singh, Home Secretary.
2. Dr. V.K.Agarwal, Secretary, Department of Legal Affairs.
3. Shri K.L.Mohanpuria, Secretary, Legislative Department.
4. Dr. P.S.A.Sundaram, Additional Secretary, Department of Administrative Reforms & Public Grievances.
5. Shri Pawan Chopra, Additional Secretary, Cabinet Secretariat.
6. Shri M.Ranjan, Joint Secretary, Cabinet Secretariat.

(Swarup Nandkeolyar)
Director

Copy to Joint Secretary(Estt.),
Copy also to PPS to Secretary(P).

Copy to Sh. V.C. Pandey (at residence)

ISSUED
- 2 JAN 1998
Desig/Initial
गुप्त/SECRET

SECRET
COPY NO. __

No. 34011/1(S)/97-Estt.(B)
Department of Personnel & Training
: :

Subject: Legislative proposal for Freedom of Information and amendment to related acts and rules.

During its meeting held on December 17, 1997 the Group of Ministers had decided that the final proposal of this Department, for the consideration of the Cabinet, based on the discussions held in the meetings of the Group of Ministers so far should be placed before them. It was also directed that it may be considered if the definition of "public authority" could be rephrased in order to make its meaning clear and unambiguous and it should be examined whether the proposed act should apply only to information contained in records that have been brought into existence after a certain cut off date.

2. The Bill has been slightly revised on the basis of the discussions in the Group of Ministers meetings.

3. The definition of public authority and the question of description of a cut off date have been discussed with the Law Ministry and the position that emerges is indicated below:

4. It was explained by the Law Ministry that the expression "controlled or substantially funded by the Government" has been used in many enactments and has acquired a specific meaning through judicial dicta. They, therefore, feel that it may be neither necessary nor desirable to make any substantive change in the definition. The definition has however been slightly rephrased in the light of the latest precedents available with the Legislative Department.

5. As regards the question of a cut off date, after discussions with the Law Ministry, it is felt that it would be fraught with considerable administrative difficulty since the

proposed Act defines "freedom of information" to mean the right to obtain information by means of inspection, obtaining certified copies etc. The right is thus for access to information and not for access to any particular records alone. It would be hard to say when a particular information can be said to have been brought into existence. The same also holds true of records since it is difficult to pin-point a specific date on which records can be said to have been brought into existence. Generally, in view of its backward and forward linkages, information can be said to be existing in a state of continuum. It has, therefore, been found that it would be difficult to import the concept of a cut off date in the scheme of the proposed Bill.

6. A draft note for Cabinet is enclosed herewith for the consideration of the Group of Ministers. As desired by the Group of Ministers the question of applicability of the proposed legislation to public sector and its extension to private sector has been highlighted in the draft Cabinet Note.

7. Even though it might be legally possible to promulgate an Ordinance on the subject, having regard to the nature of the proposed legislation, it is felt that it requires detailed consideration by the Cabinet and as such it should go through the normal legislative processes of the Parliament. The proposal is, therefore, for obtaining a Cabinet decision on the subject and placing the same before the Government that assumes office consequent on the forthcoming general elections.

8. This note has the approval of Secretary (Personnel).

(Harinder Singh)

Joint Secretary to the Government of India

New Delhi,

Dated 1st January, 1998.

Draft

SECRET

Copy No.

No. 34011/1(S)/97-Estt.(B)
Government of India
Ministry of Personnel, Public Grievances and Pensions
Department of Personnel & Training
.....

New Delhi, the January, 1998

NOTE FOR THE CABINET

Subject : Legislative proposal for Freedom of Information and amendments to related Acts and Rules.

1.0. This Department had submitted a proposal seeking the approval of the Cabinet for the introduction of the Freedom of Information Bill in the Winter session of Parliament. The proposal was placed before the Cabinet in its meeting held on October 20, 1997 and it was decided that the matter would first be considered by the Group of Ministers comprising the Minister of Home Affairs, Minister of Petroleum and Natural Gas, Minister of Industry and Minister of State (Independent Charge) of Law and Justice. The proposal was accordingly placed before the Group of Ministers which considered it in three meetings held on Oct. 28, December 17, 1997 and Jan. 5, 1998.

1.1. This Note is submitted to seek the approval of the Cabinet for the draft legislation, namely the Freedom of Information Bill. It represents a significanat step in the fulfilment of the assurance contained in the Common Minimum

Department of Personnel & Training

Programme of Government, as well as the announcement made by the Prime Minister in the course of his speech on the 50th Independence Day. The intention was to introduce the Bill in the Winter session of the Parliament. This, however, could not be done due to the dissolution of the 11th Lok Sabha and the introduction of the Bill will have to await the constitution of the next Lok Sabha after the elections. Nevertheless, it is proposed that the Cabinet may take a final decision on the proposal which will be placed before the Government that assumes office after the elections.

1.2. The proposal contained in this Note is based on the recommendations of the Working Group on Right to Information and Promotion of Open and Transparent Government, which was constituted, under the Chairmanship of Shri H.D.Shourie, vide this Department's Office Memorandum No. 34011/1(S)/97-Estt (B) dated January 2, 1997. Among other things, it was asked to examine the feasibility and need of either a full fledged Right to Information Act or its introduction in a phased manner to meet the needs of open and responsive Government and to examine the Rules framework with particular reference to Conduct Rules and Manual of Office Procedure with a view to introducing greater transparency and openness in Government working. The Group submitted its report on May 21, 1997 a copy of which is attached to this Note as Annexure I.

BACKGROUND:

2.1 There is a worldwide trend in democratic countries to have legislation for assuring to the citizens the right of access to information of the public authorities as part of the effort to promote openness, transparency and

accountability in the administration and to ensure greater participation of the people in decision making. Transparency is seen as a vital element of good governance advocated by agencies and citizen groups alike. Democracy today embraces a concept which goes beyond the traditional view of the accountability of the Executive to the Legislature in a Parliamentary democracy and incorporates a more direct accountability of the administration to the people in terms of accessibility, standards of performance and service delivery. In our country also there have been demands for the past many years for greater transparency and openness in the functioning of the Government. The Official Secrets Act, 1923 is seen as inconsistent with this spirit. It is widely recognized that secrecy and lack of openness in functioning are major contributors to corruption and abuse of authority. Thus, right to information forms an important element of the programme for effective and responsive administration and Civil Service Reforms initiated by the Government. In terms of the Common Minimum Programme , the Government is committed to bring forward a Bill on Freedom of Information.

2.2 This issue was also discussed during the Chief Ministers' Conference on "Effective and Responsive Government" held on May 24, 1997. A Statutory Scheme, based on the deliberations of the Working Group, had been circulated to the participants for consideration during the conference. The conference statement adopted at the conclusion of the meeting reflects the consensus among the Chief Ministers that a legislation for Right to Information should be enacted by Government of India as early as possible. Meanwhile, Tamil Nadu and Goa have already enacted legislation for Right to Information.

2.3 In the 38th Report on the demands for grants of the Ministry of

Personnel, Public Grievances and Pensions, the Parliamentary Standing Committee on Home Affairs has recommended that the Ministry should take up measures for an early enactment of a legislation for the right to information.

2.4. In answer to a Lok Sabha Starred Question, the Prime Minister had given an assurance that the Bill on Freedom of Information, pursuant to the recommendations of the Working Group, would be introduced in the Winter session of the Parliament.

REPORT OF THE WORKING GROUP:

3.1 The Report of the Shourie Working Group is based, among other things, on a study of the freedom of information legislation in some other countries. The Group also took into consideration the Right to Information Bill, 1996 which was prepared by the Press Council of India under the Chairmanship of Justice P.B.Sawant.

3.2. The Group took note of the fact that even though the "right to know" has been judicially recognized as a facet of the fundamental right to free speech and expression enshrined in Article 19 (1) of the Constitution, there is no specific law which assures the public access to information. It expressed the view that such a law is not only feasible, but also vitally necessary. Further, such law should be based on the broad principles that disclosure of information should be the rule and secrecy the exception, the exceptions should be clearly defined and there should be an independent mechanism for adjudication of disputes between the citizens and the public authorities.

Department of Personnel & Training

3.3 The important recommendations of the Group are :

- The Group has recommended the enactment of "Freedom of Information Act" by the Parliament. For this purpose it has provided the "**Freedom of Information Bill, 1997**" which is at **Annexure A** to the Report. The Group has expressed the view that, there being no specific entry in this regard in any of the lists in the Seventh Schedule to the Constitution, this item will fall within the purview of the residuary entry, i.e. entry No. 97, in List I of the Seventh Schedule and, thus, within the legislative competence of the Parliament. It has recommended enactment of the legislation by the Parliament also on the ground that it would ensure uniformity of application throughout the country.

- The Group has also recommended consequential amendment to Section 5 of the Official Secrets Act , 1923 which is at **Annexure B** to the Report.

- Amendments have also been proposed to Sections 123 and 124 of the Indian Evidence Act, 1872, the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973. The proposed amendments are at **Annexure C** to the Report.

- It has also recommended amendment to Rule 11 of the CCS (Conduct) Rules , 1964 and the corresponding Rules for other Services including the All India Services. The draft amendments recommended by the Working Group are at **Annexures D and E** t o the Report.

- Amendments have also been proposed by the Group to the Manual of Departmental Security instructions dealing with classification of information. The recommendations in this regard are contained in **Annexure F** to the Report.

3.4 In the context of its Freedom of Information Bill, 1997, the Group has also emphasized the need to develop modern information management systems and special training programmes for bringing about the necessary attitudinal change and for developing the necessary skills and aptitude among the employees.

Freedom of Information Bill, 1997, as prepared by the Working Group:

4.1. The salient features of the Bill drafted by the Working Group are:

(1) It applies to "Public Authorities" which have been defined to include the Central as well as State/Union Territories Governments, bodies owned or substantially controlled or funded by them and the administrative offices of the Courts and the Legislatures and local bodies [Cl.2(g)].

(2) It casts an obligation on public authorities to grant access to information and to publish certain categories of information. It also casts an obligation on the concerned officers to disclose reasons for decisions to those affected and to disclose the relevant facts and analyses when major policies or decisions are announced [Cl.4].

Department of Personnel & Training

(3) The Bill lays down the machinery for the grant of access to information. The public authorities are required to appoint Public Information Officers whose responsibility it is to deal with requests for information and also to assist persons seeking information[Cl.5].

(4) A time limit of 30 days, extendable by another 30 days for reasons to be recorded, has been prescribed for compliance with requests for information under the Act. In case no decision is communicated within this period, the request would be deemed to have been refused [Cl.5,6,7 and 8].

(5) Certain categories of information has been exempted from disclosure. These categories include information the disclosure of which would be prejudicial to the sovereignty and integrity of India, conduct of international and Centre-State relations, Cabinet documents, internal notes and correspondence containing opinions, advice, minutes etc. for the deliberative processes in a public authority. They also include information the disclosure of which would prejudicially affect law enforcement. Clause 9 of the Bill sets out the detailed categories of exempted information.

(6) A request for information can be refused on certain other grounds also, such as if it is too general or is of such a nature that it would involve a disproportionate diversion of resources or if it is available in published documents available for sale. This is subject to the condition that if a request is being refused as being too general, the Public Information Officer is required to assist the requester, as far

as possible, to reframe the request in such a manner as would facilitate compliance with it [Cl. 10].

(7) Fees can be prescribed for grant of access to information. These, however, can be waived if the disclosure is in the larger public interest [Cl. 11].

(8) The Bill also incorporates the principle of severability. That is, if a document contains both exempted and non-exempted information, and if the non-exempted information can be reasonably segregated from the exempted information, access may be granted to such information [Cl. 12].

(9) On a request for information being refused, the applicant can seek a review of the decision from the Head of Department or such other authority as may be prescribed - - the time limit for disposal being 30 days [Cl.14].

(10) An appeal can be filed against the decision of the reviewing authority. For the purpose of appeals, the Bill proposes to utilise the machinery under the Consumer Protection Act, 1986 as the appellate forum [Cl. 15].

(11) The Bill seeks to give the Act an overriding effect over all other laws which may be inconsistent with its provisions [Cl. 18].

(12) The Bill also envisages the setting up of Freedom of Information Councils at the Central and State Levels. The functions of these

Councils include the review of the functioning of the Act and to undertake research and documentation on the subject [Cl.19, 20, 21 and 22].

(13) The proposed legislation would prevail over Central and State Legislations as regards access of public to information is concerned.

CONSULTATION WITH STATE GOVERNMENTS AND MINISTRIES/ DEPARTMENTS OF THE CENTRAL GOVERNMENT:

5.1. Copies of the Report of the Working Group were sent by this Ministry to all States/ Union Territories for their comments. Responses have so far been received from 7 State Governments/ Union Territories. The responses have generally been favourable. It may also be mentioned that the statutory scheme prepared on the basis of deliberations in the Working Group had been circulated for discussions during the Chief Ministers' Conference held on May, 24, 1997 and had received the broad approval of the Conference. It was, however, felt that, while formulating the legislation, due care must be taken to protect the confidentiality of information, whose disclosure would be against the public interest.

5.2 As far as Ministries/ Departments of the Central Government are concerned, responses have so far been received from 54 Ministries/ Departments. These Ministries/ Departments have broadly supported the recommendations of the Group. Some of the Ministries have, however, pointed out that the proposed Freedom of Information Act will entail considerable administrative work owing to high demand for information

and the litigation that might ensue. Concern has also been expressed by some about the possibility of misuse of the Act by different interest groups. An apprehension has been expressed that, at least initially, information which may be required to be kept secret, may be released due to lack of adequate appreciation on the part of officers of the intricacies of the provisions of the proposed Act.

5.3 Questions have also been raised as regards the feasibility of the provision for appeals (Cl. 15 of the Bill) which envisages the use of the machinery under the Consumer Protection Act, 1986 as the appellate forum under the proposed Freedom of Information Act. The apprehensions in this respect are mainly twofold. First, the performance of these forums in redressal of complaints under the Consumer Protection Act itself leaves much to be desired as they seem to suffer from absence of the full complement of the forums at district level and state level and chronic shortages in terms of manpower, premises and material resources. They are already labouring under the burden of arrears and are unable to dispose of cases within the statutory period. Secondly, in some cases, the decision to withhold information may have to be taken at a very high level in the Government and it may not be appropriate to vest the District Forums with appellate powers over such decisions.

5.4 Another apprehension that has been expressed is with regard to the inclusion of Public Sector Undertakings (PSUs) in the definition of "Public Authority" in the Bill. The point that has been made is that PSUs operating in a competitive commercial environment will be at a disadvantage vis-a-vis their competitors in the private sector since the latter

are not covered by the proposed legislation.

5.5. A few Ministries have also expressed concern about the possible impact of the "non-obstante" clause, namely cl.18, of the Bill which seeks to give it overriding effect over other laws.

REACTIONS FROM THE MEDIA AND OTHER SECTIONS OF SOCIETY:

6.1. The Report has been generally welcomed in the articles appearing in the newspapers and magazines. Informal discussions have been held with experts in the field and social activists etc. and the Chairman, Press Council of India, who have also generally expressed themselves in support of the recommendations of the Working Group barring criticism in respect of certain aspects of the Bill formulated by the Working Group. A seminar was organised by the National Institute for Rural Development, Hyderabad on Sept. 3-4, 1997 in which eminent persons from public life, including well known jurists, and some senior civil servants participated. At the conclusion of the seminar, a draft Bill, based on the Press Council's Bill and a few provisions of the Shourie Working Group's Bill, was prepared. Shri George Fernandes, M.P. had sought to introduce this Bill in the last Lok Sabha as a Private Member's Bill. The significant points of criticism which have emerged from these discussions and seminars organised in Hyderabad and Delhi are briefly indicated below:

- The criticism regarding Clause 9 relating to exempted categories of information is that there are too many exemptions and they would

frustrate the objectives of openness and transparency in Government. In particular, Clause 9 (ix) has been assailed as giving excessively wide and unfettered discretion to officers to refuse access to information. In the Bill prepared at the conclusion of the NIRD seminar, the exemption from disclosure applies only to three categories of information:

(a) information, the disclosure or contents of which will prejudicially affect the sovereignty and integrity of India, security of the State and friendly relations with foreign States, public order, investigation of an offence or which leads to incitement to an offence;

(b) information relating to personal or other information, the disclosure of which has no relationship to any public activity or in which the public has no interest and would constitute a clear and unwarranted invasion of personal privacy;

(c) trade and commercial secrets protected by law;

provided that an appeal against the refusal of the information under clause (a) above, will lie to a Board headed by the Cabinet Secretary of the Government of India or the Chief Secretary of State Government as the case may be and the Board shall dispose of the appeal within a period of 30 days from the receipt thereof.

- Under the Bill, the definition of the term "Public Authority" (Cl.2 (g) of the Bill) has been restricted to the Government and bodies owned, substantially controlled or funded by the Government. This leaves out private firms and multinationals whose activities often impinge on public interest as they cause pollution etc. The definition of Public Authorities should be expanded to cover such

private bodies also.

- There is no penal provision in the Bill. The absence of a penal provision would make the legislation toothless as there would be no sanction against public authorities or their officers who withhold information or furnish false information in violation of the provisions of the Act or its spirit.

- The absence of a specific provision in respect of the custodial institutions and for furnishing information on Life and Liberty in 48 hours. It may be mentioned in this context that the Right to Information Bill submitted by the Press Council has a provision which requires the appointment of Visitor's Committees and grant of access to such Committees at all times and for giving information on Life and Liberty in 48 hours. The NIRD Bill also contains a provision to this effect.

- With regard to the appellate function, while there appeared to be no objection in principle to vesting this function in the machinery under the Consumer Protection Act, 1986, the apprehension was expressed that the glaring deficiencies in that machinery would prevent timely disposal of appeals and unless effective steps were taken to improve the functioning of District Forums etc., the appellate remedy might not be as effective as would be desirable and it may be desirable to let the appeals lie to the judiciary at the district level.

Draft

SECRET

Department of Personnel & Training

- The Act should specifically provide for representation of diverse interests of society in the Freedom of Information Councils.

Views of the Committee of Secretaries:

7.1 The report of the Working Group was placed before the Committee of Secretaries. The Committee broadly endorsed the Freedom of Information Bill, 1997 recommended by the Working Group subject to certain important modifications.

7.2. With regard to the applicability of the proposed legislation, the Committee agreed that it would not be desirable to extend its scope to private bodies such as commercial firms in view of the implementational difficulties that might crop up. The Committee was, therefore, of the view that the Bill for the present should be limited only to governmental bodies or organisations substantially funded or controlled by the Government as in the Bill recommended by the Working Group.

7.3. The Committee was not in favour of the recommendation to use the machinery under the Consumer Protection Act, 1986 as the appellate forum under the proposed Freedom of Information Bill for the reasons referred to earlier. The Committee felt that this would not be an efficacious proposition in view of the existing deficiencies in the functioning of these Forums in various States; also that, in view of the huge arrears in the civil courts, it would be undesirable to vest this

jurisdiction in the courts. The view was that it would be preferable to provide a simplified executive procedure of a departmental character for appeals, since the ultimate objective from the citizen's point of view was to secure a locally accessible, convenient and least costly forum for appeal against rejection of the request for information. The appellate remedy in civil courts will lead to delay, cost and inconvenience to citizens. A similar view has been taken in the context of the Tamil Nadu Act.

7.4 With regard to the criticism relating to the absence of penal provisions in the Bill, the Committee was of the view that it would not be desirable to provide for a penalty in the Bill as it might generate resistance and resentment among employees thereby adversely affecting the implementation of the law. It would involve the Administration in avoidable prosecution of cases in the court. In this context, it was felt that the recommendation of the Working Group for amendment to Rule 11 of the CCS (Conduct) Rules, 1964 would take care of the concerns expressed in this regard as the delinquent employees can be punished for misconduct.

7.5. The Committee also decided upon certain changes in the exemption clauses in order to make their scope clearer, protect confidentiality of classified information etc. while deleting Clause 9 (ix) of the Bill.

VIEWS OF THE GROUP OF MINISTERS.

Draft

SECRET

Department of Personnel & Training

8.1. Based on the directions of the Cabinet, the proposal was placed before the Group of Ministers, which considered it in three meetings held on Oct. 18, Dec. 17, 1997 and January 5, 1998. The Group was specifically apprised of the views of the Ministries/Departments which had furnished their comments by the stipulated date. It was also apprised of the particulars of the Bill drafted at the conclusion of the NIRD seminar.

8.2. The Group of Minsters has approved of this Department's proposal subject to a few changes in the Bill. It has, however, desired that the question of the scope of the Bill, with regard to the public sector undertakings, particularly those operating in a competitive commercial environment, as well as the exclusion of the private sector, should be specifically highlighted for the Cabinet's consideration.

8.3. Accordingly, the pros and cons of this issue are briefly discussed below.

8.4. As regards the private sector, the view of the Shourie Working Group was that the legislation should not apply to it. The Committee of Secretaries also endorsed this view. While extension of the proposed legislation to private sector may have an emotive appeal, it is necessary to consider it with caution and circumspection. It is noteworthy that none of the advanced democracies such as the U.S., Australia and Canada have thought it fit to widen its laws to this extent. At a fundamental level, it needs to be recognised that the basic purposes of the freedom of

Draft

SECRET

Department of Personnel & Training

information legislation are to promote openness, transparency and accountability in government, on the one hand, and to facilitate a fuller and more meaningful participation of the people, on the other. This cannot be said to apply wholly to private businesses which are not required to function to primarily subserve public interest as it is commonly understood. The relationship of an individual with the government is qualititatively different from that with a private firm. Corporate governance is a different area altogether and the appropriate vehicle to bring about improvement in it cannot be the freedom of information legislation. It was apt to be regarded as an excessive intrusion into the freedom and management of private sector. There is also the danger that it may become a tool for competitive strategy with deleterious consequences for the industry which are too obvious to require elaboration. Such a step would also be fraught with grave implications for the national economy as it would affect the investment climate at a time when we are liberalising and opening the economy. In any event, it is necessary that we proceed in a gradual manner in respect of a law of this nature and effect the necessary corrections and improvements in the light of the experience gained with the passage of time. Another difficulty that is likely to be encountered would be with reference to the appellate remedy which in the proposed Bill is of a purely departmental nature. In this scheme of things, there would be difficulty as far as private sector organisations are concerned. In view of these considerations, this Department is of the view that the proposed legislation should not be extended to the private sector.

Draft

SECRET

Department of Personnel & Training

8.5. Coming to the public sector, the most important question requiring consideration is whether, in view of its inapplicability to the private sector, the proposed legislation would impose an unacceptable cost on the public sector enterprises of commercial nature and impair their competitive ability vis-a-vis their private sector competitors by creating an uneven playing field. This aspect was elaborately considered by the Committee of Secretaries. As a matter of principle, in view of its public ownership, the public sector should remain within the ambit of the proposed legislation. However, whether an exception should be made to this principle in respect of public enterprises which function in a competitive commercial environment has also been considered and it was found difficult to arrive at a reasonable formulation for this purpose. First, there would be a large number of enterprises whose operations straddle both monopolistic and competitive environments and this presents a very serious and intractable definitional problem. Secondly, it would be well nigh impossible to examine each enterprise, with a view to excluding it from the proposed legislation, considering the large number of such enterprises in the Central and State (the legislation covers the Central as well as State governments) sectors. Having regard to these considerations, it was felt appropriate to keep the public sector within the ambit of the proposed legislation, with suitable safeguards to ensure that it does not adversely affect its competitive ability.

8.5. These safeguards are contained in clauses 8(10) and (12) of the proposed Bill which exempt information whose disclosure would adversely

affect the legitimate economic and commercial interests or the competitive position of a public authority and information in the nature of trade or commercial secrets or any information having a commercial value which is likely to be prejudicially affected by disclosure. Further, under clause 9 of the Bill, a request for information can be rejected where it would involve a disproportionate diversion of a public authority's resources or would adversely interfere with its functioning. It is submitted that these safeguards adequately secure the interests of public sector enterprises.

REVISED FREEDOM OF INFORMATION BILL, 1997:

9.1 The draft Freedom of Information Bill, 1997, given by the Working Group has, accordingly, been revised with the help of the Legislative Department and is placed at **Annexure II** to this Note. It may be pointed out that a number of suggestions made for changes in the Bill in various quarters can be implemented more appropriately through the Rules under the Act or through administrative instructions as appropriate.

9.2 **The Freedom of Information Bill, 1997 (Annexure II)** is broadly the same as the Bill recommended by the Working Group. However, certain provisions of the Working Group Bill have been modified in the light of decisions taken in the Committee of Secretaries, the Group of Ministers and the apprehensions expressed with regard to certain vital aspects relating to the security of the country. Apart from this, certain

verbal changes have been made in the Bill in order to ensure greater clarity and to avoid possible interpretational difficulties. The substantive changes are briefly summed up below :

- While the definition of public authority has been retained in essence, the two Houses of Parliament , State Legislatures, the Supreme Court, High Courts and the courts under them, and the Constitutional authorities like Election Commission, Comptroller and Auditor General of India, and the Union Public Service Commission have been brought specifically under the purview of the Act. While the Parliament, Legislatures and the Courts would be subject to the jurisdiction of the competent authority such as the Speaker and the Chief Justice, the Government would notify the competent authorities in respect of the Constitutional authorities, as well as independent institutions like the Reserve Bank of India.

- The revised Bill provides for a two-tier appellate remedy of a purely departmental character at different levels to be determined by the Appropriate Government with no recourse to courts. However, any person dissatisfied with the outcome of a departmental appeal would still have recourse to the writ jurisdiction of the High Courts under the normal law of the land.

- The revised Bill contains a new provision for enabling the Central Government to exclude specified intelligence and security

organisations from the purview of the proposed Act by inclusion of such organisations in the Schedule to the Act. This has been done taking into consideration the security requirements of the country. The present schedule includes, in respect of the Central Government, the Intelligence Bureau, the Research and Analysis Wing of the Cabinet Secretariat, the Directorate of Revenue Intelligence, the Directorate of Enforcement, the Central Bureau of Economic Intelligence and the Narcotics Control Bureau. This list is based on the advice given by the Home Ministry after consulting the I.B. The C.B.I. has not been included in the schedule since the areas of operation to be exempted for C.B.I are already provided in the exemption clause. The State Governments would be asked to specify the exact names of intelligence and security organisations in the States, which are to be included in the schedule. The Central Government may make additions or deletions in the schedule.

- Clause 9 (ix) of the Working Group's Bill has been deleted.

- The provision for deemed refusal contained in Clause 8 of the Working Group Bill has been deleted in view of the apprehension expressed that it might prove to be counter productive.

- A specific duty has also been cast, in the revised Bill, upon the National and State Freedom of Information Councils to submit annual reports to the Central Government and the State

Government, respectively, who are required to lay such reports before the Parliament and the State Legislatures, respectively.

- It has been advised by the Law Ministry that, from the legal and operational point of view, the State Governments may be vested with powers to amend the Rules framed under the Act. However, a provision has been made to enable the Central Government to prescribe the initial set of Rules governing various provisions mentioned under the Act for adoption with suitable changes by State Governments.

Legislative competence of the Parliament:

10.1. The Working Group has specifically examined this aspect and has taken the view that the Parliament is competent to enact the legislation under entry 97 in List I of the Seventh Schedule to the Constitution. It also felt that in order to ensure uniformity of application, a Central Act was preferable. However, since the residuary power of the Parliament does not extend to the State of Jammu & Kashmir, the present legislation will not apply to that State. The State Government will be advised to enact a similar legislation with appropriate changes with due regard to local conditions.

Draft

SECRET

Department of Personnel & Training

10.2. It may be mentioned that the States of Tamil Nadu and Goa have separately enacted legislation on right to information. The legislative competence of the States to enact such a law is a matter of doubt and it is unclear under which provisions of the Constitution the Governments of Tamil Nadu and Goa have enacted their respective laws. On the other hand, since the subject does not specifically figure in any of the lists in the Seventh Schedule, there appears to be far stronger basis for holding that it falls within the legislative competence of the Parliament and once the law is enacted, it would automatically apply to the State governments and other public authorities in the state sector. After the Bill is enacted, these two States will be advised to consider action for adopting the Central legislation and repeal of the existing legislation in the interest of avoiding legal complications.

Other recommendations of the Working Group:

11.1. As far as the other recommendations of the Working Group are concerned, the Ministry of Home Affairs has been requested to process the recommendations regarding amendments to the Official Secrets Act, 1923, Manual of Departmental Security Instructions and Code of Criminal Procedure, 1973. The Ministry of Home Affairs is processing for Government's approval the recommendations relating to the Official Secrets Act, 1923, Code of Criminal Procedure, 1973 and the Manual of Departmental Security Instructions. As far as the amendments to the Official Secret Act, 1923 are concerned, the Ministry of Home Affairs has

Draft

SECRET

Department of Personnel & Training

separately placed its proposal before the Group of Ministers for further submission to the Cabinet.

11.2 The Legislative Department has been requested to process the recommendations in respect of amendments to the Indian Evidence Act, 1872 and the Code of Civil Procedure, 1908. It may, however, be mentioned that, with the jurisdiction of the courts being barred in the proposed Freedom of Information Bill, the Working Group's recommendations relating to amendments to the Indian Evidence Act, 1872, Code of Civil Procedure, 1906 and Code of Criminal Procedure, 1973 would cease to have a direct relevance to the Freedom of Information Bill and a view on these recommendations can be taken independently.

11.3. As far as the amendment to Rule 11 of the CCS (Conduct) Rules and other similar rules is concerned, the Department of Personnel is separately processing the proposed amendment for the approval of the Government.

Administrative and Financial Implications:

12.1. It is true that the Bill, once enacted, will generate a certain amount of administrative work arising from requests for information. However, since it envisages supply only of existing information and does not require the creation of new records solely for its purpose, bulk of the requests which will require compliance would relate to information that is already

being compiled in various agencies. Besides, a large amount of information is expected to be disclosed, *suo motu*, under its provisions, which is expected to reduce the load of individual requests for information. No insurmountable administrative difficulties are therefore anticipated, as seen from their field level experience in different States with transparent administration and provision of information to the public on public distribution system, employment exchange, housing facilities etc. On the contrary, the law may have a beneficial effect in course of time as it would necessitate improvements in the management of information in various agencies. The process of storage and release of information will be facilitated by progressive computerisation of Government operations, and the access of the public to information on public service terminals, internet etc.

12.2. It does not require to be stated that it would be necessary to provide adequate training to employees in training institutions or in their work environment to bring about the necessary change in their attitudes and to equip them with the required skills if the proposed law is to be successfully implemented. It would be necessary for this purpose to develop suitable training packages.

12.3 Similarly, it would also be necessary to devise detailed administrative instructions for ensuring proper implementation of the proposed Act, including clear provisions and rules for the classification of different types of records, over and above the existing Manual of Departmental Security

Instructions, to cover all the transactions. A similar effort will have to be undertaken in the States, and the level of appellate authorities with the competence to decide on the classification of records will be prescribed by the appropriate Government. With this in view, the Department of Personnel is separately initiating action for devising measures for operationalising the proposed Act. It is intended that detailed guidelines and instructions on the procedures for release of information, classification of information and other related matters such as appointment of Public Information Officers would be drawn up by the time the Bill is enacted, so that the benefits of the legislation are available to the public immediately after enactment of the Bill.

12.4. Action is also being initiated to frame rules for the purposes of the Act. Apart from the Central Government, the State Governments also will have the powers to frame rules under the Bill. The Act provides that the initial set of rules relating to different provisions, apart from other required rules to enable the implementation of the Act, will be notified by the Central Government on a uniform basis. In the case of State Governments, they may make suitable modifications in the rules according to local circumstances, subject to conformity with the legal provisions and directions from the Central Government.

12.5. As far as financial implications are concerned, it is not possible to accurately estimate the possible expenditure that the legislation might entail. It is expected that the various agencies would be appointing some

of their existing officers as the Public Information Officers for the purpose of this Act or redesignating the publicity or information officers as Public Information Officers. Only in a few cases it might be necessary to create additional posts for this purpose. Thus, the manpower requirement arising from the legislation is expected to be met from within the existing sanctioned strength of the various agencies at the Central and State level, or within the existing budget. As regards the material resources in terms of computers and other office equipment, it may be stated that there are in any case ongoing programmes for computerisation of operations in various agencies, and the requirement arising from the legislation would ordinarily be met by these programmes.

12.6 The creation of a certain number of posts, particularly for the proposed Councils for Freedom of Information, would be inevitable. So far as the State Governments are concerned, this expenditure will have to be met by them from within their budget. The Central Government will have to make budget provision for the National Council and its Secretariat. It may also be mentioned that a portion of the likely expenditure would be offset by the recovery of fees for supply of information. A nodal Cell for the finalisation of rules and instructions, guiding the States, and reporting progress to Government has to be set up in the Ministry of Personnel, Public Grievances & Pensions. This Cell will be headed by a Joint Secretary to Government with two Deputy Secretaries, two Senior Analysts and two fully staffed sections, stenographic assistance etc. The details of staff requirements are provided in the Annexure III. Detailed proposals for

Draft

SECRET

Department of Personnel & Training

the constitution of the National Council and for providing the necessary financial and material resources will be separately submitted after the enactment of the Bill.

13. Even though it might be legally possible to promulgate an Ordinance on the subject, having regard to the nature of the proposed legislation, it is felt that it requires detailed consideration by the Parliament and as such it should go through the normal legislative processes of the Parliament. The proposal is, therefore, for obtaining a Cabinet decision on the subject and placing the same before the Government that assumes office consequent on the forthcoming general elections.

14. This Note as well as the proposed Bill have been seen and concurred in by the Legislative Department and the Department of Legal Affairs, and have the approval of the Minister of State for Law & Justice.

15. A statement of implementation schedule is attached (**Appendix**).

16. The Prime Minister as the Minister in charge of the Ministry of Personnel, Public Grievances & Pensions has approved the submission of this Note to the Cabinet for its approval.

Department of Personnel & Training

17. In the above background, the approval of the Cabinet is sought for the Freedom of Information Bill, 1997 (Annexure II). The Cabinet's decision will be placed before the Government that assumes office after the general elections.

(HARINDER SINGH)
Joint Secretary to the Government of India

New Delhi,
Dated

108

SECRET
COPY NO.

NO. 34011/1(S)/97-Estt.(B)
Department of Personnel & Training
: : :

Minutes of the meeting of Group of Ministers held on December 17, 1997 at 11.30 A.M. in the Chamber of the Minister of Home Affairs.

Present

1. Shri Indrajit Gupta, Minister of Home Affairs
2. Shri Janeshwar Mishra, Minister of Petroleum & Natural Gas
3. Shri Ramakant D. Khalap, Minister of State (Independent charge) of the Ministry of Law & Justice.

In Attendance

1. Shri Arvind Varma, Secretary (Personnel)
2. Shri B.P. Singh, Home Secretary
3. Dr. Raghubir Singh, Additional Secretary, Legislative Department
4. Dr. P.S.A. Sundaram, Additional Secretary, Department of Administrative Reforms & Publilc Grievances.
5. Shri M. Ranjan, Joint Secretary, Cabinet Secretariat.
6. Shri A Sinha, Joint Secretary, Department of Legal Affairs.
7. Shri Harinder Singh, Joint Secretary, Department of Personnel & Training.
8. Shri Y.G. Parande, Director, Department of Personnel & Training.

109

Department of Personnel and Training. **Secret**

Subject: Legislative proposal for Freedom of Information and amendments to related Acts and Rules.

The Group of Ministers considered the Notes dated November 11, 1997 and December 12, 1997 submitted by the Department of Personnel in pursuance of the decisions taken during the last meeting of the Group of Ministers held on October 28, 1997.

2. In particular, they noted the views expressed by various Ministries/Departments on recommendations of the Working Group chaired by Shri H.D. Shourie. It was noted that by and large there was a broad acceptance of the recommendations of the Working Group in relation to the draft Freedom of Information Bill. It was also noted that most of the concerns expressed by the different Ministries/Departments had been taken note of in finalising the draft Freedom of Information Bill which was under the Government's consideration.

3. The Group of Ministers also took note of the salient features of the draft Bill prepared at the conclusion of a National Workshop held on September 3-4, 1997 at National Institute of Rural Development, Hyderabad which had been sought to be introduced by Shri George Fernandes as a Private Member's Bill in Lok Sabha, and the comments given thereon in Department of Personnel's Note dated Nov. 11, 1997. The Group of Ministers broadly endorsed the approach of the Department of Personnel.

4. The issue relating to the likely impact of the proposed legislation on public sector undertakings operating in a competitive commercial environment, in view of the fact that their private sector competitors would not be covered by it, and the question whether the Bill should also cover the private sector, were also considered by the Group of Ministers. As regards the interests of PSUs, it was noted that the Bill provided appropriate

safeguards in Clauses 8 (10) and 8(12), which exempted disclosure of information which would prejudicially affect the legitimate economic and commercial interests or the competitive position of a public authority and information in the nature of commercial or trade secrets etc. It was also noted that in most other countries having freedom of information legislation, such as the U.S. and Australia, bodies in the nature of Government Corporations were generally covered within the purview of such enactments. On the question of inclusion of private sector, it was pointed out that, notwithstanding the arguments in support of such a course from various quarters, such a step would be fraught with very wide implications on the national economy. It was also mentioned that in no other country was the private sector covered by such legislation - it being widely recognised that the relationship of the citizen with governmental bodies was qualititatively different from that with private organisations and a right to information could generally be said to exist only in respect of government held information. The objective of the laws providing the right or freedom to access information was essentially to promote open, transparent and accountable government and this consideration could not be wholly applicable to private bodies which could not be said to "govern". It was also pointed out that it was not as though the Bill did not provide for access to information relating to private firms at all. Such information could be accessible through the concerned regulatory bodies to whom firms may be required, under the relevant laws, to furnish information relating to matters such as pollution levels, health or safety standards etc. Having regard to all the relevant aspects the Group of Ministers broadly endorsed the relevant provisions of the Bill but also decided that these issues may be specifically highlighted in the proposal to be submitted to the Cabinet. In this context, while considering the definition of " public authority", the Group of Ministers desired that the Department of Personnel should attempt to rephrase the definition, in consultation with the Law Ministry, in order to make its meaning clear and unambiguous.

5. It was also decided that the reference to Cabinet in Cl. 8(3) should be amplified to

cover Cabinet Committees and Sub-Committees.

6. Another question that was considered was whether the proposed Act should be made applicable only to information contained in records that had been brought into existence after a certain cut-off date, considering the existing state of record management. The Group of Ministers desired the Department of Personnel to examine this aspect and formulate a suitable proposal.

7. It was decided that the Department of Personnel will formulate a proposal for the consideration of the Cabinet, based on the deliberations of the Group of Ministers so far, and place it before the GoM in ~~their~~ a final meeting. It was also decided that the Ministry of Home Affairs would take the same action in respect of ~~their~~ its proposal for amendments to the Official Secrets Act, 1923.

SECRET
MOST IMMEDIATE

No. 34011/1(s)/97-Estt.(B)
Department of Personnel & Training

New Delhi, the 2nd Jan.,98.

Subject:- Legislative proposal for Freedom of Information and amendments to related Acts and Rules.

*****

The undersigned is directed to refer to this Department's note of even number dated the 26th/29th December,1997 on the above subject and to enclose a copy of the Note for the consideration of the Group of Ministers in the meeting to be held at 11.30 A.M. on 5th January, 1998.

Incidentally, in their report submitted to the Government in May 1997, the Working Group on 'Right to Information' had also recommended certain amendments to section 5 of the Official Secrets Act, 1923 in order to make it consistent with the proposed Freedom of Information Act. The Note of the Ministry of Home Affairs, in pursuance of the above recommendation, was considered by the Cabinet in its meeting held on 1st November,1997 and it was decided that the matter may in the first instance, be considered by a Committee of Secretaries. The Cabinet also directed that Ministry of Home Affairs should, thereafter, bring up the matter again alongwith the recommendations of the Committee of Secretaries. The Committee of Secretaries disscussed the matter in its meetings held on 24.11.1997, 27.11.1997 and

112

3.12.1997 and endorsed the draft of the amended section 5 of the Act. It also recommended that the Group of Ministers, which is looking into the proposed Freedom of Information Bill, may be requested to consider the draft amendment to the Official Secrets Act and the proposed "The Official Secrets Rules". A copy of the draft Cabinet Note, prepared by the Ministry of Home Affairs on the subject, is also enclosed for the consideration of the Group of Ministers.

(Swarup Nandkeolyar)
Director

1. P.S. to Home Minister
2. P.S. to Minister of Petroleum & Natural Gas.
3. P.S. to Minister of Industry.
4. P.S. to Minister of State (Independent charge), Ministry of Law & Justice.

Copy to:
1. Shri B.P.Singh, Home Secretary.
2. Dr. V.K.Agarwal, Secretary, Department of Legal Affairs.
3. Shri K.L.Mohanpuria, Secretary, Legislative Departmeni.
4. Dr. P.S.A.Sundaram, Additional Secretary, Department of Administrative Reforms & Public Grievances.
5. Shri Pawan Chopra, Additional Secretary, Cabinet Secretariat.
6. Shri M.Ranjan, Joint Secretary, Cabinet Secretariat.

(Swarup Nandkeolyar)
Director

Copy to Joint Secretary(Estt.),
Copy also to PPS to Secretary(P).

SECRET

Copy No. 3

No. 34011/1(s)/97-Estt.(B)

DEPARTMENT OF PERSONNEL & TRAINING

NOTE FOR THE CABINET COMMITTEE
ON PARLIAMENTARY AFFAIRS

Subject: Private Members' Bill by Shri George Fernandes, M.P., regarding "The Right to Information Bill, 1997" in the Lok Sabha.

*****

Shri George Fernandes, M.P., has given notice for introduction of "Right to Information Bill, 1997" as a Private Members' Bill in the Lok Sabha. A copy of the Bill is attached to this Note as Annexure I.

2. It may be mentioned in this connection that in terms of the Common Minimum Programme of the Government, the Government is committed to bringing forward a legislation for right to information. A Working Group on Right to Information and Promotion of Open and Transparent Government was appointed in January, 1997 under the Chairmanship of Shri H.D. Shourie. It had among its Members Shri Soli Sorabjee, the former Attorney General of India. The Working Group submitted its report to the Government on May 21, 1997. It has, among other things, given a draft Freedom of Information Bill, 1997 for the Government's consideration.

...2/-

115

3. The draft Freedom of Information Bill recommended by the Working Group chaired by Shri H.D. Shourie is under Government's examination. Comments on it were invited from all the State Governments and the Ministries/Departments of the Central Government. Although responses have been received from only a few State Governments, it may be mentioned that a statutory scheme based on tbe deliberations of the Working Group was placed before the Conference of Chief Ministers which was held on May 24, 1997 and the scheme found broad support from the Conference. Responses have been received from most of the Ministries/Departments of the Central Government and they have broadly supported the recommendations of the Working Group while suggesting certain modifications. The matter was placed before the Committee of Secretaries who recommended a few changes in the Bill given by the Working Group. Based on this, the draft Freedom of Information Bill, 1997 was submitted to the Cabinet for its approval. The proposal was considered by the Cabinet in its meeting held on October 20, 1997 and it was decided that it will first be considered by the Group of Ministers comprising Minister of Home Affairs, Minister of Petroleum & Natural Gas, Minister of Industry and Minister of State (Independent Charge) of the Ministry of Law & Justice. The Group of Ministers has held one meeting on the issue on

October 28, 1997. The next meeting is likely to be held shortly and it is expected that the Group of Ministers would finalise its recommendations in that meeting. The matter would, thereafter, be re-submitted to the Cabinet for its consideration.

4. The Prime Minister has given an assurance in Lok Sabha that the Government would introduce a Bill for Freedom of Information during the Winter session of the Parliament. In the course of his speech on the 50th Independence Day also, the Prime Minister has made the same promise.

5. The Right to Information Bill sought to be introduced by Shri Fernandes is the one which has been drawn up on the basis of the conclusions arrived at in a Workshop on Right to Information held at the National Institute of Rural Development, Hyderabad on September 3-4,1997. It has separately been received by this Department from the National Institute of Rural Development and the conclusions of the Workshop have been taken note of during the processing of the draft Freedom of Information Bill, 1997.

6. It will thus be evident that the Government is itself taking all measures to ensure the introduction of the Freedom of Information Bill, 1997 in the forthcoming winter session of the Parliament.

117

7. Ordinarily, Private Members' Bills are not opposed at the stage of introduction if they fall within the legislative competence of the Parliament.

8. However, in the present case, the Government itself is committed to the introduction of a Bill for Freedom of Information and all steps are being taken for this purpose. It is, therefore, proposed that it may be explained to the Hon'ble M.P. that the Government itself is likely to introduce the Bill and he may be persuaded to withdraw the Bill sought to be introduced by him.

9. Approval of the Cabinet Committee on Parliamentary Affairs is sought to the proposal contained in para 8 above.

9. This Note has the approval of Minister of State in the Ministry of Personnel, Public Grievances & Pensions.

(HARINDER SINGH)
Joint Secretary to the Govt. of India

New Delhi.
20th November, 1997

118