

*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  
1998*

*File 1*  
*Pages 1 to 213*

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No.501/3/1/97-Cab.  
GOVERNMENT OF INDIA (BHARAT SARKAR)  
CABINET SECRETARIAT (MANTRIMANDAL SACHIVALAYA)

New Delhi, the 27th April, 1998

Subject:- Freedom of Information Bill.

The undersigned is directed to say that it has been decided, with the approval of the Prime Minister, to constitute a Group of Ministers with the following composition to examine afresh the proposed Freedom of Information Bill and to finalise its recommendations on the same:-

Shri L.K. Advani,  
Minister of Home Affairs.  
Shri George Fernandes,  
Minister of Defence.  
Shri M. Thambi Durai,  
Minister of Law, Justice & Company Affairs and  
Minister of Surface Transport.  
Smt. Sushma Swaraj,  
Minister of Information and Broadcasting &  
Minister of Communications.  
Smt. Vasundhra Raje,  
Minister of State in the Ministry of  
External Affairs.  
Shri R. Janarthanam,  
Minister of State in the Ministry of Personnel,  
Public Grievances and Pensions.

2. The Group of Ministers will be serviced by the Department of Personnel and Training.

(D.M. Rao)  
for Cabinet Secretary  
Tele : 3015802

To

Shri L.K. Advani, Minister of Home Affairs.  
Shri George Fernandes, Minister of Defence.  
Shri M. Thambi Durai, Minister of Law, Justice and  
Company Affairs and Minister of Surface Transport.  
Smt. Sushma Swaraj, Minister of Information and  
Broadcasting and Minister of Communications.  
Smt. Vasundhra Raje, Minister of State in the Ministry  
of External Affairs.  
Shri R. Janarthanam, Minister of State in the Ministry  
of Personnel, Public Grievances and Pensions.

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Secretary to the President.  
Secretary to the Vice-President.

  
(D.M.M. Rao)

Deputy Secretary to the Cabinet.  
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Principal secretary to the Prime Minister.  
Secretary to the Prime Minister.

  
(D.M.M. Rao)

Deputy Secretary to the Cabinet.  
-----

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Secretary, Department of Defence.  
Foreign Secretary.  
Finance Secretary.  
Secretary, Department of Consumer Affairs.

  
(D.M.M. Rao)

Deputy Secretary to the Cabinet.  
-----

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

.....

New Delhi, the 8th May, 1998.

Subject: Legislative Proposal for Freedom of Information  
and amendments to related Acts and Rules.

.....

With the approval of the Prime Minister, a Group of Ministers, with the following composition, has been constituted to examine the proposed Freedom of Information Bill and to finalise its recommendations of the same:

1. Shri L.K. Advani  
Minister of Home Affairs
2. Shri George Fernandes  
Minister of Defence
3. Shri M. Thambi Durai  
Minister of Law, Justice & Company Affairs and  
Minister of Surface Transport
4. Smt. Sushma Swaraj  
Minister of Information and Broadcasting and  
Minister of Communications
5. Smt. Vasundhara Raje  
Minister of State in the  
Ministry of External Affairs
6. Shri R. Janarathanan  
Minister of State in the  
Ministry of Personnel, Public Grievances & Pensions.

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Secret

Department of Personnel & Training

2. The first meeting of the Group of Ministers will be held at 11.30 a.m. on Monday the 11th May, 1998 in the chamber of Home Minister (Room No.104, North Block, New Delhi). A copy of the Note on the subject prepared for the consideration of the Group of Ministers is enclosed.

21 May 98

(Harinder Singh)

Joint Secretary to the Govt. of India

- ✓ 1. P.S. to Home Minister
- ✓ 2. P.S. to Minister of Defence
- ✓ 3. P.S. to Minister of Law, Justice and Company Affairs
- ✓ 4. P.S. to Minister of Information and Broadcasting
- 5. P.S. to Minister of State in the Ministry of External Affairs
- ✓ 6. P.S. to Ministry of Personnel, Public Grievances & Pensions

Copy alongwith the request that you may kindly make it convenient to attend the meeting:

- ✓ 1. Shri Prabhat Kumar, Cabinet Secretary, Rashtrapati Bhavan, New Delhi.
- ✓ 2. Shri B.P. Singh, Secretary, Ministry of Home Affairs, New Delhi.
- ✓ 3. Shri Rahbir Singh, Secretary, Legislative Department, Ministry of Law, Justice and Company Affairs, Shastri Bhavan, New Delhi.

Copy also forwarded to:

- ✓ 1. PPS to Addl. Secretary (AR&T), Department of Admn. Reforms & P.G.
- ✓ 2. PPS to Secretary (P), DOPT.

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

New Delhi, dated the 6th May, 1998.

NOTE FOR THE GROUP OF MINISTERS

Subject: Legislative proposal for Freedom of Information and amendments to related Acts and Rules.

1. 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 for 1997. The proposal was placed before the Cabinet in its meeting held on October 20, 1997 and it was decided by the earlier Government that the matter would first be considered by the Group of Ministers comprising the Minister of Home Affairs, Minister of Petroleum & Natural Gas, Minister of Industry and Minister of State for Law & Justice. The Group considered the draft Bill at several meetings and approved this Department's proposal subject to a few modifications in the Bill. The draft Bill, however, could not be considered by the out-going Cabinet. The Prime Minister has now approved the constitution of a new Group of Ministers to examine afresh the proposed Bill and finalise its recommendation on the same. The Note is accordingly being placed before the Group of Ministers for their consideration.

2. 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. The 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. In the 38th Report on the Demand for Grant of the Ministry of Personnel, Public Grievances & Pensions, the Parliamentary Standing Committee on Home Affairs has also recommended that the Ministry should take up measures for an early enactment of a legislation for the Right to Information. In answer to a Lok Sabha Starred Question on 30th July, 1997, the then Prime Minister had given an assurance that a Bill on Freedom of Information would be introduced in the coming Winter Session of Parliament. The Government's resolve to bring about the proposed legislation was also mentioned by the President in his first address to the joint sitting of the two Houses of Parliament after the 12th General Election to Lok Sabha.

3. In January, 1997, the Government set up a Working

Group on " Right to Information and Transparency" under the Chairmanship of Shri H.D.Shourie. The Group submitted its report on May 21,1997 a copy of which is attached to this Note as Annexure-I. The Group has inter-alia recommended the enactment of "Freedom of Information Act" by the Parliament and for this purpose, it has provided the "Freedom of Information Bill, 1997" [Annexure-A to the Report]. This draft Bill is based, among other things, on a study of the information legislation in some other countries and the Right to Information Bill, 1996, prepared by the Press Council of India under the Chairmanship of Justice P.B.Sawant was also taken into consideration by the Working Group.

4. The legislation of the "Freedom of Information Act" recommended by the Working Group 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. A similar response has been received on the Bill from the Ministries/Departments of the Central Government.

5. 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. The draft Freedom of Information Bill, 1997, given by the Working Group was accordingly revised with the help of the Legislative Department and placed before the Cabinet for approval to its introduction in the Winter Session of Parliament for 1997.

6. In its meeting held on October 20, 1997, the Cabinet decided that the matter would first be considered by the Group of Ministers. Based on the directions of the Cabinet, the proposal was placed before the Group of Ministers, which considered it in three meetings held on October 28, December 17, 1997 and January 5, 1998. A copy each of the Notes/minutes of these meetings are attached to this Note as Annexure-II. The Group was specifically apprised of the particulars of the Bill drafted at the conclusion of the seminar organised by the National Institute for Rural Development, Hyderabad on September 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 Bill and a few provisions of the Shourie Working Group's Bill, was prepared. Shri George Fernandes, then a Member of



Parliament and now Union Minister for Defence, had sought to introduce this Bill in the last Lok Sabha as Private Members' Bill. A copy of this Bill is attached as Annexure-III to this Note.

7. The Group of Ministers has approved 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. The draft Freedom of Information Bill, 1997, given by the Working Group, has accordingly been revised with the help of the Legislative Department. The revised Bill, titled "The Freedom of Information Bill, 1998", is broadly the same as recommended by the Working Group barring certain provisions which have been modified in the light of the decisions taken in meetings of the Group of Ministers. A copy of this Bill is at Annexure-IV to this Note. The major differences between this revised Bill and Private Members' Bill tabled by Shri George Fernandes are given in the statement placed at Annexure-V.

9. A draft Note for obtaining the approval of

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the Cabinet to the proposed Freedom of Information Bill, 1998, was prepared earlier. The full sequence of events leading to the preparation of the Cabinet Note are indicated in the Statement at Annexure VI. A copy of this Note has been attached as Annexure-VII. In consideration of the observation made by the earlier Group of Ministers, the pros and cons of the applicability of the Bill to the Public Sector as also the exclusion of the private sector from its purview, have been discussed in paras 8.4 and 8.5 of the Cabinet Note. The draft Note was concurred in by both the Department of Legal Affairs and the Legislative Department with the approval of the Minister of State of the Ministry of Law & Justice. However, the Note could not be considered by the out-going Cabinet.

10. In the above background, the Group of Ministers are requested to consider the draft "Freedom of Information Bill, 1998", as in Annexure-IV, and give their recommendation for submission of the proposal to the Cabinet, as in the Note at Annexure-VII, to seek their approval for introducing of the Bill in the forthcoming Budget Session of the Parliament.

11. This Note has been approved by Secretary (Personnel).

(HARINDER SINGH) GJS

Joint Secretary to the Government of India.

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## **Report of the Working Group on Right to Information and Promotion of Open and Transparent Government**



Government of India  
Ministry of Personnel, Public Grievances and Pensions, New Delhi

May 1997

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# **Report of the Working Group on Right to Information and Promotion of Open and Transparent Government**



Government of India  
Ministry of Personnel, Public Grievances and Pensions, New Delhi

May 1997

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# Report of the Working Group on Right to Information and Promotion of Open and Transparent Government

## Introduction

1.1 The Working Group was set up under Government of India, Department of Personnel and Training's Office Memorandum F. No. 34011/1(s)/97-Estt.(B) dated Jan. 2, 1997. The terms of reference of the Group included the examination of feasibility and need to introduce a full-fledged Right to Information Act so as to meet the needs of open and responsive Government. The Group was also asked 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. A copy of the Government Order dated Jan. 2, 1997 is at *Appendix A*.

1.2 The following officials and non-officials were nominated to the Group:-

- |                                                                                                   |   |          |
|---------------------------------------------------------------------------------------------------|---|----------|
| (1) Shri H.D.Shourie,<br>Chairman, Common Cause.                                                  | - | Chairman |
| (2) Shri Soli J. Sorabjee,<br>Senior Advocate, Supreme Court.                                     | - | Member   |
| (3) Shri S.Narendra,<br>Principal Information Officer,<br>Ministry of Information & Broadcasting. | - | Member   |
| (4) Shri A.Sinha,<br>Joint Secretary,<br>Department of Legal Affairs                              | - | Member   |
| (5) Shri R.N.Verma,<br>Executive Director, Railway Board.                                         | - | Member   |

- |      |                                                                                   |   |        |
|------|-----------------------------------------------------------------------------------|---|--------|
| (6)  | Shri S.P.Ojha,<br>Sr.Deputy Director General,<br>Department of Posts.             | - | Member |
| (7)  | Shri Ashok Kumar,<br>Joint Secretary,<br>Department of Telecommunications.        | - | Member |
| (8)  | Shri Shashi Prakash,<br>Joint Secretary,<br>Ministry of Home Affairs.             | - | Member |
| (9)  | Shri N.S.Madhavan,<br>Joint Secretary,<br>Ministry of Information & Broadcasting. | - | Member |
| (10) | Shri Harinder Singh,<br>Joint Secretary,<br>Department of Personnel & Training.   | - | Member |

Consequent on his transfer, Shri S.P. Ojha was replaced by Shri V. Saksena on the Group.

1.3 The Working Group was given a time of 2 months to give its report. However, taking into consideration the complexities of the issues involved, the time given for submission of its report was extended to May 31,1997.

1.4 The Group held six meetings. The Chairman of the Working Group also called on Justice P.B. Sawant, Chairman, Press Council of India to apprise him of the tentative views of the Working Group and to elicit his views on the subject. Similarly, Dr. Sundaram, Additional. Secretary, Deptt. of Administrative Reforms, also called on Shri. A.K. Venkat Subramanian, Secretary, Deptt. of Consumer Affairs, to apprise him of the proposals of the Working Group as regards use of the machinery under the Consumer Protection Act, 1986 as an appellate forum under the proposed Freedom of Information Act and to seek his informal views.

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## The Context

2.1 It is now widely recognised that openness and accessibility of people to information about the government's functioning is a vital component of democracy. In all free societies, the veil of secrecy that has traditionally shrouded activities of governments is being progressively lifted and this has had a salutary effect on the functioning of governments. In most democratic countries, the right of people to know is now a well established right created under law. It is a right that has evolved with the maturing of the democratic form of governance. Democracy is no longer perceived as a form of government where the participation of people is restricted merely to periodical exercise of the right of franchise, with the citizens retiring into passivity between elections. It has now a more positive and dynamic content with people having a say in how and by what rules they would be governed. Meaningful participation of people in major issues affecting their lives is now a vital component of the democratic governance and such participation can hardly be effective unless people have information about the way government business is transacted. Democracy means choice and a sound and informed choice is possible only on the basis of knowledge.

2.2 Modern democracy embraces a wider and more direct concept of accountability - a concept that goes beyond the traditionally well established principle of accountability of the Executive to the Legislature in a parliamentary democracy. Increasingly, the trend is towards accountability, in terms of standards of performance and service delivery, of public agencies to the citizen groups they are required to serve. Such accountability is possible only when public have access to information relating to the functioning of these agencies.

2.3 Finally, transparency and openness in functioning have a cleansing effect on the operations of public agencies. As has aptly been said, sunlight is the best disinfectant.

2.4 It bears mention that it is not only the developed countries that have enacted freedom of information legislation. Similar trends have appeared in the developing countries as well. In our neighbourhood, Pakistan recently promulgated a Freedom of Information Ordinance. The new South African Constitution specifically provides the right to information in its Bill of Rights - thus giving it an explicit constitutional status. Malaysia operates an on-line data base system, known as Civil Service Link, through which a person can access information regarding functioning of the public administration. There is thus a broad sweep of change towards openness and transparency across the world.



2.5 In our own country, we have not been immune to these winds of change. There have long been demands for greater openness and transparency in administration which have gained momentum in the recent past and a consensus has evolved among the political parties on the need to legislate the right to freedom of information. The Common Minimum Programme of the present Government specifically mentions its commitment to introducing a Bill on Freedom of Information. In their 38th Report on demands for grants of the Ministry of Personnel, Public Grievances and Pensions, the Parliamentary Standing Committee on Home Affairs has strongly recommended that the Ministry may take up the matter urgently to facilitate early enactment of a Right to Information Act. The Government of Tamil Nadu has recently passed an Act for Right to Information. Some other state governments have also taken administrative steps to make information available to public. The Governments of Gujarat, Rajasthan and Madhya Pradesh may be mentioned in this context.

2.6 The Courts too have, in a series of judgements, declared that the right to know is a facet of the fundamental right to freedom of speech and expression enshrined in Art.19(1) of the Constitution - a landmark judgement on the subject being the judgement of the Supreme Court in *S.P.Gupta vs Union of India* (AIR 1982 SC 149).

2.7 In the bureaucracy also there has been an increasing awareness of the importance of openness and transparency. A consensus emerged in the Conference of Chief Secretaries held in November, 1996, on the need for an early enactment of a law on Right to Information. We also note with satisfaction the various steps taken by the Government such as the issue of instructions on transparency to all Ministries/Departments of the Central Government and a request for similar action to the State Governments, the incorporation of a specific provision relating to transparency in the draft Code of Ethics for the Civil Services and the initiative to formulate Citizens' Charters in various organisations under the Government.

### **Freedom\* of Information Bill**

3.1 Even though the need for right to information has thus been widely recognised in the country, and the right has also received judicial recognition, there is no specific law which assures the public access to information. In many quarters, apprehensions are expressed about the possible impact of such a law and the costs it might impose on public agencies in terms of time and money.

3.2 We are of the view that the fears expressed in this regard are often exaggerated. It needs to be remembered that bulk of the information that may have to be supplied under

the proposed enactment would already be getting compiled in the public agencies. Secondly, a substantial portion of the costs involved could be recovered in the form of fees to be charged for supply of information. With improved management of information and through adoption of appropriate information technology, no public agency should face insurmountable difficulties arising from demands for information.

**3.3 We are, therefore, convinced that a legislation for freedom of information is not only feasible but is also vitally necessary.**

**3.4 We are also of the view that the legislation should be enacted by the Parliament in order to ensure uniformity of its application throughout the country.** The question whether Parliament has the legislative competence to enact the proposed Freedom of Information Bill was examined by us. We find that the subject does not fall under ambit of any of the entries in the State List (List II) in the Seventh Schedule of the Constitution. It would, therefore, be covered by entry 97 in the Union List (List I) of the Seventh Schedule - it being the settled legal position 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 terms of List II of the Seventh Schedule.

**3.5 Having elaborated on the importance of openness in Government, it is also necessary to recognise that there would always be certain kinds of information which has of necessity to be kept secret in public interest.** In deciding what to disclose and what to withhold from the public, one has to balance the public interest in disclosure with public interest in secrecy on the one hand and public interest in disclosure with legitimate private interest in secrecy on the other. This has been the approach of the countries having legislation on freedom of information.

**3.6 In this background, we decided that our approach to the proposed legislation should be governed by the following broad principles:**

- (a) disclosure of information should be the rule and secrecy the exception;**
- (b) the exceptions should be clearly defined; and**
- (c) there should be an independent mechanism for adjudication of disputes between the citizens and public authorities.**

**3.7 With this approach in mind, we undertook a detailed study of the relevant material made available to us and suggestions received from various quarters. We also studied the legislation in certain other countries. Notably, the laws studied included the**

Freedom of Information Act, 1966 of the United States of America, Freedom of Information Act, 1982 of Australia, Access to Information Act, 1980 of Canada, the Official Information Act, 1982 of New Zealand and the Code of Practice on Access to Government Information (1997 edition) of the United Kingdom.

3.8 After a detailed study of these documents, we have finalised a draft Freedom of Information Bill, 1997 which is annexed to this report as *Annexure A*.

3.9 A few remarks may be made about some of the important features of the Bill.

3.10 At the outset, we decided that the most appropriate title for the Bill would be "Freedom of Information Bill". The right to information has already received judicial recognition as a part of the fundamental right to free speech and expression and the purpose in enacting the Freedom of Information Act is mainly to provide a statutory framework for this right. Therefore, in our opinion, the expression "freedom of information" fully reflects the spirit and intent in the proposed legislation. **We accordingly decided that the Bill may be called Freedom of Information Bill.**

3.11 We believe that there are certain kinds of information that public authorities should, *suo motu*, make available to public. This includes information relating to functions and responsibilities of the concerned organisation, a description of its decision making processes and the statutory/administrative framework within which it performs its assigned tasks etc. In order to facilitate access of public to their records, the concerned organisations should also be required to maintain such records in a proper manner. Similarly, there should be a duty to give reasons for decisions and, in respect of major policy announcements, to disclose to public the relevant facts and analyses. **The Bill accordingly seeks to cast such obligation on public authorities. We may clarify that, in respect of the obligation regarding maintenance of records, the provision only refers to records that are operationally required and does not seek to impose an obligation to create new records, solely for the purposes of the Act, that are not required for normal operations (Clause 4).**

3.12 In view of the wide diversity of conditions of life of our people, we recognised the need to specifically provide for a facilitative function for the officers responsible for providing access to information. Accordingly, the Public Information Officer is enjoined to render reasonable assistance to persons requesting for information. Similarly, where a person is unable to make a written request, the Public Information Officer may either accept an oral request or assist such person to make a written request (Clauses 5 and 6).

3.13 We also considered it necessary to define clearly the areas of information that should remain exempted from disclosure under the proposed Bill. In drafting the relevant provisions for this purpose, we have kept in view the overriding importance of public interest (Clause 9).

3.14 We have also kept in view the possible adverse effect of an overload of demand on administration and provided that requests for information can be refused on certain grounds such as their being too general or causing a disproportionate diversion of the resources of a public authority. However, a duty has been cast on the Public Information Officer to help the requester, as far as possible, to reframe his request in such a manner as would facilitate compliance with it, where it is being refused as being too general (Clause 10).

3.15 While we have provided for charging of fees for access to information, we have also made a provision for waiver of fees where the disclosure of information is in the public interest in order that an individual may not have to bear the cost where the community at large benefits from disclosure (Clause 11).

3.16 While setting out the grounds for exemption from disclosure, we have also incorporated the principle of severability in the Bill. This would ensure that access would be given to non-exempted information contained in a document, which also contains exempted information, if such information can reasonably be segregated (Clause 12).

3.17 We felt that there was need to provide a departmental remedy to the affected citizens first before recourse to an external grievance redressal forum. This would enable quicker redressal in many cases and would also result in filtering of disputes before they reach an external appellate authority. Accordingly, a provision has been made for an internal review of decisions to refuse access to information taken by Public Information Officers (Clause 14).

3.18 As regards the appellate remedy, we felt that there was a clear necessity to provide for an independent machinery for this purpose. We examined the feasibility of providing for appeal to the Courts having jurisdiction over the concerned public authority. We, however, felt that this might not prove an effective appellate remedy considering the state of arrears in Courts and the high cost of litigation. At the same time, creation of a separate machinery would entail huge costs and would also take time. We, therefore, felt that it would be preferable to utilise an existing district level mechanism to ensure quick

and economic grievance redressal for the affected citizens. In our view the most suitable institution for discharging the appellate function under the Act would be the machinery created under the Consumer Protection Act, 1986 and a suitable provision has accordingly been made in the Bill (Clause 15).

3.19 While recommending this, we are conscious of the deficiencies that continue to affect the functioning of these forums in many States. It would be necessary for the Government of India and State Governments to take effective steps to remove these deficiencies, particularly in view of the additional functions proposed to be assigned to them.

3.20 We also discussed at length the question whether the provisions of the Freedom of Information Act should be given an overriding effect or its provisions should be made subject to those of other laws. This was particularly in the context of the fact that even in advanced countries like the United States of America, Canada and Australia, the provisions of such Acts are subject to those of other laws. We, however, felt that the Freedom of Information Act might be frustrated by resort to other legislation unless there is a *non obstante* clause. Besides, we are convinced that, for freedom of information, it is the provisions of this Act that should be the litmus test since the information that needs to be protected from disclosure would, in any case, be covered by the exemptions provided in it. The Bill accordingly contains a *non-obstante* clause which seeks to give the Act an overriding effect (Clause 18).

### Amendments to other laws/rules

4.1 There are certain other laws and rules which may impinge on access of public to information. If Freedom of Information Act is to fully serve its intended purpose, it would be necessary to review all such laws to make them consistent with it in order to ensure that they do not impede flow of information to the public. While the scope of such a review is obviously too wide for us to cover, we reviewed a few important provisions. These were 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.

4.2 It is the Official Secrets Act that has been regarded in many quarters as being primarily responsible of the excessive secrecy in government. Its "catch-all" nature has invited sustained criticism and demands for its amendment. Section 5 of this Act provides

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for punishment for unauthorised disclosure of official secrets but omits to define official secrets. We have proposed an amendment to this section which incorporates a definition of "official secret" and thus removes its omnibus character. The draft of Section 5 proposed by us is at *Annexure B*.

4.3 As far as the Evidence Act is concerned, we took note of the amendments to the above sections recommended by the Law Commission in its Eighty Eighth report. We have made a slight change in their formulation and the provisions proposed by us are at *Annexure C*.

4.4 There is a widespread feeling that the Central Civil Services (Conduct) Rules, 1964, and corresponding rules applicable to Railways, Foreign Services and All India Services, inhibit government servants from sharing information with public. The accent in these rules is on denial of information to public. This situation has obviously to change if Freedom of Information Act is to serve its purpose and if transparency is to be brought about in the system. We have accordingly finalised two drafts for the amendment to Rule 11 of CCS (Conduct) Rules. The first can be adopted straightaway while the other may be adopted once the Act comes into force. The proposed amendments are at *Annexure D and E* of the Report. The All-India Services (Conduct) Rules, 1968, and other similar rules, would also need to be amended on the same lines.

4.5 We also recommend that the Government may entrust 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 such as the Law Commission.

4.6 In order to make the Act fully operational and effective, it would also be necessary to frame rules to be notified under it. We have confined ourselves to drafting of the Bill. The Government may consider setting up a small sub-group to draft the necessary rules.

## **Classification of Information**

5.1 A major contributor to the lack of transparency is the tendency to classify information even where such classification is clearly unjustified. There is also the tendency to accord higher classification than is warranted. The Manual of Departmental Security Instructions, issued by Ministry of Home Affairs, and the Manual of Office Procedure, which incorporates some of these instructions, do lay down the criteria and guidelines for



classification and specify the authorities competent to authorise classification gradings - Top Secret, Secret and Confidential.

5.2 While the criteria for classification have perhaps necessarily to be broad, it is desirable, in the interest of a proper approach to classification, that they should be backed up by a suitable illustrative list for guidance of officers. While drawing up such a list, the principle to be adhered to is that ordinarily only such information, as would qualify for exemption under the proposed Freedom of Information Act, should be classified.

5.3 We also find that, among other things, "serious embarrassment to government" and "embarrassment to government" appear as criteria for classification of information as secret and confidential respectively. These are obviously too vague and general and need to be deleted.

5.4 We are also of the view that the level of authority for deciding classification grading should be raised by one level in order to ensure adequate application of mind and well considered decisions.

5.5 We also find that the present instructions do not prescribe any specific period for validity of classification and merely state that a document shall remain classified as long as required. We recommend that a specific limitation on such period may be prescribed and this should be twenty years - excepting cases where a particular information may require to be kept classified beyond this period for reasons of national security/national interest. In such cases the competent classifying authority should be required to record the justification in writing.

5.6 We also note that the Manual of Departmental Security Instructions is itself classified as Confidential. Consequently, it appears that it is not widely available to officers in the government which may be a contributory factor for lack of uniformity and proper application of the prescribed guidelines. We, therefore, recommend that its classification should be downgraded to "Restricted" and it should be freely available to officers at least of the rank of Under Secretary and above.

5.7 Our recommendations relating to amendments to Manual of Departmental Security Instructions are at *Annexure F of the Report*.

## Administrative Measures for making freedom of information effective.

6.1 The proposed Act will not be fully effective unless the Government takes steps to build capacity in its systems to cope with the expected demand for information. There will have to be a substantial upgradation of the management of information in the Government and other organisations covered by the Act. We are informed that the Government, as a part of its thrust in the direction of administrative reforms, have made plans for computerisation of operations. These plans will have to be pushed through with vigour. Similarly, it will need to be stressed to the concerned organisations that they must develop modern management informations systems to ensure quick and easy access to information held in their records. We are informed that the Government have already launched a project for public facilitation counters in identified Ministries/ Departments with public interface. This is welcome measure and its coverage may be widened as expeditiously as possible.

## Training and Reorientation of Employees

7.1 The full potential of the Freedom of Information Act would not be realised unless a culture of openness and transparency pervades the Government and its agencies. Such a culture cannot come about unless there is a fundamental shift in the attitudes and ethos among employees. **It would be necessary for the Government to make this a central component of the training inputs that it provides for its employees.** The experience in other countries which have enacted freedom of information legislation suggests that this is a specialised field and officers need to be properly trained to exercise sound judgement in interpreting the provisions of the relevant legislation while taking decisions relating to disclosure of information. Special skills and aptitudes would need to be developed among officers to ensure that the provisions of Freedom of Information Act are implemented in their true intent and spirit and without jeopardising public interest. **It would, therefore, be essential for the Government to develop special training modules for this purpose.**

## Conclusion

8.1 It only remains for us to thank the Government for having given us the opportunity to devote ourselves to such an important task. The Freedom of Information Bill, when passed, will without doubt be one of the most significant milestones in the history of our country. We are confident that the Government will take all necessary steps



to bring forward the draft legislation before the Parliament as soon as possible and appropriately during the fiftieth year of our independence. Any measure of this nature requires the widest possible consultation and debate in the community. We, therefore, **suggest for the consideration of the Government that they may give wide publicity to our Report and invite reactions from all sections of society.** We are told that a Conference of Chief Ministers is being held on May 24, 1997. This may be a good opportunity for the Central Government to circulate this Report and elicit the views of Chief Ministers of the States.

8.2 We would like to place on record our special and profound appreciation of the work done by the concerned officers: Dr. P.S.A. Sundaram, Additional Secretary, Department of Administrative Reforms, and Shri Y.G. Parande, Director, Department of Personnel and Training.

Sd/-  
(H.D.Shourie)  
Chairman

Sd/-  
(Soli J. Sorabjee)  
Member

Sd/-  
(S. Narendra)  
Member

Sd/-  
(A. Sinha)  
Member

Sd/-  
(R.N.Verma)  
Member

Sd/-  
(V. Saksena)  
Member

Sd/-  
(N.S. Madhavan)  
Member

Sd/-  
(Shashi Prakash)  
Member

Sd/-  
(Harinder Singh)  
Member

New Delhi.  
May 21, 1997

## Freedom of Information Bill, 1997

A Bill to provide freedom to every citizen to secure access to information under the control of public authorities, consistent with public interest, in order to promote openness, transparency and accountability in administration 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. *Short title and commencement*

- (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. *Definitions*

In this Act, unless the context otherwise requires:-

- (a) "appropriate Government" means the Government of India or the Government of a State/Union Territory, as the case may be.
- (b) "document" means a document in any form and includes any printed or written material, information stored or recorded by means of any devices and visual images which are reproducible, whether with or without the aid of any device.
- (c) "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; and where the information is stored in computers or any other electromagnetic device, the facility of access to it through terminals or supply of printouts.
- (d) "information" means any material relating to the affairs, administration or decision of a public authority and includes any document or record relating to the affairs of the public authority ;

- (e) "Public Information Officer" means the Public Information Officer appointed under the Act.
- (f) "prescribed" means prescribed by rules under this Act.
- (g) "public authority" includes :
  - (i) the Government of India, the Government of each of the States/Union Territories, local bodies and other bodies owned or substantially controlled or funded by the Government of India or Government of a State/Union Territory and the administrative offices of the Supreme Court, High Courts, subordinate Courts and of Parliament and State Legislatures;
  - (ii) a company, corporation, trust, firm, society or a cooperative society substantially funded or controlled by the Government;

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.
- (h) "third party" means a person or an organization other than the person making a request for access to information and a public authority.

### 3. *Freedom of Information:*

Subject to the provisions of this Act, every citizen shall have the freedom to seek information from a public authority.

### 4. *Obligations on public authorities:*

- (1) Every public authority shall be under a duty to maintain all its records, in accordance with its operational requirements, duly catalogued and indexed and, subject to the provisions of sections 9 and 10, grant access to information to any person requesting for such access.
- (2) Each public authority shall publish periodically, and keep updated, information indicating:
  - (i) particulars of its organization, functions and responsibilities;
  - (ii) description of its decision making processes in terms of procedures and powers and responsibilities of its officers and employees;

- (iii) norms for performance of activities such as prescribed periods for their processing and completion of physical and financial targets etc., and the actual achievements with reference to such norms;
  - (iv) classes of records under its control including the rules, regulations, instructions and list of manuals etc. used by its employees for carrying out activities;
  - (v) the facilities provided for access to information; and
  - (vi) the name, designation and other relevant particulars of the Public Information Officer, to whom requests for information may be addressed.
- (3) 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.

#### *5. Appointment of Public Information Officers:*

- (i) Every public authority shall appoint officers to be called Public Information Officers in its offices.
- (ii) It will be the responsibility of Public Information Officers to deal with requests for access to information and to render reasonable assistance to requesters seeking access to information.

#### *6. Requests for Access to Information:*

A request under this Act shall be made to the appropriate Public Information Officer in writing and shall specify, as clearly as possible, the particulars of the information, document or records to which access is being sought:

Provided that where a requester cannot, for valid reasons, make a request in writing, the Public Information Officer may either accept an oral request or render reasonable assistance to the requester in making a written request.

#### *7. Disposal of Requests:*

- (1) Upon a request being made to him, the Public Information Officer shall provide access to the information, where it is decided not to refuse such access, as expeditiously as possible and in any case within 30 days of the receipt of the request;

Provided that where it is not possible to provide access within 30 days, the period may be extended upto a maximum of another 30 days, for reasons to be recorded, and communicated to the requester, in writing.

Provided further that where it is decided to grant access to information on payment of any additional fee, representing the cost of providing such access, the Public Information Officer shall send an intimation to the requester, accompanied by details of fees determined by him, requesting him to deposit the fees; and the period intervening between the dispatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period prescribed for grant of access to information.

- (2) Where the Public Information Officer decides to refuse access, such decision shall also be taken within 30 days of the receipt of the request and it shall be communicated to the requester in writing, setting out the precise grounds and the relevant provisions of the Act, on which such refusal is based and mention the remedy open to the requester.
- (3) Access to information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of a public authority or would be detrimental to the safety or preservation of the document in question.

#### *8. Deemed Refusal of Request:*

Where the decision on a request for access to information is not communicated to the requester within 30 days, or within the extended period, the request shall be deemed to have been refused and the requester shall have the right to make a review application in accordance with the provisions of the Act.

#### *9. Exemption from disclosure of Information:*

Information covered by any of the following categories shall be exempted from disclosure under the provisions of this Act:

- (i) information disclosure of which would prejudicially affect the sovereignty and integrity of India, security of the State, conduct of international relations, including information received in confidence from foreign Governments, their agencies or international organisations;

- (ii) information disclosure of which would prejudicially affect the conduct of Centre-State relations, including information exchanged in confidence between the Central and State Governments or any of their authorities/agencies;
- (iii) information in the nature of Cabinet papers, including papers prepared for submission to Cabinet or submitted to Cabinet, other than the documents whereby such decisions are published;
- (iv) information in the nature of internal working papers such as inter-departmental/ intra-departmental notes and correspondence, papers containing advice, opinions, recommendations or minutes for the purposes of deliberative processes in a public authority;

Provided 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.

- (v) information disclosure of which would prejudicially affect the enforcement of any law including detection, prevention, investigation or suppression of crime or contravention of any law; or would lead to incitement to an offence; or would prejudicially affect the operations of any intelligence organizations to be specified by the appropriate Government; or would prejudicially affect public safety or the safety of an individual; or would prejudicially affect fair trial or adjudication of a pending case; or would reveal the existence or identity of a confidential record or source of information; or would prejudice future supply of information relating to violation or contravention of any law;
- (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 of a public authority; or would cause unfair gain or loss to any individual or organization;

Without prejudice to the generality of this provision, such information may include premature disclosure of proposals relating to

- (a) taxes, including duties of Customs and Excise;
- (b) currency, exchange or interest rates;

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- (c) regulation or supervision of financial institutions.
- (vii) information the disclosure of which would prejudicially affect the management of services under, and operations of, public authorities;
- (viii) information in the nature of trade or commercial secrets or any information having a commercial value which is likely to be prejudicially affected by such disclosure, or information the disclosure of which is likely to prejudicially affect the competitive position of a third party;

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

- (ix) information the disclosure of which would not subserve any public interest;
- (x) information which would cause unwarranted invasion of the privacy of an individual;
- (xi) information the disclosure of which may result in the breach of Parliamentary privileges or would amount to violation of an order of a competent Court.

#### 10. *Grounds for Refusal of Access in certain cases:*

Without prejudice to the provisions of Section 9, a Public Information Officer may refuse access to information where:

- (i) the request is too general or is of such a nature that, having regard to the volume of information required to be retrieved or processed for fulfilling it, it would involve disproportionate diversion of the resources of a public authority or would adversely interfere with the 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 Public Information Officer to render help as far as possible, to the requester to reframe his request in such a manner as may facilitate compliance with it;

- (ii) the request relates to information that is required by law or convention to be published at a particular time; or
- (iii) the request relates to information that is contained in published material available for sale.

#### 11. *Fee*

The appropriate Government may prescribe the fees to be charged for access to information, which may include an application fee and such additional fees as may represent the cost of providing access.

Provided that the fees may be waived where the disclosure of information can be said to be in the larger public interest.

#### 12. *Severability.*

If a request for access to information is refused on the ground that it is in relation to information which is exempted from disclosure, then notwithstanding anything contained in this Act, access may be given to that part of the document which does not contain any information that is exempted from disclosure under this Act and which can reasonably be severed from any part that contains exempted information.

#### 13. *Third Party Intervention.*

Where a public authority intends to disclose information which relates to, or has been supplied by a third party and has consistently been treated as confidential by such third party, a notice may be given to it of the intended disclosure inviting it to make a representation against the intended disclosure, within 14 days of such notice. The Public Information Officer shall take such representation, if any made, into consideration while taking a decision on the request for information in question.

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

#### 14. *Internal Review.*

- (1) A requester, whose request for access to information has been refused by the Public Information Officer, may make an application, within 30 days of the refusal, for review of the decision to the Head of Department, or such other authority as may be prescribed, having jurisdiction over the office of the public authority to which the request had been addressed.
- (2) The reviewing authority shall dispose of the application within 30 days.



Provided that, where the application for review is rejected, the grounds for rejection shall be communicated to the applicant in writing setting out the appellate remedy available to the applicant.

- (3) In the case of third party information, the reviewing authority shall also follow the procedure set out in section 13 of the Act.
- (4) A review application may also be made as regards the fee proposed to be charged by the Public Information Officer for access to information.

#### 15. *Appeals.*

- (1) An appeal against the decision of a reviewing authority may be made, within 30 days of such decision. The appeal shall be considered and disposed of as a complaint under the Consumer Protection Act, 1986.
- (2) It shall be disposed of by the District Forum, the State Commission or the National Commission, as the case may be, by a written order, within 30 days.
- (3) The concerned Forum or the Commission, as the case may be, on an application by the public authority, hold proceedings in camera.

Provided that no document or record shall be withheld from the perusal of the appellate authority.

#### 16. *Publication of Certain Matters by Public Authorities.*

Notwithstanding anything contained in this Act or in any other law for the time being in force, but subject to the provisions of section 9, it shall be the duty of every public authority which proposes to initiate any project or activity, to appropriately publish, 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 and control as affect the general public.

#### 17. *Protection of action taken in good faith*

No suit, prosecution or other legal proceedings shall lie against any public authority 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.

18. *The Act to have overriding effect.*

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

19. *National Council for Freedom of Information.*

- (1) The Central Government may, by notification in the Official Gazette, establish with effect from such day as may be specified in the notification, a Council to be known as the National Council for Freedom of Information.
- (2) The National Council may consist of the following members -
  - (a) the Minister in charge of Department of Administrative Reforms in the Central Government, who shall be its Chairman, and
  - (b) such other official and non-official members representing such interests as may be prescribed;
  - (c) the Council may meet as and when necessary, with at least one meeting being held every year;
  - (d) the time and place of the meetings of the Council shall be as the Chairman thinks fit and it shall observe such procedure as may be prescribed to transact its business.

20. *Objects of the National Council.*

The object of the National Council shall be to promote freedom of information in the country and it shall deal with all matters related to freedom of information such as

- (a) review of the operation of the Act and rules made thereunder,
- (b) review of the administrative arrangements and procedures to secure for citizens the fullest possible access to information,
- (c) research and documentation as regards management of information with a view to improve the extent and accuracy of information being made available under the Act, and

- (d) to advise the Government on all matters related to freedom of information, including training, development and orientation of employees to bring in a culture of openness and transparency.

#### 21. *State Councils for Freedom of Information*

- (1) The State Government may, by notification in the Official Gazette, establish with effect from such day as may be specified in the notification, a Council to be known as the State Council for Freedom of Information.
- (2) The State Council may consist of the following members -
  - (a) the Minister in charge of Department of Administrative Reforms in the State Government, who shall be its Chairman, and
  - (b) such other official and non-official members representing such interests as may be prescribed;
  - (c) the Council may meet as and when necessary, with at least one meeting being held every year;
  - (d) the time and place of the meeting of the Council shall be as the Chairman thinks fit and it shall observe such procedure as may be prescribed to transact its business.

#### 22. *Objects of the State Council*

The object of the State Council shall be to promote the freedom of information within the State and it shall deal with the matters specified in section 20 in respect of the State.

#### 23. *Power to make rules*

- (1) The appropriate 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 appropriate Government under this Act.

#### 24. *Laying of Rules.*

- (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.

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## 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.

**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, 1973**

(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 the officer 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

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- (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, the Court shall, before adjudicating upon his objection, ascertain from 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."

**Draft of proposed provision to be inserted at the appropriate place in the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973.**

"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."

## Proposed amendment to Rule 11 of CCS(Conduct) Rules, 1964

### Existing Rule

#### 11. Unauthorised 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.

**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.

### Proposed Rule

#### 11. Communication of Official 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** - 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.

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**Proposed amendment to Rule 11 of CCS (Conduct) Rules, 1964**  
**(After the Freedom of Information Act comes into force)**

**Existing Rule****11. Unauthorised 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.

**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.

**Proposed Rule****11. Communication of Official Information:**

Every Government servant shall, in performance of his duties in good faith, communicate information to a member of public or any organisation in accordance with the Freedom of Information Act,

**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.

## Proposed Amendments to Manual of Departmental Security Instructions

### UPGRADING AND DOWNGRADING (PARA 2.3).

#### Existing:

Documents once classified as "Top Secret", "Secret", "Confidential" and "Restricted" should remain so classified as long as required. A recipient officer of appropriate rank in a Department or Ministry may upgrade the security classification of a document received from outside, but this raised classification will be limited only to the Ministry or Department. He will, however, have no authority to downgrade the security classification of a document received, without the concurrence of the originator. Within the same department, an officer superior to the originator would have the authority to downgrade or upgrade the classification.

#### Proposed:

Documents once classified as "Top Secret", "Secret", "Confidential" and "Restricted" should remain so classified as long as required but not exceeding 20 years. However, the competent classifying Officer may, for reasons to be recorded in writing, authorise continued classification within 20 years of specific information the disclosure of which would cause damage to national security or national interest. A recipient officer of appropriate rank in a Ministry or Department may upgrade the security classification of a document received from outside, but this raised classification will be limited only to the Ministry or Department. He will, however, have no authority to downgrade the security classification of a document received, without the concurrence of the originator. Within the same department, an officer superior to the originator would have the authority to downgrade or upgrade the classification.

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## INFORMATION DESERVING CLASSIFICATION (PARA 3).

### Existing:

It would be for each Ministry/Department to identify the information which deserves to be given a security classification. Illustratively, information concerning the following would deserve to be classified:-

- i) Military plans, weapons and operations;
- ii) The vulnerabilities or capabilities of systems, installation or plans relating to national security;
- iii) Intelligence activities (including special activities and identities of personnel working in Intelligence/Security Organisations who are or can be employed on under-cover duties) or Intelligence sources or methods;
- iv) Foreign relations or foreign activities of the country;
- v) Scientific, technological or economic information having a bearing on national security;

### Proposed:

It would be for each Ministry/Department to identify the information which deserves to be given a security classification. Ordinarily, only such information should be given a security classification which would qualify for exemption from disclosure under the Freedom of Information Act. Illustratively, the following categories of information would deserve to be classified:-

- i) Information relating to military plans weapons and operations;
- ii) Information relating to the vulnerabilities or capabilities of systems installation, projects or plans relating to national security;
- iii) Information relating to intelligence activities (including special activities), Intelligence sources or methods, or Cryptology;
- iv) Information relating to foreign relations or foreign activities of the country including confidential sources;
- v) Information relating to scientific, technological or economic information having a bearing on national security;

vi) Nuclear energy programmes or measures for safeguarding nuclear materials or facilities;

vii) Cryptology;

viii) Confidential source;

ix) Information received in confidence; and

x) Important negotiations or contracts.

vi) Information relating to nuclear energy programmes or measures for safeguarding nuclear materials or facilities;

vii) Information received in confidence;

viii) Information whose disclosure would prejudice the prevention, investigation or detection of crime/the apprehension of offenders;

ix) Information the disclosure of which would prejudicially affect the Government's ability to manage the economy or would prejudicially affects the legitimate, economic and commercial interest of a public authority; or would cause unfair gain or loss to any individual or organisation;

x) Information relating to negotiations or contracts.

## TABULAR STATEMENT SUMMARISING SOME OF THE INSTRUCTIONS

### CLASSIFICATION

Existing:

*Top Secret:*

For information, the unauthorised disclosure of which may cause exceptionally grave

Proposed:

For information, the unauthorised disclosure of which may cause exceptionally grave

damage to national security or national interest.

*Secret:*

For information, the unauthorised disclosure of which may cause serious damage to national security or national interest, or serious embarrassment to the Government.

*Confidential:*

For information, the unauthorised disclosure of which may cause damage to national security or would be prejudicial to national interests or would embarrass the Government.

damage to national security or national interests.

For information, the unauthorised disclosure of which may cause serious damage to national security or national interests.

For information, the unauthorised disclosure of which may cause damage to national security or would be prejudicial to national interests.

#### OFFICER AUTHORISED TO ACCORD THE GRADING

**Existing:**

**Proposed:**

*Top Secret*

i) Not below Deputy Secretary

i) Not below Joint Secretary

*Secret*

ii) Not below Under Secretary

ii) Not below Deputy Secretary

*Confidential*

iii) Not below Section Officer

iii) Not below Under Secretary

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,<br>Jt. Secy., Department of<br>Personnel and Training | Member |

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 identify 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.

Sd/-  
(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.

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

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

Principal Information Officer, Ministry of Information & Broadcasting, 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)

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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.

#### 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.

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 43 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 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.

## 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.

**Department of Personnel and Training**

**Secret**

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.

F.N.34011/1(S)/97 - Estt.(B)

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Copy No 10-

F.No.34011/1/(s)/97-Estt.(B)

Department of Personnel and Training

New Delhi, the 5th Nov., 1997

- 5 NOV 1997

Subject: Legislative proposal for Freedom of Information and amendments to related Acts and Rules.

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The undersigned is directed to refer to the meeting of the Group of Ministers on the above subject held in the Chamber of the Home Minister on October 28, 1997. The minutes of the said meeting are enclosed.

2. The Home Minister will take the next meeting of the Group of Ministers at 10.30 A.M. on November 12, 1997 in his Chamber.

CS/L

71 Barinder Singh

( Barinder Singh )

Joint Secretary to the Govt. of India

- 14/12  
from  
copy  
1
- ✓ 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. Minister of State (Independent charge)  
Ministry of Law & Justice

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...2/-

- 5 NOV 1997

Copy to:

- Let*
- ✓ 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. Shri Pawan Chopra, Additional Secretary, Cabinet Secretariat.
  - ✓ 5. Shri M. Ranjan, Joint Secretary, Cabinet Secretariat.

( Harinder Singh )

Joint Secretary to the Govt. of India

5 NOV 1997

*Let* ✓ C C Dr. P S A Sundaram, Addl. Secy (H.A.)



cc. PPS to Secy (P).

*Issued 10 letters only*



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

**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 it.

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 of 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.

## Department of Personnel and Training

Secret

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.

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.

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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.

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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;

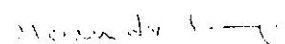
provided that an appeal against the refusal of the information under clause (a) above, will lie to a Board headed by the Cabinet Secretary of the Government of India or the Chief Secretary of State Government as the case may be and the Board shall dispose of the appeal within a period of 30 days from 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

Subject:- Legislative proposal for Freedom of Information and amendments to related Acts and Rules.

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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.

*Sd/-*  
(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:

- 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.

  
(Y.G.Parande)  
Director

Copy also to PPS to Secretary(P).

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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*

**(Harinder Singh)**

Joint Secretary.

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.

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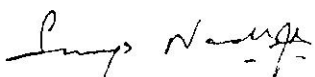
The undersigned is directed to refer to this Department's note of even number dated the 26th/29th December, 1997 on the above subject and to enclose a copy of the Note for the consideration of the Group of Ministers in the meeting to be held at 11.30 A.M. on 5th January, 1998.

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

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5.12.1997 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.
1. 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).

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 <sup>to</sup> 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  
(Harinder Singh)

Joint Secretary to the Government of India

New Delhi,

Dated 1st January, 1998.

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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 significant step in the fulfilment of the assurance contained in the Common Minimum

F.No.34011/1(s)/97-Estt (B)

Secret

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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

Department of Personnel & Training

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

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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.

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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 to the Report.



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- 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].

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- (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

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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

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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

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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

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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

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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

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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.



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- 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

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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.**

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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 Ministers 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

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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 qualitatively 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.

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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

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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

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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

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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



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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.

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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

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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

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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

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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

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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

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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.

**RIGHT TO INFORMATION BILL, 1997  
(PRESS COUNCIL - NIRD BILL OF 1997)**

**Finalised at the**

**National Workshop on Right to Information  
3-4 september, 1997**

**held at the National Institute of Rural Development  
Rajendranagar, Hyderabad.**

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## Statements of Objects and Reasons

The Right to Information Bill 1997 seeks to fulfil a long standing demand on Indian governance which was forcefully made by the Report of Second Press Commission (1982) which stated that:

*A popular government without popular information or means of acquiring is but a prologue to a farce*

More recently the need for a "Right to Information Bill" has been recommended in the report of Working Group on Right to Information and Promotion of Open Government and the Press Council of India. Such a Bill is all the more necessary in the light of the passing of the Public Records Act 1993 and various legislative initiatives by various state governments to support transparency and open government.

In a changing economy, transparency and openness in government is absolutely necessary to ensure that programmes and funds earmarked for the welfare of the disadvantaged fulfil the promise of liberation of the poor. Various social action groups in Rajasthan and elsewhere have shown the importance of people having knowledge of their entitlements. Many cases involving a misuse of programmatic resources can be avoided if there is transparency and openness about the use of funds.

The Right to Information is a part of the Right to Free Speech, Life and Liberty and good governance which are guaranteed in the fundamental rights.

Hence this Bill.

New Delhi  
27 September, 1997

*George Fernandes*

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

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LEGISLATION OF "FREEDOM OF INFORMATION ACT, 1998"  
CHRONOLOGY OF EVENTS.

<u>Date</u>	<u>Event</u>
Jan 2, 1997	Govt. sets up a 'Working Group' on "Right to Information and Transparency" under the Chairmanship of Shri H.D.Shourie, with Shri Soli Sorabjee as one of the 8 members.
Jan 10, 1997	Working Group hold its first meeting.
Jan 18, 1997	Working Group holds its second meeting.
Feb 19, 1997	Working Group holds its third meeting.
March 14, 1997	Working Group holds its fourth meeting.
April 12, 1997	Working Group holds its fifth meeting.
April 25, 1997	Working Group holds its sixth meeting.
May 21, 1997	Working Group submits its Report to the Government.
May 24, 1997	Chief Minister's Conference on "Effective and Responsive Govt." - consensus that a legislation for Right to Information should be enacted by Govt. of India as early as possible.
June 3, 1997	Copies of Working Group's report circulated to all Ministries/Departments for views/comments.
June 11, 1997	Copies of Working Group's report circulated to all State Govts./UTs for views/comments.
July 29, 1997	Committee of Secretaries hold its first meeting to consider DOPT's note on FOI Bill.
July 30, 1997	While answering supplementaries to a Starred Question on 30.7.97, P.M. makes a Statement in Lok Sabha that "Right to Information Bill" will be introduced in the winter session of 1997

Aug 15, 1997	Announcement made by PM in course of speech on the 50th Independence Day that the FOI Bill will be introduced in the Winter Session .
Aug 21, 1997	Committee of Secretaries holds its second meeting.
Sept 3-4, 1997	"National Workshop on Right to Information " organised by National Institute of Researach & Development.
Sept 23, 1997	Committee of Secretaries holds its third meeting.
Sept 26, 1997	Core Group set up to finalise the draft FOI Bill.
Oct 6, 1997	Core Group holds its second meeting.
Oct 17, 1997	"Note for Cabinet" sent to Cabinet Sectt. for obtaining Cabinet's approval to introduction of FOI Bill in Parliament.
Oct 20, 1997	Meeting of the Cabinet.
Oct 23, 1997	Cabinet Secretariat constitutes the Group of Ministers.
Oct 28, 1997	Group of Ministers holds its first meeting.
Nov 24, 1997	Workshop on "Right to Information" organised at Yashada by DOPT in collaboration with LBSNAA.
Dec 17, 1997	Group of Ministers holds its second meeting.
Jan 5, 1998	Group of Ministers holds its third meeting.
Feb 12, 1998	Draft Bill as finalised by Group of Ministers, referred to Law Ministry.
March 6, 1998	Law Ministry concurs in FOI Bill.

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NOTE FOR GROUP OF MINISTERS

Subject : Amendment to Section 5 of the Official Secrets Act, 1923.

A proposal to amend Section 5 of the Official Secrets Act, 1923 was approved by a Group of Ministers on 5.1.1998. The Group of Ministers approved the amendments proposed. Thereafter, a Note for Cabinet was prepared which is placed below. The minutes of the meeting of Group of Ministers held on January 5, 1998 may be seen at F/A.

2. The draft Cabinet Note is submitted for reconsideration of the Group of Ministers.

*Sangita Gairola*  
(Sangita Gairola)  
Joint Secretary (IS-I)  
12.5.98.

Shri Harinder Singh, JS(E), Deptt. of Personnel.

\* 15 copies of draft Cabinet Note are enclosed.

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Minutes of the meeting of Group of Ministers held on January 5, 1998 at 11.30 A.M. in the Chamber of the Minister of Home Affairs.

P R E S E N T

1. Shri Indrajit Gupta, Minister of Home Affairs.
2. Shri Janeshwar Mishra, Minister of Petroleum & Natural Gas

In Attendance

1. Shri Arvind Varma, Secretary(Personnel).
2. Shri B.P. Singh, Home Secretary.
3. Dr. Rabhubir Singh, Secretary, Legislative Department.
4. Shri Nikhil Kumar, Special Secretary, Ministry of Home Affairs.
5. Shri S. Lakshminarayanan, Additional Secretary, Department of Pension & Pensioners Welfare.
6. Shri B.K. Halder, Joint Secretary, Ministry of Home Affairs.
7. Shri M. Ranjan, Joint Secretary, Cabinet Secretariat.
8. Shri A. Sinha, Joint Secretary, Department of Legal Affairs.
9. Shri Harinder Singh, Joint Secretary, Department of Personnel & Training.
10. Shri Y.G. Parande, Commissioner(Customs), Sahar Airport, Mumbai.
11. Shri Swarup Nandkeolyar, Director, Department of Personnel & Training.
12. Shri A.K. Paitandy, Deputy Secretary, Ministry of Home

Department of Personnel & Training

Subjective:- Legislative proposal for Freedom of Information and amendments to related Acts and Rules.

The Group of Ministers considered:

- i) The Note dated January 1, 1998 of the Department of Personnel & Training; and
- ii) The Note dated December 26, 1997 of the Ministry of Home Affairs,

submitted in pursuance of the decisions taken during the last meeting of the Group held on December 17, 1997. The proposal contained in the Note of the Department of Personnel & Training was approved.

2. Similarly, the Group of Ministers carefully considered the proposal contained in the Note of 26th December, 1997, of the Ministry of Home Affairs and approved amendments proposed in Section 5 of the Official Secrets Act, 1923, the inclusion of an enabling provision (Section 16) and also the subsequent Section 17, in the Official Secrets Act to make rules etc., and the official secrets rules, as contained in para 36 of the draft Cabinet Note and at Annexure-IV of the Note.

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COPY NO.

F.No.II/21011/49/97-IS(US D.II)  
MINISTRY OF HOME AFFAIRS

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NOTE FOR THE CABINET

Subject : Amendment to Section 5 of the Official Secrets Act, 1923.

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BACKGROUND:-

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, <sup>and</sup> 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 Act 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

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Section. It is this wide scope and "catch all" nature of Section 5 which has been the target of wide criticism.

INITIAL RECOMMENDATION OF THE COMMITTEE OF SECRETARIES:-

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.

CONSTITUTION OF THE WORKING GROUP ON RIGHT TO INFORMATION AND ITS SUGGESTIONS IN RESPECT OF SECTION 5 OF THE OFFICIAL SECRETS ACT, 1923 AS WELL:-

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,

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Common Cause, and comprising representatives of Supreme Court, 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 formulation 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

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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.

CONSULTATIONS WITH OTHER MINISTRIES IN RESPECT OF THE  
RECOMMENDATIONS OF THE WORKING GROUP ON SECTION 5 OF THE  
OFFICIAL SECRETS ACT, 1923:-

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.

RESPONSE OF THE MINISTRY OF DEFENCE TO THE RECOMMENDATION  
AND MHA'S VIEW POINT ON THE SAME:-

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

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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 affect 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 modifications suggested by the Ministry of Defence are dealt with <sup>and</sup>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

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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 unnecessary 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

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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, Ministry of Defence, whose comments have been considered in this Ministry, have partially accepted as stated in paras 6 and 7 of the note.

PLACING OF THE MATTER BEFORE THE CABINET IN ITS MEETING HELD  
ON 1ST NOVEMBER, 1997 AND THE CABINET'S DIRECTION:-

9. The proposal for amendment to Section 5 of the Official Secrets Act, was placed before the Cabinet. The

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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.

DELIBERATIONS AND 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

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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.

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.

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EMERGENCE OF THE IDEA THAT THE DEFINITION OF THE OFFICIAL  
SECRETS SHOULD FLOW FROM THE PROPOSED LEGISLATION ON  
"FREEDOM OF 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 Secretaries, held on 27.11.1997, a draft formulation of 'Official Secrets' as part of the amended Section 5 of the Official

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Secrets 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.I. 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

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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.

FINAL SHAPE OF RECOMMENDATIONS BY THE COMMITTEE OF SECRETARIES:-

20. In continuation of the meetings held on 24.11.1997

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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 scrutiny.

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

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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

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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.

RESPONSE OF THE MINISTRY OF HOME AFFAIRS TO THE  
RECOMMENDATIONS OF THE COMMITTEE OF SECRETARIES AND THE  
FINAL FORMULATIONS ON THE PROPOSED AMENDMENTS, ETC.:-

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., were 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

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relating to claim of privilege in respect of certain important documents, the subject, as a whole, were referred to the Attorney General of India in a comprehensive manner and his final opinion is still awaited. In fact, the pinpointed issue and its possible impact on other relevant aspects in the Official Secrets Act, 1923 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 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 was then placed before the Group of Ministers, as desired by the Committee of Secretaries.

MEETING OF THE GROUP OF MINISTERS AND THE DECISION TAKEN:-

32. The group of Ministers in their meeting held on 5th January, 1998, further deliberated on the matter and the

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proposal contained in the Note dated 26th December, 1997, of the Ministry of Home Affairs on this issue of Amendment to Section 5 of the Official Secrets Act, 1923, was approved. Union Home Secretary further informed the Group of Ministers that the Attorney General of India could be requested to tender his advice on the point relating to claiming of privilege in respect of certain documents, as and when the Union Cabinet takes-up this amendment proposal for its consideration.

A POINT RAISED BY THE CABINET SECRETARIAT AND THE  
CLARIFICATION OF MINISTRY OF HOME AFFAIRS:-

33. After this meeting of the Group of Ministers, there was a reference from the Cabinet Secretariat, dated 6th January, 1998, drawing attention to this Ministry's Draft Cabinet Note, circulated for the Group of Ministers on 5th January, 1998. In this reference, the attention of the Ministry of Home Affairs has been drawn to the decision of the Committee of Secretaries recorded at para 21(ii) on page 12 of the Draft Cabinet Note stating that the new Section 16 should provide that 'classification shall not be subject to judicial scrutiny'. In the reference of the Cabinet Secretariat it has been mentioned that 'the same does not appear to have been reflected in the proposed Section 16 on page 22 of the aforesaid Cabinet Note'.

34. Following receipt of this reference through the Department of Personnel, Ministry of Home Affairs once again

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looked into the details already furnished from its end in the matter. The recommendations of the Committee of Secretaries for a suitable provision in Sub-Section 2 of Section 16 has also been carefully seen. In this connection it may be mentioned that the exact phraseology of the new Section 16 including that of the proviso was undertaken by MHA in consultation with Shri A. Sinha, Joint Secretary & Legal Adviser, Ministry of Law. In order to meet the guidelines available with MHA from the Committee of Secretaries, it has already been mentioned below Sub-Section 2 of Section 16 that 'a classification made by a competent authority shall be final'. Moreover, there is a new Section, Section 17, which also contains two Sub-Clauses and also a proviso after the same which indicate that no Court, other than a High Court or the Supreme Court, shall call for or peruse a matter classified as 'Top Secret'. In addition to all these, even in Rule 8 of the proposed Rules available at page 26 of the Ministry of Home Affairs' Cabinet Note, it has been made abundantly clear that 'where privilege in respect of an Official Secret, other than 'Top Secret matter' has been claimed, the Court or the Commission of Inquiry, as the case may be, shall not decide that claim unless it has given a reasonable opportunity of hearing to the person claiming privilege and shall pass a speaking order'. It has also been made incumbent on the judicial forum to give reasonable opportunity to the aggrieved party for seeking judicial remedy against Court's order in such matters. It would also not be out of place to mention that even in Section 5(i) of the new provision has been put in

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such a manner as to place strong constraints on all judicial forums.

35. Moreover, in para 29 of the Ministry of Home Affairs' Cabinet Note, it has been explained comprehensively that another relevant pointed issue regarding claiming of privilege in respect of documents with possible impact of the same on other relevant aspects of the Official Secrets Act has figured in the discussions with the Attorney General of India on 16th December, 1997, and as desired by the Attorney General of India, comprehensive details pertaining to this matter and the Official Secrets Act, 1923, as a whole, have already been furnished to him and his opinion is awaited. In this connection, as mentioned in para 32, Home Secretary informed the Group of Ministers that in course of time Union Cabinet could take into consideration the view point of the Attorney General of India by inviting him in the Cabinet Meeting, as and when the Cabinet takes-up this amendment proposal for further consideration.

CONCLUSION:-

36. The matter is now placed before the Cabinet for consideration. Approval of Cabinet is solicited to our proposal contained in Annexure-IV of this Cabinet Note under three heads namely (i) Amendments proposed to Section 5 of

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## 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.

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EXISTING PROVISIONPROPOSED DRAFT

5(1). If any person having in his possession or control any secret official code or pass word or any sketch, plan, model, article, note, document or information which relates to or is used in a prohibited place or relates to anything in such a place, (or which is likely to assist, directly or indirectly an enemy or which relates to a matter the disclosure of which is likely to affect the sovereignty and integrity of India, the security of the State or friendly relations which foreign States or which has been made or obtained in contravention of this Act) or which has been entrusted in confidence to him by any person holding office under Government, or which he has obtained or to which he has had access owing to his position as a person who holds or has held office under Government, or as a person who holds or has held a contract made on behalf of Government, or as a person who is or has been employed under a person who holds or has held such an office or contract -

(a) wilfully communicates the code or pass word, sketch, plan, model, article, note, document or information to any person other than a person to whom he is authorised to communicate it or a Court of Justice or a person to whom it is, in the interests of the State, his duty to communicate it; or

(b) uses the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety or the State; or

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.

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(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.

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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 <sup>take</sup> 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 affect 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.

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

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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.

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11. 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 anything 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

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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.

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NOTIFICATION

GSR In exercise of the powers conferred by Section 16 of the Official Secrets Act, 1923 (19 of 1923) the Central Government makes the following rules namely:-

1. Short title, commencement and application.

(1) These rules may be called 'the Official Secrets Rules, 1997'.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. DEFINITION:

In these rules unless the context otherwise requires:-

(a) "Act" means the Official Secrets Act, 1923 (19 of 1923).

(b) All other words and expressions used in these rules and not defined, but defined in the Act, shall have the same meaning as respectively assigned to them in the Act.

3. An 'Official secret' may be classified as 'Top Secret', 'Secret' or 'Confidential';

Provided that a classification in respect of a matter made prior to coming into force of these rules shall continue to be in force until that matter has again been classified under these rules.

4. An Official Secret shall be accorded -

(i) 'Top Secret' grading, if the disclosure of the same is likely to cause

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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.

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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 matter 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.

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SECRET  
Copy No.

No. 34011/1(s)/97-Estt.(B)  
Government of India

Ministry of Personnel, Public Grievances & Pensions  
Department of Personnel & Training

New Delhi, dated the 20th May, 1998  
20 MAY 1998

Subject:- Legislative proposal for Freedom of Information  
and amendments to related Acts and Rules.

Reference is invited to this Department's Notes  
of even number dated the 8th May and 12th May, 1998, on  
the above subject.

2. A copy of the minutes of the meeting of the  
Group of Ministers held in the Chamber of Home Minister  
on 14th May, 1998, is enclosed.

*PR Singh*

(Rakesh Malhotra)  
Desk Officer

- Acc*
- ★ 1. P.S. to Home Minister
  - ✓ 2. P.S. to Minister of Defence
  - ✓ 3. P.S. to Minister of Law, Justice and Company Affairs
  - ✓ 4. P.S. to Minister of Information & Broadcasting
  - ✓ 5. P.S. to Minister of State in the Ministry of External Affairs.
  - ★ 6. P.S. to Minister of State for Personnel, Public Grievances and Pensions

Copy to:

- B*
- ✓ 1. Shri Prabhat Kumar, Cabinet Secretary.
  - ★ 2. Shri B.P. Singh, Home Secretary.
  - ✓ 3. Dr. Raghbir Singh, Secretary, Legislative Department, Ministry of Law, Justice and Company Affairs, Shastri Bhavan, New Delhi.
  - ✓ 4. Shri P.G. Mankad, Secretary, Ministry of Information & Broadcasting.
  - ✓ 5. Dr. P.S.A. Sundaram, Additional Secretary, Department of Administrative Reforms & Public Grievances.
  - ★ 6. Smt. Sangita Gairola, Joint Secretary, Ministry of Home Affairs.
  - ✓ 7. Shri Y.G. Parande, Commissioner (Customs), Sahar Airport, Mumbai.

Copy also forwarded to :

- C*
- ★ 1. PPS to Secretary (P), DOP&T.
  - ★ 2. P.S. to Joint Secretary (Establishment), DOP&T.

*20/5*  
*15/5/98*  
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*20 MAY 1998*

## MINUTES OF THE MEETING OF THE GROUP OF MINISTERS

The Group of Ministers constituted for considering the legislative proposal for Freedom of Information and amendment to related Acts and Rules met on the 14th May, 1998 at 11 A.M. in the room of the Home Minister. The following were present:

- (1) Shri L.K. Advani,  
Home Minister
- (2) Shri George Fernandes  
Defence Minister
- (3) Shri M. Thambi Durai,  
Minister of Law, Justice & Company Affairs
- (4) Smt. Sushma Swaraj,  
Minister of Information & Broadcasting
- (5) Shri K.R. Janarthanan,  
Minister of State for Personnel, PG & Pensions

2. The following Officers were present:

- (1) Shri Prabhat Kumar, Cabinet Secretary,
- (2) Shri Arvind Varma, Secretary (Personnel)
- (3) Shri B.P. Singh, Home Secretary,
- (4) Dr. Raghbir Singh, Secretary, Legislative Deptt.
- (5) Shri P.G. Mankad, Secretary, I&B
- (6) Dr. P.S.A. Sundaram, Addl. Secretary (AR)
- (7) Shri Harinder Singh, Joint Secretary (Estt.)
- (8) Smt. Sangita Gairola, Joint Secretary, MHA

3. The Group of Ministers considered the proposed Freedom of Information Bill 1998 and the proposed amendments to the Official Secrets Act alongwith consequent changes in executive instructions. The GOM felt that any Bill placed before the Parliament must be a step towards making

governance more open and transparent, but at the same time it should ensure that the efficiency and security of the State, besides the economic interests of the country, are not compromised. After perusal of the proposed Bill, the GOM concluded that a plain reading of the draft bill would indicate that while the restrictions on release of information under clauses 8 and 9 of the proposed Bill may be substantially justified, an impression should not be created that there are too many restrictions and that the proposed bill is highly restrictive. The Group noted that the approach of the H.D. Shourie Committee was that Right to Information should be the rule and denial of information an exception.

4. It was decided by GOM that a Bill in this regard may be drafted wherein the possibility of widening the ambit and scope of items where supply of information shall be mandatory may be examined and the areas and items in respect of which a citizen would have the right to seek and get information should be suitably spelt out. Such legislation would have the benefit of being a positively oriented law rather than a law which speaks of the right of the citizen to get information but then restricts the same by a long list of exemptions. The GOM desired that the draft of such a legislation should, as far as possible, be made available for consideration of the GOM by the end of June, 1998.

5. The GOM also noted that in a large number of cases executive instructions in terms of the Official Secrets Act have imposed excessive restrictions which may have outlived their utility but are still in place e.g. restrictions on photographing specified public places. Therefore, MHA should separately examine doing away with the restrictions which are meaningless, out-dated or are not capable of implementation.

6. As regards the Official Secrets Act, 1923, GOM felt that while the Act should be retained as a separate statute, 'Official Secret' may be defined in a way consistent with the proposed Bill, and to restrict the omnibus character of the 1923 Act.



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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 18<sup>th</sup> June, 1998

Office Memorandum

Subject:- Legislative proposal for Freedom of Information and amendments to related Acts and Rules.

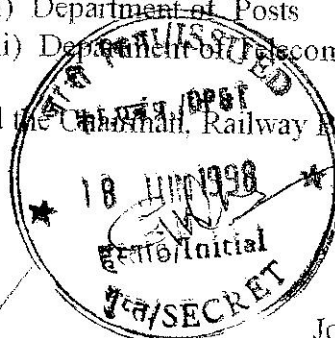
Reference the Cabinet Secretariat's O.M.No. 1/97/3/97-CA.V dated the 30<sup>th</sup> September, 1997 on the above subject.

2. 20 copies (Copy Nos. 1-20) of the Note on the aforesaid legislative proposal are sent herewith for consideration of the Committee of Secretaries. As the Group of Ministers have desired that a revised draft of the Bill on "Freedom of Information" may be made available for their consideration by the end of June, 1998, it is requested that a meeting of the COS to consider the above Note may please be convened at a very early date.

3. Incidentally, it may be mentioned that since the view points of all the Ministries/Departments have been incorporated in the present draft Bill, it may be useful to restrict participation in the COS to the Secretaries in charge of :

- (i) Ministry of Home Affairs
- (ii) Ministry of Information and Broadcasting
- (iii) Ministry of External Affairs
- (iv) Ministry of Defence
- (v) Department of Rural Development
- (vi) Department of Legal Affairs
- (vi) Legislative Department
- (vii) Department of Posts
- (viii) Department of Telecom

and the Chairman, Railway Board.



Harinder Singh

(Harinder Singh)

Joint Secretary to the Government of India.

✓ Cabinet Secretariat  
(Shri Rajrishi Bhattacharya, Joint Secretary),  
Rashtrapati Bhawan,  
New Delhi.

7/c

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Secret  
Copy No.

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

NOTE FOR COMMITTEE OF SECRETARIES

**Subject:** Legislative proposal for Freedom of Information and amendments to related Acts and Rules.

1.0 This Note deals with the proposal for revision of the Freedom of Information Bill and consequent amendments to legal and administrative provisions relating to secrecy and release of information by public authorities. The proposal follows from the decisions taken in the meeting on 14<sup>th</sup> May, 1998 of the Group of Ministers constituted by the present Government to examine the proposed Freedom of Information Bill and finalise the recommendations on the same.

BACKGROUND

2.1 In the course of a series of meetings of the Committee of Secretaries from July to September 1997, the COS had examined the recommendations of the Working Group on Right to Information and Promotion of Open and Transparent Government, including a draft legislation on Freedom of Information and amendments to related legislation and regulations administered by the Home Ministry/Law Ministry. While balancing the desirability of openness in government as well as the access of the public to information

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on transactions of public authorities with the imperatives of confidentiality and the risks of disclosure, the Committee had decided on a number of amendments to the draft legislation proposed by the Working Group. The COS had also proposed amendments to Section 5 of the Official Secrets Act, 1923. The draft Bill for Freedom of Information was prepared on the basis of the decisions of the COS and in consultation with the Law Ministry (Annexure-I). The recommendations of the COS were submitted to the Group of Ministers constituted by the previous Government. In the light of decisions taken by that GOM, the draft Bill was further revised.

2.2 When the draft legislation and the related amendments were discussed on May 14, 1998 by the Group of Ministers constituted by the present Government, it was felt that the objective of the Bill should be to provide for greater transparency in government, especially in areas which are of daily concern to the people, but to achieve this in a way that does not undermine the efficiency and security of government, and the economic interests of the country. The GOM was of the view that the exemptions proposed under clauses 8 and 9 of the draft Bill tend to give the impression of being too large and sweeping and resulting in denying practically all information to the public despite the avowed intention of right to information. It was suggested that the Bill should spell out items where the supply of information is mandatory, and areas where a citizen would have a right to seek and get information. Simultaneously, it was felt that the Official Secrets Act should be amended to restrict its omnibus character, and to bring its provisions in tune with those of the proposed Bill on Information. The intention behind the Bill should be to clearly convey to the people that disclosure of information is the

rule, while secrecy and withholding of information is the exception governed by objective criteria. The GOM desired that the revised proposals for the Freedom of Information Bill should be brought before the GOM before the end of June 1998, in order that Government may consider the introduction of the Bill in the Budget Session of 1998 itself. The present set of proposals is being submitted in the context of these directions of the GOM (Annexure-II).

### APPROACH

3.1 Attention is invited to the provisions of the draft Bill which were finalised with the approval of the GOM in the previous Government, and to the Bill drafted by the Shourie Working Group. These Bills are predicated on the grant of freedom of information to all citizens according to procedures prescribed in the Bill, subject only to the exemption from disclosure of the categories of information contained in clauses 8 and 9, as well as the rule of third party information (clause 11). Thus, the right to information from public authorities was circumscribed by a negative list, including information relating to notified intelligence and security organizations. However, this was juxtaposed with the requirement under clause 4 of the Bill for all public authorities to provide information and details of projects prior to their initiation. It may be mentioned here that this scheme of the legislation for freedom of information has been followed in the countries which have enacted similar legislation such as the U.S.A., Canada, Australia, New Zealand etc. The format was followed by the Press Council Bill and the Private Member's Bill on Right to Information sponsored by Shri George Fernandes, then a Member of Parliament and now Union Minister for Defence (Annexures III and IV). The

logic was to project access of the public to information as unrestricted except for specified areas, and to avoid the problems both of exhaustive specification of the areas of availability of information and of discretionary exclusion of information on the ground of absence of legislative provision. It was also appreciated that, in a country like India with its diversity and vastness, multiple administrative jurisdictions, and wide variety of subjects dealt with by public authorities, it is very difficult to devise a positive list of information that would subsume all the subject areas of public authorities ranging from the central government departments to the smallest village panchayat as well as the immediate areas of interest for the resident population.

3.2 As recognized by the GOM itself in the meeting, the suggested format of detailed specification of the areas for freedom of information represents a major overhaul of the scheme and format of the draft Bill. In the course of detailing out the areas for free access to information, care has to be taken both to protect the confidentiality of classified records of government departments and sensitive organizations, and to preempt the tendency of officials to deny access to information on the grounds of non-listing in the statute. The revised format would also call for decisions on a number of issues such as confidentiality, enforceability of access, severability, intelligence and security organizations, consistency with the provisions of the Official Secrets Act etc.

#### SUGGESTED AMENDMENTS

4.1 It is proposed that clause 3 of the Bill may be expanded to provide that, " subject to the provisions of this Act, all citizens shall have freedom of information in respect of

all matters including the following". This will be followed by a generic list of subjects of relevance to all public authorities in the Centre and States. Following this list, it will be stipulated that the Appropriate Government and the Competent Authority (as defined in the Bill) may modify the items in the list by notification. Alternately, the list of matters under this Section may be provided through a Schedule which can be modified by procedure provided under the Rules. Provision will have to be made for the Appropriate Governments and Competent Authorities to prescribe detailed items of information to be provided freely to the public on demand by different Departments, attached and field agencies, PSUs, elected local bodies, autonomous and other agencies owned and controlled/funded substantially by Government, having regard to the nature of their work and the nature of information likely to be demanded by the clients of each public authority. This exercise will necessarily be predicated on available administrative instructions on transparency by the Central and State Governments, refined by consultation with citizen groups and feedback surveys in the course of implementation of the legislation. It will also be governed by exercises for the classification of documents with reference to the amended Official Secrets Act and the scheme of classification adopted for different agencies by the Appropriate Governments and the Competent Authorities.

4.2 As regards the items to be included in the main Section or under the Schedule, it is possible to provide for matters coming directly under the Central and State Governments and agencies coming under them including local authorities, but the Competent Authority will have to be consulted for matters concerning the two Houses of

Parliament and the Legislature, the Supreme Court and the High Courts, and the Constitutional Authorities such as C&AG and UPSC. It is presumed that the list will not include matters contained in the records of the intelligence and security organizations as specified in the Schedule in the context of clause 8(15). The Schedule will also not include items already provided for proactive disclosure by public authorities under clause 4 as this information is available to the citizens without demand.

4.3 In May 1997, Secretary (Personnel) had addressed letters to the Secretaries of all the Ministries/Departments, in which he outlined specific steps for ensuring transparent administration. It was pointed out that, even within the present statutory and administrative framework, Code of Conduct Rules etc., it was possible to take steps for transparency in the context of the movement for Citizens' Charter. It was certainly possible to provide large areas of information which were being provided to the Parliament, or were not classified in any way, but which were at present withheld or not easily accessible to the common man. It was suggested that this information could be made widely available through the internet and the Information and Facilitation Counters set up in the various Bhavans and field offices/outlets. An illustrative list of records that can be made freely available was attached to this letter. A copy of the list is at Annexure VI. The first seven items in the list are already covered under clause 5 of the Bill as referred to earlier, and hence the remaining items could be covered for inclusion in the Schedule.

4.4 While considering improvements in the list earlier devised by DOP&T, the following points may be noted. Firstly, the enclosed list does not clearly specify what

falls within the purview of the Central Government, what under state governments, what under the competent authorities specified in the Bill, and what under other public authorities. This may be done with the help of Law Ministry. We could specify generic items such as items 9, 12, 16 and 17 (Annexure-VI) which would be uniformly applicable to all public authorities, and add a few more generic categories such as procurement and tender transactions, details of expenditure and physical achievements on different schemes (where relevant), details of grants and other assistance provided to voluntary agencies/educational institutions, appointments/empanelment of employees in public authorities after finalization and issue of formal orders, Secondly, there are various sector-specific items of information which could be mentioned illustratively as in the enclosed list (Annexure-VI)..

4.5 Thirdly, the list could contain matters of transparency in the specific context of the panchayat raj institutions and nagarpalikas, especially in the context of the agitation for right to information at the village level in Rajasthan and other states, and the letters addressed by the Union Rural Development Department to all the states. Items have been proposed such as:

- Information on the list of beneficiaries under various development schemes, and list of works taken up at the village level (and at the ward level for urban areas);
- Proceedings of the gram sabhas;
- Details of work done through NGOs and other bodies;
- Technical documents like estimates, bills, vouchers in local language;
- Award of tenders and procurement of materials and equipment;
- Details of charges and fees for various civic services, procedures of securing connections and issue of permits, building approvals, location of offices and description of staff manning them, requirement of documents for compliance, all in local language;



4.6. Fourthly, the availability of information from classified records has to be read with the severability clause in the draft Bill. For operational purposes, and to reduce the manual workload, the provision of information through the electronic media or through various means of oral communication has to be allowed, with the stipulation to provide written information where demanded. The provision of information itself will of course be governed by the clauses relating to the Public Information Officer and the release of information, the appeal provisions etc. Here, the PIO should be required under Rules to forward the request to the appropriate authority if he does not hold that information. It may be mentioned that preliminary exercises have been done by this Ministry with the help of a consultant, LBSNAA and a few state officials to identify the practical dimensions of dealing with the request for information in the present state of record keeping, procedures, delegation of powers, state of computerisation, staff attitudes etc.,. These factors, along with a crash programme for rendering all the Acts, rules and instructions intelligibly into local language, and orientation of the staff, will alone make the proposed clause on the positive list meaningful.

4.7. In sum, it is proposed that the two lists prepared by the DOP&T and the Government of Madhya Pradesh, and the transparency items circulated by the Department of Rural Development be integrated into generic groups, and arranged in the order of central, state and local jurisdiction, in order to make up the Schedule which will be referred to under clause 3, and further that the observations contained in paragraphs 4.1, 4.2, 4.4, and 4.6 be taken into account while drafting the rules and executive

instructions to operationalise this clause. The list at Annexure VII could be considered in this context.

#### AMENDMENTS TO OTHER SECTIONS AND LAWS

5.1. GOM has also observed (Annexure-II) that the proposed restrictions on the disclosure of information contained in clauses 8 and 9 appear to be too large, however justified they may be. These exemption provisions at present include also the information relating to intelligence and security organisations in the Schedule to the Bill. The present set of exemptions in clause 8 has been arrived at on the basis of discussions in the COS, starting from the list of exemptions contained in the Working Group's Bill. In contrast, both the Press Council Bill and the Private Member's Bill contain a short list of exemptions, namely:

(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 an incitement of 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 the 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 : provided that information

which cannot be denied to Parliament or State Legislature shall not be denied to any citizen.

5.2. It may be noted that these provisions do not take care of certain important exemptions in Federal countries, like the U.S., having a FOI Law, namely:

- Centre-state relations
- Cabinet papers and related advice and procedures
- Information, the disclosure of which would affect fair trial or adjudication of a pending case
- Where the disclosure would prejudicially affect the legitimate economic interests or competitive position of a public authority (particularly relevant in the context of exclusion of private sector from the Bill)
- Where disclosure may result in breach of the privileges of Parliament or the Legislature of a State, or the violation of any order of Court of competent jurisdiction
- Where it would prejudicially affect the operations of intelligence and security organizations listed in the Schedule (parallel provision is available in the Australian Act)

5.3. It is submitted for consideration that, having regard to the direction of the GOM, to the provision could be recast with fewer exemptions substantially on the lines of the Private Member's Bill, but after suitably incorporating the omissions noted in para 5.2 above. This revised clause would then form the basis of the revised definition of Official Secret to be added to Section 5<sup>\*</sup> of the Official Secrets Act, and the Rule to be made thereunder.

5.4. It is presumed that GOM is in agreement with other features of the proposed Bill such as the definition of public authorities and exclusion of the private sector, the procedure for seeking information, levy of fees, confining appeals to the executive

instead of allowing appeals to the civil court, absence of penal provisions for defaulting employees etc., These constitute areas of difference with the Private Member's Bill.

5.5 As regards the prosecution of defaulting employees for failing to provide information within time, or wilfully providing false or inaccurate information, the Goa Act provides for the prosecution of and imposition of fine upon such employees under administrative procedures for not furnishing information in time and prosecution for furnishing wrong information. The draft Bill of Madhya Pradesh provides for fine upto Rs.2000 to be levied on the defaulting employee and head of department after an administrative enquiry. It was earlier envisaged by COS that the provisions of Disciplinary Rules would provide enough room for punishment to delinquent employees once the violation of the obligation under this Act is defined as a misconduct. It is for consideration, whether as in the case of the Madhya Pradesh Bill, this is to be spelt out in the Act itself to drive home the government's intention to penalise the defaulting employees.

5.6 On the question of appeals, the Goa Act provides for an appeal to a Tribunal, while the Tamil Nadu Act and the Madhya Pradesh draft Bill envisage a final appeal to the appropriate government. Since the proposed Bill covers also the Legislature and the judiciary, and there are weighty reasons for excluding the jurisdiction of the civil courts, the existing provisions appear to be rational.

ISSUES FOR DECISION

6. The approval/decision of the Committee of Secretaries is solicited on the following issues:
- a) The expansion of clause 3 of the Bill to provide for a list of items where supply of information will be mandatory, and to provide this list through a Schedule composed of items of information on the lines proposed in Part 4 of this Note, specifically para 4.7;
  - b) To assume powers under rules/Act for modifications to the above Schedule and for devising public authority-specific lists of items to be provided by statutory orders for giving this information as a matter of right to the citizens as proposed in the Note;
  - c) To amend the existing clause 8 on the lines proposed in Part 5 of the Note (para 5.3) with a smaller number of items to minimise the impression about the law being too restrictive, while, at the same time, respecting the requirements of security and confidentiality;
  - d) To consider amendments to provisions relating to specific action against defaulting employees under this Bill as proposed in para 5.5 of the Note.
7. Based on the decisions of the COS, the revised drafting of the Bill will be taken up urgently in order to meet the deadline given by the GOM. The MHA may consider amendments to Section 5 of the Official Secrets Act and the Rule based on the decision of the COS.
8. This issues with the approval of Secretary(P).

*Harinder Singh*

(Harinder Singh)

Joint Secretary to the Government of India.

New Delhi

Dated the 18<sup>th</sup> June, 1998.

MINUTES OF THE MEETING OF THE GROUP OF MINISTERS

The Group of Ministers constituted for considering the legislative proposal for Freedom of Information and amendment to related Acts and Rules met on the 14th May, 1998 at 11 A.M. in the room of the Home Minister. The following were present:

- (1) Shri L.K. Advani,  
Home Minister
- (2) Shri George Fernandes  
Defence Minister
- (3) Shri M. Thambi Durai,  
Minister of Law, Justice & Company Affairs
- (4) Smt. Sushma Swaraj,  
Minister of Information & Broadcasting
- (5) Shri K.R. Janarthanan,  
Minister of State for Personnel, PG & Pensions

2. The following Officers were present:

- (1) Shri Prabhat Kumar, Cabinet Secretary,
- (2) Shri Arvind Varma, Secretary (Personnel)
- (3) Shri B.P. Singh, Home Secretary,
- (4) Dr. Raghbir Singh, Secretary, Legislative Deptt.
- (5) Shri P.G. Mankad, Secretary, I&B
- (6) Dr. P.S.A. Sundaram, Addl. Secretary (AR)
- (7) Shri Harinder Singh, Joint Secretary (Estt.)
- (8) Smt. Sangita Gairola, Joint Secretary, MHA

3. The Group of Ministers considered the proposed Freedom of Information Bill 1998 and the proposed amendments to the Official Secrets Act alongwith consequent changes in executive instructions. The GOM felt that any Bill placed before the Parliament must be a step towards making

governance more open and transparent, but at the same time it should ensure that the efficiency and security of the State, besides the economic interests of the country, are not compromised. After perusal of the proposed Bill, the GOM concluded that a plain reading of the draft bill would indicate that while the restrictions on release of information under clauses 8 and 9 of the proposed Bill may be substantially justified, an impression should not be created that there are too many restrictions and that the proposed bill is highly restrictive. The Group noted that the approach of the H.D. Shourie Committee was that Right to Information should be the rule and denial of information an exception.

4. It was decided by GOM that a Bill in this regard may be drafted wherein the possibility of widening the ambit and scope of items where supply of information shall be mandatory may be examined and the areas and items in respect of which a citizen would have the right to seek and get information should be suitably spelt out. Such legislation would have the benefit of being a positively oriented law rather than a law which speaks of the right of the citizen to get information but then restricts the same by a long list of exemptions. The GOM desired that the draft of such a legislation should, as far as possible, be made available for consideration of the GOM by the end of June, 1998.

5. The GOM also noted that in a large number of cases executive instructions in terms of the Official Secrets Act have imposed excessive restrictions which may have outlived their utility but are still in place e.g. restrictions on photographing specified public places. Therefore, MHA should separately examine doing away with the restrictions which are meaningless, out-dated or are not capable of implementation.

6. As regards the Official Secrets Act, 1923, GOM felt that while the Act should be retained as a separate statute, 'Official Secret' may be defined in a way consistent with the proposed Bill, and to restrict the omnibus character of the 1923 Act. ,

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29-6-98

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No.1/97/3/97-CA.V  
GOVERNMENT OF INDIA/BHARAT SARKAR  
CABINET SECRETARIAT/MANTRIMANDAL SACHIVALAYA  
RASHTRAPATI BHAVAN

\*\*\*\*\*

New Delhi, dated 29th June, 1998

Subject :- Legislative proposal for Freedom of Information and amendments to related Acts and Rules.

.....

The minutes of the meeting of Committee of Secretaries held at 3.00 P.M. on the 25<sup>th</sup> June, 1998 in the Committee Room of the Cabinet Secretariat, Rashtrapati Bhavan, New Delhi, on the above subject, are forwarded herewith.

{ Encl: Doc. No. CD(CA-V)-33/1998 }.

*29/6*  
( Ravi Mital )  
Deputy Secretary  
Tel.No.3792357

- 4026/SSC 21/98*  
*30/6/98*  
*29/6*  
*AS (ART) and J(E) with 30/6/98*  
*Pr. Secy*  
*29/6*  
*D & (E-3)*  
*(S. Anand)*
- To
1. Shri Arvind Varma, Secretary, Deptt. of Personnel & Training.
  2. Shri B.P. Singh, Home Secretary.
  3. Shri V.K. Agarwal, Chairman, Railway Board.
  4. Shri P.G. Mankad, Secretary, M/o Information & Broadcasting.
  5. Shri K. Raghunath, Foreign Secretary.
  6. Shri Ajit Kumar, Defence Secretary.
  7. Shri R.L. Meena, Secretary, Deptt. of Legal Affairs.
  8. Dr. N.C. Saxena, Secretary, Deptt. of Rural Development.
  9. Dr. Raghbir Singh, Secretary, Legislative Department.
  10. Shri R.U.S. Prasad, Secretary, Department of Posts.
  11. Shri A.V. Gokak, Secretary, Deptt. of Telecommunications.

Copy forwarded to :

Shri Brajesh Mishra, Principal Secretary to the Prime Minister.

*29/6*  
( Ravi Mital )  
Deputy Secretary

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CABINET SECRETARAT

DOC. NO.CD(CA.V)-33/1998.

COPY NO. 1

MINUTES OF THE MEETING OF COMMITTEE OF SECRETARIES

Venue: Committee Room, Cabinet Secretariat, Rashtrapati Bhavan.

Date of Meeting: 25.6.1998.

Time of Meeting: 3.00 P.M.

P R E S E N T

Shri Prabhat Kumar, Cabinet Secretary.  
Shri Arvind Varma, Secretary, Deptt. of Personnel & Training.  
Shri Ajit Kumar, Defence Secretary.  
Shri A.V. Gokak, Secretary, Deptt. of Telecommunications.  
Shri R.U.S. Prasad, Secretary, Deptt. of Posts.  
Shri R.L. Meena, Secretary, Deptt. of Legal Affairs.  
Dr. N.C. Saxena, Secretary, Deptt. of Rural Development.  
Dr. Raghubir Singh, Secretary, Legislative Department.  
Shri Nikhil Kumar, Special Secretary, Min. of Home Affairs.  
Shri Pawan Chopra, Addl. Secretary, Cabinet Secretariat.  
Dr. P.S.A. Sundaram, Addl. Secretary, Deptt. of A.R & P.G.  
Shri Sudarshan Seth, O.S.D. (G.A), Railway Board.  
Shri R. Bhattacharya, Joint Secretary, Cabinet Secretariat.  
Shri Harinder Singh, Joint Secretary, Deptt. of Personnel & Training.  
Shri Ajay Sinha, Joint Secretary & Legal Adviser, Deptt. of Legal Affairs.  
Shri Ravi Mital Deputy Secretary, Cabinet Secretariat.

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Sub: Legislative proposal for Freedom of Information and amendments to related Acts and Rules

The Committee of Secretaries at its meeting held on 25.6.1998 considered the note on "Legislative proposal for Freedom of Information and amendments to related Acts and Rules" [Doc. No. CD(CA-V)-28/98] from Ministry of Personnel, Public Grievances & Pensions.

2. Secretary (Personnel), while initiating the discussion, informed the Committee that a draft Bill on Freedom of Information was prepared, in consultation with the Law Ministry, on the basis of discussions held by the Committee of Secretaries. These discussions were based on the recommendations of the Working Group on Right to Information and Promotion of Open and Transparent Government. When the draft legislation was put up on May 14, 1998 before the Group of Ministers (GOM) constituted by the Government, it was, inter alia, of the view that the exemptions proposed under clauses 8 and 9 of the draft Bill tend to give the impression of being too large and sweeping, resulting in denying practically all information to the public despite the avowed intention of right to information. It was suggested that the Bill should spell out items where the supply of information is mandatory, and areas where a citizen would have a right to seek and get information. It was stated that based on the decisions taken by the GOM, a draft positive list has been prepared where the citizens would have right to information.

3. A view was expressed that giving a positive list of items in the Bill may give an impression to the public authorities, who are supposed to provide information, that the list is comprehensive and for items not covered by this list no information need be provided. On the other hand, it is difficult to provide a comprehensive list. It was pointed out that because of this problem it is proposed that clause 3 of the Bill may be expanded to provide that, "subject to provisions of this Act, all citizens shall have freedom of information in respect of all matters including the following". This will be followed by a generic list of subjects of relevance to all public authorities in the Centre and States. Following this list, it will be stipulated that the Appropriate Government and the Competent Authority (as defined in the Bill) may modify the items in the list by notification. Alternatively, the list of matters under this Section may be provided through a Schedule which can be modified by procedure provided under the Rules. It was also pointed out that the Competent Authority will have to be consulted for matters concerning the two Houses of Parliament, and the Legislature, the Supreme Court and the High Courts, and the Constitutional Authorities such as C&AG and UPSC.

4. The GOM had observed that the proposed restrictions contained in clauses 8 and 9 appeared to be too large, however, justified they may be. It was proposed that the Press Council Bill and the Private Member's Bill, which contain a short list of exemptions, would be suitably recast, after incorporation of some important provisions, and the revised clause would form the basis of the revised definition of Official Secret.

5. After detailed discussion of the pros and cons of providing a comprehensive positive list while, at the same time, compressing the negative list, it was felt that two alternate draft Bills should be prepared; the first being the original draft Bill presented for the meeting of the GOM on May 14, 1998 and the second being the new draft Bill prepared in accordance with the directions given in the GOM meeting dated May 14, 1998. The positive and negative features of both the Bills would need to be clearly brought out to present the same for consideration of the GOM.

6. It was also pointed out that as regards the prosecution of defaulting employees for failure to provide information within time, the Goa Act provides for the prosecution of and imposition of fine upon such employees. The Madhya Pradesh Act provides for fine upto Rs.2000 to be levied on the defaulting employee and Head of Department after an administrative inquiry. A view was expressed that prosecuting Government employees under different Acts may not be advisable and recourse to the relevant disciplinary rules would be sufficient to punish them. It had, therefore, been envisaged in the draft Bill that the appropriate provisions of the relevant disciplinary rules would be sufficient to provide for punishment to delinquent employees once the violation of the obligation under this Act is defined as misconduct. However, in case monetary fine is proposed to be imposed, amendments will have to be carried out in CCS (CCA) Rules, 1965 as well as the CCS (Pension) Rules, 1972 etc. After discussions, it was felt that since the GOM had not raised this issue the original approach, which envisaged recourse to the relevant disciplinary rules, for punishment may be adhered to.

7. Secretary, Deptt. of Legal Affairs stated that in case a positive list, which now may include items listed under List II - State List, in the Seventh Schedule under Article 246 of the Constitution, is indicated to provide for disclosure of information, the proposed Bill may fall outside the legislative jurisdiction of Parliament. It was also stated that the matter regarding Freedom of Information and Privacy is under the consideration of the Law Commission and, therefore, the opinion of the Commission may be awaited. A view was, however, expressed that if the doctrine of 'pith and substance' is applied and the item does not come under List II or List III of the Seventh Schedule to the Constitution, then it comes under Item 97 of List I of that Schedule for which Parliament is competent to legislate. In this regard, Secretary (Personnel) pointed out that this issue had been examined by the 'Working Group on Right to Information and Promotion of Open and Transparent Government', of which Shri Soli J. Sorabjee was also a member and Shri Shourie, Chairman. The opinion of the Shourie Group was that since the subject does not fall under the ambit of any of the entries in the State List (List II) in the Seventh Schedule of the Constitution, it would be covered under entry 97 of the Union List. After discussion, it was agreed that since a very fundamental issue regarding jurisdiction of Parliament had been raised the matter may be referred to the learned Attorney General for advice.

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- 4 -

8. After detailed discussion, the Committee recommended the following:-
- (i) The matter regarding jurisdiction of Parliament to legislate this Bill may be referred to the learned Attorney General for his opinion.
  - (ii) A new draft Bill may be prepared indicating a right of freedom of information for items specified in a comprehensive positive list with a provision for addition or deletion of items by notification. The *Restrictions* instruction proposed might be covered by appropriately defining the term 'Official Secrets' in the relevant Act & restricting information on official secrets on the Freedom of Information Bill. It should also incorporate the other directions given by the GOM in the meeting on May 14, 1998.
  - (iii) A Drafting Committee, comprising of representatives of the Ministry of Personnel, PG&P, Ministry of Home Affairs and Ministry of Law and Justice (both Legal Affairs and Legislative Department), may be constituted to urgently prepare the new draft Bill.
  - (iv) The positive and negative features, as well as the pros and cons, of the original draft Bill as well as the new draft Bill may be clearly brought out and a note prepared for consideration of the Committee of Secretaries.
  - (v) After the Committee of Secretaries considers this note, the views, including the pros and cons of the two alternate draft Bills, would need to be placed for consideration of the GOM.

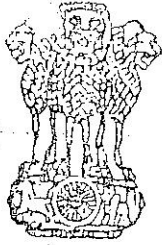
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\* amended with Lab Secret's  
d.m. dated 10.9.98

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सत्यमेव जयते

डा. पी. एस. ए. सुन्दरम  
DR. P.S.A SUNDARAM  
TEL : 3732133, 3732545  
FAX : 3732133

अपर सचिव  
प्रशासनिक सुधार और लोक शिकायत विभाग  
भारत सरकार  
सरदार पटेल भवन, संसद मार्ग, नई दिल्ली-११०००९  
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. 34011/1(s)/97-Esu.(B)  
D.O. No.

दिनांक July 3, 1998  
Dated

Subject : Legislative Proposal for Freedom of Information.

Dear *Sunil Mehta*

Your attention is invited to minutes of the meeting of the Committee of Secretaries held on 25th June, 1998 on the above subject. In the course of the meeting, the Department of Legal Affairs felt that the proposed Bill may fall outside the legislative jurisdiction of Parliament. At the same time, the attention of the Law Ministry was drawn to the opinion expressed by the Working Group on Right to Information and Promotion of Open and Transparent Government set up under the Chairmanship of Shri H.D. Shourie, to the fact that a legislation can and should be enacted by the Parliament in order to ensure uniformity of its application throughout the country. The Committee, of which Shri Soli J. Sorabjee was the Member, found that the subject of Right to Information does not fall under the ambit of any of the entries in the State List in the Seventh Schedule of the Constitution. It will, therefore, be covered by entry 97 in the Union List (List I) of the Seventh Schedule. The Committee drew attention to the settled legal position 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 terms of List II of the Seventh Schedule. The Committee also made reference to a series of judgements by the Supreme Court that right to know is a facet of the fundamental right of freedom of speech and expression enshrined in Article 19(1) of the Constitution - a landmark judgement on the subject being the judgement of the Supreme Court in S.P. Gupta vs Union of India (AIR 1982 SC 149).

2. Having regard to the clear opinion expressed by the Shourie Committee and the reservations of the Department of Legal Affairs, it was agreed in the meeting that the matter regarding jurisdiction of Parliament to legislate this Bill may be referred to the learned Attorney General for advice, since the very fundamental issue regarding jurisdiction of Parliament had been raised.

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*Sum*  
3/7/98

3. I am sure the Department of Legal Affairs is taking urgent action to refer the matter to the learned Attorney General for advice, since the Cabinet Sub-Committee has desired that the draft Bill should be brought up before them in the course of this month to enable the introduction of the Bill before the end of the current Budget Session.

4. While drawing up the reference for advice, you may like to take into account the following points:-

- (1) The observations of the Shourie Committee in para 2.6 to 3.4 of the report (a copy of the report is enclosed).
- (2) In the course of the discussion, Shri Soli J. Sorabjee had pointed out that the Right to Information had acquired a constitutional status by virtue of the Supreme Court judgement in S.P. Gupta's case. Subsequently he was pleased to forward a note regarding the legislative competence of the Union Government to enact Freedom of Information Act. A copy of his opinion is enclosed. He has clearly stated that the proposed Freedom of Information Act, having regard to its true character, pith and substance, cannot fall under Item 12 of the State List. This would also dispose of the argument that the reference to records in the proposed Act would invoke the jurisdiction of the State Governments over the disclosure of information.
- (3) What is important is the fact that all citizens shall have freedom of information and to secure information in respect of various items specified by the competent authority by virtue of statutory provisions or rules under the Act. The fact that the records are held by public authorities coming under State Government could not by itself constitute an encroachment of Parliament on the jurisdiction of the States especially since the Act would provide the State Governments to provide by Rules for classification and use of information contained in the records held by public authorities coming under them.
- (4) The Press Council of India had also drafted a Bill on Right to Information. In fact, this formed the starting point for the work of the Shourie Committee. Subsequently, the Press Council Bill was converted into a private member Bill which was introduced by Shri George Fernandes under the previous Lok Sabha. While drafting the Bill, Justice P.V. Sawant, Chairman, Press Council of India and former Justice of the Supreme Court, took the clear view that the Parliament alone had the legislative competence to enact the legislation on Freedom of Information. This was apart from the desirability of the enactment of a Central legislation which would be uniformly applicable to the public authorities coming under Central and State

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:- Legislative proposal for Freedom of Information and amendments to related Acts and Rules.**

Reference is invited to Cabinet Secretariat O.M.No. 1/97/3/97-CA.V dated the 29<sup>th</sup> June, 1998 forwarding the minutes of the meeting of the Committee of Secretaries on the above subject held on 25<sup>th</sup> June, 1998 (Annexure-I).

2. Action taken on the recommendations made by the Committee, as mentioned in para 8 of the minutes, is given below.

**Jurisdiction of the Parliament to legislate the Bill**

3. The Department of Legal Affairs has made a reference to the Attorney General for seeking his opinion on the question of legislative competence of the Parliament to enact the proposed Freedom of Information(FOI) Bill. The views of the Attorney General in the matter shall be made available to the Committee of Secretaries by the Department of Legal Affairs either before or during the next meeting of the Committee.

**Redefining the term 'Official Secrets' in the relevant Act**

4. A copy of the minutes of the COS meeting held on 25<sup>th</sup> June, 1998 has been forwarded to the Ministry of Home Affairs for examining the suggestion. The views of the above Ministry shall be made available by it separately to the Committee of Secretaries either before or during the next meeting of the Committee.



In the course of the meeting with Home Secretary, it was clarified by him that the term 'Official Secrets' will be defined with reference to the exemption clause in the proposed FOI Bill.

### Review of the original draft Bill

5. In view of the observations made by the Group of Ministers in its meeting of May 14, 1998 that the Bill placed before it contained a long list of exemptions, Section 8 of the Bill has been reviewed and the number of items on which information is exempted from disclosure has been brought down from 15 items to 9 items while fully respecting all the areas in the earlier Section. The revised draft Bill [hereinafter referred to as Freedom Bill] is appended to this Note as **Annexure-II**. The reference to intelligence and security agencies has been transferred to Section 28. Invasion of privacy has been covered in Section 9.

### New Draft 'Freedom of Information Bill'

6. As desired by the Committee of Secretaries, a Drafting Committee, comprising Home Secretary, Secretary (Personnel), Secretary (Legislative Department), Additional Secretary (Administrative Reforms) and Joint Secretary (Legislative Department) was constituted for the purpose of preparing a new draft Bill as an alternative to the original draft Bill. After holding its deliberations, the Drafting Committee has prepared and suggested for consideration of the Committee of Secretaries a Bill for the purpose (hereinafter referred to as Freedom -1 Bill) appended to this Note as **Annexure-III**. The main feature of the Freedom-1 Bill is the appended Schedule which will contain a generic list of subjects of relevance to all public authorities under the Central Government and the State Governments on which every citizen shall have the freedom to obtain information. In case it is advised by Attorney General that a reference to a subject under the State Government in the positive list is not legally maintainable, then the alternative would be to stipulate that the competent authority and the State Government would notify the items of information to be provided in the Schedule under Section 3. In effect,

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then, there would be six parts of the Schedule, one each for the Competent Authorities and two for the Central and State Governments.

### Comparison between draft 'Freedom Bill' and draft 'Freedom Bill-I'

7.1 The draft 'Freedom Bill' and the draft 'Freedom Bill -I' are identical in content except in so far as Section 3 of the two drafts is concerned. Section 3 of the draft 'Freedom Bill' provides that subject to the provisions of the Act, all citizens shall have freedom of information. An exactly similar provision has been made in the draft 'Freedom Bill-I' by virtue of sub-section (1) of Section 3. In addition, this Section in the latter Bill contains another sub-section to indicate by way of illustration in the Schedule the specific subjects [ without prejudice to the generality of sub-section (1) ] to which the openness provided by the first sub-section relates. Another sub-section has been added to this Section to enable addition or deletion of subjects from this Schedule at a later date if considered necessary. The contents of the Schedule are subject to observations in the previous paragraph of this Note.

7.2 Prima-facie, in effect, there is no difference between these Sections in either of the two draft Bills. Whatever information is not exempted from disclosure by virtue of other provisions of the Bill would necessarily have to be provided to the applicant and the presence or absence of the illustrative Schedule makes no difference in so far as the objective is concerned. There is, however, an apprehension that if the Bill contains the contemplated Schedule, it is quite probable that some of the public functionaries at the grass root level might interpret it to mean that in respect of subjects not covered either by the Schedule or by the exemptions, it is discretionary for them to furnish or refuse the information sought by the applicant. An attempt to minimise these grey areas would result in the Schedule having a long drawn list, given the number and variety of subjects being handled by the public authorities under the Central Government and the State Governments. Though a long list of subjects on which openness is being provided under the Bill would undoubtedly project the Act as being a positively oriented law, the unwieldiness of the list is likely to create problems at the application stage. This view was shared by

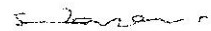
officials of the Government of Madhya Pradesh which has enacted a FOI Act with a positive list.

7.4 Apart from the practical problem of specifying all the items appropriate to various public authorities, the legal position would be as follows. The application for release of information would be scrutinised by the Information Officer or Appellate Authorities primarily with reference to the list of exemptions in Section 8 and the considerations listed in Section 9, as well as Section 28 of the Act. The provisions of the Official Secrets Act would apply to the release of information in the exempted categories. The fact that an item of information is listed in the Schedule under Section 3 would itself not entitle the citizen to get the information unless it passes through the sieve of Sections 8 and 9. Thus, the listing of items by means of Section 3 may ultimately lead to greater frustration and disenchantment of the people once they see the realities among the disclosure process. This will undermine the presentational advantage of a positive list.

7.3. On balance, it is felt that the scheme proposed in the draft Bill without the positive list would be more easily implementable and carry greater credibility. In effect, citizens would have freedom of information on all aspects of working of public authorities subject only to the provisions of Sections 8, 9 and 28. The proactive release of information, disclosure of reasons for decisions and opportunity for public hearing to affected persons, as provided in Section 4, could be elaborated by administrative instructions to cover the items in the positive list.

8. In consideration of the above the Committee of Secretaries may like to take a view as to which of the two drafts (**Annexure-II and Annexure-III**) would be more appropriate to the requirements. The Ministry of Home Affairs may be requested to take consequential action to amend the 'Official Secrets Act, 1923'.

9. This note issues with the approval of Secretary (Personnel).



(P.S.A. SUNDARAM)

Additional Secretary to the Government of India.

New Delhi

Dated the 28<sup>th</sup> July, 1998

F.No. 34011/1(s)/97-Estt.(B)

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CABINET SECRETARIATDOC. NO. CD(CA.V)-33/1998.

COPY NO. 1.....

MINUTES OF THE MEETING OF COMMITTEE OF SECRETARIES

Venue: Committee Room, Cabinet Secretariat, Rashtrapati Bhavan.

Date of Meeting: 25.6.1998.

Time of Meeting: 3.00 P.M.

P R E S E N T

Shri Prabhat Kumar, Cabinet Secretary.  
Shri Arvind Varma, Secretary, Deptt. of Personnel & Training.  
Shri Ajit Kumar, Defence Secretary.  
Shri A.V. Gokak, Secretary, Deptt. of Telecommunications.  
Shri R.U.S. Prasad, Secretary, Deptt. of Posts.  
~~Shri R.L. Meena, Secretary, Deptt. of Legal Affairs.~~  
Dr. N.C. Saxena, Secretary, Deptt. of Rural Development.  
Dr. Raghbir Singh, Secretary, Legislative Department.  
Shri Nikhil Kumar, Special Secretary, Min. of Home Affairs.  
Shri Pawan Chopra, Addl. Secretary, Cabinet Secretariat.  
Dr. P.S.A. Sundaram, Addl. Secretary, Deptt. of A.R & P.G.  
Shri Sudarshan Seth, O.S.D. (G.A), Railway Board.  
Shri R. Bhattacharya, Joint Secretary, Cabinet Secretariat.  
Shri Harinder Singh, Joint Secretary, Deptt. of Personnel & Training.  
Shri Ajay Sinha, Joint Secretary & Legal Adviser, Deptt. of Legal Affairs.  
Shri Ravi Mital Deputy Secretary, Cabinet Secretariat.

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Sub: Legislative proposal for Freedom of Information and amendments to related Acts and Rules

The Committee of Secretaries at its meeting held on 25.6.1998 considered the note on "Legislative proposal for Freedom of Information and amendments to related Acts and Rules" [Doc. No. CD(CA-V)-28/98] from Ministry of Personnel, Public Grievances & Pensions.

2. Secretary (Personnel), while initiating the discussion, informed the Committee that a draft Bill on Freedom of Information was prepared, in consultation with the Law Ministry, on the basis of discussions held by the Committee of Secretaries. These discussions were based on the recommendations of the Working Group on Right to Information and Promotion of Open and Transparent Government. When the draft legislation was put up on May 14, 1998 before the Group of Ministers (GOM) constituted by the Government, it was, inter alia, of the view that the exemptions proposed under clauses 8 and 9 of the draft Bill tend to give the impression of being too large and sweeping, resulting in denying practically all information to the public despite the avowed intention of right to information. It was suggested that the Bill should spell out items where the supply of information is mandatory, and areas where a citizen would have a right to seek and get information. It was stated that based on the decisions taken by the GOM, a draft positive list has been prepared where the citizens would have right to information.

3. A view was expressed that giving a positive list of items in the Bill may give an impression to the public authorities, who are supposed to provide information, that the list is comprehensive and for items not covered by this list no information need be provided. On the other hand, it is difficult to provide a comprehensive list. It was pointed out that because of this problem it is proposed that clause 3 of the Bill may be expanded to provide that, "subject to provisions of this Act, all citizens shall have freedom of information in respect of all matters including the following". This will be followed by a generic list of subjects of relevance to all public authorities in the Centre and States. Following this list, it will be stipulated that the Appropriate Government and the Competent Authority (as defined in the Bill) may modify the items in the list by notification. Alternatively, the list of matters under this Section may be provided through a Schedule which can be modified by procedure provided under the Rules. It was also pointed out that the Competent Authority will have to be consulted for matters concerning the two Houses of Parliament, and the Legislature, the Supreme Court and the High Courts, and the Constitutional Authorities such as C&AG and UPSC.

4. The GOM had observed that the proposed restrictions contained in clauses 8 and 9 appeared to be too large, however, justified they may be. It was proposed that the Press Council Bill and the Private Member's Bill, which contain a short list of exemptions, would be suitably recast, after incorporation of some important provisions, and the revised clause would form the basis of the revised definition of Official Secret.

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After detailed discussion of the pros and cons of providing a comprehensive positive list while, at the same time, compressing the negative list, it was felt that two alternate draft Bills should be prepared; the first being the original draft Bill presented for the meeting of the GOM on May 14, 1998 and the second being the new draft Bill prepared in accordance with the directions given in the GOM meeting dated May 14, 1998. The positive and negative features of both the Bills would need to be clearly brought out to present the same for consideration of the GOM.

6. It was also pointed out that as regards the prosecution of defaulting employees for failure to provide information within time, the Goa Act provides for the prosecution of and imposition of fine upon such employees. The Madhya Pradesh Act provides for fine upto Rs.2000 to be levied on the defaulting employee and Head of Department after an administrative inquiry. A view was expressed that prosecuting Government employees under different Acts may not be advisable and recourse to the relevant disciplinary rules would be sufficient to punish them. It had, therefore, been envisaged in the draft Bill that the appropriate provisions of the relevant disciplinary rules would be sufficient to provide for punishment to delinquent employees once the violation of the obligation under this Act is defined as misconduct. However, in case monetary fine is proposed to be imposed, amendments will have to be carried out in CCS (CCA) Rules, 1965 as well as the CCS (Pension) Rules, 1972 etc. After discussions, it was felt that since the GOM had not raised this issue the original approach, which envisaged recourse to the relevant disciplinary rules, for punishment may be adhered to.

7. Secretary, Deptt. of Legal Affairs stated that in case a positive list, which now may include items listed under List II - State List, in the Seventh Schedule under Article 246 of the Constitution, is indicated to provide for disclosure of information, the proposed Bill may fall outside the legislative jurisdiction of Parliament. It was also stated that the matter regarding Freedom of Information and Privacy is under the consideration of the Law Commission and, therefore, the opinion of the Commission may be awaited. A view was, however, expressed that if the doctrine of 'pith and substance' is applied and the item does not come under List II or List III of the Seventh Schedule to the Constitution, then it comes under item 97 of List I of that Schedule for which Parliament is competent to legislate. In this regard, Secretary (Personnel) pointed out that this issue had been examined by the 'Working Group on Right to Information and Promotion of Open and Transparent Government', of which Shri S. J. Sorabjee was also a member and Shri Shourie, Chairman. The opinion of the Shourie Group was that since the subject does not fall under the ambit of any of the entries in the State List (List II) in the Seventh Schedule of the Constitution, it would be covered under entry 97 of the Union List. After discussion, it was agreed that since a very fundamental issue regarding jurisdiction of Parliament had been raised the matter may be referred to the learned Attorney General for advice.

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8. After detailed discussion, the Committee recommended the following:-
- (i) The matter regarding Jurisdiction of Parliament to legislate this Bill may be referred to the learned Attorney General for his opinion.
  - (ii) A new draft Bill may be prepared indicating a right of freedom of information for items specified in a comprehensive positive list with a provision for addition or deletion of items by notification. The instruction proposed might be covered by appropriately defining the term 'Official Secrets' in the relevant Act & restricting information on official secrets on the Freedom of Information Bill. It should also incorporate the other directions given by the GOM in the meeting on May 14, 1998.
  - (iii) A Drafting Committee, comprising of representatives of the Ministry of Personnel, PG&P, Ministry of Home Affairs and Ministry of Law and Justice (both Legal Affairs and Legislative Department), may be constituted to urgently prepare the new draft Bill.
  - (iv) The positive and negative features, as well as the pros and cons, of the original draft Bill as well as the new draft Bill may be clearly brought out and a note prepared for consideration of the Committee of Secretaries.
  - (v) After the Committee of Secretaries considers this note, the views, including the pros and cons of the two alternate draft Bills, would need to be placed for consideration of the GOM.

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MOST IMMEDIATE/SECRET

CABINET SECRETARIAT  
RASHTRAPATI BHAVAN

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Subject:- Legislative proposal for Freedom of Information and amendments to related Acts and Rules.

Deptt. of Personnel & Training may kindly refer to their O.M. No. 34011/1(s)/97-Estt.(B), dated 28.7.98, forwarding therewith 20 copies of a 'further Note' on the aforesaid legislative proposal for consideration of the Committee of Secretaries.

2. It is noticed that there is no compliance of the decisions of last COS as draft bill is at variance with the decisions taken in the aforesaid meeting. In addition, Annexure-III, Section 3 and Schedule 2 need to be re-drafted to reflect the decisions of the GOM and the COS.

3. It is requested that needful may be done and revised COS note may be sent to this Secretariat for consideration by the COS. 19 copies of the background note (Copy Nos.1-19) are returned herewith.

*[Signature]*  
( Ravi Mital )  
Deputy Secretary  
Tel.No. 3792357

Deptt. of A.R. & P.G. (Dr. P.S.A. Sundaram, Addl. Secretary).

Cabinet Sectt. U.O.No. 1/97/3/97-CA-V, dated August 14, 1998.

*to be submitted to Deptt.  
for put up with file  
[Signature]  
14/8/98*

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Department of Administrative Reforms  
and Public Grievances

Subject : **Legislative proposal for Freedom of Information  
and Amendments to related Acts.**

Attention is invited to U.O. Note No. 1/97/3/97-CA-V dated 14th August, 1998 from Deputy Secretary, Cabinet Secretariat at FR. The Cabinet Secretariat has returned the COS Note sent by this Ministry on the ground that there is no compliance of the decisions of last COS. The Draft Bill is stated to be at variance with the decisions taken in the aforesaid meeting. We have been asked also to redraft Annexure III, Section 3 and Schedule 2 to reflect the decisions of the GOM and COS.

2. It is submitted that the Cabinet Secretariat does not appear to have appreciated the approach of this Ministry while formulating the revised proposals and two Draft Bills in the Note for the COS. There is in fact no failure in compliance with the decisions of the previous COS, nor is the Draft Bill at variance with the decisions of the COS. This is explained with reference to each decision in para 8 of the minutes of COS meeting on 25th June, 1998.

- (A) The Law Ministry has referred to Attorney General the matter regarding jurisdiction of Parliament to legislate this Bill. Law Secretary informed me that he proposes to request the Attorney General personally to expedite his opinion. The opinion will affect the formulation of Section 3 and the inclusion of items relating to State subjects in the Schedule.
- (B) The Note for COS explains in paragraph 6 how the Drafting Committee, set up in terms of para 8(iii) of the minutes, has proposed for the consideration of COS two Draft Bills. The Bill called Freedom-1 Bill at Annexure III is in fact the new Draft Bill contemplated in para 8(ii) of the minutes. Section 3 of this Bill provides for right to information relating to items specified in a comprehensive positive list to be contained in Schedule I of the Bill. It is contemplated that there would be six parts to this Schedule, each of which will be specified by the Central and State Governments and the four competent authorities. The subjects of a generic nature that may be included in the Schedule were indicated in the list attached with the Note for the COS circulated for the meeting held on 25th June, 1998. The list can be finalised only after we get the advice of Attorney General and that is why the Schedule has been left blank now.
- (C) The other Draft Bill at Annexure II is the Bill with the original version of Section 3 without the positive list contained in the Schedule.
- (D) Schedule II of the new Draft Bill in Annexure III is the same as envisaged originally. This has been drafted in consultation with the Home Ministry. There has been no objection to this Schedule by COS or GOM. The formulation in Section 28 has been improved by the Drafting Committee.



- (E) The GOM had asked this Ministry to reduce the number of exemptions in Section 8 with due regard for confidentiality and security. This has been achieved by rephrasing and reducing the list of exemptions in Section 8 and the factors listed in Section 9. The exemptions in Section 8 will now correspond to the definition of "Official Secret" in the explanation to Section 5 of Official Secrets Act, 1923, and thus the correspondence between this Act and the Draft Bill has been achieved, as envisaged by GOM. The Law Ministry has advised that it is more appropriate to define the "Official Secret" in this way than to define it elaborately in the 1923 Act. This is also because there are aspects like privacy regarding which the criterion of official secret will not apply, and due to which disclosure is denied to people.
- (F) Paragraph 7.2 to 7.5 of the present Note for COS bring out the implications of the positive list with reference to the original Bill as envisaged in para 8 (iv) of the minutes. The view of this Ministry is that the scheme proposed in the Draft Bill at Annexure II without the positive list is to be preferred, for the reasons given in para 7.5.

3. It would thus be seen that the logic of the Note forwarded by this Ministry to the Cabinet Secretariat fully complies with the decisions of the last meeting of the COS, and the directions of GOM.

4. In view of above observations, it is requested that the Cabinet Secretariat may circulate the note for the Committee of Secretaries in the present form alongwith this response. It is submitted that there has been considerable delay in reporting back to the Group of Ministers since its first meeting held a few months ago. Unless a clear direction is given to DoPT for the submission of revised proposals with GOM, it will be difficult to cross all the stages of submission and introduce the Bill for Freedom of Information and Amendments to Official Secrets Act during Winter Session 1998.

*this comes with the approval  
of Secretary (P)*

*P.S.A. Sundaram*  
(P.S.A. Sundaram)  
Additional Secretary (AR&T)  
August 25, 1998

*enc. 14 copies of note for COS*

Shri Pawan Chopra, Additional Secretary, Cabinet Secretariat

D/AR&PG U.O. No. 34011/1(S)/97-Estt(B) dated August 25, 1998

26 AUG 1998

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Immediate

**CABINET SECRETARIAT  
RASHTRAPATI BHAVAN**

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Subject:- Legislative proposal for Freedom of Information and Amendments to related Acts.

Department of AR&PG may kindly refer to their U.O. No. 34011/1(S)/97-Estt.(B) dated 26.8.1998 on the above subject.

2. The two drafts of the Freedom Bill submitted have been examined in the light of the decision taken in the COS held on 25.6.1998 as below:

Para 8(ii) of COS held on 25.6.1998	Sec 3(1) & 3(2) of Annex-III Freedom Bill 1	Sec 3 of Annex-II Freedom Bill
A new draft Bill may be prepared indicating a right of freedom of information for items specified in a comprehensive positive list with a provision for addition or deletion of items by notification. The restrictions proposed might be covered by appropriately defining the term 'Official Secrets' in the relevant Act and restricting information on official secrets on the Freedom of Information Bill. It should also incorporate the other directions given by the GOM in the meeting on May 14, 1998	3.(1) Subject to the provisions of this Act, all citizens shall have freedom of information.  (2) in particular and <u>without prejudice to the generality of the provisions of sub-section (1)</u> , such freedom shall relate to matters specified in Schedule I.  (3) The Central Government may, by notification in the Official Gazette, amend Schedule I by including any matter therein or omitting any matter therefrom and on the publication of such notification, such matter shall be deemed to be included in or, as the case may be, omitted from Schedule I.	Subject to the provisions of this Act, all citizens shall have freedom of information.

3. It may be noticed from the above that wording of Section 3(1) and 3(2) of Annexure-III (Freedom Bill 1) do not conform with the decision at para 8(ii) of COS dated 25.6.1998 wherein it was decided that "the new draft Bill should indicate a right of freedom of information for items specified in a comprehensive positive list. The restrictions proposed might be covered by appropriately defining the term 'Official Secrets' in the relevant Act and restricting information on official secrets on the Freedom of Information Bill". This restriction has not been provided for in the draft in Annexure-III (Freedom Bill 1).

4. It was observed in the meeting of GOM held on May 14, 1998 that the proposed restriction contained in Clauses 8 and 9 appear to be too large however justified they may be. The intention of the GOM was to reduce the restrictions contained in Clauses 8 and 9 and the decision taken in the COS was that the Press Council Bill and the Private Members

Bill which contain a short list of exemptions, would be suitably recast after incorporation of some important provisions, and the revised clause would form the basis of the revised definition of Official Secret. This would mean that Clauses 8 and 9 of Annexure-III would also have to be suitably recast. This has not been done.

5. Thus there seems to be no difference in character in the two drafts.

6. D/o AR&PG is requested to suitably revise the draft before the matter is considered in a COS meeting.

  
( RAVI MITAL )  
Deputy Secretary  
Tel: 3792357

Dr. P.S.A. Sundaram, Addl. Secretary, Deptt. of AR&PG  
Cabinet Sectt. U.O. No. 1/97/3/97-CA.V, dated 10th Sept., 1998

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Ministry of Law, Justice & Co. Affairs  
Department of Legal Affairs  
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Sub:- Whether Parliament is competent to enact a law which also obliges the State Governments to disclose information in respect of their administrative functions.

Department of Personnel & Training has a proposal to introduce a Bill in Parliament on Right to Information. The proposed law would enable a citizen to obtain information from public records. Public records may be classified as follows:-

- (i) Public records maintained by the Central Government offices, Corporations, Government companies and other bodies owned or controlled by the Central Government.
- (ii) Public records maintained by the State Government offices, Corporations, Government companies and other bodies owned or controlled by the State Governments.

2. There is no doubt about the competence of Parliament to enact a law in respect of category (i) above. However, the question of competence of Parliament to enact a law in respect of category (ii) was referred for the opinion of the Attorney General vide Statement of Case placed below. It was pointed out that the records maintained by the offices of the State Government would relate to the executive functions of that Government and that such executive functions may relate to legislative entries in List II (State List). The subject of information would also naturally be relatable to those entries.

3. The Attorney General in his opinion placed below has expressed the view that as the proposed legislation would not relate to an entry either in List II or in List III, it is fully within the legislative competence of Parliament and would be covered by the residuary entry 97 of Union List.

4. It may, however, be pointed out that information about a subject in List II or III, which is administered by the State Government, would relate to that subject, and may not be said to be not covered by it. A subject in the State List would cover all aspects including maintenance of records, disclosure of information, etc. In other words, the information would also naturally flow from the particular subject of legislative entry in the State List. It would be for the State Government to see whether any information should be disclosed in respect of their public records and if so, to what extent. It would be overstretching to take a view that information relatable to subjects mentioned in the State List would not be covered by such subjects.

5. It is understood that some of the States have already enacted laws on freedom of information in respect of their public records. If a view is taken that the information relatable to State subjects is covered by a residuary entry 97 of the Union List, competence of State Legislatures for enactment of those laws may become questionable. It appears to us that competence of State Legislatures cannot be doubted for enacting law in respect of public records of the State Governments. Rather Parliament's competence to make laws in respect of the records of the State Governments may be open to question.

6. We may forward the opinion of Attorney General to DOP&T along with our above views.

*R. L. Meena*  
( R.L. MEENA )  
Law Secretary  
27.10.1998

MLJ & CA

*19/10/98*  
*29-10-98*

Law Secy

*R. L. Meena*  
29/10/98

JS & LA (A Sinha)

May kindly see the above note. A copy each of the Statement of Case and the opinion of the Attorney General, is also placed below.

*A. Sinha*  
(A. SINHA)  
JS(A) & LA  
29.10.98

Secretary (Personnel)

*A. Sinha*  
30.10.98

JS(E)

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OPINION

The main question on which my opinion is sought is whether the Union Government has the legislative competence to enact the proposed Freedom of Information Bill, 1997.

The legal principles governing the legislative competence of the Union and the States are well settled. In the leading case of *Union of India Vs. H.S. Dhillon* reported in (1971) 2 SCC 779 the Supreme Court held that if a Central Act is challenged as being beyond the legislative competence of Parliament, the only question to be asked is : Is the matter sought to be legislated included in List II or in List III : No question has to be asked about List I. If the answer is in the negative then it follows the Parliament has power to make laws with respect to that matter. No further question arises. See paras 21, p.792 and para 67, p803.

The pith and substance of the proposed legislation is to secure access to information under the control of public authorities, consistent with public interest, in order to promote openness, transparency and accountability in administration.

I have examined all the entries in List II and have borne in mind the well settled principle of wide and liberal interpretation of legislative entries. As far as I can see there is no entry in List II which would encompass the proposed legislation.

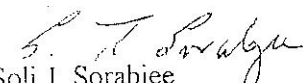
Reference is made to entry 12 of List II, which is as follows :

“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.”

In my opinion, however, widely this entry may be interpreted it would not cover the proposed Freedom of Information Bill. It is well to remember another principle, viz. that whilst giving wide amplitude to the scope of legislative entries no unnatural or strained construction should be placed upon them. See *Diamond Sugar Mills Vs. State of U.P.* AIR 1961 SC 652 & 655 and *New Manek Chowk Spg. And Wvg. Mills Co. Ltd. Vs. Municipal Corporation of the City of Ahmedabad* AIR 1967 SC 1801 at 1812, 1814 Para 27.

In my opinion the proposed legislation does not fall either in List II or List III. Consequently it is fully within the legislative competence of Parliament and would be covered by the residuary Entry 97.

The legal sequiter of the conclusion I have reached is that the State legislatures lack legislative competence to enact legislation whose pith and substance corresponds to the proposed Freedom of Information Bill.

  
Soli J. Sorabjee  
Attorney General for India  
14.10.98

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STATEMENT OF CASE

The Department of Personnel & Training is examining a proposal to introduce a Bill, namely, the Freedom of Information Bill, in the Parliament. The proposal contained in the draft Bill seeks to provide freedom to every citizen to secure information under the control of public authorities, consistent with public interest. The proposal is aimed at promoting openness, transparency and accountability in administration. The draft Bill also contains a list of items, information in relation to which will be exempt from disclosure. A copy of the draft Bill is enclosed at Annexure-I.

2. Under the draft Bill every public authority shall appoint one or more Public Information Officer who will deal with requests for information. Public authority has been defined as any authority or body established or constituted by or under the Constitution, or by any law made by the appropriate Government, and includes any other body owned, controlled or substantially funded by the Government. Appropriate Government in relation to a public authority, has been defined as the Central Government or a State Government, as the case may be. Thus the proposed Bill will cast an obligation on any public authority whether coming under the Central Government or a State Government, to provide information subject to other provisions of the Bill. The Bill is based on the Report of the Working Group on Right to Information and Promotion of Open and Transparent Government, a copy of which is placed at Annexure-II.

3. When the draft Bill was further considered, it was felt that the proposed exemptions appeared too large and

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sweeping, giving an impression of denying practically all information to the public despite the avowed intention of right to information. It was suggested that the draft Bill should spell out items where the supply of information was mandatory, and areas where a citizen would have right to seek and get information.

4. Accordingly, a draft positive list has to be prepared, which is sought to be included in one of the schedules to be appended to the Bill. The positive list would contain items, such as copies of land records, the list of beneficiaries under various developmental schemes at village level, proceedings of Gram Sabhas, details of charges and fee for various civic services, copies of monthly crime report, etc.

5. When the matter was placed before the Committee of Secretaries recently, a doubt was expressed that since the positive list would include items listed under List II (State List) of the Seventh Schedule to the Constitution, the proposed Bill might appear to be falling outside the legislative competence of Parliament. Another view that was expressed was that if the doctrine of 'pith and substance' was applied and the item did not come under List II or List III of the Seventh Schedule to the Constitution, then it would come under Entry 97 of List I, in respect of which the Parliament was competent to legislate. It was accordingly decided that the opinion of the Attorney General in the matter would be solicited. For the sake of convenience of the learned Counsel, the relevant constitutional provisions are being indicated in the subsequent paras.

6. According to Art. 1 of the Constitution, India is a union of States. Our Constitution provides for a Federal



System of Government. Every Federation requires a division of powers between the Federal Government and the States. In our Constitution, this has been effected by Part XI dealing with 'Relations Between the Union and the States'. While Articles 245 to 255 deal with distribution of legislative powers, the administrative relations between the Union and the States is dealt with in Articles 256 to 261.

7. Art. 246 deals with the distribution of legislative powers as between the Union and the State Legislatures with reference to the different Lists in the Seventh Schedule. The provisions of this Article are extracted below for the sake of convenience:

"246. Subject matter of laws made by Parliament and by the Legislatures of States -(1) Notwithstanding anything in clauses (2) and (3), Parliament has exclusive power to make laws with respect to any of the matters enumerated in List I in the Seventh Schedule (in this Constitution referred to as the "Union List").

(2) Notwithstanding anything in clause (3), Parliament, and, subject to clause (1), the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule (in this Constitution referred to as the "Concurrent List".)

(3) Subject to clauses (1) and (2), the Legislature of any State has exclusive power to make laws for such State or any part thereof with

respect to any of the matters enumerated in List II in the Seventh Schedule (in the Constitution, referred to as the "State List").

(4) Parliament has power to make laws with respect to any matter for any part of the territory of India not included in a State notwithstanding that such matter is a matter enumerated in the State List."

As per the above scheme, the Union Parliament has full and exclusive power to legislate with respect to matters in List I and has also power to legislate with respect to matters in List III. The State Legislature, on the other hand, has exclusive power to legislate with respect to matters in List II and has concurrent power with respect to matters included in List III. Further, Article 248 dealing with residuary powers of legislation reads as follows:

"(1) Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

(2) Such powers shall include power of making any law imposing a tax not mentioned in either of these Lists"

Entry 97 of List I (Union List) also reads as under:

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either of those Lists."

As would be clear, if an item does not relate to any of the matters enumerated in List II or III, it will come under Entry 97 of List I. Consequently, Parliament alone will be competent to make law on such a subject.

8. It follows from the above that the Parliament would be competent to make law in relation to a subject covered by List I or List II. Similarly, the State Legislature would be competent to make law in relation to a subject falling in List II or List III. So far as the power of the State Legislature in relation to a matter contained in List III is concerned, the same would be subject to law made by Parliament.

9. The Supreme Court has held that various entries in the three Lists are not 'powers' of legislation, but 'fields' of legislation. The power to legislate is given by Art. 246, and other Articles of the Constitution [AIR 1962 SC 1044 Calcutta Gas Company v State of West Bengal;-(1970) 1 SCR 4797 Harakchand v. Union of India; (1971) 2 SCC 779 Union of India v Dhillon]. The Supreme Court has also held that the language of these entries should be given the widest scope of which their meaning is fairly capable because they set up a machinery of Government [(1995) 1 SCR 1071 Dhunichand v. Bhuwalka Bros; AIR 1957 SC 459 Sri Ram v. State of Bombay; AIR 1965 SC 1387 Banwari v. WTO]. Each general word should, accordingly, be held to extend to all ancillary and subsidiary matters which can fairly and reasonably be comprehended in it [(1955) 1 SCR 1285 Hans Muller v. Superintendent; AIR 1963 SC 1667 Ram Kishan v. State of Bihar]. The doctrine of widest possible interpretation of a legislative entry would not, however,

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enable the legislature to make a law relating to a matter which has no rational connection with the subject matter of an Entry [AIR 1965 SC 1375 Navnit Lal v. K.K.Sen, A.A.C of IT).

10. It may be apt to point out at this stage that the executive power of the Union is co-extensive with its legislative power (Art. 73). Similarly, the executive power of the State is co-extensive with its legislative power (Art. 162).

11. Now, under the draft Bill, both the Central Government as well as the State Governments will be obliged to make information available in respect of their respective executive functioning. So far as the State Government is concerned, its executive function would relate to the legislative entries in Lists II and III. As has already been indicated, a legislative entry has to be given widest interpretation so as to include all ancillary and subsidiary matters. It is possible to take a view that the obligation to provide information in relation to an executive function would be covered under the corresponding legislative entry being an ancillary or subsidiary matter. If the view is accepted, then only the State Legislature would be competent to enact a law on the subject, in respect of an item included in List II. So far as an executive function corresponding to an entry in List III is concerned, if the field is occupied by a Parliamentary legislation, then Parliament would be competent to enact a law regarding right to information in respect of that matter. Otherwise, the State Legislature only will have power to provide for right to information. So far as Parliament is concerned, it can make law in respect of an administrative function corresponding to an entry in List I or List III.

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12. As regards residuary power of Parliament, the Supreme Court has, in M/s. International Tourist Corporation v. State of Haryana [AIR 1981 SC 74] held that before exclusive legislative competence can be claimed for Parliament by resort to the residuary power, the legislative incompetence of the State legislation must be clearly established. Entry 97 itself is specific that a matter can be brought under that entry only if it is not enumerated in List II or List III. The residuary power cannot be so exclusively incorporated as to whittle down the power of the State Legislature.

13. As would be seen from the above, so far as the executive functions of the States are concerned, the power to enact a law on Right to Information could be clearly traced to the legislative entries in List II & III. As such, no occasion to invoke the residuary power of Parliament would arise. Parliament can, however, make law on right to information in relation to matters included in List I and those matters in List III in respect of which a law made by Parliament is already in existence.

14. The question relating to the competence of Parliament was also considered by the Working Group on Right to Information and Promotion to Open and Transparent Government. The Group was of the view that since the subject matter of right to information was not included in any of the entries in List II of the Seventh Schedule, it would be covered by Entry 97 of List I. This may be seen in para 3.4 of the Report of the Working Group. The Department of Administrative Reforms and Public Grievances has also written a letter to this Department, drawing attention, inter alia, to the above reference in the said Report and to the Bill on

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right to information. of the Press Council of India. It has been stated that while drafting the Bill, Justice P.V. Sawant took a clear view that Parliament alone had the legislative competence to enact a legislation on freedom of information. The Department of Administrative Reforms and Public Grievances has requested that the contents of their letter may also be brought to the notice of the learned Counsel. Accordingly, a copy of the letter is placed at Annexure-III. It may be pointed out in this connection that the proposal to draw up a positive list covering the State subjects was not considered by the Working Group.

15. So far as the doctrine of 'pith and substance' is concerned, it means that if an enactment substantially falls within the powers expressly conferred by the Constitution upon the Legislature which enacted it, then it cannot be held to be invalid merely because it incidentally encroaches on matters assigned to another Legislature. As has already been explained above, the administrative functions performed by the State Governments relate to matters included in List II and III. The disclosure of information in respect of those matters would be ancillary or subsidiaries to those legislative entries. As such, the State Legislatures alone would be competent to enact law on 'Right to Information' on them. Entry 97 of List I would not give incidental powers to Parliament to encroach upon the above right of the State Legislatures. As such, the doctrine of 'pith and substance' does not appear to be applicable in this case.

16. In the light of the above, the opinion of the learned Counsel is solicited on the following:-

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- (i) Whether, in pursuance of Entry 97 of List I, Parliament would be competent to make a law on


'Right to Information' casting obligations on the State Governments to make disclosure in respect of the information maintained by their offices concerning functions performed by them, which are relatable to Entries in List II and III?

(ii) Whether the State Legislatures are competent to enact law on 'Right to Information' in respect of the information maintained by the offices under the State Governments?

(iii) Whether the proposed positive list can be validly incorporated in the law to be enacted by Parliament? and

(iv) Generally.

New Delhi,  
7th July, 1998

  
(A. SINHA)  
JS(A) & LA

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MOST IMMEDIATE  
SECRET

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

New Delhi, dated the 24<sup>th</sup> December, 1998.

**Subject:- Legislative proposal for Freedom of Information  
and amendments to related Acts and Rules.**

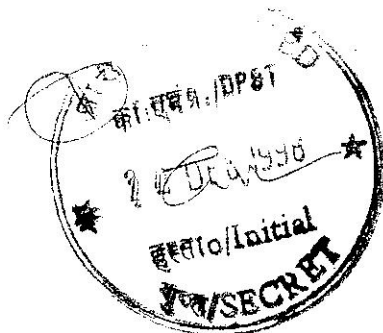
In their meeting held on 18<sup>th</sup> December, 1998, the Group of Ministers considered the legislative proposal for Freedom of Information and desired that copies of similar legislation in advanced democracies may be obtained before the next meeting so that the recommendations regarding the proposed legislation may be finalised at an early date.

2. It may be recalled that in 1997, the Department of Administrative Reforms & P.G. had deputed abroad a team of officers of the level of Director/Deputy Secretary to study the Citizens Charter in advanced countries like USA, Canada, New Zealand and Australia. While submitting its Report, the Study Team, it is presumed, might have also submitted copies of the legislation on Right to Information obtaining in these countries. It is requested that a copy each of such legislations, in case these were submitted by the Study Team, may please be forwarded to this Department urgently for perusal by the Group of Ministers in their next meeting.



( RAKESH MALHOTRA )  
Desk Officer

Department of Administrative Reforms & P.G.  
[Smt. Devika Kumar, Director ]



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IMMEDIATE  
SECRET

K-13011/15/97-PG(CC)  
Department of Administrative Reforms  
and Public Grievances

Dated : 30th December, 1998

Subject : Legislative proposal for Freedom of Information  
and amendments to related Acts and Rules.

Reference Department of Personnel and Training  
Note No. 34011/1(s)/97-Estt.(B) dated 24th December, 1998  
on the above mentioned subject.

2. In this connection, the following information has  
been separately furnished to JS(E), Shri Harinder Singh :-

- (i) Material obtained from British Council Division,  
New Delhi on Right to Information.
- (ii) Internet addresses obtained from the British  
Council Division, from where information on UK's  
Freedom of Information Act can be obtained, namely,
  - (a) <http://www.spj.org/foia/lookback/paul2.htm>
  - (b) <http://www.aclu.org/library/foia.html>
  - (c) <http://mmm.simplenet.com/frames/foi/foi.html>
  - (d) <http://www.spj.org/foia/index.htm>
- (iii) Telephone Number of Shri Y.G. Parande,  
Commissioner (Imports), CBEC, Mumbai, (No.2619538)  
who had visited UK for Fellowship on Citizens'  
Charter under UNDP project. This team had visited  
UK only.



(A.C. Sharma)

Under Secretary to the Govt. of India

Department of Personnel & Training  
(Shri Rakesh Malhotra, Desk Officer)  
North Block, New Delhi

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

**Subject:-** Legislative proposal for Freedom of Information and amendments to related Acts and Rules.

2. A copy of the minutes of the meeting of the Group of Ministers held on 18<sup>th</sup> December, 1998, is enclosed.

1. Home Minister
2. Minister of Defence
3. Minister of Law, Justice & Company Affairs
4. Minister of Information & Broadcasting
5. Minister of State in the Ministry of External Affairs
6. Minister of State for Personnel, Public Grievances & Pensions

1. Shri Prabhat Kumar, Cabinet Secretary
2. Shri B.P.Singh, Home Secretary
3. Dr. Raghbir Singh, Secretary, Legislative Department, Ministry of Law, Justice & Company Affairs
4. Shri P.G.Mankad, Secretary, Ministry of Information & Broadcasting
5. Smt. Sangita Gairola, Joint Secretary, Ministry of Home Affairs

1. PPS to Secretary(Personnel), DOP&T
2. PS to Joint Secretary(Estt.), DOP&T



**MINUTES OF THE MEETING OF GROUP OF MINISTERS TO  
CONSIDER THE LEGISLATIVE PROPOSAL FOR FREEDOM OF  
INFORMATION AND AMENDMENTS TO RELATED ACTS AND  
RULES.**

The second meeting of the Group of Ministers constituted to examine the legislative proposal for the proposed Freedom of Information Bill, 1998 was held on 18<sup>th</sup> December, 1998 at 1.00 PM in the room No.42, Parliament House, New Delhi. The following were present:-

1. Shri L.K. Advani, Home Minister
2. Shri George Fernandes, Minister of Defence
3. Shri Pramod Mahajan, Minister for Information & Broadcasting

In attendance:-

1. Shri Prabhat Kumar, Cabinet Secretary
2. Shri B.P. Singh, Home Secretary,
3. Shri B.B. Tandon, Secretary, Deptt. of Personnel
4. Dr. Raghbir Singh, Secretary, Legislative Department
5. Shri Harinder Singh, Joint Secretary, Deptt. of Personnel
6. Smt. Sangita Gairola, Joint Secretary, Ministry of Home Affairs

2. The Group of Ministers considered the note of the Department of Personnel dated the 7<sup>th</sup> December, 1998 on the aforesaid subject and the legal and administrative aspects of the proposed legislation were discussed in detail. It was noted that keeping in view the vast area covered by the State in India it would not be feasible or practicable to provide a positive list of items where disclosure of

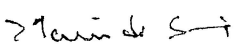
information would be mandatory since efforts to draw up such a list by the DoPT have not yielded fruitful results. It was also acknowledged that even if it is possible to draw such a list by generic and sub-generic titles where information can be provided, such a list would be very voluminous and since such lists would have to be provided by various State Governments who have different official languages, the process of printing, translation and supply of voluminous positive list would create problems at the field levels. The GOM also noted that similar legislation in advanced countries like USA, Canada, New Zealand and Australia does not have any positive list and there is a uniform pattern in legislative drafting of these acts to the effect that all information other than mandatory or discretionary exceptions is required to be made available to the general public with or without prescribed fees. The Group of Ministers noted that keeping in view the fact that the proposed law will be implemented at fairly junior levels, the legal and rules framework should be simple and easy to understand.

3. The GOM further noticed that in regard to the question of legislative competence of Central Government to enact legislation common to Central and State Governments under entry 97 of list I (Residuary powers) of the Seventh Schedule to the Constitution there was contradiction between the views of Law Ministry and the Attorney General. After detailed discussions and perusal of the Constitutional provisions and views of Shourie Committee in this regard, the GOM veered round the view that, keeping in view the judicial pronouncements regarding the doctrine of pith and substance while interpreting the Constitutional provisions, the Central Government is in fact competent to legislate in the matter. The Conference of Chief Ministers held in May, 1997 had in fact supported such legislation.

4. In particular the GOM examined the proposed exemptions from disclosure of information listed in Clause 8 and 9 of the Freedom of Information Bill. The

GOM felt that while the proposed exemptions are adequate, Clause 6 of the proposed Bill needs to be amended to delete the words “or through electronic means” before the Bill is recommended for acceptance.

5. The Group of Ministers desired that copies of similar legislation in advanced democracies may be obtained before the next meeting so that the recommendations regarding the proposed legislation may be finalised at an early date.

  
(Harinder Singh)  
Joint Secretary(E)  
24/12/98