

*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  
2000*

*File 1*

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*File 2*

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*File 1*



(5)

(125)

FILE 1

D.O.No.F.66(1)/200-Leg.I

संसदीय कार्य एवं  
सूचना प्रौद्योगिकी मंत्री  
भारतनई दिल्ली-110 001  
MINISTER OF PARLIAMENTARY AFFAIRS  
AND INFORMATION TECHNOLOGY  
INDIANEW DELHI-110 001  
January 12, 2000

प्रिय वसुंधराजी,

The Budget Session will start sometime in the third week of February. You might be planning to bring up a few new Bills in this Session from your Ministry.

In order to plan the business of the Government properly and efficiently in both the Houses, I will be grateful if an advance information of all such bills is given to me at the earliest.

You are aware that the process of enactment of a new law, from conception in your Ministry to passing in Parliament, goes through the various stages of inter-ministerial consultations, approval of the Cabinet, the drafting of the law, introducing in either of the Houses, scrutiny by the Department Related Standing Committee, etc. It is a highly time consuming process.

Keeping this in mind, I will be grateful if you begin the process early, so that you will be able to pass the new law in the forthcoming Budget Session. Please do not hesitate to seek my assistance at any stage.

With regards,

Brotherly yours,

प्रमोद महाजन

(Pramod Mahajan)

Smt. Vasundhara Raje,  
Minister of State (Independent Charge) for Small Scale Industries,  
Agro & Rural Industries and Personnel & Pensions, Atomic Energy and  
Space,  
Government of India,  
New Delhi.

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

New Delhi, dated the 12<sup>th</sup> November, 1999

NOTE FOR THE GROUP OF MINISTERS

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

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. This 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 outgoing Cabinet. In April 1998, after the constitution of the 12<sup>th</sup> Lok Sabha, the Prime Minister approved the constitution of a new Group of Ministers to examine afresh the proposed Bill and finalize its recommendation on the same. The Group held two meetings, the first on 14<sup>th</sup> May, 1998 and the second on 18<sup>th</sup> December, 1998. The third meeting of the Group to finalize the draft Bill could not be held due to the pre-occupation of the Members in connection with elections to the 13<sup>th</sup> Lok Sabha. The Prime Minister has now approved the constitution of a new Group of Ministers to examine the proposed Bill and finalize its recommendations. 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 38<sup>th</sup> 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 30<sup>th</sup> 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 12<sup>th</sup> General Elections 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 activities 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 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 11<sup>th</sup> Lok Sabha as Private Members' Bill. A copy of this Bill is attached as Annexure-III to this Note.
7. The Group of Ministers approved this Department's proposal subject to a few changes in the Bill. The draft Freedom of Information Bill, 1997, given by the Working Group, was accordingly revised. This Bill, however, could not be considered by the outgoing Cabinet.
8. In April, 1998, the Prime Minister constituted a Group of Ministers to examine afresh the proposed Freedom of Information Bill and to finalize its recommendations on the same. The Group held two meetings, the first on 14<sup>th</sup> May, 1998 and the second on 18<sup>th</sup> December, 1998. The opinion of the Attorney General on the question of legislative competence of the Parliament to enact the proposed Freedom of Information Bill, along with the views of the Law Secretary/Law Minister on the Attorney General's opinion, were placed before the GOM in the last meeting. After

detailed discussions and perusal of the constitutional provisions, the GOM took the view that the Central Government is in fact competent to legislate in the matter. The GOM further desired that copies of similar legislation may be made available to it during the next meeting so that recommendations regarding the proposed legislation are finalized at an early date. A copy each of the minutes of the meetings held on 14<sup>th</sup> May and 18<sup>th</sup> December, 1998 are attached to this Note as Annexure IV. The third meeting of the Group to finalize the draft Bill could not, however, be held as some of its Members resigned from the Union Cabinet and subsequent pre-occupation of the Members in connection with elections to the 13<sup>th</sup> Lok Sabha.

9.1. As desired by the GOM, in its meeting held on 18<sup>th</sup> December, 1998, a copy each of the

(i) 'Freedom of Information Act, 1966' enacted by USA.

(ii) 'Access to Information Act, 1982' enacted by Canada

(iii) 'Freedom of Information Act, 1989' enacted by Australia ; and

(iv) White Paper on Government's proposal for a 'Freedom of Information Act; presented to the British parliament in Dec.' 97.

are placed at Annexures V, VI, VII and VIII respectively.

9.2. All Freedom of Information statutes provide a "public right to know" government information, a set of exceptions for certain categories of information and a right of redress, either to Courts (USA) or to a special "Information Commissioner"(Canada). The cross national differences center on relatively tangential issues such as time limits, permissible costs for providing the information, definition of exemptions for "national security", "law enforcement", "individual piracy" and right to operation of "appeal and redress" Supplementary duties to provide information as a matter of routine, rather than solely in response to a request, necessitate publishing of facts and analysis of facts which the government considers relevant and important in framing major policy decisions.

9.3 The American Act covers all agencies in executive branch of the federal government, including the FBI and CIA (although operational files are exempt). The judicial and legislative branches of government are excluded as is the office of the President. State, local and city governments are excluded too. The Act does not spell out information sources, other than records, which are covered and it is assumed to cover information in whatever form it exists. In contrast, the Canadian Act covers all government departments and most agencies, including the police and security Intelligence Service. Commercial Crown corporations, institutions of Parliament, and the Courts are not within scope. 'Cabinet confidences' - which include Cabinet minutes and memoranda - are excluded from the legislation if they are less than 20 years old. In Australia, the Act covers Central government and many agencies. While the Police are included, the Security and Intelligence services are excluded as are the documents generated by them. Public corporations are exempt from the Act in respect of documents relating to their commercial activities.

9.4. Certain exemptions are common to every Freedom of Information regime as defence and national security, policy advice, personal privacy and law enforcement. It is the nature of exemptions that primarily determine the extent to which the Act can be used by the public to obtain official information. Exemptions may be mandatory or discretionary where non-disclosure is permitted in certain circumstances. Again, exemptions can be stated in terms of class (type of record- Cabinet papers, legal advice) or contents. Provision of a 'public interest override' is normally appropriate to be included along with 'harm test' although in the latter case, such a decision is appealable.

9.5 All the nine exemptions included in the American Act are discretionary and in common with Australia and Canada- (1) defence, security and international relations; (2) internal discussion and advice; (3) law enforcement and legal proceedings; (4) effective management and operations of the public service; (5) privacy of an individual; (6) third party's commercial confidences, (7) information given in confidence; (8) statutory and other restrictions; (9) research, statistics, analysis; and effective management of the economy and collection of taxes ( the last two are common in part). Australia and Canada, in addition, share (10) publication and

prematurity in relation to publication as an exemption. Australia has two other exemptions in the form of (11) communications with the royal household and (12) unreasonable, and vexatious or voluminous requests which are peculiar to it. All the 12 exemptions contained in the Freedom of Information Act of Australia are discretionary as well and incorporate harm-tests though Cabinet documents are class-based without harm-test.

9.6. Exemptions under the Access to Information Act in Canada fall in two categories: mandatory, allowing the Government no option but to deny access to such exemptions as information obtained in confidence from foreign governments, trade secrets and other information supplied to government in confidence; and, discretionary exemptions which incorporate harm tests.

10. The proposed 'Freedom of Information Bill, 1999' (Annexure IX) has been drafted using the legislations obtaining in the established advanced democracies of USA, Canada and Australia as models. Due emphasis has been paid in fine-tuning the provisions consistent with governance procedures in India.

11. In the above background, the Group of Ministers are requested to consider the draft "Freedom of Information Bill, 1999, as in Annexure-IX, and give their recommendations for submission of the proposal to the Cabinet to seek their approval for introducing the Bill in the next Session of Parliament.

12. This Note has been seen and approved by the Minister of State(Personnel).

*Harinder Singh*

(HARINDER SINGH)

Joint Secretary to the Government of India

New Delhi

Dated the 12<sup>th</sup> November, 1999

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 provide for a review of the functioning the Act at the end of a specified period, say 10 years.

10. It was also decided that the Chairmen of the National and State Freedom of Information Councils should be eminent personalities from public life rather than Ministers.

11. The Group of Ministers also felt that in view of the commitment of the Government as reflected in the Common Minimum Programme, the proposed legislation should clearly reflect the desire to provide as much information as possible to the public, within strictly enforced time limits.

Therefore, this should find an appropriate reflection either in the preamble to the proposed Act or in the Statement of Objects and Reasons of the Bill.

12. The Group of Ministers was also informed that a reminder had been sent to the Ministries/Departments whose responses to the recommendations of the Working Group on Right to Information and Promotion of Open and Transparent Government, chaired by Shri H.D. Shourie, were still awaited in view of the direction of the Cabinet that the Group of Ministers should specially consider their comments. These Ministries had been given time till the 31st October, 1997 to furnish their comments and informed that in the event no responses was received by that date it would be presumed that they have no comments to offer. The responses received would be placed before the Group of Ministers in their next meeting. The Group decided to finalise their deliberations very soon so as to enable the Cabinet to decide on the proposal to introduce the Bill in the Winter session the Parliament.

SECRET

COPY NO. ....

No. 34011/1(S)/97-Estt.(B)  
Department of Personnel & Training.

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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. Patil, 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 3 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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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

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 Notes  
of even number dated the 3th 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.

*YR Singh*

(Rakesh Malhotra)  
Desk Officer

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:

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. Menon, 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 :

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

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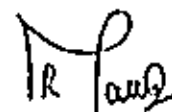
No.34011/1(s)/97-Estt.(B)  
Government of India  
Ministry of Personnel, Public Grievances & Pensions  
Department of Personnel & Training  
.....

New Delhi, dated the 28<sup>th</sup> December, 1998.

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 the 16<sup>th</sup> December, 1998 on the above subject.

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



( Rakesh Malhotra )  
Desk Officer

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

Copy to :-

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

Copy also forwarded to :-

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  
(Harinder Singh)  
Joint Secretary(E)  
21/12/98



# YOUR RIGHT TO KNOW

The Government's proposals for a Freedom of Information Act

Presented to Parliament by the  
Chancellor of the Duchy of Lancaster  
by Command of Her Majesty, December 1997

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# Preface by the Prime Minister



The Government is pledged to modernise British politics. We are committed to a comprehensive programme of constitutional reform. We believe it is right to decentralise power; to guarantee individual rights; to open up Government; and to reform Parliament.

The Government is delivering on its promises:

- voters have supported a Scottish Parliament and a Welsh Assembly, giving the people of Scotland and Wales more control over their own affairs within the United Kingdom;
- a Bill bringing new rights, through the incorporation of the European Convention on Human Rights into United Kingdom law, has been introduced to Parliament;
- White Papers on a new strategic authority and an elected mayor for London, and development agencies in the regions of England, have been introduced.

This White Paper explains our proposals for meeting another key pledge — to legislate for freedom of information, bringing about more open Government. The traditional culture of secrecy will only be broken down by giving people in the United Kingdom the legal right to know. This fundamental and vital change in the relationship between government and governed is at the heart of this White Paper.

These proposals will form the basis for a thorough and informed debate. As an open Government our next step will be to conduct a careful consultation exercise on the basis of a draft Bill.

Tony Blair

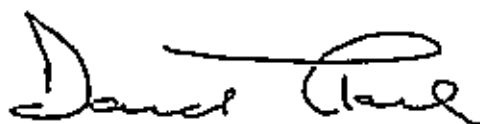
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# Foreword by the Chancellor of the Duchy of Lancaster

Openness is fundamental to the political health of a modern state. This White Paper marks a watershed in the relationship between the government and people of the United Kingdom. At last there is a government ready to trust the people with a legal right to information. This right is central to a mature democracy.

There are matters, such as national security or personal privacy, where information has to be protected. Government itself needs some protection for its internal deliberations. This White Paper strikes a proper balance between extending people's access to official information and preserving confidentiality where disclosure would be against the public interest. It is a new balance with the scales now weighted decisively in favour of openness.

The Government will be publishing a draft Freedom of Information Bill next year. The Government believes that the proposals outlined in this White Paper will contribute positively to the progressive opening up of the British State.



# Introduction

1.1 Unnecessary secrecy in government leads to arrogance in governance and defective decision-making. The perception of excessive secrecy has become a corrosive influence in the decline of public confidence in government. Moreover, the climate of public opinion has changed: people expect much greater openness and accountability from government than they used to.

1.2 That is why we pledged before the election to introduce a Freedom of Information (FOI) Act. The purpose of the Act will be to encourage more open and accountable government by establishing a general statutory right of access to official records and information. This White Paper sets out proposals for such legislation.

1.3 An FOI Act will provide the people of this country, for the first time, with a general statutory right of access to the information held by public authorities. This right to know has existed in Sweden since the 18<sup>th</sup> century, in the USA since 1956, in France since 1978, in Canada, Australia and New Zealand since 1982 and in the Netherlands since 1991. The United Kingdom can learn from the experience of these mature fellow democracies. This White Paper contains a number of proposals which reflect overseas experience — and in one or two cases considers but rejects ideas commonly encountered abroad. We are willing to learn and see an FOI Act as central to our programme of modernising government. The Act will provide a clear standard of openness for the Government as a whole, in keeping with the need for proper Ministerial accountability to Parliament.

1.4 It is important to set these major steps in the wider context of open government as a whole. For example, since May, we have:

- taken steps towards setting up a Food Standards Agency to provide substantially more open and transparent arrangements in this vital area of consumer interest;
- required National Health Service trusts to hold their meetings in public;
- required all executive and advisory Non-Departmental Public Bodies to produce and make publicly available annual reports;
- required details of most public appointments to be placed on the Internet;
- prepared consultative proposals on the commitment to an independent National Statistical Service which will enhance the integrity of official statistics. These will be published shortly;

- removed restrictions on disclosure of certain internal government papers to the National Audit Office,
- published a National Asset Register listing for the first time all the property owned by government departments.

1.5 We recognise the importance of underpinning these initiatives with a statutory guarantee of openness. This is essential. It is something that the last Government conspicuously failed to do. The result is a haphazard approach based largely on non-statutory best practice arrangements (in particular the central government *Code of Practice on Access to Government Information*) with statutory requirements for openness applying only in certain areas such as environmental information<sup>1</sup>, or limited to particular sectors of the public service, notably local authorities<sup>2</sup>. In preparing Freedom of Information legislation, we intend to reduce the complexities and duplication in existing statutory and non-statutory access requirements as far as possible.

1.6 We could have scored an early legislative achievement by simply enacting the existing *Code of Practice* into statute. Such an approach would not have done justice to our firm commitments. We have taken rather longer in order to complete a root and branch examination of this whole area in order to produce a better and more lasting scheme. The result is this White Paper which makes proposals for proper Freedom of Information legislation designed to replace this piecemeal and inadequate system with clear and consistent requirements which would apply across government.

1.7 Our FOI Act will have the following features:

- application across central government departments and their agencies, to local authorities, and to many thousands of public bodies and the NHS, as well as to privatised industries and other private bodies that carry out statutory functions (paragraph 2.2);
- there will be a right of access to a wide range of official records or other information (paragraphs 2.6 – 2.16);
- strict tests will be applied to ensure that information will be released except where disclosure would cause harm to one or more of a limited number of specified "interests" or would be contrary to the public interest (paragraphs 3.7 and 3.15 – 3.18).

<sup>1</sup> Environmental Information Regulations 1992 (SI 1992/3240).

<sup>2</sup> For example Access to Information (Local Government) Act 1985; Access to Personal Files Act 1987.

- the system for protecting sensitive information will be simple, based on seven key specified interests, as opposed to the 15 exemptions currently in the Code of Practice (paragraphs 3.9 - 3.13);
- individuals will be granted greater access than ever before to the personal information which government holds on them (paragraph 4.5);
- individuals will be able to exercise their rights of access to personal information under FOI or Data Protection Legislation (paragraphs 4.9 - 4.11);
- there will be an independent Information Commissioner, who will police the Act, and handle appeals. The Commissioner will have wide-ranging powers, including the power to order disclosure of information (paragraphs 5.6 and 5.12);
- access rights to current and historical records will be integrated in the Act (paragraph 6.4).

1.8 We also propose a progressive approach to openness, including a continuing programme of action by the Office of Public Service to underpin the Act by changing the culture of government towards greater openness (Chapter 7). We will also consult widely on a draft FOI Bill to be published next year (Chapter 8).

1.9 Even before the draft Bill is published however, this White Paper marks the start of a consultative process on FOI. It is designed to set out our proposals clearly and succinctly. Nevertheless, it is a White Paper with "green edges". Comments on any aspect of it will be welcome: certain issues are highlighted as likely to be of particular significance to those who may be directly affected by an FOI Act, whether they are within or outside public services. Comments on these points would be especially welcome. Details of how to comment are set out on the inside front cover; details on how to join a debate on the White Paper on the Internet are included on the inside back cover.

# A right to know — rights of access under FOI

## The scope of the Act — who will it cover?

2.1 We believe that Freedom of Information, as a fundamental element of our policy to modernise and open up government, should have very wide application. The Freedom of Information Act will apply across the public sector as a whole, at national, regional and local level. It will apply throughout the United Kingdom although it will be for the Scottish Parliament to determine the approach of the Scottish executive and other Scottish public bodies to openness and freedom of information within devolved areas in which it is competent to enact primary legislation. In Wales, the Act will cover the National Assembly for Wales (as a Crown body) and other public authorities.

2.2 The Act will have a far broader scope than the existing central government *Code of Practice on Access to Government Information*, or other openness measures in government. It will cover:

- Government Departments, including non-Ministerial Departments, and their Executive Agencies;
- Nationalised industries, public corporations, and all the 1,200 Non-Departmental Public Bodies ("Quangos"). Examples range from the Equal Opportunities Commission and the UK Atomic Energy Authority to the Royal Botanic Gardens and the Northern Lighthouse Board;
- the National Health Service;
- administrative functions of the Courts and tribunals;
- administrative functions of the Police and Police Authorities;
- the Armed Forces;
- Local Authorities;
- Local Public Bodies, for example Registered Social Landlords and Training and Enterprise Councils;
- Schools, Further Education Colleges and Universities;
- the Public Service Broadcasters (for example the BBC, Channel Four, the Radio Authority);

- private organisations insofar as they carry out statutory functions.
- the privatised utilities.

In addition, FOI provisions will be applied to information relating to services performed for public authorities under contract. Appropriate requirements will be included in the individual contracts between public authorities and contractors.

### Who will the Act *not* cover?

2.3 A very few public bodies, because of the nature of their role, will be completely excluded from the Act. Parliament, whose deliberations are already open and on the public record, will be excluded. We are clear that the Security Service, the Secret Intelligence Service, the Government Communications Headquarters and the Special Forces (SAS and SBS) could not carry out their duties effectively in the interests of the nation if their operations and activities were subject to freedom of information legislation. These organisations, and the information that they provide, will be excluded from the Act, as will information about these organisations held by other public authorities.

2.4 The Act will contain a list, showing which public authorities and other organisations are covered, so that there will be no ambiguity about which bodies are included and which are not.<sup>3</sup> This list will be published as part of the draft Bill next year. Such a list will need to be amended from time to time as public bodies are created or wound up, or public functions are carried out by different bodies. The Act will provide for this with an Order-making power to allow the list to be kept up to date. ♦

### What is the Freedom of Information Act intended to do?

2.5 The objective of the Act is to help open up public authorities and other organisations which carry out public functions. First, it will empower people, giving everyone a right of access to the information that they want to see. Secondly, it will place statutory duties on the bodies covered by the Act to make certain information publicly available as a matter of course.

3. In the rest of the Paper we use the term "public authorities" as the generic term to cover all the bodies and organisations included in paragraph 2.2.

## Your Right of Access

2.6 This is at the heart of the Act. The Government sees it as taking the general form of a right, exercisable by any individual, company or other body to records or information of any date held by the public authority concerned in connection with its public functions.

➤ "... by any individual, company or other body"

2.7 Anybody can apply for information. Applicants will not need to demonstrate or state their purpose in applying for information. All requests will be considered equally on their contents, not on the stated or presumed intentions of the applicant.

➤ "... to records or information ..."

2.8 The *Code of Practice on Access to Government Information*, introduced by the last Administration in 1994, provides access to information, but not to actual records or documents. This is in contrast to most statutory FOI regimes (see Annex A). The Code's approach has been frequently criticised as unnecessarily secretive because it offers potential scope for "doctoring" the material; and as cumbersome because in many cases disclosure of actual documents is the simplest and quickest route for both Department and enquirer.

2.9 Another key issue is the changing nature of information creation and storage. In the USA for example, updating the 1966 legislation has recently been necessary to ensure that FOI covered computer disks and other IT storage methods.

2.10 We believe that, for the Act to be fully effective, the access right should be capable of a broad and flexible application in this respect. It should cover both records and information. And the term "records" should cover all forms of recorded information including electronic records, tape, film and so on.

2.11 The flexibility in these arrangements will help both the applicant and the public authority. The applicant will be able to specify the form of the record or information requested. The authority would be required, in the first instance, to release disclosable records or information in the form requested. But it too will have flexibility to meet the

request in a different form if this would be more in keeping with the requirements of the Act or if exact compliance would involve disproportionate cost or effort (see "Gateways to the Act", paragraphs 2.23 - 2.27). Or it could decide to make a charge reflecting the cost of meeting the application if necessary (see "Who Pays?", paragraphs 2.28 - 2.34).

2.12 A refusal to supply information or records in the form requested would be appealable to the Information Commissioner (Chapter 5), who would need to take into account factors such as the technical feasibility of meeting the request, and other discretionary cost thresholds relating to the provision of information, such as that for answering Parliamentary Questions. If problems of disproportionate cost look likely to limit significantly the extent to which individual public authorities are able to provide information under the Act, there will be scope for them to agree procedures with the Information Commissioner to provide it in a more cost-effective form.

➤ "... of any date. ... "

2.13 The access right will apply to records of any date regardless of whether they were created before or after the Act comes into force. There would be only very limited exceptions to this, for example where the new Freedom of Information Act incorporates and supersedes certain existing statutory access rights which themselves only give access to records after a specified date.

2.14 Eventually, records held by many public authorities reach an age — normally 30 years — where they become subject to the criteria governing historical records. Chapter 6 of this White Paper sets out our proposals for integrating the access rights to both current and historical records under the FOI Act.

➤ "... held by the public authority concerned. ... "

2.15 The access right will apply to recorded information that the public authority concerned already holds. It does not have to have originated this itself. If an authority does not hold the information requested, it could choose to obtain it for the applicant, but would not be legally obliged to do so.

➤ "... in connection with its public functions. ..."

2.16 Many public authorities within the scope of the Act will hold records of various sorts which do not relate directly to their public functions. For example, individual authorities may hold private or personal records. Political and constituency papers may be held in the Private Offices of Government Ministers alongside official records. Commercial organisations carrying out public functions will, naturally, hold many other records relating to their separate commercial operations. Such records would not be available under the Act.

### Duties to publish information

2.17 A Freedom of Information Act must be a catalyst for changes in the way that public authorities approach openness. In this respect, sensible legislation should have a far greater impact than any voluntary or discretionary system. Experience overseas consistently shows the importance of changing the culture through requiring "active" disclosure, so that public authorities get used to making information publicly available in the normal course of their activities. This helps ensure that FOI does not simply become a potentially confrontational arrangement under which nothing is released unless someone has specifically asked for it.

2.18 We believe it is important that further impetus is given to the pro-active release of information. So, the Act will impose duties upon public authorities to make certain information publicly available, as a matter of course. These requirements will be consistent with the other provisions of the Act — including its harm and public interest tests (see Chapter 3). They will be broadly along the lines of those in the *Code of Practice*, namely:

- facts and analysis which the Government considers important in framing major policy proposals and decisions;
- explanatory material on dealings with the public;
- reasons for administrative decisions to those affected by them;
- operational information about how public services are run, how much they cost, targets set, expected standards and results, and complaints procedures

## What is FOI not intended to do?

2.19 We are clear that an FOI Act is not appropriate for certain purposes and that the legislation should exclude certain limited categories of information held by public authorities.

2.20 First, it is not intended as an aspect of public sector employment law. It is not therefore intended that the Act should cover access to the personnel records of public authorities by their employees. This will also apply to records held for recruitment and appointments. The important distinction here is between the rights of individuals as members of the public to official information, and the different relationship between public sector employees and their employers. Allowing civil servants and other public sector employees a right of access to their personnel files under the FOI Act (as opposed to the Data Protection Act — see Chapter 4) would, among other things, result in public and private sector employees having different statutory rights. We are already acting positively on behalf of employees where disclosure issues are concerned. We are supporting a Private Member's Bill currently before Parliament (the *Public Interest Disclosure Bill*). This is concerned with protecting the rights of employees in certain specific situations where an unauthorised disclosure is seen by the employee as the only means of bringing to external attention an abuse or problem within an organisation (commonly known as "whistle-blowing").

2.21 Second, FOI should not undermine the investigation, prosecution or prevention of crime, or the bringing of civil or criminal proceedings by public bodies. The investigation and prosecution of crime involve a number of essential requirements. These include the need to avoid prejudicing effective law enforcement, the need to protect witnesses and informers, the need to maintain the independence of the judicial and prosecution processes, and the need to preserve the role of the criminal court as the sole forum for determining guilt. Because of this, the Act will exclude information relating to the investigation and prosecution functions of the police, prosecutors, and other bodies carrying out law enforcement work such as the Department of Social Security or the Immigration Service. The Act will also exclude information relating to the commencement or conduct of civil proceedings.

2.22 Lastly, FOI should not disadvantage the government in litigation. For that reason, the Act will not cover legal advice obtained by the government from any source or any other advice within government which would normally be protected by legal professional privilege.

## Gateways to the Act

2.23 We are determined that the Act should be open, fair, straightforward and simple to operate both from the point of view of the applicant and of those who hold the information. The bodies covered by the Act will be expected to act reasonably and helpfully when applying the qualifying "harm tests" described in Chapter 3. Drawing upon overseas experience (see Annex B), time limits for response will be set out in the Act to ensure that applicants do not have to wait an excessive or unreasonable time for responses. Equally, applicants will be encouraged to act reasonably and not abuse or misuse the access rights that the Act provides.

2.24 For Freedom of Information legislation to operate effectively, it is necessary to include at the outset some basic tests of reasonableness for applications for information. We have termed these "Gateway" provisions in our Act. They are intended to give an applicant rapid entry into the FOI process by — on the one hand — encouraging applications which are reasonable and practicable for public authorities to deal with and — on the other hand — encouraging the authority and the applicant to co-operate in this process. This will therefore be the first step in the process of considering an FOI application (see the diagram at Annex C which sets out the whole process, step by step).

2.25 In most cases the "Gateway" process will simply be a matter of ensuring that the request is well-formed and clear; but the tests of reasonableness will also serve as the FOI equivalent of the procedures preventing the law being misused by vexatious litigants. Overseas FOI experience includes examples of individuals making hundreds or even thousands of requests to public authorities. This has persuaded us that some such provisions are necessary but we will ensure that they are carefully drawn so that they do not obstruct genuine requests for information. We have in mind the following considerations but would welcome views on these, and any others thought necessary.

2.26 Applications for information covered by the Act should normally progress to the point where they are assessed against the harm and public interest tests (see Chapter 3 and the diagram at Annex C). Circumstances where public authorities could deal differently with applications would include the following:

- applications for information which has already been published and is still reasonably available. Disclosure could be refused, but information to help identify the existing publication should be given to the applicant;
- applications for information which will be, or is intended to be, published at a future date. The public authority would need to give an indication of the plans for publication;
- applications which are not specific enough to provide the relevant authority with a reasonable indication of what is being sought. The authority would, in the first instance, need to indicate the nature of the problem and invite the applicant to be more specific;
- large-scale "fishing expeditions" or other applications which would result in a disproportionate cost or diversion of the public authority's resources in order to identify, collect, or review the required records. The authority would need to give an indication of why the application caused this problem or — if it intended to meet the application but at a significant charge — the likely cost to the applicant of doing so;
- multiple applications from the same source for related material in order to avoid the previous restriction. Public authorities would have flexibility in such cases over how they treated such applications for charging and cost threshold purposes;
- large multiple applications for similar information from different sources which are clearly designed to obstruct or interfere with the public authority's business. Here, authorities would clearly have the option of publishing the information at an early stage in the process, thus avoiding the need for repeated disclosure to individuals.

2.27 In general, the object should be for the public authority to be helpful in dealing with problematic requests so that, if possible, the applicant can obtain the information he or she seeks by one means or another. Where this is not possible, an applicant should normally be able to appeal to the Information Commissioner (see Chapter 5).

There may also be scope for the Commissioner to mediate — whether formally under the Act or more informally — where an authority and an applicant have failed to reach agreement on what constitutes a valid application.

## Who Pays?

2.28 Freedom of Information carries costs, essentially because it puts public authorities and the information they hold at the service of the people. That is particularly so with an Act that will cover all past as well as current records. This is not a reason for refusing to have FOI. But it is a reason for examining the cost carefully.

2.29 Every major FOI regime in the world contains provisions for charging — requesting payment from the applicant in certain circumstances, depending on the type and amount of information supplied. Some also have provision for flat-rate "entry fees" to use the different services provided under the Act (eg \$X to make a request, \$Y to take the case to appeal). In the UK, "Data users" — bodies holding information covered by the Data Protection Act — are able to levy a maximum fee of £10 per request, but cannot impose a charge relating to the work done to respond to the request. Under the Code of Practice this position is reversed: fees are not permitted, but charges can be made for work done to deal with requests.

2.30 In considering what fees and charges structure would be most appropriate for FOI, we have the following aims:

- a system which is as fair as possible to applicants based on the assumption that the bulk of the costs of FOI will be borne by public authorities;
- a mechanism which reinforces the "Gateway" tests set out above by deterring frivolous requests and encouraging responsible use of the Act;
- a means of applying some control over flows of "subject access" requests for personal information between FOI and the new Data Protection Act (this is explained in Chapter 4).

2.31 On this basis, we propose that:

- public authorities covered by the Act should be able to charge a limited access fee per request;

- this should be no more than £10, to keep it in line with the fee for subject access under Data Protection;
- where the request is for an individual's own personal information, the authority holding the information can charge a flat fee up to a maximum of £10;
- no fees will be charged for access to review and appeals procedures. This would too easily encourage an irresponsible attitude from those dealing with the request in the first instance;
- complaints about misuse of fees may be made to the Information Commissioner.

2.32 Public authorities will be able to set charging schemes within parameters laid down either in the Act itself or (more probably) an Order made under it. These parameters would require that charging schemes

- exclude any power to make a profit, ensuring that charges reflect only "reasonable" costs;
- should not apply to information which a public authority is required, under the FOI Act itself, to make publicly available;
- should be structured to fall primarily on the limited number of applications which involve significant additional work and considerable costs, rather than straight forward applications which, for public authorities, should be part and parcel of normal interaction with the public;
- must provide early notification of any prospective charge to applicants, to enable them to choose whether to proceed with their applications (this may be particularly important where work involving reviewing of documents for sensitive content is likely to reduce the ultimate benefit to the enquirer).

2.33 A common concern with uniform fee and charging systems is that they tend to penalise the individual applicant in search of a limited range of information, as opposed to a private company which may be systematically using FOI to augment its commercial data-base. The Government would therefore welcome views on (a) the desirability and (b) the viability of a two-tier charging approach designed to impose higher charges on commercial and other corporate users of the Act.

2.34 As with fees, complaints about charges will be appealable to the Information Commissioner. The Commissioner would also be able to determine whether an authority's general fee and charging structure conformed with the provisions of the Act.

### Services for which the government charges

2.35 The government has for many years off-set the costs of some of its operations through charging commercial rates for certain tradeable information-based services (for example land registration data supplied by HM Land Registry). The total income from charging for these information services (including direct sales income, licensing revenue and income from data supply) amounted to some £180 million in 1996-97.

2.36 This charging regime is underpinned by Crown copyright which has been the subject of a review launched by the previous Government. The results of that review are being published shortly as a Green Paper which will invite comments on proposals to simplify the application of Crown copyright (eg more standardised and fast-track licences) and to liberalise it (eg non-enforcement for declared classes of material, such as unpublished public records, Acts of Parliament and Statutory Instruments).

2.37 We want to protect the integrity and status of government material and to secure the revenue which Departments obtain for providing high-quality services for which the customer is willing to pay a price. At the same time, we want to provide the public and the information industry with easier and quicker access to the general run of material produced and held by government. We shall consult on options for striking this balance in the Green Paper on Crown copyright.

2.38 We will take account of comments on the Green Paper in drafting the FOI Bill, the charging provisions of which will be drafted to exclude tradeable government information.

# The right to know and the public interest

## Disclosure Decisions

3.1 Decisions on disclosure under the FOI Act will be based on a presumption of openness. Public authorities taking such decisions will therefore need to start by assessing the effect of disclosing, rather than withholding, the information.

3.2 It is important, both for the authority itself, and for the applicant, that this assessment is as simple and straightforward as possible.

3.3 We have considered the existing *Code of Practice on Access to Government Information* in this respect, but do not believe it provides a suitable approach. In particular:

- it contains too many exemptions — 15 in total, more than any of the main statutory FOI regimes elsewhere in the world (see Annex D). This inevitably makes it complex for applicants to use, and encourages accusations that Departments 'trawl' for anything that might serve as a reason for non-disclosure;
- its wording encourages the use of a "class-based" approach towards exemptions. This is where a whole category of information or record is protected, leaving no scope for partial disclosure of a record, after deletion of sensitive material;
- it often requires a balance to be struck, whereby the harm that the disclosure could cause to one or more of the exemptions is set against the public interest in disclosure. But how the "public interest" might be constituted is not defined, and assessing harm against undefined factors can be difficult for staff and others who may be unfamiliar with the Code and with disclosure concepts.

3.4 In our view, it is right that the test for disclosure under FOI should be based on an assessment of the harm that disclosure might cause, and the need to safeguard the public interest. However, our proposals for doing this are designed to make decisions on disclosure — which in some cases will be complex and sensitive — as simple as possible to understand both by those required to make the decision, and by the applicant who is seeking information. In particular, the harm test which will be applied should give an indication of the degree of harm which is likely to justify protecting information relating to a particular interest. And an attempt should be made to set out how a decision on the "public interest" can be made.

3.5 This is what our proposed system is intended to do.

## How decisions on disclosure will be made

### I. The substantial harm test

3.6 As noted above, we see the tests for harm in the *Code of Practice* as insufficient. In particular, there is for most exemptions no indication of the extent of harm against which the disclosure or withholding of information should be judged.

3.7 We believe the test to determine whether disclosure is to be refused should normally be set in specific and demanding terms. We therefore propose to move in most areas from a simple harm test to a substantial harm test, namely will the disclosure of this information cause substantial harm?

### II. The specified interests

3.8 We believe the 15 exemptions in the *Code of Practice* can be substantially reduced. Indeed, we do not propose that the Act should contain exempt categories at all, but rather that disclosure should be assessed on a "contents basis", records being disclosed in a partial form with any necessary deletions, rather than being completely withheld. This ensures that the harm test is sensibly and realistically applied to key areas. We have provisionally identified seven "specified interests" in place of the Code's exemptions.

3.9 In order to assess the circumstances in which substantial harm might be caused by disclosure, those using the Act will need to have a reasonable idea of the scope of each specified interest. So the FOI Bill will set out, to the necessary extent, particular factors in respect of each interest. Those considering applications — including the proposed Information Commissioner — should have regard to those factors when deciding whether a disclosure would cause harm or substantial harm to any one of them.

3.10 The Bill will also make clear that such harm could in certain circumstances be caused by the cumulative effect of numerous disclosures of similar material over a period, as well as by a single disclosure.

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### III. Proposed key specified interests governing disclosure

5.11 We propose seven such interests:

#### 1. National security, defence and international relations.

Protection of information whose disclosure could damage the national and international interests of the State is a key requirement of an FOI Act. The integrity of communications received in confidence from foreign governments, foreign courts or international organisations should be protected.

#### 2. Law Enforcement.

Again, protection in this area is common to all FOI legislation. Paragraph 2.21 notes that the Act should not undermine the investigation, prosecution or prevention of crime, or the conduct of civil proceedings, and these functions of public authorities will be excluded from the Act. Beyond this however, there can clearly be no obligation to disclose other information which could substantially harm the effectiveness of law enforcement or encourage the avoidance or evasion of tax and other financial obligations owed to the State.

#### 3. Personal Privacy.

The right of the individual to personal privacy is a fundamental human right. To some extent, this right is already protected through the law relating to confidentiality; moreover it is enshrined in Article 8 of the European Convention on Human Rights, which we propose to incorporate into UK law as a key element of our policy of bringing rights home. Protection against disclosures which could substantially harm this right is an essential element of an FOI regime.

At the same time, the right to personal privacy cannot be absolute — there may be circumstances where disclosure of personal information may be in the public interest. Such cases could well raise difficult choices between the potentially conflicting interests of the individual, the applicant and the public authority holding the information. This is an issue which an FOI Act may need to acknowledge through a mechanism to allow third party appeals against impending disclosure (see paragraph 5.19). The Government is

introducing legislation into Parliament to implement the 1995 European Community Data Protection Directive. Data protection is integral to personal privacy, so there will be clear and important links between this legislation and FOI. These are examined in Chapter 4.

#### 4. Commercial Confidentiality.

Relations between public authorities and the private sector need to rest on two-way openness and trust. There will of course be information — like trade secrets, sensitive intellectual property or data which could affect share prices — where disclosure would substantially harm the commercial interests of suppliers and contractors. This might, in certain circumstances, apply to the commercial interests of the disclosing authority itself — we are mindful that the Act's proposed coverage will include the nationalised industries, executive public bodies with significant commercial interests, and some private bodies in relation to any statutory or other public functions which they carry out. But we believe that openness should be the guiding principle where statutory or other public functions are being performed, and in the contractual arrangements of public authorities. For example unsuccessful bidders need to know why they were unsuccessful and how they could succeed next time. For the public, it is important to know how much central government services cost, no matter who provides them. Commercial confidentiality must not be used as a cloak to deny the public's right to know.

#### 5. The Safety of the Individual, the Public and the Environment.

Protection should exist for information whose disclosure could pose a significant threat to the health and/or safety of an individual person, the public more generally, or the environment.

#### 6. Information Supplied in Confidence.

Many public authorities hold information supplied to them by private individuals, companies or other organisations in the expectation that it will be kept confidential. Much of this will be personal information or commercially sensitive material, in which case the relevant specified interests will apply. But there may be other circumstances where an obligation of confidentiality exists — for example the views of experts given freely on the understanding of confidentiality or opinions expressed about an individual in references for

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appointments or citations for honours. In taking forward proposals in this area, we will have regard to the law of confidentiality. As noted in paragraph 2.13, the Act will cover information and records of any date before it comes into force. This will make it particularly important to ensure adequate protection for people or organisations whose communications with public authorities were covered by explicit undertakings of confidentiality, or at least a reasonable expectation that the law of confidentiality applied to them.

## Decision-Making and Policy Advice

3.12 There is one specified interest where, because of particular factors set out below, we propose that decisions on disclosure be made against a test of "simple" harm (ie, "would disclosure of this information cause harm?"). This is:

### 7. The Integrity of the Decision-making and Policy Advice Processes in Government.

Now more than ever, government needs space and time in which to assess arguments and conduct its own debates with a degree of privacy. Experience from overseas suggests that the essential governmental functions of planning ahead, delivering solutions to issues of national importance and determining options on which to base policy decisions while still maintaining collective responsibility, can be damaged by random and premature disclosure of its deliberations under Freedom of Information legislation. As a result, high-level decision-making and policy advice are subject to clear protection in all countries, sometimes taking it outside the scope of the legislation altogether — for example in Canada, where "Cabinet Confidences" and related information are excluded from that country's Access to Information Act.

We do not propose a restrictive approach on these lines. Indeed, unlike previous UK Administrations, we are prepared to expose government information at all levels to FOI legislation. But we believe the relevant harm test needs to reflect the points set out above, and in particular the extent and nature of the damage which can be caused in this area. This leads us to propose a modified, straightforward harm test in this area. Factors which would need to be taken into account in determining whether this test would prevent disclosure of information are likely to include:

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- the maintenance of collective responsibility in government;
- the political impartiality of public officials;
- the importance of internal discussion and advice being able to take place on a free and frank basis;
- the extent to which the relevant records or information relate to decisions still under consideration, or publicly announced.

As noted above, we see the use of harm tests as being based on the contents, not the nature, of the records or information requested. In framing our proposals on decision-making and policy advice, we see the factors determining the harm test here as likely to apply particularly to high-level government records (Cabinet and Cabinet Committee papers, Ministerial correspondence and policy advice intended for Ministers, whether from government departments or other public bodies). Protection of this interest may well also be necessary for other records such as confidential communications between departments and other public bodies. But all potential disclosures will be decided on the basis of the information in question, against the requirements of the Act.

## Factual and Background Material

3.13 In keeping with our general commitment to openness, and in particular with our work to establish an independent National Statistical Service, we are keen to ensure that as much factual and background information as possible is made publicly available. We therefore see the decision-making and policy advice interest as designed primarily to protect opinion and analytical information, not the raw data and factual background material which have contributed to the policy-making process. Public authorities will therefore be encouraged to make such information available, even where opinion and advice based upon it needs to remain confidential. This is in line with, for example, a similar separation envisaged in the 1993 *Right to Know Bill*, and a recommendation of the 1996 Report on Open Government by the Select Committee on the Parliamentary Commissioner for Administration. We intend to exemplify this process by publishing shortly, in accordance with earlier commitments, substantial factual background to the development of this White Paper, and the decisions it announces.

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3.14 We believe that these seven specified interests (subject to further definition, as necessary, in the legislation) should offer adequate protection for sensitive information. We would however welcome views and comments on this issue.

#### IV. Safeguarding the public interest

3.15 Applying the harm test is an essential element of any decision on disclosure. But there is a risk that the results of applying that test may not necessarily be consistent with the public interest (whether the outcome is to disclose or to withhold information).

3.16 Consideration of the "public interest" has become an increasingly important aspect in decisions — in both legal and non-legal contexts — on disclosure of information. It can, in certain circumstances, be critical in deciding whether information should be disclosed or withheld. We believe it to be an essential element in determining the right to know.

3.17 In addition, we have noted (paragraph 3.3 above) that the way that the public interest is meant to be applied under the *Code of Practice* is unclear, and can be difficult for both the disclosing authority and the applicant to understand.

3.18 We make two proposals to deal with this. First, ensuring that any decision on disclosure safeguards the public interest should be a separate, identifiable step in the FOI process. Second, an attempt will be made in the Bill to increase the clarity and certainty of individual decisions by defining what constitutes the public interest.

#### The public interest

3.19 No single factor can be said to constitute the "public interest", nor can the outcome of conducting a public interest test be predicted in advance: a case-by-case approach will be necessary. We believe, however, that public authorities can seek to ensure that decisions under FOI safeguard the public interest first by checking:

- that the preliminary decision on whether or not to disclose, resulting from the substantial harm test, is not itself perverse. For example, would a decision not to disclose particular information itself result in substantial harm to public safety, or the environment, or the commercial interests of a third party?



and then by ensuring:

- that the decision is in line with the overall purpose of the Act, to encourage government to be more open and accountable (see paragraph 1.2), or if not, that there is a clear and justifiable reason for this; and
- that the decision is consistent with other relevant legislation including European Community Law which requires either the disclosure or the withholding of information. In particular, we are concerned to preserve the effectiveness of the Official Secrets Act, and there may in some cases be a need to ensure that a decision taken under the FOI Act would not force a disclosure resulting in a breach of the harm tests that prohibit disclosure under the Official Secrets Act.

3.20 Disclosure may also be prevented in specific circumstances by other legislation. We intend, however, where appropriate and consistent with European Community legislation, that the Act should repeal or amend the many existing statutory bars to disclosure first identified in the 1993 *Open Government* White Paper, bringing them into line with the harm and public interest tests set out above.

3.21 If any of the points highlighted in the text above — soundness of original decision; consistency with the purpose of the FOI Act; and consistency with other relevant legislation — cannot be answered satisfactorily, further consideration is likely to be needed before a final decision is taken on whether or not to disclose. This process is illustrated in the diagram at Annex C showing how the Act is expected to work in practice.

# The right to personal information

4.1 The Freedom of information Act will give individuals a statutory right of access to the personal information about them which is held by public authorities. In most other countries (and under the existing Code of Practice) access to personal information has proved to be one of the most popular and widely-used aspects of Freedom of Information legislation. Examples of such information might include personal social security benefit records or Inland Revenue tax records.

4.2 A number of Acts already give people access to information about themselves.<sup>4</sup> We believe that it is desirable to bring as much of this existing legislation as possible under the new Freedom of Information Act. Further work will be done to determine how far each of these Acts can be replaced by the Freedom of Information Act. This will be done alongside the work on other statutory provisions described in paragraph 3.20.

## Protecting Personal Information: Data Protection

4.3 The most significant existing legislation on access to personal information is the *Data Protection Act 1984*. This is due to be replaced, in an augmented form, by a new Data Protection Act, which will implement an EC Directive<sup>5</sup>. Data Protection legislation is designed, amongst other things, to protect an individual's personal information from misuse by organisations, in either the public or the private sector, which process such data as part of their activities. One of the key aspects is that the individual has a right to obtain a copy of the personal information about them that an organisation holds. (The procedure for obtaining this information is sometimes called "subject access".)

4.4 The *Data Protection Act 1984* applies only to personal information held on computers. The new Data Protection Act will go wider and apply to some paper files. It will not apply to all paper files because this is not required under the Directive. For example, the Directive does not apply to policy files which only incidentally contain personal information. To comply with the Directive the new Data Protection Act must be in place by 24 October 1998.

<sup>4</sup> Consumer Credit Act 1974; Data Protection Act 1984; Access to Personal Files Act 1987 and associated regulations (Social Services) Regulations 1989; (Social Services) (Scotland) Regulations 1989; (Housing) Regulations 1989; (Housing) (Scotland) Regulations 1992; Access to Medical Records Act 1988; Education (School Records) Regulations 1989; School Pupils Records (Scotland) Regulations 1990; Access to Health Records Act 1990; Human Fertilisation and Embryology Act 1990.

<sup>5</sup> EC Data Protection Directive (95-46-EC)

## What FOI will cover

4.5 Subject to the exclusions set out in paragraphs 2.20 to 2.22 above, Freedom of Information will apply to all personal data held by public authorities and other relevant organisations, whether on computer or on paper files. It will therefore cover a wider range of information held by public authorities than either the existing or the proposed Data Protection legislation.

## Striking the right balance

4.6 The two regimes of Freedom of Information and Data Protection will cover the same ground in providing access for an individual to data held about them by public authorities.<sup>6</sup> But in other respects the two regimes will carry out very different tasks. We intend to ensure that the regimes for freedom of information and the protection of personal privacy accommodate each other. The two regimes must perform differing functions as effectively as possible, with the potential for conflict kept to a minimum.

## Protection for the individual

4.7 Any Freedom of Information Act must provide adequate protection for an individual from any unwarranted invasion of personal privacy caused by an application from a third party. In practice, for the Freedom of Information Act in the United Kingdom, the new Data Protection Act will provide the basis for this protection.

4.8. The Freedom of Information Act will be drafted so that it is compatible with the Data Protection Principles which are set out in Data Protection legislation. These include, for example, the requirements that data should only be used for a specified and lawful purpose; that it should be adequate and relevant for that purpose; and that it should be accurate and kept up to date. A third party right of appeal, described in paragraph 5.19, will allow an individual to be consulted in cases where his or her personal information privacy might be affected by an FOI application. The Act will also ensure that, except where other statute requires, third parties do not have a right of access to information about an individual if the individual is denied that right.

<sup>6</sup> Data Protection also extends throughout other sectors of the economy.

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## The access regime

4.9 We intend that the access regime should be as simple and helpful as possible for the applicant. It will ensure that any complexity in the overlap between the schemes or difficulty in determining the boundary is not reflected in the way in which it is presented to the user.

4.10 Data Protection legislation provides the individual with a number of rights. These include a right to correct inaccurate personal information and a right to compensation for any damage and associated distress caused by an organisation's misuse of the information. We believe it would be wrong to limit these rights to personal information covered by, or obtained through, the Data Protection Act, particularly as the boundary of coverage will move over time (because of the likelihood of phasing in of the Acts and changes in how data are held). Therefore we intend that, as far as possible, the rights applying under the Data Protection Act will apply to all personal information held by public authorities irrespective of the coverage of the Data Protection regime or the route of access.

4.11 As far as is practicable, we will align the systems for access to personal information under Data Protection and Freedom of Information. This is likely to include the means of access, time limits for reply, charges and appeals. Paragraph 2.31 sets out one method of how this might be achieved for the issue of charging. In addition the Government proposes that public authorities will have a duty to ensure that any significant difference between the two regimes is made known to any applicant who might be affected by such a difference.

## Appeals mechanisms for personal information

4.12 As explained in the next chapter, an independent Information Commissioner will be established to deal with appeals under the Freedom of Information Act. The Data Protection Registrar oversees the Data Protection regime. There will be occasions when appeals or cases involve both jurisdictions and it is clear that the two office holders will need to cooperate closely and effectively.

4.13 The Government proposes that the Commissioner and Registrar should be required, under the Freedom of Information Act, to consult each other and to exchange information on those cases where both jurisdictions come into play. In the unlikely event of a dispute arising between the Commissioner and Registrar, on which they were are unable to reach agreement, this would ultimately be resolved by the Courts

# Review and appeals

## The need for an independent review and appeal mechanism

5.1 The case for an independent review and appeals mechanism under the Freedom of Information Act is twofold. First, cases involving the disclosure of information are often complex and sometimes require fine judgements to be made on whether the public interest in disclosing information should or should not prevail over a competing public interest in withholding information. There is a clear need for an expert review body to exercise such judgements. Secondly, it is the right of appeal that will effectively guarantee and enforce people's right to know under the Freedom of Information Act.

5.2 The importance of independent review and appeal is recognised internationally through the provision of different types of appeals mechanisms, whether an Ombudsman, a tribunal or a specially designated Commissioner. Similarly, in this country, the Parliamentary Ombudsman<sup>1</sup> supervises the *Code of Practice on Access to Government Information* while the Data Protection Registrar enforces the requirements of personal privacy deriving from the *Data Protection Act 1984*.

5.3 We see independent review and appeal as essential to our Freedom of Information Act. We favour a mechanism which is readily available, freely accessible and quick to use, capable of resolving complaints in weeks not months. That is what we propose to create under the Act.

## Review and appeals under the Code

5.4 Under the *Code of Practice on Access to Government Information* there is a two-stage appeals process. In the first instance a complainant can ask a government department to carry out an internal review of its decision not to disclose information. If the complainant remains dissatisfied, he or she can then ask the Parliamentary Ombudsman to conduct an investigation.

5.5 This system has worked relatively well. Internal review has led to further disclosure in over 30% of cases. The Parliamentary Ombudsman has proved effective in policing the Code and in resolving the relatively small number of complaints. He has received some 140 since the Code was introduced in 1994. Although the Parliamentary Ombudsman does not have the power to order disclosure, departments have invariably complied with his recommendations. The Government would like to pay tribute to successive Parliamentary Ombudsmen (Sir William Reid and Mr Michael Buckley) for their valuable work on the Code.

<sup>1</sup> The Parliamentary Ombudsman also fulfils the role of Health Service Commissioner (HSC) with a responsibility for policing the Code of Practice on Complaints at the HSC and for Scottish and Welsh complaints.

## Review and appeals under the FOI Act

5.6 We propose to build on the Code's two-stage system of appeal. The internal review stage will be formalised and a new independent Information Commissioner will be given wide-ranging powers. The Commissioner will be able to challenge authorities which refuse to release records and information which are subject to the Act. The Commissioner will have the power to order disclosure.

5.7 We envisage that the Information Commissioner will fulfil a role similar to that performed by the Parliamentary Ombudsman under the Code. However, we intend to make the new Commissioner an independent office holder (like the Data Protection Registrar) rather than an officer accountable to Parliament (like the Parliamentary Ombudsman). We believe that an independent officer is the more appropriate model given the wide coverage of the Act which will include very large numbers of bodies (for example schools and local authorities) that are not directly accountable to Parliament. An independent office holder will be answerable to the courts for his or her decisions. In this way, the appeals system will be (and will be seen to be) independent and in particular not subject to any form of political override which might ultimately be used to resolve contentious cases in favour of the Government.

### Stage 1: Internal Review

5.8 Internal review will be the first step in the FOI appeals process. It will provide a quick, low cost and simple mechanism for resolving many complaints. It should also ease the burden on the Information Commissioner, leaving him or her to concentrate on more complex cases. An internal review should be carried out by an official who was not involved in the initial decision and be completed within a specified timescale.

5.9 Generally, an internal review will be a precondition for making a complaint to the Information Commissioner. However, the Commissioner will have the discretion to accept a complaint which has not been the subject of an internal review, for example, where:

- a complaint concerns unreasonable delay in dealing with an initial request for information or in conducting the internal review itself.
- the public authority concerned is too small to have its own review procedure. Care will be taken to ensure that internal review procedures do not create an excessive burden for very small bodies.



## Stage 2: Appeals to the Information Commissioner

5.10 The new Information Commissioner will have a key part to play in promoting, interpreting and enforcing the Freedom of Information Act. The Commissioner will not have any locus where the information concerned is not covered by the Act. The Commissioner's primary role will be to investigate complaints that a public authority has failed to comply with the requirements of the Act either by refusing to disclose information, or by taking an unreasonable time to respond to requests, or by imposing excessive charges for information. He or she will be expected to resolve such cases as quickly and informally as possible. In a similar vein, the Commissioner will also hear appeals relating to access to historic records.

5.11 In addition, we will require the Information Commissioner to:

- publish an annual report, and special reports where necessary, to Parliament on the operation of his or her function and the operation of the Act more generally;
- publish reports on the outcomes of investigations and issue best practice guidance on the interpretation of the Act; and
- promote greater general public awareness and understanding of the Act.

5.12 We are prepared to give the Information Commissioner wide-ranging powers to carry out these important functions effectively:

- the power to order disclosure of records and information which are subject to the Act. This is an essential guarantee of the Commissioner's role in ensuring that public authorities fulfil their duties under the Act. The Commissioner could require disclosure of whole records, or of part of them with sensitive material deleted, or of extracted information as appropriate;
- the right of access to any records within the scope of the Act and relevant to an investigation;
- the power to review and adjust individual charges or charging systems, or to waive a charge if disclosure is considered to be in the wider public interest. For example, the Commissioner might consider that there is a compelling public interest in disclosure which could go by default if the applicant could not afford to meet the charge being levied.

- the right to resolve disputes via mediation. Mediation should enable less complicated appeals to be resolved quickly, at minimum cost, without the need for a formal enquiry

5.13 In line with the Parliamentary Ombudsman's enforcement powers, the Information Commissioner will also be allowed to report any failure by a public authority to comply with a disclosure order, or to supply records relevant to an investigation, to the court. Such cases would be treated by the court in the same way as a contempt of court.

5.14 There have been a number of cases overseas where public officials have deliberately altered, destroyed or withheld records from review. Although such cases are rare, and while there is no evidence of similar abuses having occurred under the Code, we believe that the public's right to know established under the Act should be properly safeguarded. We will therefore allow the Information Commissioner to apply for a warrant to enter and search premises and examine and remove records where he or she suspects that records that are relevant to an investigation are being withheld. We also intend to create a new criminal offence for the wilful or reckless destruction, alteration or withholding of records relevant to an investigation of the Information Commissioner.

5.15 There will be occasions, involving requests for personal information in particular, when FOI appeals overlap with the jurisdiction of the Data Protection Registrar. In such cases the Information Commissioner will need to consult the Data Protection Registrar (see paragraphs 4.12 and 4.13). Experience under the Code also shows that complaints about access to information and about maladministration can often be linked — for example, a complainant's case may be that he or she has been denied access to information which would be relevant in determining the degree of fault of the public authority concerned. We will therefore encourage the Information Commissioner to develop close working relationships with the various public sector Ombudsmen.

## Right of appeal beyond the Information Commissioner

5.16 We do not propose that there should be a right of appeal to the courts. However, a disclosure order of the Information Commissioner (or a decision not to grant an order) would be subject to judicial review.<sup>8</sup> We have decided to take this approach

8. The question of whether the Commissioner has properly exercised his or her powers in reaching a particular decision. This is in contrast to a right of appeal to the courts on the substantive question of whether the decision was the right one or not.

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because we believe it to be in the best interests of the FOI applicant. Overseas experience shows that where appeals are allowed to the courts, a public authority which is reluctant to disclose information will often seek leave to appeal simply to delay the implementation of a decision. The cost of making an appeal to the courts would also favour the public authority over the individual applicant.

5.17 Our proposed review and appeals system under FOI is set out diagrammatically at Annex E.

### Ministerial certificates and vetoes

5.18 In a number of countries with FOI legislation, Ministers are given the discretion to override the disclosure powers of the appeals body. For example, they can certify that particular documents lie outside the appeals process or they can veto a finding of the relevant Ombudsman. We have considered this possibility, but decided against it, believing that a government veto would undermine the authority of the Information Commissioner and erode public confidence in the Act. We believe that our proposals strike the right balance between the sometime competing public interests in disclosing and withholding information.

### Third party rights of appeal

5.19 Public authorities hold a great deal of information concerning individuals, companies and other organisations (referred to collectively as "third parties") which will be potentially releasable under the Act. We would welcome views on whether a mechanism should be established to allow third parties to appeal against decisions to release information which they believe would cause "substantial harm" to their interests and, if so, what structure the mechanism should have. The need for such appeals is most likely to arise in the areas of personal privacy, commercial confidentiality, or when the information requested was supplied in confidence by the third party.

# Public records

6.1 A Freedom of Information Act will have a considerable impact on our public records system. Government records of historical value are selected for permanent preservation and, when they are 30 years old, they are made available to the public in the Public Record Office.\* "Records" includes not just written ones but records in any form (for example e-mail).

## A unified Act

6.2 The Government wants the two systems — Freedom of Information for current records and Public Records for historical records — to complement each other to give a unified approach to openness. We therefore propose that the FOI Act should cover access to both current and historical material. This will provide a comprehensive right of access to all records, regardless of their age.

6.3 At present there are both statutory and non-statutory rules governing access to historical material:

- the *Public Records Act 1958* sets out the responsibilities of the Lord Chancellor as the Minister responsible for public records, the powers and duties of the Keeper of Public Records and the general rules governing the access to and selection, preservation and destruction of, public records;
- the *Public Records Act 1967* sets the statutory closure period after which records must be made available for public inspection as 30 years, except for certain defined reasons;
- the 1993 *White Paper on Open Government* contains more specific guidance on the criteria for extended closure of public records and the retention of documents in Departments.

6.4 We propose that those rules relating to access rights to historical records be incorporated into the FOI Act (other aspects, such as the role and responsibilities of the Public Record Office, will continue to be covered by a separate Public Records Act). This does not mean that exactly the same access provisions for current records will apply to historical records. Those for historical records will reflect the fact that their sensitivity has decreased due to the passage of time. In moving toward a unified Act, we want to take the opportunity to improve the public's right of access to historical records.

\* The vast majority of records have little historical value and are therefore destroyed before they are 30 years old.

## The 30 year rule

6.5 At present, historical records must be made available to the public — in the Public Record Office — after 30 years. We have examined carefully the case for change and concluded that on balance it is preferable to retain the 30 year rule which is in line with international practice. In particular, we do not think that meeting the considerable costs of reducing the 30 year rule for all historical records would constitute the best use of scarce public resources.

6.6 Instead, under the new FOI regime which we are introducing, more records should be released before 30 years. Fewer records will be withheld for the full 30 years. This will mean that 30 year old records will generally be of a greater sensitivity than before. We think it right therefore that the threshold date should be set at 30 years, a period long enough to enable the great majority of these historical records then to be released to the public. One of the virtues of this system, in comparison with practice elsewhere, is that there is a set date by which it is known that records are going to be listed and be available for the public to use. This will continue.

## Criteria for withholding documents for longer than 30 years

6.7 The overriding presumption is that all records preserved for historical reasons will be made available to the public at 30 years. The 1993 *White Paper on Open Government* laid down the strictly-defined criteria that must be met if they are to be withheld from the public for longer than 30 years. As part of our general approach to giving access rights a statutory basis, we propose to incorporate these criteria into statute, so that they have the same status as the tests governing access to current information.

6.8 The criteria relate closely to some of the specified interests identified for FOI purposes: defence, international relations and national security; information provided in confidence, and personal information. We will take the opportunity of the FOI Act to reformulate the criteria to reinforce this relationship.

6.9 We also propose to introduce an upper time limit of one hundred years on the withholding of material. Such a ceiling means that no information would be left indefinitely undisclosed either because it is not subject to any statutory disclosure

requirement or because it is subject to statutory provisions which bar its release. We fully expect that virtually all of the public records held beyond 30 years because of their continuing sensitivity will cease to need protection after 100 years. However, because of the inherent sensitivity of the records in question we propose to test whether their disclosure could still cause substantial harm to the public interest.

### Application of the criteria

6.10 Applications from departments for the extended closure or retention of documents beyond 30 years are put to the Lord Chancellor who is advised by his Advisory Council on Public Records. We propose to give the Advisory Council the statutory support of the Public Record Office so that such applications are checked against the relevant statutory criteria.

### Right of appeal

6.11 The present route of appeal against extended closure or retention of records beyond the 30 year period — to the Lord Chancellor's Advisory Council — is unsatisfactory. The Council and its little-known powers are limited to making non-binding recommendations on disclosure. Furthermore the Council is itself involved in the initial decision to close or retain material. We propose to direct appeals on public records to the independent Information Commissioner.

### The importance of record-keeping

6.12 An FOI Act can only be as good as the quality of the records which are subject to its provisions. Statutory rights of access are of little use if reliable records are not created in the first place, if they cannot be found when needed, or if the arrangements for their eventual archiving or destruction are inadequate. The fast-growing use of IT will further increase pressure on the records system. We therefore propose to place an obligation on departments to set records management standards which take these changes into account, having regard to best practice guidance drawn up by the Public Record Office.

# Making government more open

7.1 Openness does not begin and end with a Freedom of Information Act. Overseas experience shows that statutory provisions need to be championed within government itself if openness is to become part of the official culture rather than an irksome imposition.

7.2 We believe that this sort of culture change has taken place in some countries — the USA and New Zealand are examples. We see no reason why it should not also be possible in the UK, despite a more entrenched culture of secrecy extending back at least to the 19<sup>th</sup> century and the Official Secrets Acts from 1889 onwards.

7.3 This will however mean that, for at least some public authorities, a Freedom of Information Act will bring with it substantial new obligations. This is all the more likely, given the very wide intended coverage of the Act. Arrangements for phasing-in through the progressive extension of the Act's provisions to all sectors and all different types of information may be needed. Existing mechanisms for openness — including the *Code of Practice on Access to Government Information* — will remain in place, with any necessary changes to smooth the transition to the fully-implemented legislation. A programme of work will be needed to facilitate this process.

7.4 In addition, a number of key tasks must be undertaken if we are to make an FOI Act the beginning of a real culture change:

- the general public will need a user-friendly "How to use FOI" guide;
- the public authorities covered by the Act need to be encouraged and helped to fulfil their obligations (whether statutory or otherwise) to pursue active openness — for example publishing internal manuals, performance indicators, giving reasons for decisions and so on;
- public authorities will need access to authoritative and up-to-date guidance in working with and interpreting the Act;
- effective training for officials must be organised and provided. A learning culture must be developed as the Act takes effect. For example, case studies of general interest could be assembled, publicised and made the subject of training courses.

- the operation of the Act needs to be monitored, leading to an annual report to Parliament;
- there needs to be a central point within government to which the Information Commissioner can turn to ease communication and liaison with the many public authorities covered by the Act.

These tasks are vital if we are to realise our objective of a more open government.

7.5 A clear, active and testing approach by the Information Commissioner is unquestionably a key aspect of changing the culture, and Chapter 5 sets out our proposals for ensuring that the Commissioner does indeed play such a role. Some of the functions listed above may well also properly fall to the Commissioner, in furtherance of his or her role.

7.6 In general however, we believe that the role of champion should best be supplied by government itself. It is vital that FOI should not result in a position where all the pressure for an open and positive approach to disclosure of information lies outside government, while a resulting counter-culture of reluctance develops within.

7.7 The Chancellor of the Duchy of Lancaster set up a small dedicated FOI Unit in the Cabinet Office (Office of Public Service) in May this year. That Unit, in liaison with the Information Commissioner's Office, the Civil Service College, nominated contacts in government departments and other public bodies with a direct interest in FOI matters, will be well placed to carry forward much of this work.

7.8 All formal guidance and circulated papers of this Unit, together with, for example, the minutes of its meetings with the Information Commissioner or his/her Office, would be open documents, perhaps forming appendices to the Annual Report on FOI to Parliament. While the main focus of the Unit's work would be government departments, it would also co-ordinate its work closely with other larger public bodies and those in government performing key sponsor roles for other public services covered by the Act, such as the Department of Health and NHS Management Executive.



7.9 The Unit would also work with the Civil Service College and other training providers to ensure that training about the Act, the statutory functions and duties it imposes, and the importance of open government generally, was properly planned and implemented. The Government will consider inclusion of FOI awareness training in the central monitoring of Departments' training and development Action Plans under the requirements of the 1996 White Paper *Development and Training for Civil Servants: A Framework for Action*.

7.10 The Government regards these commitments as essential to ensure that the momentum towards open and accountable administration created by the FOI Act is maintained.

## The way forward

8.1 The people of this country have waited a long time for a legal right to know.

8.2 Within eight months of taking office we are bringing forward these proposals for giving the people such a right. We are determined to get this long-delayed freedom of information legislation right. We now propose to consult on the proposals set out in this White Paper and comments are invited by the end of February. (Details of how to do this are set out inside the front and back covers.)

8.3 Helped by the points made during the consultation, we will then prepare a draft Bill on which, as part of our general programme of modernising the conduct of Parliamentary business, there will be further consultation, not least with the House of Commons Public Administration Select Committee and the House of Lords Public Service Select Committee.

8.4 This means that we will be well placed to introduce a Bill into Parliament. The long wait for the right to know is nearly over.

## ANNEX A

Access rights under  
overseas FOI legislation

Country and Date of Enactment	Right of access to	Access
New Zealand December 1982	Official information: "any information recorded or stored by means of any tape recorder, computer or other device, and any material subsequently derived from information so recorded or stored".	Fully retrospective
Australia March 1982	The Act gives right of access to official documents. For the purposes of the Act "document" includes maps, plans, photographs, audio-tapes, video and film, and records stored electronically.	Retrospection limited to 5 years before the Act (1982). Rationale was one of workload (i.e. it would be difficult to access old documents) and not that earlier "records" had been compiled without regard to the possibility of disclosure.
Canada June 1982	The Act gives right of access to records. The definition of "record" includes "any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microfilm, sound recording, videotape, machine readable record, and any other documentary material, regardless of physical form or characteristics, and any copy thereof".  A right of access is also provided to "any record that does not exist but can be produced from a machine readable record... using computer hardware and software and technical expertise normally used by the Government Institution".	Retrospective, but with a progressive roll out: 1. To July 1980; 2. To July 1978; 3. Unreasonable workload excuse allowed; 4. No limit
USA 1966	Right of access to records. A definition of "record" is not given.	
Sweden Principles first expressed in 1786	Right of access is given to official documents. A document is defined as something that contains information. That is anything on paper but also tape and electronic recordings. A document is official if it is held by a public authority and is regarded as having been received or drawn up by the authority.	

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ANU 1993

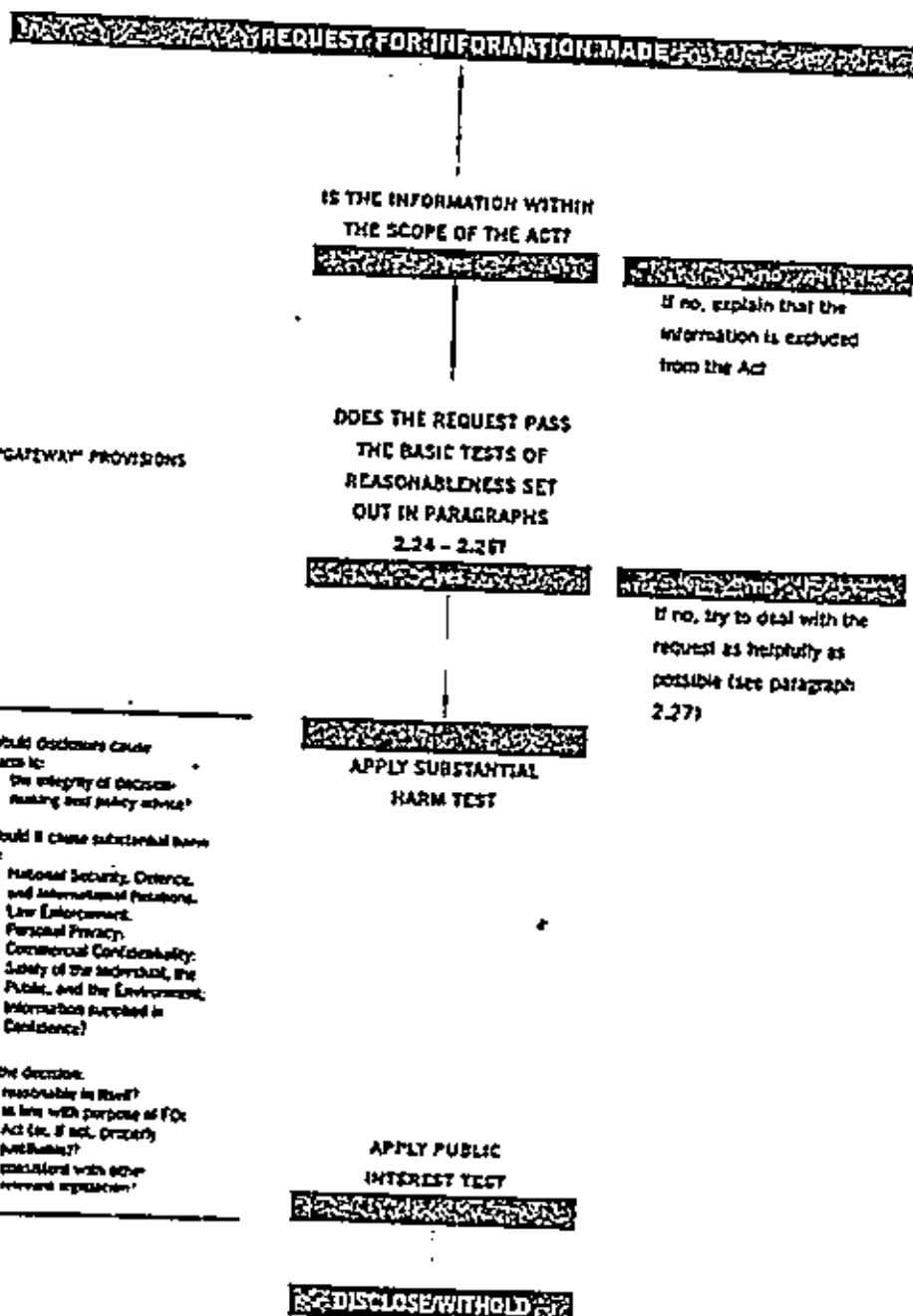
# Response times to FOI access requests

Code of Practice on Access to Government Information	Number of days to respond to access requests
	20 working days
Canada	30 days
New Zealand	20 working days
Australia	30 days
USA	20 working days
Ireland	28 days

65-

ANNEX C

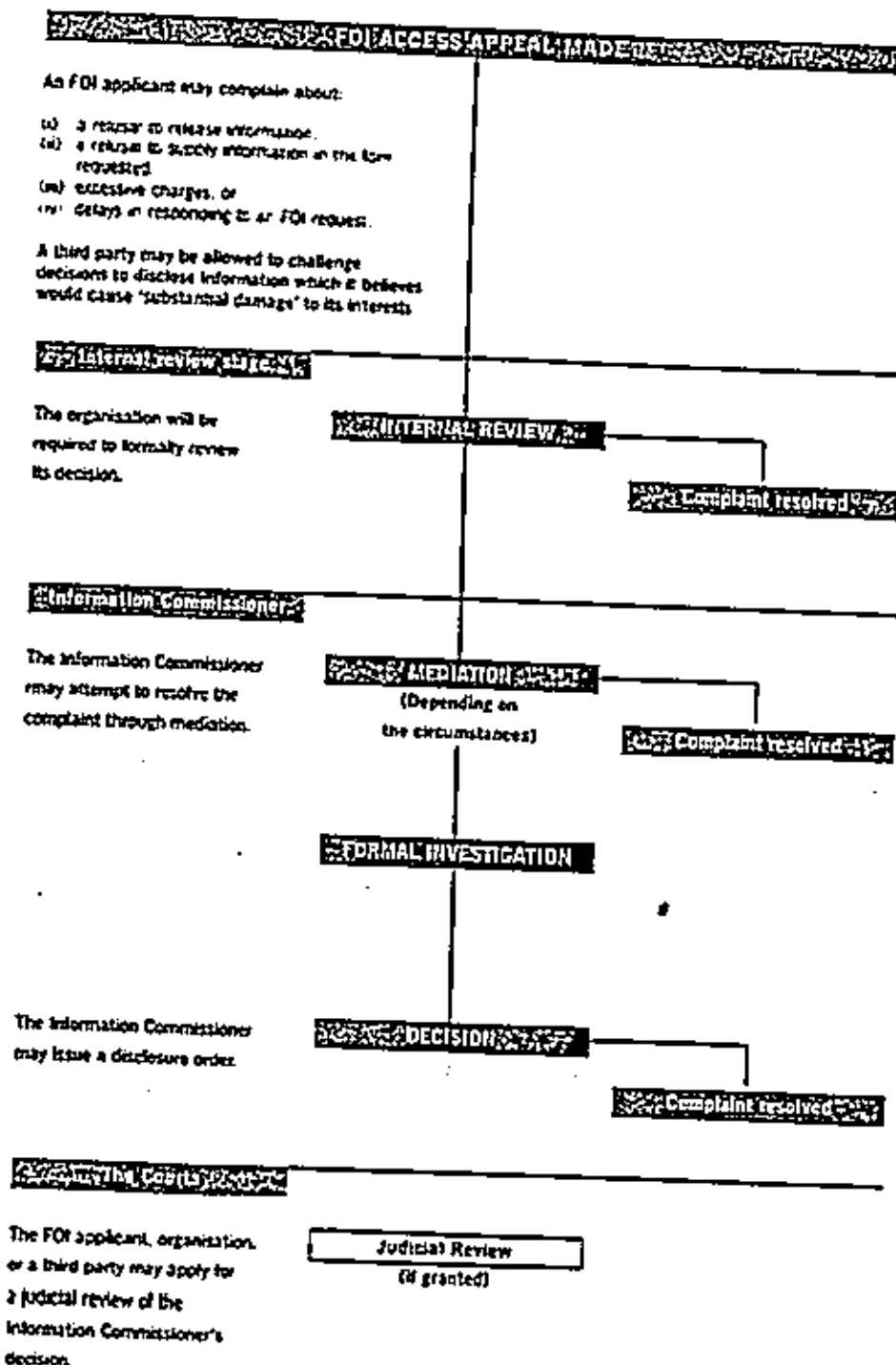
# Processing an FOI application



# Exemptions: the Code and overseas FOI

	Exemptions in UK Official Information Act	Australia	New Zealand	Ireland	Spain	USA	France	Canada
1. Defence, Security and international relations	YES	YES	YES	YES	YES	YES	YES	YES
2. Internal discussion and advice	YES	YES	YES	YES	YES	YES	YES	YES
3. Communications with the Royal Household	YES	YES						
4. Law enforcement and legal proceedings	YES	YES	YES	YES	YES	YES	YES	YES
5. Immigration and nationality								
6. Effective management of the economy and collection of taxes	YES	YES	YES	YES	YES	YES	YES	YES
7. Effective management and operations of the public service	YES		YES	YES	YES			YES
8. Public employment, public appointments and honours			in part					
9. Unreasonable, vexatious or voluminous requests	YES		YES					
10. Publication and premature to relation to publication	YES	YES						YES
11. Research, statistics, analysis	YES		YES		in part			YES
12. Privacy of an individual	YES	YES	YES	YES	YES	YES	YES	YES
13. Third party's commercial confidences	YES	YES	YES	YES	YES	YES	YES	YES
14. Information given in confidence	YES	YES	YES	YES	YES			YES
15. Statutory and other restrictions	YES		YES		YES	YES	YES	YES

# Processing an FOI access appeal



## YOUR RIGHT TO KNOW — DEBATING THIS WHITE PAPER ON THE INTERNET

The "Informing Government" web site (<http://foi.democracy.org.uk/>) has been set up to promote public discussion of this White Paper and to enable the public to ask questions of and make suggestions to the Cabinet Minister for Public Service, Dr David Clark, who is responsible for the White Paper.

If you would like your submission to be published on this web site as part of this discussion, please indicate this. Although such submissions on paper can be converted for electronic publication, the process is made easier if you can e-mail your submission in text format (a.txt file) to [submissions@democracy.org.uk](mailto:submissions@democracy.org.uk), or send it by post on a 3.5 inch disk, to:

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Content Director  
UK Citizens' Online Democracy  
c/o Internet Vision  
60 Albert Court  
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नॉर्थ ब्लॉक, नई दिल्ली-110001  
GOVERNMENT OF INDIA  
DEPARTMENT OF PERSONNEL AND TRAINING  
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES  
AND PENSIONS  
NORTH BLOCK, NEW DELHI-110001

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

Dated the 19<sup>th</sup> November, 1999.

Dear Shri Nath,

19 NOV 1999

As you may be aware, the Central Government is considering a legislative proposal to provide freedom to every citizen to secure access to information under the control of public authorities in order to promote openness, transparency and accountability in administration. In the context of formulating the proposal, we feel that it would be useful to keep in view the experience gained by the Government of Goa on the enactment of "Goa Right to Information Act". I shall, therefore be grateful if you could kindly arrange to send us an Appraisal Report on the working of the above Act urgently.

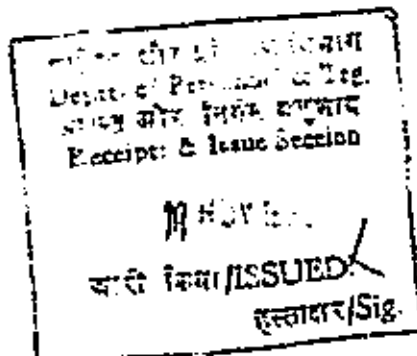
With best regards

Yours sincerely,

Harinder Singh

(Harinder Singh)

Shri Ashok Nath  
Chief Secretary,  
Government of Goa,  
Panjim.





HARINDER SINGH  
संयुक्त सचिव  
JOINT SECRETARY (E)  
Tel. No. 301 1276

**MOST IMMEDIATE**

कार्मिक और प्रशिक्षण विभाग  
कार्मिक, लोक शिकायत तथा वेशन मंत्रालय  
सौरभ ब्लॉक, नई दिल्ली-110001  
GOVERNMENT OF INDIA  
DEPARTMENT OF PERSONNEL AND TRAINING  
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES  
AND PENSIONS  
NORTH BLOCK, NEW DELHI-110001

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

Dated the 19<sup>th</sup> November, 1999.

Dear Shri Muthuswami,

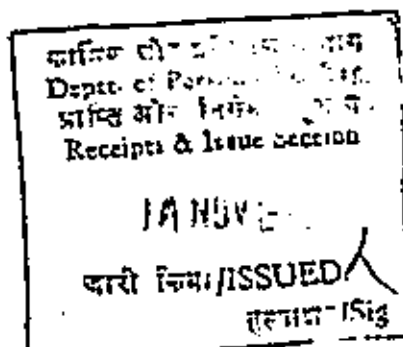
As you may be aware, the Central Government is considering a legislative proposal to provide freedom to every citizen to secure access to information under the control of public authorities in order to promote openness, transparency and accountability in administration. In the context of formulating the proposal, we feel that it would be useful to keep in view the experience gained by the Government of Tamil Nadu on the enactment of "Tamil Nadu Right to Information Act". I shall, therefore be grateful if you could kindly arrange to send us an Appraisal Report on the working of the above Act urgently.

With regards

Yours sincerely,

(Harinder Singh)

Shri A.P. Muthuswami,  
Chief Secretary,  
Government of Tamil Nadu,  
Chennai.



MOST IMMEDIA

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

Harinder Singh  
Joint Secretary

New Delhi, dated the                      Nov., 199

Dear Shri \_\_\_\_\_

As you may be aware, the Central Government is considering a legislative proposal to provide freedom to every citizen to secure access to information and the control of public authorities in order to promote openness, transparency and accountability in administration. In the context of formulating the proposal, we feel that it would be useful to keep in view the experience gained by the Government of Tamil Nadu/ Government of Goa on the enactment of "Tamil Nadu Right to Information Act"/ "Goa Right to Information Act". I shall therefore be grateful if you could kindly arrange to send us an Appraisal Report on the working of the above Act urgently.

With regards,

Yours sincerely,

(HARINDER SINGH)

1. Shri A.P. Muthuswami,  
Chief Secretary,  
Government of Tamil Nadu,  
Chennai

2. Shri Ashok Nath,  
Chief Secretary,  
Government of Goa.

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Government of India

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

.....

New Delhi, dated the 26<sup>th</sup> November, 1999.

26 NOV 1999

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 the 22<sup>nd</sup> November, 1999 on the above subject.

A copy of the minutes of the meeting of the Group of Ministers held in the Chamber of Home Minister on 22<sup>nd</sup> November, 1999, is enclosed.

RP

(Rakesh Malhotra)

Under Secretary to the Government of India

- A
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 Parliamentary Affairs and Minister of Water Resources
  5. P.S. Minister of External Affairs
  6. P.S. to Minister of State (Independent charge), Ministry of Information & Broadcasting
  7. P.S. to Minister of Personnel, Public Grievances and Pensions

Copy to:

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1. Shri Prabhat Kumar, Cabinet Secretary, Rashtrapati Bhavan, New Delhi.
  2. Shri Kamal Pande, Home Secretary, North Block, New Delhi.
  3. Shri Raghbir Singh, Secretary, Legislative Department, Ministry of Law, Justice and Company Affairs, Shastri Bhavan, New Delhi.
  4. Shri Pawan Chopra, Additional Secretary, Cabinet Secretariat, New Delhi.
  5. Smt. Sangita Gairola, Joint Secretary, Ministry of Home Affairs, New Delhi.

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2. PPS to Additional Secretary(AR&T), Department of Admn. Reforms & Public Grievances.
3. PS to Joint Secretary(E), Department of Personnel & Training



74

## DEPARTMENT OF PERSONNEL & TRAINING

---

The first meeting of the Group of Ministers constituted to examine the legislative proposals for the proposed Freedom of Information Bill, 1999 was held on 22.11.99 at 3.30 p.m. in the room of Home Minister. The following were present:-

- 1) Shri L.K. Advani, Home Minister
- 2) Shri George Fernandes Minister of Defence,
- 3) Shri Pramod Mahajan, Minister of Parliamentary Affairs & Information Technology
- 4) Shri Ram Jethmalani, Minister for Law, Justice and Company Affairs
- 5) Shri Arun Jeitley, Minister for Information & Broadcasting,
- 6) Mrs. Vasundra Raje, Minister of State (Independent charge) of the Ministry of Small Scale Industries and Agro and Rural Industries, Minister of State in the Department of Personnel and Training & Department of Pension and Pensioners' Welfare in the Ministry of Personnel, Public Grievances and Pensions, Department of Atomic Energy and Department of Space.

In attendance:-

1. Shri Kamal Pandey, Home Secretary,
2. Shri B.B. Tandon, Secretary, Department of Personnel

75

3. Dr. Raghubir Singh, Secretary, Legislative Department,
4. Shri Harinder Singh, Joint Secretary(E), Deptt. of Personnel
5. Smt. Sangeeta Gairola, Joint Secretary, MHA

2. The Group of Ministers considered the Note of the Department of Personnel dated the 12<sup>th</sup> November, 1999 on the aforesaid subject and the legal and administrative aspects of the proposed legislation were discussed in detail. The existing legislative enactments on the subject relating to USA, Canada, Australia and the UK Government white paper on proposals for Freedom of Information Act were also made available to the GOM. The GOM noted that while there were differences in the individual Acts of Parliament belonging to different countries, a perusal of the available information indicated that by and large, the advanced countries were also allowing free access to information with certain exceptions and there was no positive list in the statutes of other countries as all information was available subject to specified exceptions. Further, the GOM noted that the proposed Bill had to be re-examined in light of the Constitutional provisions and the judgement of Supreme Court in the case of S.P. Gupta Vs. Union of India (AIR 1982 SC 149). In this context the GOM desired that the exemptions provided for disclosure of information under the proposed clause 8 and 9 of the Bill in question needed to be re-drafted keeping in view the provisions of Article 19 (1) & (2) of the Constitution besides the provisions Article 74 and 78 of the Constitution. The GOM also debated as to whether the Article 19(1) of the Constitution allowed

greater access to information as compared to Article 19(2) of the Constitution. However, it was concluded that both the provisions have to be read together even though the scope of Article 19(2) in the aforesaid Article was more restrictive. In view of this, the Department of Legislative Affairs were directed to examine whether any modifications are required in the proposed Bill, keeping in view the requirements of Article 19(2) of the Constitution.

3. In this context it was felt that in order to avoid public apprehension about restrictive nature of clause 8 and 9 of the proposed Bill, GOM felt that it would be desirable to delete clause 4 of the proposed bill which deals with legal advice, recommendations or minutes of deliberative nature and instead proper legislative drafting should be done to divide the proposed clause 8 into 8(a) and 8(b) internal deliberative processes may be exempted under Clause 8(b). Such rearrangement would give positive look to the proposed bill.

4. In addition the question of providing independent mechanism for allowing information through judicial forum could also be examined keeping in view the powers vested by the Constitution under Article 136 and 226 with the Supreme Court and High Court respectively. However, the GOM also noted that the cost and delay in seeking judicial remedy ran counter to the desire of the Government to provide quick and cheap access

to information to the general public. In view of this, the existing Bill may be retained in this respect

5. The GOM directed the Department of Legislative Affairs and the DOPT to re-examine the proposed Bill in light of the above directions at the earliest so that the Bill could be introduced in the Parliament at the earliest.



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D.O.No.34011/1(S)/97-Estt.(B)

कार्मिक, लॉक शिफायत तथा पेंशन मंत्रालय  
नई दिल्ली-110001

GOVERNMENT OF INDIA  
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCE  
AND PENSIONS  
NEW DELHI-110001

सचिव  
SECRETARY

B.B.TANDON

Tele.: 3014848  
Fax: 3012432

November 25, 1999

Dear Dr.Raghubir Singh,

26 NOV 1999

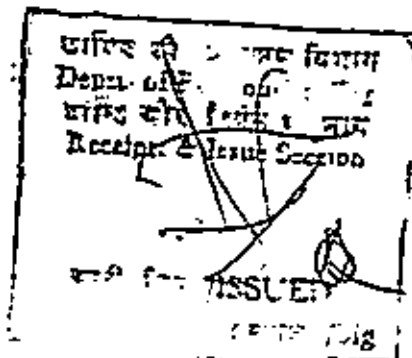
This is further to the meeting of the Group of Ministers held on the 22<sup>nd</sup> November, 1999 in the Chamber of the Home Minister. As you are aware, the GOM had desired that the proposed 'Freedom of Information Bill' should be reexamined and brought in line with the judgement of Supreme Court in the case of Shri S.P.Gupta Vs. Union of India as also Article 19(1) and 19(2) of the Constitution. The GOM also directed that the proposed Bill may be placed before the Group at the earliest so that it could be introduced in the ongoing Session of Parliament. We shall, therefore, be grateful if you could kindly arrange to send the revised draft Bill expeditiously. In case any further assistance is required in the matter, you may please contact Shri Harinder Singh, Joint Secretary(Estt.) [Tele.3011276].

With regards,

Yours sincerely,

(B.B.TANDON)

Dr. Raghubir Singh,  
Secretary  
Legislative Department,  
Shastri Bhavan,  
New Delhi.



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

B.B.TANDON  
SECRETARY


New Delhi, dated the November, 1999.

Dear Dr.Raghubir Singh,

This is further to the meeting of the Group of Ministers held on the 22<sup>nd</sup> November, 1999 in the Chamber of the Home Minister. As you are aware, the GOM had desired that the proposed 'Freedom of Information Bill' should be reexamined and brought in line with the judgement of Supreme Court in the case of S.P.Gupta vs Union of India as also Article 19(1) and 19(2) of the Constitution. The GOM also directed that the proposed Bill may be placed before the Group at the earliest so that it could be introduced in the ongoing Session of Parliament. We shall therefore be grateful if you could kindly arrange to send the revised draft Bill expeditiously. In case any further assistance is required in the matter, you may please contact Shri Harinder Singh, Joint Secretary (Estt.) [Tele.3011276].

*With regards,*

Yours sincerely,

  
25.11.99  
( B.B.Tandon )

Dr.Raghubir Singh,  
Secretary,  
Legislative Department,  
Shastri Bhavan,  
New Delhi.

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New Delhi, the 10th December, 1999.  
19 Agrahayana, 1921(S).

Subject:- Freedom of Information Bill.

Reference Cabinet Secretariat Memo. of even number dated the 29th October, 1999.

2. The undersigned is directed to say that it has been decided, with the approval of the Prime Minister, to revise the composition of the Group of Ministers on the above subject as under :-

Shri L.K. Advani,  
Minister of Home Affairs.  
Shri George Fernandes,  
Minister of Defence.  
Shri Ram Jethmalani,  
Minister of Law, Justice and Company Affairs.  
Shri Pramod Mahajan,  
Minister of Parliamentary Affairs  
and Minister Information Technology.  
Shri Jaswant Singh,  
Minister of External Affairs.  
Shri Arun Jaitley,  
Minister of State (Independent charge)  
of the Ministry of Information and Broadcasting.  
Smt. Vasundhara Raja,  
Minister of State (Independent charge)  
of the Ministry of Small Scale Industries and  
Agro and Rural Industries, Minister of State  
in the Department of Personnel and Training,  
Department of Pensions and Pensioners Welfare  
of the Ministry of Personnel, Public Grievances  
and Pensions, Department of Atomic Energy and  
Department of Space.  
Shri Arun Shourie,  
Minister of State in the Ministry of Planning,  
Minister of State in the Ministry of Statistics  
and Programme Implementation and Minister of State  
in the Department of Administrative Reforms and  
Public Grievances of the Ministry of Personnel,  
Public Grievances and Pensions.

3. The Group of Ministers will continue to be serviced by the Department of Personnel and Training.

(P. Gopalakrishnan)  
for Cabinet Secretary  
Tele: 3015802

To

Shri L.K. Advani, Minister of Home Affairs.  
Shri George Fernandes, Minister of Defence.  
Shri Ram Jethmalani, Minister of Law, Justice and Company  
Affairs.  
Shri Pramod Mahajan, Minister of Parliamentary Affairs and  
Minister of Information Technology..  
Shri Jaswant Singh, Minister of External Affairs.

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New Delhi, the 10th December, 1999.  
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Shri Pramod Mahajan,  
Minister of Parliamentary Affairs  
and Minister Information Technology.  
Shri Jaswant Singh,  
Minister of External Affairs.  
Shri Arun Jaitley,  
Minister of State (Independent charge)  
of the Ministry of Information and Broadcasting.  
Smt. Vasundhara Raje,  
Minister of State (Independent charge)  
of the Ministry of Small Scale Industries and  
Agro and Rural Industries, Minister of State  
in the Department of Personnel and Training,  
Department of Pensions and Pensioners Welfare  
of the Ministry of Personnel, Public Grievances  
and Pensions, Department of Atomic Energy and  
Department of Space.  
Shri Arun Shourie,  
Minister of State in the Ministry of Planning,  
Minister of State in the Ministry of Statistics  
and Programme Implementation and Minister of State  
in the Department of Administrative Reforms and  
Public Grievances of the Ministry of Personnel,  
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(P. Gopalakrishnan)  
for Cabinet Secretary  
Tele: 3015802

To

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Shri George Fernandes, Minister of Defence.  
Shri Ram Jethmalani, Minister of Law, Justice and Company  
Affairs.  
Shri Pramod Mahajan, Minister of Parliamentary Affairs and  
Minister of Information Technology..  
Shri Jaswant Singh, Minister of External Affairs.

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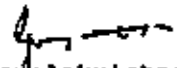
SECRET  
- 2 -

Shri Arun Jaitley, Minister of State (Independent charge) of the Ministry of Information and Broadcasting.  
Smt. Vasundhara Raje, Minister of State (Independent charge) of the Ministry of Small Scale Industries and Agro and Rural Industries, Minister of State in the Department of Personnel and Training, Department of Pensions and Pensioners Welfare of the Ministry of Personnel, Public Grievances and Pensions, Department of Atomic Energy and Department of Space.  
Shri Arun Shourie, Minister of State in the Ministry of Planning, Minister of State in the Ministry of Statistics and Programme Implementation and Minister of State in the Department of Administrative Reforms and Public Grievances of the Ministry of Personnel, Public Grievances and Pensions.

-----

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Secretary to the Vice-President.

  
(P. Gopalakrishnan)  
Deputy Secretary to the Cabinet

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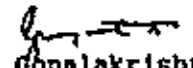
Principal Secretary to the Prime Minister.  
Secretary to the Prime Minister.

  
(P. Gopalakrishnan)  
Deputy Secretary to the Cabinet

-----

Copy also forwarded for information to :-

✓ Secretary, Ministry of Personnel, Public Grievances and Pensions.  
Secretary, Department of Legal Affairs.  
Secretary, Legislative Department.  
Secretary, Ministry of Home Affairs.  
Secretary, Department of Public Enterprises.  
Secretary, Department of Expenditure.  
Secretary, Department of Defence.  
Foreign Secretary.  
Finance Secretary.  
Secretary, Department of Consumer Affairs.

  
(P. Gopalakrishnan)  
Deputy Secretary to the Cabinet

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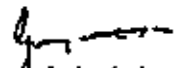
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- 2 -

Shri Arun Jaitley, Minister of State (Independent Charge) of the Ministry of Information and Broadcasting.  
Smt. Vasundhara Raje, Minister of State (Independent Charge) of the Ministry of Small Scale Industries and Agro and Rural Industries, Minister of State in the Department of Personnel and Training, Department of Pensions and Pensioners Welfare of the Ministry of Personnel, Public Grievances and Pensions, Department of Atomic Energy and Department of Space.  
Shri Arun Shourie, Minister of State in the Ministry of Planning, Minister of State in the Ministry of Statistics and Programme Implementation and Minister of State in the Department of Administrative Reforms and Public Grievances of the Ministry of Personnel, Public Grievances and Pensions.

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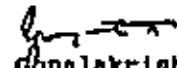
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Secretary, Department of Expenditure.  
Secretary, Department of Defence.  
Foreign Secretary.  
Finance Secretary.  
Secretary, Department of Consumer Affairs.

  
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Deputy Secretary to the Cabinet

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MOST IMMEDIATE

COPY NO. ....

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

New Delhi, the 29th October, 1999.  
7 Kartika, 1921(S).

-----

Subject:- Freedom of Information Bill.

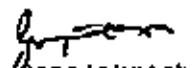
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With the approval of the Prime Minister a Group of Ministers was constituted vide Cabinet Secretariat Memo. of even number dated 27.4.1998 to examine the proposed Freedom of Information Bill and, to finalise its recommendations on the same. The composition of the Group was revised vide Cabinet Secretariat Memo. of even number dated 19.7.1999.

2. It has been decided, with the approval of the Prime Minister, to reconstitute the Group of Ministers on the above subject as under : -

Shri L.K. Advani,  
Minister of Home Affairs.  
Shri George Fernandes,  
Minister of Defence.  
Shri Ram Jethmalani,  
Minister of Law, Justice and Company Affairs.  
Shri Pramod Mahajan,  
Minister of Parliamentary Affairs  
and Minister of Water Resources.  
Shri Jaswant Singh,  
Minister of External Affairs.  
Shri Arun Jaitley,  
Minister of State (Independent charge)  
of the Ministry of Information and Broadcasting.  
Smt. Vasundhara Raje,  
Minister of State (Independent charge)  
of the Ministry of Small Scale Industries and  
Agro and Rural Industries, Minister of State  
in the Ministry of Personnel, Public Grievances  
and Pensions, Minister of State in the Department  
of Atomic Energy and Department of Space.

3. The Group of Ministers will continue to be serviced by the Department of Personnel and Training.

  
(P. Gopalakrishnan)  
for Cabinet Secretary  
Tele: 3015802

To

Shri L.K. Advani, Minister of Home Affairs.  
Shri George Fernandes, Minister of Defence.  
Shri Ram Jethmalani, Minister of Law, Justice and Company  
Affairs.  
Shri Pramod Mahajan, Minister of Parliamentary Affairs and  
Minister of Water Resources.  
Shri Jaswant Singh, Minister of External Affairs.  
Shri Arun Jaitley, Minister of State (Independent charge)  
of the Ministry of Information and Broadcasting.

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HOT IMMEDIATE

COPY NO. ....

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

New Delhi, the 29th October, 1999.  
7 Kartika, 1921(S).

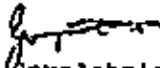
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Shri Pramod Mahajan,  
Minister of Parliamentary Affairs  
and Minister of Water Resources.  
Shri Jaswant Singh,  
Minister of External Affairs.  
Shri Arun Jaitley,  
Minister of State (Independent charge)  
of the Ministry of Information and Broadcasting.  
Smt. Vasundhara Raje,  
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Shri Pramod Mahajan, Minister of Parliamentary Affairs and  
Minister of Water Resources.  
Shri Jaswant Singh, Minister of External Affairs.  
Shri Arun Jaitley, Minister of State (Independent charge)  
of the Ministry of Information and Broadcasting.

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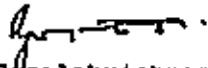
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Sat. Vasundhara Raje, Minister of State (Independent charge) of the Ministry of Small Scale Industries and Agro and Rural Industries, Minister of State in the Ministry of Personnel, Public Grievances and Pensions, Minister of State in the Department of Atomic Energy and Department of Space.

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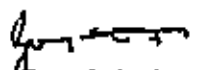
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Secretary to the Vice-President.

  
(P. Gopalakrishnan)  
Deputy Secretary to the Cabinet

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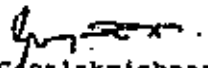
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Secretary to the Prime Minister.

  
(P. Gopalakrishnan)  
Deputy Secretary to the Cabinet

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Secretary, Department of Legal Affairs.  
Secretary, Legislative Department.  
Secretary, Ministry of Home Affairs.  
Secretary, Department of Public Enterprises.  
Secretary, Department of Expenditure.  
Secretary, Department of Defence.  
Foreign Secretary.  
Finance Secretary.  
Secretary, Department of Consumer Affairs.

  
(P. Gopalakrishnan)  
Deputy Secretary to the Cabinet

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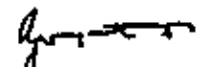
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- 2 -

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(P. Gopalakrishnan)  
Deputy Secretary to the Cabinet

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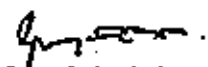
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(P. Gopalakrishnan)  
Deputy Secretary to the Cabinet

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

  
(P. Gopalakrishnan)  
Deputy Secretary to the Cabinet

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राष्ट्रीय एकीकरण  
National Integration

HARINDER SINGH  
JOINT SECRETARY(E)  
TEL. No. 301 1276

भारत सरकार  
कार्मिक और प्रशिक्षण विभाग  
कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय  
नार्थ ब्लॉक, नई दिल्ली-110001  
GOVERNMENT OF INDIA  
DEPARTMENT OF PERSONNEL AND TRAINING  
MINISTRY OF PERSONNEL PUBLIC GRIEVANCES  
AND PENSIONS  
NORTH BLOCK, NEW DELHI-110001

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

Dated the 16<sup>th</sup> December, 1999.

Dear Shri Bagchi,

As you may be aware, the Government is actively considering a proposal for introduction of a Bill in the Parliament so as to provide freedom to every citizen to secure access to information under the control of public authorities. In the context of the proposed legislation, I shall be grateful if you could kindly clarify whether 'Right to Information' is part of Universal Declaration of Human Rights and also whether India is a signatory to it.

*Reply in.*

Yours sincerely,

*Harinder Singh*  
(Harinder Singh)

Shri Sandeep Bagchi,  
Joint Secretary,  
Ministry of Home Affairs,  
North Block,  
New Delhi.

US (RM) (in relation)

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

New Delhi, dated the 24<sup>th</sup> December, 1999

NOTE FOR THE GROUP OF MINISTERS

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

This Department's Note of even number dated the 12<sup>th</sup> November, 1999, was considered by the Group of Ministers in its meeting held on 22<sup>nd</sup> November, 1999. This supplementary Note addresses the issues that arose during the deliberations as reflected in the minutes circulated vide this Department's memo of even number dated the 26<sup>th</sup> November, 1999 (Annexure-I).

2. When the draft legislation was discussed on 22<sup>nd</sup> November, 1999 by the Group of Ministers, it was felt that the proposed Freedom of Information Bill, 1999 had to be re-examined in the light of the Constitutional provisions and the judgement of Supreme Court in the case of S.P.Gupta vs. Union of India (AIR 1982 SC 149). Accordingly, the GOM directed the Legislative Department to examine whether any modifications are required to be made in clauses 8 and 9 of the draft Bill keeping in view the requirements of Article 19 (2) of the Constitution. Further, in order to give the proposed Bill a positive look, the GOM desired that

- (i) sub-clause (4) of Clause 8 of the draft Bill placed before it may be deleted;
- (ii) Clause 8 may be rearranged by dividing it into Clauses 8(a) and 8(b),
- (iii) the remaining 7 exemptions may be placed under Clause 8(a), and

- (iv) the 'internal deliberative processes', which the existing clause 8(4) seeks to exempt from disclosure, may be suitably incorporated under clause 8(b) of the draft Bill.

The present set of proposals is being submitted in the context of these directions of the GOM.

### Draft FOI Bill and Supreme Court Judgement

3. In S.P Gupta Vs. Union of India, the Supreme Court has held that the advice tendered by the Council of Minister to the President is protected from judicial scrutiny by virtue of clause 2 of Article 74 of the Constitution but the same cannot be said regarding the views expressed by the Chief Justice of the High Court and Chief Justice of India on consultation which forms a part of the advice. In other words, what is protected against disclosure under clause 2 of Article 74 is only the advice tendered by the Council of Ministers and the material on which the reasoning of the Council of Ministers is based cannot be said to form part of advice. However, the interpretation of clause 2 of Article 74 in S.P.Gupta's case has a direct bearing only on the issue to what extent the Government can claim privilege to withhold information from the Court and not on the question to what extent Government should provide information to citizens, which is the scope of the proposed Bill. Accordingly, it is felt that the draft Bill does not require any modifications in the context of the judgement in the S.P. Gupta's case.

### Review of the draft Bill vis-a-vis Article 19(2)

4. Sub-clause (a) of clause (1) of Article 19 provides for the right to freedom of speech and expression. Clause (2) of the said Article empowers the State to impose reasonable restrictions on the said right in the interest of sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of courts, defamation or incitement to an offence. The exemptions coming under clause 8(1) of the draft FOI Bill placed before the GOM in the last meeting basically correspond to the provisions of Article 19(2) of the Constitution. The other

exemptions coming under sub-clauses 2 to 8 of clause 8 of the FOI Bill are but an elaboration of the aforesaid Constitutional provisions so that the areas of disclosure are well-defined with minimal possibility of being given varied interpretations by the Courts of Law. At the same time, specifying the exemptions would also give clear and perceptible directions to the Information officers thereby reducing the risk of arbitrariness in taking decisions on requests for supply of information under the contemplated Act. Besides, a clearer demarcation of the areas exempted from disclosure has other advantages too as it would facilitate the authorities at the grass-root level in taking quicker decisions on whether the request for information should be acceded to or rejected. Having regard to these considerations, it is felt that the present arrangement of detailing the exemptions under clause 8 of the draft FOI Bill may be retained.

Deletion of clause 8 (4) of the draft FOI Bill

5. In the meeting of 22<sup>nd</sup> November, 1999, a view was taken that in order to avoid public apprehensions about the restrictive nature of clauses 8 and 9 of the draft FOI Bill, and also to give the Bill a positive look, it would be desirable to delete clause 4 of the proposed Bill and incorporate the relevant provisions as clause 8(b). This has been examined by the Legislative Department who are of the view that in order to exempt legal advice, recommendations and minutes of deliberative nature from disclosure while at the same time providing for free access to final decisions of such deliberative process, it would be adequate if a proviso is inserted in clause 8 (4) providing that the said exemptions will not apply to any information which is in the nature of final decision or outcome of such advice, information, recommendation. To this limited extent, the draft FOI Bill has been revised by the Legislative Department and a copy thereof is at Annexure -II. However, an amendment to this effect on the lines indicated by the GOM in its meeting on 22<sup>nd</sup> November, 1999, has separately been suggested by the Minister of Information & Broadcasting. A copy of this suggested amendment to clause 8 is at Annexure-III. In this arrangement, the existing sub-clause 4 under clause 8

has been deleted and in content inserted as clause 8 (1). The remaining 7 sub-clauses have been placed under clause 8 (2).

6. In consideration of the above, the Group of Ministers may like to take a view whether the draft Freedom of Information Bill as revised by the Legislative Department (Annexure-II) would be appropriate to the requirements, or for that matter clause 8 thereof may be replaced by the clause suggested by the Minister for Information & Broadcasting (Annexure-III) before the draft Bill is commended to the Cabinet for its introduction in Parliament.

7. This Note has been seen and approved by the Minister of State (Personnel).

*Harinder Singh*

(HARINDER SINGH)

Joint Secretary to the Government of India.

New Delhi

Dated the 24<sup>th</sup> December, 1999

MINISTRY OF HOME AFFAIRS  
(IS.I DIVISION)

...

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

...

Reference is invited to Department of Personnel and  
Training I.D.No.34011/1(s)/97-Estt.(B) dated 15.12.1999,  
on the above cited subject.

2. In this regard the matter has been examined by this  
Ministry keeping in view the observations made by GOM in  
its meeting held on 14th May, 1998 and it is observed  
that:

- (i) As regards the observation regarding defining  
of 'Official Secret' in a manner consistent  
with the proposed Bill on Freedom of  
Information, it is seen from examination of  
the relevant section i.e. section 8(1) of the  
proposed draft Bill that the provision  
suggested therein is already covered under  
the existing provisions of Section 5(1) of  
the OSA:
- (ii) Further, Sections 8(2) and (3) are within the  
purview of the Departmental Security  
Instructions:
- (iii) As regards sections 8(4) and (5),  
"information in the nature of advice  
including legal advice, opinions contained in  
intra-departmental or inter-departmental  
papers" would also be covered under the  
Official Secrets Act in so far as it pertains  
to the sovereignty and integrity of India,  
security of the State etc., as defined in  
section 5(1) of the OSA:
- (iv) As regards Section 8(6) it is felt that  
"trade or commercial secrets" should be  
covered under the Patents Act or any special  
law being enacted relating to the subject  
matter.
- (v) Similarly, Sections 8(7) and (8) may also be  
examined by the DOPT in consultation with  
Ministry of Law and the Ministry/Department  
concerned with the subject matter for  
ascertaining as to whether the proposed  
provisions are covered under any existing  
Acts/Rules covering the subject matter.

Hence, it is quite clear that there is no need to alter the definitions of "Official Secret" as defined in the OSA in order to make it consistent with the proposed Bill.

3. The observation regarding restricting the "omnibus character of the OSA 1923" emanated from the recommendations of the Working Group on Right to Information which submitted its report in May, 1997. The matter has been examined and it may be seen that the present definition of section 5(1) provides for:

- (i) Information which relates to or is used in respect of a prohibited place;
- (ii) which is likely to assist directly or indirectly and enemy; and
- (iii) information relating to a matter which is likely to affect the sovereignty and integrity of India, security of the State or friendly relations with foreign states.

Thus, it is abundantly clear that information, the disclosure of which affects the sovereignty and integrity of the country etc., is covered under the OSA, the provision of which are very sparingly used with the approval of the Home Minister.

4. Regarding executive instructions which have outlived their utility such as restrictions on photography of certain public places, it is submitted that these would cover a wide range of Ministries which have imposed these restrictions for various reasons. Thus, it is for the concerned Ministries to examine whether the utility of declaring these places as prohibited places for photographing still exists. The Ministry of Home Affairs cannot, therefore, suo-moto undertake a "review" in this regard.

5. So far as Official Secrets Act 1923 is concerned, the photographing of 'prohibited places' is not allowed for some well founded and cogent reasons. The public places other than prohibited places are not covered under the OSA, 1923. Hence, no relaxation with reference to photographing of 'prohibited places' is desirable.

6. The Freedom of Information Bill is still under consideration. It has not yet been approved by the Parliament. Hence, the proposed amendments to the Manual of Departmental Security Instructions should be undertaken only after the provisions of the Freedom of Information Bill have been approved.

## DEPARTMENT OF PERSONNEL & TRAINING

---

The second meeting of the Group of Ministers constituted to examine the legislative proposals for the proposed Freedom of Information Bill, 1999 was held on 7.1.2000 at 4.00 p.m. in the room of Home Minister. The following were present:-

- 1) Shri L.K. Advani, Home Minister
- 2) Shri George Fernandes Minister of Defence,
- 3) Shri Pramod Mahajan,

Minister of Parliamentary Affairs & Information Technology

- 4) Shri Ram Jethmalani, Minister for Law, Justice and Company Affairs
- 5) Shri Arun Jeitley, Minister for Information & Broadcasting,
- 6) Mrs. Vasundra Raje, Minister of State (Independent charge) of the Ministry of Small Scale Industries and Agro and Rural Industries, Minister of State in the Department of Personnel and Training & Department of Pension and Pensioners' Welfare in the Ministry of Personnel, Public Grievances and Pensions, Department of Atomic Energy and Department of Space.

In attendance:-

1. Dr. Raghubir Singh,  
Secretary, Legislative Department  
Ministry of Law
2. Shri Mukund Kaushal,  
Special Secretary, Ministry of Home Affairs

3. Shri Harinder Singh,

Joint Secretary(E), Deptt. of Personnel & Training.

The Group of Ministers considered the Note of Department of Personnel & Training dated the 24<sup>th</sup> December 1999 and also the Note of Ministry of Home Affairs dated the 4<sup>th</sup> January 2000. The GOM deliberated on the two alternative formulations of the proposed Clause 8 of the Bill contained in Annexure II&III of the Note of Deptt. of Personnel & Training. The GOM noted that as of now the difference of opinion existed in regard to Clause 8 of the proposed Bill, but the entire Bill has to be seen in its totality keeping in view the width of rights of citizen in regard to access to information within the framework of the Constitution. The GOM felt that the whole issue hinges on whether it is decided to make available only the final decision of the government or make available information about deliberative processes involved in decision making. In this context it was noted that the deliberative processes are excluded in almost all the legislations enacted in advanced democracies, but the public has a right to final decision taken by the government. The GOM was unanimous that ultimately the ambit and scope of rights conferred by the proposed Bill should necessarily depend on making governance more effective and, therefore, the GOM decided to have one more look at the alternate formulations before finalising the matter, keeping in view the fact that effective governance should guide any further step. In this connection it was also suggested that the proposed Bill should also include a provision that Govt. would have right to disclose more

information that what is provided for in the proposed Bill, if it is felt necessary to do so in public interest.

It was decided that the GOM will meet on Tuesday, the 18<sup>th</sup> January 2000 at 11.00 AM in the chamber of Home Minister for further deliberation.

## DEPARTMENT OF PERSONNEL & TRAINING

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- 1) Shri L.K. Advani, Home Minister
- 2) Shri George Fernandes Minister of Defence,
- 3) Shri Pramod Mahajan,  
Minister of Parliamentary Affairs & Information Technology
- 4) Shri Ram Jethmalani, Minister for Law, Justice and Company Affairs
- 5) Shri Arun Jeitley, Minister for Information & Broadcasting,
- 6) Mrs. Vasundra Raje, Minister of State (Independent charge) of the Ministry of Small Scale Industries and Agro and Rural Industries, Minister of State in the Department of Personnel and Training & Department of Pension and Pensioners' Welfare in the Ministry of Personnel, Public Grievances and Pensions, Department of Atomic Energy and Department of Space.

### In attendance:-

1. Dr. Raghbir Singh,  
Secretary, Legislative Department  
Ministry of Law
2. Shri Mukund Kaushal,  
Special Secretary, Ministry of Home Affairs

3. Shri Harinder Singh,

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## DEPARTMENT OF PERSONNEL & TRAINING

---

The third meeting of the Group of Ministers constituted to examine the legislative proposals for the proposed Freedom of Information Bill, 1999 was held on 2.2.2000 at 4.00 p.m. in the room of Home Minister. The following were present:-

- 1) Shri L.K. Advani, Home Minister
- 2) Shri George Fernandes Minister of Defence,
- 3) Shri Ram Jethmalani, Minister for Law, Justice and Company Affairs
- 4) Shri Arun Jaitley, Minister for Information & Broadcasting,
- 5) Shri Arun Shourie, Minister of State in the Ministry of Planning,

Minister of State in the Ministry of Statistics and Programme

Implementation and Minister of State in the Department of Administrative

Reforms and Public Grievances of the Ministry of Personnel, Public

Grievances and Pensions.

### In attendance:-

1. Shri Kamal Pande, Home Secretary
2. Shri B.B. Tandon, Secretary, Deptt. of Personnel & Training
3. Dr. Raghubir Singh, Secretary, Legislative Department
4. Shri Harinder Singh, Joint Secretary(E), Deptt. of Personnel & Training.

The Group of Ministers considered two notes circulated by the Ministry of Law dated 11<sup>th</sup> January 2000 and 17<sup>th</sup> January 2000 proposing the draft Bill

formulation for the consideration of the Group of Ministers. The GOM agreed that the provisions in the Chapter 3 and 4 in the proposed Bill regarding setting up of National Council and State Council be deleted as such Councils can be created even without enabling legislative provisions as and when it is required. The Group also noted that the earlier provision under Clause 8(7) regarding exemption for information, the disclosure of which would prejudicially affect the management of personnel of public authorities and their operation was too wide and in any case it was superfluous because the proposed Clause 8(5) already restricts grant of information relating to minutes or records of advice including legal advice, information or recommendations made by any officer of a public authority during a decision making process prior to executive decision or policy formulation, with the result that advice of CVC, UPSC, PESB and Law Ministry in individual cases is protected under the proposed Clause 8(5).

The GOM also endorsed the formulation in Clause 26 which states that the Official Secrets Act 1923 and every other Act in force shall cease to be operative to the extent to which it is inconsistent with the provisions of the proposed enactment. Separately, however, the GOM desired that the ambit and scope of Official Secrets Act may be considered by MHA keeping in view the changing scenario but this aspect needs to be considered separately. The Group also noted that while a great deal of effort has been made to draft the proposed Bill, ultimately the exact impact of the bill will be felt after the courts start interpreting the various provisions of the proposed enactment.

The Group of Ministers recommended the latest Bill drafted by the Legislative Department subject to appropriate provisions being made to enable release of information exempted from disclosure under the proposed clause 8 in the custody of the Government latest on completion of 25 years after the event. Therefore, the Legislative Department was requested to redraft the proposed Bill in accordance with the directions of the Group of Ministers, so that it can be placed before the Cabinet at the earliest.

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SECRET

COPY NO. 14

No.1(57)/97-Leg.I  
GOVERNMENT OF INDIA  
MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS  
LEGISLATIVE DEPARTMENT

New Delhi, the 11th January, 2000

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

Reference is invited to the meeting of the Group of Ministers held on 7th January, 2000, in the Chamber of the Home Minister. It was decided in the meeting that the next meeting of the Group of Ministers shall be held on 18th January, 2000, in the Chamber of the Home Minister (Room No.104, North Block, New Delhi).

Legislative Department has further scrutinised the Bill earlier circulated as Annexure II to the Ministry of Personnel, Public Grievances & Pensions' O.M. No.34011/1(s)/97-Estt.(B) dated the 4th January, 2000. A copy of the note explaining the changes now made alongwith a copy of the Bill showing changes so made is at Annexure I and a copy of the Bill incorporating all these changes is at Annexure II.

(T.K. Viswanathan)

Addl. Secretary to the Government 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 Parliamentary Affairs and Minister of Information Technology
5. P.S. to Minister of External Affairs
6. P.S. to Minister of State (Independent Charge), Ministry of Information & Broadcasting
7. P.S. to Minister of State in the Department of Administrative Reforms and Public Grievances, Ministry of Personnel, P.G. and Pensions.
8. P.S. to Minister of State in the Department of Personnel & Training and Department of Pensions and Pensioners Welfare, Ministry of Personnel, Public Grievances and Pensions.

Copy to:

1. Shri Prabhat Kumar, Cabinet Secretary, Rashtrapati Bhawan, New Delhi.
2. Shri Kamal Pande, Home Secretary, North Block, New Delhi.
3. Shri Raghubir Singh, Secretary, Legislative Department, Ministry of Law, Justice and Company Affairs, Shastri Bhawan, New Delhi.
4. Shri Pawan Chopra, Additional Secretary, Cabinet Secretariat, New Delhi.
5. Smt. Sangita Gairola, Joint Secretary, Ministry of Home Affairs, New Delhi.

Copy also forwarded to:

1. ✓ PPS to Secretary(P), Department of Personnel & Training.
2. PPS to Additional Secretary(AR&T), Department of Admin. Reforms & Public Grievances.
3. PS to Joint Secretary(E), Department of Personnel & Training.

Ministry of Law, Justice and Company Affairs  
(Legislative Department)

\*\*\*

Subject : Legislative proposal for Freedom of Information and amendments to related Acts and Rules – Note for the Group of Ministers.

The Bill finalised by this Department is at Annexure-II of the Note for the Group of Ministers dated 24.12.1999 circulated by the Ministry of Personnel, Public Grievances and Pensions. The said Note was considered by GOM on 07.01.2000. The GOM shall meet again on 18.01.2000 to consider the provisions of this Bill. We have further examined the Bill and find that some more corrections with a view to strengthen the provisions of the Bill, bringing in clarity in the provisions thereof and some changes of drafting nature are desirable.

Clause 2 (c)

The definition of "freedom of information" has been slightly modified with a view to provide in an illustrative manner the various modes of maintenance of information in electronic form and to make certain drafting corrections of verbal nature.

Clause 2 (d)

The definition of "information" has been slightly modified with a view to bring in clarity of expression.

Clause 4

It is not necessary to specifically mention at the outset in matter of provisions relating to obligations on public authorities that such obligations are subject to the provisions of sections 8 and 9. It unnecessarily gives an impression that the obligations cast are not of full

efficiency. Even without such opening words, the result would be the same. Sub-clause (e) in particular and sub-clauses (a) and (c) generally have been modified with a view to make the provisions more effective and to provide clarity in language.

#### Clause 6

It should be made obligatory upon the public information officer to help the persons who are not able to make their requests in writing in reducing such requests in writing.

#### Clause 7 (3) (ii)

Certain changes of drafting nature have been made.

#### Clause 8

It is unnecessary to specifically refer to "information received in confidence from foreign governments, their agents or international organisations" in sub-clause (1). The rest of the provisions are sufficient to take care of eventualities where it is not desirable to reveal such information. Present sub-clause (5) should be brought out as sub-clause (2). It is unnecessary to keep the rules made under clause 3 of article 77 and clause 3 of article 166 of the Constitution under the wrap of secrecy. Further, the provisions relating to Cabinet papers too have been modified with a view to provide that the records relating to the deliberations of Council of Ministers, Secretaries and other officers shall be exempt from disclosure. Instead of making provisions for exemption from disclosure of information in the nature of advice, etc. and then further providing that the information in the nature of final decision, etc. shall not be exempt, it is better to provide that the minutes or records of advice, etc., during the decision making process prior to the executive decision or policy formulation shall be exempt from

disclosure. Some changes of drafting nature have been made in sub-clauses (6) and (8). It is not in the interests of democratic norms to keep the information relating to management of personnel of public authorities and their operations under the wrap of secrecy.

#### Clause 9

Some changes of drafting nature have been made.

#### Chapter III and Chapter IV

Establishment of National Council and State Councils shall impede free flow of information and shall be of little help in dissemination thereof. Since the concept of right to information as a statutory right is being brought out in our country for the first time and there may be certain operational problems in the beginning, it is best to leave the matter to the Central Government and the concerned State Governments. Making provisions for having such Councils can best be left over to a stage when the Act has functioned for a sufficiently long time, say for five years. The objectives mentioned in clause 16 in relation to the National Council and Clause 22 relation to the State Councils can best be performed by the instrumentalities of the respective Governments directly.

#### Clause 26

The Official Secrets Act, 1923 had been a much criticised enactment. In view of that, it shall be better to specifically to make a mention of that Act in clause 26.

If approved, we may send a Note to Department of Personnel for circulation amongst GOM.

*(Dr. Raghu Singh)*  
(Dr. Raghu Singh)

Secretary

10.01.2000

MLJ & CA

*Encl. 1  
Note may be sent  
to the members of  
the Group directly to  
the concerned authorities*

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17/1/2000

SECRET

COPY NO. 10

No. L57197-Leg.1  
GOVERNMENT OF INDIA  
MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS  
LEGISLATIVE DEPARTMENT

New Delhi, the 17<sup>th</sup> January, 2000

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

Reference is invited to Ministry of Law, Justice & Company Affairs, Legislative Department's O.M. of even number dated the 11<sup>th</sup> January, 2000. On scrutiny by this Department it was also found necessary that a provision in the nature of saving jurisdiction of courts and right of any party to any judicial proceedings to inspection or production of any information, document or other evidence should remain unaffected with the enactment of the Freedom of Information Bill, 2000. It is regretted that the provision was inadvertently not included in the Bill annexed to O.M. referred above. The following clause may be read as a part of the Bill at Annexure II of the above O.M.:-

immediate

28  
6.5 (8-87) "Power of Court to order inspection or production of any information not barred"

14A. Nothing in this Act shall affect the power of any court to order inspection or production of any information, document or other evidence for the purposes of any inquiry or proceeding or the right of any part to any judicial proceedings to such inspection or production."

  
C.L.K. Vrajanathan  
Addl. Secretary to the Government of India

110

362/JS(E)/2000

21/1/2000

No:EI/Inf/Right-Inf.Act/Misc/99/

Government of Goa,  
Department of Information and  
Publicity,  
Udyog Bhavan, 3rd floor,  
Panaji - Goa.

Dated:- January 17, 2000

212/214/GO/2000  
24/1

To,  
Shri Harinder Singh,  
Joint Secretary  
Deptt. of Personnel & Training,  
Ministry of Personnel, Public  
Grievances & Pensions,  
North Block,  
New Delhi - 110 001.

Sub:Implementation of Goa Right to  
Information Act.

Sir,

Kindly refer to your D.O.Letter No.34011/1(5)/97-Esstd(I)  
dated 19/11/1999 addressed to the Chief Secretary of Goa on the  
subject cited above and to State that the Goa Right to  
Information Act has been implemented in the State in the  
year 1997 and since its implementation, the people of State  
are aware of the working of the Administration by seeking  
particular information from the concerned Department. Under  
this Act the State Council has been established in order to  
promote the Act in the State.

The copy of the Act is also enclosed herewith for  
necessary action.

Yours faithfully,

( K. V. Prabhugaonkar )  
Director, Information & Publicity  
&  
Ex-Officio Jt. Secy. to the Govt.

Enc:As above.

111

27(5)/2000  
27/1/2000

24/1/2000  
45/0/RM



Harinder Singh

संयुक्त सचिव  
(Estt.)  
GOVT. SECRETARY  
Tel: 301-1276

भारत सरकार  
कार्मिक और प्रशिक्षण विभाग  
कार्मिक, लावा शिपनयत तथा पेंशन मंत्रालय  
नार्थ ब्लॉक, नई दिल्ली-110001  
GOVERNMENT OF INDIA  
DEPARTMENT OF PERSONNEL & TRAINING  
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES  
AND PENSIONS  
NORTH BLOCK, NEW DELHI-110001  
Dated the 14<sup>th</sup> February, 2000

D.O. No. 34011/1(S)/97-Estt.(B)

Dear Shri Viswanathan,

We have received the draft of "The Freedom of Information Bill, 2000" as revised by the Legislative Department in accordance with the directions given by the Group of Ministers in its meeting of February 2, 2000. On going through this draft, the following discrepancies/omissions have come to notice:-

- i) In line 4 of Clause 7(1), the reference is apparently intended towards "Sections 8 and 9" and not "sections 8 and 10."
- ii) In lines 4-5 of clause 11, the notice period seems to have been inadvertently stated as "fifteen days" instead of "fifty days" as was indicated in the earlier drafts;
- iii) The fee sub-section referred to in clauses 18(2)(b), 18(2)(a), 19(2)(d) may be consistently indicated either as "sub-section (1) of Section 7" or "Section 7"; and
- iv) The words "competent authority" seem to have been inadvertently omitted between the words "or the" and "shall be" in line 1 of clause 20(1).
- v) In line 2 of the Schedule, the words "(See section 28)" are apparently to be substituted as "(See Section 16)".

In view of the above, you may perhaps like to have the draft rechecked and revised, if necessary.

2. I also take this opportunity to enclose drafts of the "Statement of Object and Reasons" and "Financial Memorandum", to be attached with the Freedom of Information Bill, together with the speech proposed to be given by the Minister of State (PP) in connection with the introduction of the above Bill in Lok Sabha. I shall be grateful if you could kindly confirm whether these are in order. A very early reply would be highly appreciated.

With regards

Yours sincerely,

*Harinder Singh*  
(Harinder Singh)

Shri T.K. Viswanathan,  
Additional Secretary,  
Legislative Department,  
Shastri Bhavan, NEW DELHI

*Letter delivered*

*15/2*

*USE RM)  
(see machine)*

*112*

## STATEMENT OF OBJECTS AND REASONS

With a view to promote transparency in the functioning of Government, the Government of India appointed a 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 Department of Personnel and Training O.M. No.34011/1(s)/97-Estt.(B) dated January 2, 1997. Among other things, it was asked to examine the feasibility and need for either full fledged Right to Information Act or its introduction in a phased manner to meet the needs of open and responsible Governance and to examine the rules frame work with particular reference to Civil Service (Conduct) Rules and Manual of Office Procedure. This Working Group submitted its report in May, 1997 along with a draft Freedom of Information Bill. In Para 3.6 of its report, the working group recommended that the proposed Bill should ensure, to the extent possible, that disclosure of information should be the rule and secrecy should be an exceptions and the exception should be clearly defined. The Working Group not only considered the various suggestions on the subject but also studied corresponding laws in other countries including 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. The Working Group also recommended suitable amendments to the Civil Service (Conduct) Rules and the Manual of Departmental Security Instructions with a view to bring them in harmony with the proposed Bill. In addition the Working Group has proposed to amend the Official Secrets Act, 1923 and Indian Evidence Act, 1872 with a view to ensure harmony between the proposed Bill and other Acts.

2. The whole matter was subsequently deliberated by the Group of Ministers constituted by the present Government and the two earlier Governments and extensive discussions were also held by the Committee of Secretaries to ensure that free flow of information is available to the public, while at the same time protecting the national interest, sovereignty and friendly relations with foreign countries etc.

3. In our present democratic frame work, free flow of information for the citizens and non-Government institutions suffers from several bottlenecks including the existing legal frame work, lack of infrastructure at the grass roots levels (where most of the information will be sought and given) and an attitude of secrecy within the Civil Service as a result of the old rules framework. The Government proposes to deal with all these aspects in a phased manner so that Right to Information Act become reality consistent with the objective of having a stable, honest, transparent and efficient Government.

4. The proposed legislation can be seen at different levels in order to move towards greater transparency and accountability. At one level this bill can be seen as enhancing our democratic system in as much as the informed criticism is essential to the functioning of the democratic institutions and in this context the information available with the public authorities is a vital input as the public authorities collect enormous amount of information which may be relevant for the citizen. At another level the very act of allowing citizen to ask for information would promote greater accountability and transparency in the functioning of the public authority. In addition, the proposed Bill will enable the citizen to have an access to information which are essential for obtaining his rights and benefits which are available to various citizens and citizens groups like NGOs. With a view to further this objective, clause 3 of the proposed Bill specifies that subject to the provisions of this Act, all citizens shall have right to freedom of

information and the exceptions are clearly specified under clause 8 and 9 of the proposed Bill. Obligation of every public authority to provide information is also specified under clause 4 of the proposed Bill and it is proposed that every public authority shall maintain all records consistent with its operational requirement duly catalogued and indexed and published at such an intervals as may be prescribed by the appropriate Government or the competent authority about the functioning of the organisation as specified in clause 4 (b) of the proposed Bill. The words "Public Authority" have been defined to mean any authority or body established or constituted by or under the Constitution, by any law made by the appropriate Government and includes any other body held, controlled or substantially financed by the funds provided directly or indirectly by the appropriate Government.

5. The proposed bill is consistent with Article 19(1) and (2) of the Constitution and the exceptions provided in clause 8 and 9 are, therefore, flow out of the aforesaid articles. The proposed Bill is also consistent with Article 19 of Universal Declaration of Human Rights which specify that "everyone has a right to freedom of opinion and expression; This right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers". India is also a signatory to this declaration. In addition, the proposed Bill also takes note of judicial pronouncements by the Apex Court regarding "right to know" consistent with the national interest which is derived from the concept of freedom of speech.

(VASUNDHARA RAJE)

New Delhi

The January, 2000.

M.F. FAROOQUI, I.A.S  
Secretary to Government



PUBLIC (ESTT.I & LEG.) DEPARTMENT  
Public & Rehabilitation Department.  
Fort St. George,  
Chennai - 600 009.  
Phone : (Off) 044-561444  
(Res.) 044-4872865

D.O.Letter No: 24675/99- 3,

Date: 18.1.2000

Dear Thiru Harinder Singh,

Sub: Tamil Nadu Right to Information Act, 1997 -  
Appraisal report - sent.

Ref: Your D.O.Letter No.34011/1/(S)/97-  
Estt(B), Dated: 19.11.1999

As desired in D.O.letter cited, I am to  
enclose herewith the Appraisal report on "Tamil Nadu Right  
to Information Act, 1997" together with the copies of the  
Act and the rules framed thereunder.

Yours Sincerely,

To  
Thiru Harinder Singh,  
Joint Secretary,  
Department of Personnel and  
Training,  
Ministry of Personnel, Public  
Grievances and Pensions,  
North Block,  
New Delhi-110 001 (w.e)

55(S)/2000- Estt(B)

15.1.2000

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# TAMIL NADU GOVERNMENT GAZETTE EXTRAORDINARY PUBLISHED BY AUTHORITY

No. 254]

CHENNAI, MONDAY, MAY 5, 1997

Chithirai 22, Isvara, Thiruvalluvar Aandu-2026

## Part IV — Section 2 Tamil Nadu Acts and Ordinances.

### CONTENTS.

Acts :	Pages
No. 23 of 1997—Tamil Nadu Payments of Salaries (Amendment) Repeal ..	76
No. 24 of 1997—Tamil Nadu Right to Information ..	77-80

The following Act of the Tamil Nadu Legislative Assembly received the assent of the Governor on the 4th May 1997 and is hereby published for general information.

ACT No. 24 OF 1997.

*An Act to make provision for securing the right to information in the State of Tamil Nadu and for matters relating thereto.*

WHEREAS it is necessary that every Governmental action should be transparent to the public;

AND WHEREAS to achieve this object, every citizen should be able to get information from the Government;

Enacted by the Legislative Assembly of the State of Tamil Nadu in the Forty-eighth Year of the Republic of India as follows:—

1. (1) This Act may be called the Tamil Nadu Right to Information Act. Short title and commencement.

(2) It shall come into force at once.

2. In this Act, unless the context otherwise requires,—

*Definitions.*

(1) "Competent authority" means any authority, officer not below the rank of Deputy Collector or an Officer of an equivalent grade and above empowered by the Government by notification, to be the competent authority for the purpose of this Act;

(2) "Government" means the State Government;

(3) "information" includes copy of any document relating to the affairs of the State or any local or other authorities constituted under any Act for the time being in force or a statutory authority or a company, corporation or a co-operative society or any organisation owned or controlled by the Government.

3. (1) Every person bonafide requiring information may have access to such information in accordance with the procedure specified under this Act. Right of access to information.

(2) Notwithstanding anything contained in sub-section (1), no person shall be given information relating to—

- (a) information relating to defence security;
- (b) information whose disclosure will prejudice the security, integrity and sovereignty of the Nation and the State;
- (c) information whose disclosure would harm the conduct of international relations or affairs;
- (d) information received in confidence from foreign Governments, foreign courts or international organisations;
- (e) information whose disclosure would harm the frankness and candour of internal discussion, including:—
  - (i) proceedings of Cabinet and Cabinet committees;
  - (ii) internal opinion, advice, recommendations, consultation and deliberation;
  - (iii) reflections and assumptions relating to internal policy analysis; analysis of alternative policy options and information relating to rejected policy options;
  - (iv) confidential communications between departments, public bodies and regulatory bodies.

Central Act of 1972.

(u) the documents referred in sections 123 and 124 of the Indian Evidence Act, 1872;

- (i) any matter which is likely to,—
  - (i) help the commission of offence;
  - (ii) help or facilitate escape from legal custody or affect prison security; or
  - (iii) impede the process of investigation or apprehension or prosecution of offenders.

(3) (a) Any person who wants to have access to the information may make an application in the manner prescribed to the competent authority in such form with such particulars, as may be prescribed.

(b) Where an application is made under clause (a) and the information is not available with the competent authority but is available with another department or authority, the competent authority may transfer the application to the competent authority with whom such information is available and inform the applicant accordingly. The competent authority to whom such application is transferred shall furnish the information within thirty working days from the date of receipt of the application from the competent authority from whom it has been referred or received.

(c) Where an application is so transferred to a department or authority, the head of that department or authority shall be deemed to be a competent authority.

(d) (i) Upon the receipt of an application requesting for an information, the competent authority shall consider it and pass orders thereon either granting or refusing the request, as soon as practicable and in any case, within thirty working days from the date of receipt of application.

(ii) In other cases, the competent authority shall take all reasonable steps to inform the applicant of its decision on the request as soon as practicable.

(4) (a) If in the opinion of the competent authority any information, if disclosed, is likely to cause breach of the peace or cause violence, or disharmony among the section of the people on the basis of religion, language, caste, creed, community or if it is prejudicial to public interest, the competent authority shall refuse to give information.

(b) Any application made under clause (a) shall be rejected, for reasons to be recorded in writing, if in the opinion of the competent authority,—

(i) any such information sought falls in any one or more categories of items listed under section 3 (2), or

(ii) the disclosure of the information sought would be prejudicial to the maintenance of public order, or maintenance of essential services and supplies.

4. (1) Any person aggrieved by an order of the competent authority or any person who has not received any order from the competent authority within thirty working days may appeal to the Government or to such other authority as may be notified by the Government, subject to such rules as may be prescribed.

(2) The decision of the Government or such other authority as may be prescribed shall be final.

(3) No order adversely affecting any person shall be passed except after giving that person a reasonable opportunity of being heard.

5. No suit, prosecution or other legal proceeding shall lie against any authority or person for anything done in good faith or intended to be done in pursuance of this Act or the rules made thereunder. Protection of action taken in good faith.

6. If any difficulty arises in giving effect to the provisions of this Act, the Government may, by an order published in the *Tamil Nadu Government Gazette*, make such provisions not inconsistent with the provisions of this Act and appear to them to be necessary or expedient for removing the difficulty. Power to remove difficulties.

Provided that no such order shall be made after the expiry of two years from the date of the commencement of this Act.



# TAMIL NADU GOVERNMENT GAZETTE

EXTRAORDINARY PUBLISHED BY AUTHORITY

No. 248]

CHENNAI, WEDNESDAY, MAY 6, 1998  
Chithirai 23, Vekuthaniya, Thiruvalluvar Aandu—2029

## Part III—Section 1 (a)

General Statutory Rules, Notifications, Orders,  
Regulations, etc., issued by Secretariat Departments.

### NOTIFICATIONS BY GOVERNMENT

#### PUBLIC DEPARTMENT. (S.C.)

THE TAMIL NADU RIGHT TO INFORMATION RULES, 1997.

[G.O. Rt. No. 1757, Public (S.C.), 6th May 1998.]

No. SRO A-26(a)/98.

In exercise of the powers conferred by sub-section (1) of section 7 of the Tamil Nadu Right to Information Act, 1997 (Tamil Nadu Act 24 of 1997), the Governor of Tamil Nadu hereby makes the following Rules :—

#### RULES

1. *Short title.*—These rules may be called the Tamil Nadu Right to Information Rules, 1997.

2. *Definitions.*—In these rules, unless the context otherwise requires,—

(1) "Act" means the Tamil Nadu Right to Information Act, 1997 (Tamil Nadu Act 24 of 1997).

(2) "appellate authority" means the authority specified in sub-section (1) of section 4.

3. *Right of access to information.*—Any person who wants to have access to any information under the Act may make an application to the competent authority in the Form annexed to these rules by post or in person. The Competent Authority shall consider the application as provided for in sub-sections (3) and (4) of section 3 of the Act.

## ANNEXURE.

*Form.*

(See rule 3 of the Tamil Nadu Right to Information Rules, 1997.)

[Appeal under section 4(1) of the Tamil Nadu Right to Information Act, 1997.]

DATE OF FILING OR DATE OF RECEIPT BY POST REGISTRATION No.—

(1) Full name of the Appellant .. ..

(2) Address .. .. .

(3) Particulars of the Competent Authority ..

(4) Date of receipt of the orders appealed against.

(5) Last date for filing the appeal .. ..

(6) Limitation .. .. .

(7) Particulars of information—

(i) Nature of information required ..

(ii) Name of the Office or Department to which the information relates.

(iii) Subject matter of information ..

(iv) The year and place of area to which the information relates.

(v) Purpose for which the information is required.

Place :

Signature of Appellant.

Date :



# TAMIL NADU GOVERNMENT GAZETTE

PUBLISHED BY AUTHORITY

No. 32]

CHENNAI, WEDNESDAY, AUGUST 18, 1999

Aavani 1, Pramathi, Thiruvalluvar Aandu-2030

## Part III—Section 1 (a)

General Statutory Rules, Notifications, Orders,  
Regulations, etc., issued by Secretarial Departments.

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Tamil Nadu Indian Made Foreign Spirits (Supply by Wholesale) Rules—Amendment .. .. .	190
<b>PUBLIC DEPARTMENT.</b>	
Tamil Nadu Right to Information Rules—Amend- ments .. .. .	191

"1. Fishing shall be permitted in the Poondi Reservoir, the Nagsi and Kortallayar River below the Vothiyar dam only under a licence obtainable from the Inspector of Fisheries, Poondi, at a proportion of the fee payable for the licence."

2. Fishing shall be closed within the following limits during the months of September, October and November every year :—

(i) For 200 metres each of the Kortallayar river below the Poondi Regulator;

(ii) Kesavaram;

(iii) Tamaraiakkem; and

(iv) Vellar Anicut.

3. The following fees shall be charged for licences:—

(i) Canoe operated from shore Rs. 15 (Rupees Fifteen only) a month.

(ii) Kannivalai (Gill net) not to exceed 150 metres in length, 1.5 metres in height Rs. 35 (Rupees thirty-five only) a month.

(iii) Manivalai (Dredge) not to exceed 25 metres Rs. 60 (Rupees sixty only) a month.

(iv) Ootha (Conical basket) No. 1 No. Kammikode (Murrel net) 10 Nos. Single red and blue whil etc. Rs. 10 (Rupees ten only) a month.

4. The nets used for fishing shall have a mesh of 25 Milli Megre bar from Knot to knot.

(i) The Kannivalai (Gill net) shall be operative only in night time i.e., in between 4.00 Post Meridian and 6.00 Ant Meridian next day.

(ii) The Licensee shall not fish Indian Major Carps and Exotic Carps of size less than 15 centimetre of Catla, Rohu, Mrigal, Carbasu, Sal, Silver Carp, Grass Carp and Common Carp and if any such fish is accidentally caught shall be returned alive into the water.

5. In the Poondi Reservoir fishing shall be regulated departmentally as follows when the water level in the reservoir is reduced below 36.59 metre (120') Minimum Water Storage Level in the name of "Major Fishing" :—

(i) The centres and timings of fishing by the Licensees shall be decided upon by the Inspector of Fisheries, Poondi.

(ii) The catches consisting of Catla, Rohu, Mrigal, Carbasu, Sal, Silver Carp, Grass carp, Common carp, Murrels, Tilapia (More than 15 centimetre in length), bigger sized Cat Fish and fresh water prawns shall be shared between the Licensee and the Government in the ratio 1:2. The catches consisting of Tilapia (less than 15 centimetre in length) and all other miscellaneous small sized fish shall be shared between the Licensee and the Government equally.

(iii) Mesh regulation of nets shall not apply when the water level in the reservoir is reduced below 36.59 metre (120') Maximum Water Storage Level.

6. The Licences issued are not transferrable and shall be shown or deemed to any officer of Fisheries, Forest, Revenue, Police, Public Works Department or to any person authorised in this behalf by the Director of Fisheries, Chennai.

7. The Licences shall on demand show their catch to any of the officer or person for the inspection of their catch as mentioned in condition Number 6.

8. The Licensees shall not ply his canoe, catamaran or boat within 200 metres of the Dam, Masonry Works, etc., nor shall unload his catches near such works after fishing during normal fishing time.

9. Any Licensee or other person found in possession of fish in the licensed area should be able to prove to the satisfaction of the officers concerned as to how he came in possession of the fish, failing which the fish shall be forfeited to the Government.

10. The Inspector of Fisheries, Poondi may refuse to grant licence or cancel any licence already granted if a person fails to conform any of the conditions prescribed in licence or poaches in the reserved area or abets poaching. When a licence is so cancelled the Licensee shall not be entitled to the refund of any portion of the fee he has paid for such licence. The Assistant Director of Fisheries concerned may at any time revoke the cancellation order and validate the licence under special circumstances."

## PUBLIC DEPARTMENT

## AMENDMENTS TO TAMIL NADU RIGHT TO INFORMATION RULES.

[G.O. Ms. No. 1040, Public (Establishment I and LEG), 3rd August 1999.]

No. SRJ 4-62-99.— In exercise of the powers conferred by sub-section (1) of Section 7 of the Tamil Nadu Right to Information Act, 1997 (Tamil Nadu Act 24 of 1997), the Governor of Tamil Nadu hereby makes the following amendments to the Tamil Nadu Right to Information Rules, 1997.

## AMENDMENTS.

In the said Rules,—

(1) in rule 2, in clause (2), for the expression "sub-section (1) of section 4", the expression "sub-section (1) of section 4 of the Act" shall be substituted;

(2) in the Annexure, for the Form, the following Form shall be substituted, namely:—

"FORM \_

(See Rule 3.)

To

.....  
(The Competent Authority to be specified)

- |  |    |
|--|----|
| (1) Full name of the applicant   | .. |
| (2) Address  | .. |
| (3) Particulars of information required                                | .. |
| (i) Nature of information required                                     | .. |
| (ii) Name of the Office or Department to which the information relates | .. |
| (iii) Subject matter of information                                    | .. |
| (iv) The year and place or area to which the information relates       | .. |
| (v) Purpose for which the information is required                      | .. |

Place:

Date:

Signature of the Applicant.

M. F. FAROOQUI,  
Secretary to Government.

PRINTED AND PUBLISHED BY THE DIRECTOR OF STATIONERY AND PRINTING CHENNAI  
ON BEHALF OF THE GOVERNMENT OF TAMIL NADU.

(1 Group) III-1(a)-(32)-2

APPRAISAL REPORT ON THE TAMIL NADU RIGHT TO INFORMATION  
ACT, 1997 (TAMIL NADU ACT 24 OF 1997)

In the Budget Speech for 1997-98, the Hon'ble Chief Minister of Tamil Nadu announced that a "Right to Information Act" would be enacted. Accordingly, "Tamil Nadu Right to Information Act, 1997" (Tamil Nadu Act 24 of 1997) was enacted and published in the Tamil Nadu Government Gazette Extra-ordinary to enable the people, the right to access to information about the administration, which are expected to be known to them. The Act come into being with effect from 5.5.1997.

Subsequently, the Tamil Nadu Right to Information Rules, 1997 were also framed and the same was published in the Tamil Nadu Government Gazette, dated: 6.5.1998.

As per the Act and Rules, Competent/ Appellate authorities to whom public have to be approached, have been nominated for the Departments of Secretariat/Heads of Departments/ Public Sector Undertakings.

The working of this Act can be assessed only after sometime.

// TRUE COPY //

125

K. Raju  
19.1.2000  
SECTION OFFICER

# *File 2*

CLAUSE 7: DISPOSAL OF REQUESTS

Name of Organisation/ Individual	Comments/ Suggestions	Response of Government
Commonwealth Human Rights Initiative	<p>In Section 7, a provision for requests for urgent information and for waiver of fees in certain cases must be included and the section reworded to accommodate these requests.</p> <p>The Law must clearly state the fee that can be charged (which should not be excessive and unreasonable) and must also contain provision for waiver of fees in cases where demand for information is made from people who are unable to pay the same or in cases where information is sought in public interest or for protection of life and liberty.</p> <p>The Section must contain a provision for deemed refusal in cases where there is no response to the request within the stipulated time limit.</p> <p>The law must clearly state that where information sought is regarding the life and liberty of a person, the same must be provided within 24 hours. People request information because they need to fulfil a specific need; they must not be made to wait for 30 days in such instances.</p>	<p>It would be difficult for the Public Information Officer to determine whether the group/individual cannot, for genuine reasons, pay the prescribed fees or for that matter the information is being sought in public interest etc. Moreover, it would also be difficult to follow a consistent and uniform approach in handling requests for waiver of fees. Hence, no provision has been made in the Bill for exemption from payment of fees. However, <u>there may not be any objection</u> to make a provision in the Bill that the fees charged shall not be unreasonable.</p> <p>The provision for 'deemed refusal' has not been included in the Bill on the consideration that it might prove to be counter productive.</p> <p><u>There may not be any objection</u> to a provision being made in the Bill that where the information sought for under the Act relates to life and/or liberty of a person, the same shall be provided within 48 hours as an exception to the general rule.</p>
Consumer Education and Research Centre	<p>The time specified for response to requests is very long, 30 days is too long to wait for information. People request information because it is needed and is relevant to a person at a given point in time. Certain type of information which affects life and liberty of persons should be provided within 24 or 48 hours.</p>	<p>The response times to FOI access requests have been prescribed as 30 days by Canada, 20 <b>working</b> days by New Zealand, 30 days by Australia, 20 <b>working</b> days by USA, 28 days by Ireland and 20 <b>working</b> days by UK. In this context, the response time of 30 days provided in the Indian FOI Bill is not considered to be long.</p>

## CLAUSE 7: DISPOSAL OF REQUESTS

Name of Organisation/ Individual	Comments/ Suggestions	Response of Government
Commonwealth Human Rights Initiative	<p>In Section 7, a provision for requests for urgent information and for waiver of fees in certain cases must be included and the section reworded to accommodate these requests.</p> <p>The Law must clearly state the fee that can be charged (which should not be excessive and unreasonable) and must also contain provision for waiver of fees in cases where demand for information is made from people who are unable to pay the same or in cases where information is sought in public interest or for protection of life and liberty.</p> <p>The Section must contain a provision for deemed refusal in cases where there is no response to the request within the stipulated time limit.</p> <p>The law must clearly state that where information sought is regarding the life and liberty of a person, the same must be provided within 24 hours. People request information because they need to fulfil a specific need; they must not be made to wait for 30 days in such instances.</p>	<p>It would be difficult for the Public Information Officer to determine whether the group/individual cannot, for genuine reasons, pay the prescribed fees or for that matter the information is being sought in public interest etc. Moreover, it would also be difficult to follow a consistent and uniform approach in handling requests for waiver of fees. Hence, no provision has been made in the Bill for exemption from payment of fees. However, <u>there may not be any objection</u> to make a provision in the Bill that the fees charged shall not be unreasonable.</p> <p>The provision for 'deemed refusal' has not been included in the Bill on the consideration that it might prove to be counter productive.</p> <p>? ? ? ?</p>
Consumer Education and Research Centre	<p>The time specified for response to requests is very long, 30 days is too long to wait for information. People request information because it is needed and is relevant to a person at a given point in time. Certain type of information which affects life and liberty of persons should be provided within 24 or 48 hours.</p>	<p>The response times to FOI access requests have been prescribed as 30 days by Canada, 20 <b>working</b> days by New Zealand, 30 days by Australia, 20 <b>working</b> days by USA, 28 days by Ireland and 20 <b>working</b> days by UK. In this context, the response time of 30 days provided in the Indian FOI Bill is not considered to be long.</p>

Q 3358/Su/PA/2000  
29.9.2000

V 5341/JS(E)/2000  
29/9/2000

S/m. 1(R)

PARLIAMENT OF INDIA  
RAJYA SABHA SECRETARIAT

Telegram : "PARISHAD"  
Fax : (91 11) 3012592 / 3015585 PHA  
(91 11) 3792940 / 3782983 PH  
Telephone :

PARLIAMENT HOUSE ANNEXE  
NEW DELHI-110001

No.RS.6(6)/2000-CS(HA)

28 September, 2000

### OFFICE MEMORANDUM

Subject: Examination of the Freedom of Information Bill, 2000 by the Department-related Parliamentary Standing Committee on Home Affairs.

The undersigned is directed to state that the Freedom of Information Bill, 2000, as introduced in the Lok Sabha on 25 July, 2000 and pending therein, has been referred to the Department-related Parliamentary Standing Committee on Home Affairs for examination and report thereon. **The Committee is scheduled to hear the presentation of the Secretary, Ministry of Personnel, Public Grievances and Pensions in its meeting to be held on Monday, 6 November, 2000 at 3.00 p.m. in Committee Room 'A', Ground Floor, Parliament House Annexe, New Delhi.**

2. The Secretary, Ministry of Personnel, Public Grievances and Pensions is, therefore, requested to make it convenient to attend the said meeting.

3. The Ministry of Personnel, Public Grievances and Pensions is further requested to furnish the following documents (both in English and Hindi) pertaining to the said Bill at the earliest but in any case **not later than 20 October, 2000** for circulation amongst Members of the Committee :-

- |     |   |   |            |
|-----|---|---|------------|
| (1) | Background note on the Bill   | - | 100 copies |
| (2) | Official Secrets Act, 1923  | - | 80 copies  |
| (3) | Minutes of the Chief Ministers Conference on "Effective and Responsive Government" held on 24 May, 1997 at New Delhi  | - | 100 copies |
| (4) | Report of the Working Group on Right to Information and Promotion of Open and Transparent Government under the Chairmanship of Shri H.D. Shourie submitted to the Government alongwith the draft Freedom of Information Bill. | - | 80 copies  |

PARLIAMENT OF INDIA  
RAJYA SABHA SECRETARIAT

TELEPHONE SECRETARIAT  
NEW DELHI


: 2 :

PARLIAMENT HOUSE ANNEXE,  
NEW DELHI-110001

- |      |   |   |            |
|------|---|---|------------|
| (5)  | Civil Service (Conduct) Rules   | - | 80 copies  |
| (6)  | Manual of Office Procedure  | - | 80 copies  |
| (7)  | Manual of Departmental Security Instructions  | - | 80 copies  |
| (8)  | Universal Declaration of Human Rights   | - | 80 copies  |
| (9)  | A list of States which has already enacted the said Act and 80 copies of each Act and rules/orders made thereunder. |   |            |
| (10) | List of eminent organisations/persons connected with the subject  |   |            |
| (11) | Any other papers which may be relevant to the subject matter on the Bill.   |   | 100 copies |

4. The Ministry is also requested to appoint nodal officer(s) of the Ministry who may coordinate with this Secretariat on the subject.

5. The receipt of the communication may kindly be acknowledged.



(TAPAN CHATTERJEE)  
DEPUTY SECRETARY

To

Shri B.B. Tandon,  
Secretary to the Government of India,  
Ministry of Personnel, Public Grievances and Pensions,  
New Delhi.

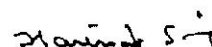
**Most Immediate****DEPARTMENT OF PERSONNEL & TRAINING**

**Subject: Examination of the Freedom of Information Bill, 2000 by the Department- related Parliamentary Standing Committee on Home Affairs.**

As the Ministry of Home Affairs are aware, the Freedom of Information Bill, 2000, as introduced in the Lok Sabha on 25<sup>th</sup> July, 2000, has been referred to the Department- related Parliamentary Standing Committee on Home Affairs for examination and report thereon. The Committee is scheduled to hear the presentation of the Secretary(Personnel) on 6<sup>th</sup> November, 2000. In their O.M. dated 28<sup>th</sup> September, 2000 (copy placed below), the Rajya Sabha Secretariat had requested this Ministry to furnish inter-alia the following documents ( both in English and Hindi) pertaining to the said Bill for circulation amongst Members of the Committee:-

1. Official Secrets Act, 1923
2. Manual of Departmental Security Instructions

It is requested that 80 copies each of the above documents (both in English and Hindi) may please be furnished to this Department urgently for onward transmission to the Rajya Sabha Secretariat. An additional 5 copies of these documents may also be provided for ~~the~~ departmental use in connection with the presentation.



(Harinder Singh)  
Joint Secretary

  
Ministry of Home Affairs

[Smt. Sangeeta Gairola, Joint Secretary (IS)]

Department of Personnel & Training I.D.No. 34011/1(s)/97-Estt.(B) dated 4.10.2000

S. No. 4(I)

CONFIDENTIAL

**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 13<sup>th</sup> October, 2000

**OFFICE MEMORANDUM**

**Subject:- Examination of the Freedom of Information Bill, 2000 by the Department-related Parliamentary Standing Committee on Home Affairs.**

The undersigned is directed to refer to the Rajya Sabha Secretariat O.M.No. RS.6(6)/2000-CS(HA) dated the 28<sup>th</sup> September, 2000 on the subject mentioned above and to forward herewith the following documents pertaining to the "Freedom of Information Bill, 2000" for circulation amongst members of the Department-related Parliamentary Standing Committee on Home Affairs:-

- (1) Background note on the Bill (English and Hindi) - 100 copies
- (2) Official Secrets Act, 1923 (English and Hindi) - 80 copies
- (3) Statement adopted at the Conference of Chief Ministers on "Effective and Responsive Government" held on 24<sup>th</sup> May, 1997 (English and Hindi) - 100 copies
- (4) Report of the Working Group on Right to Information and Promotion of Open and Transparent Government under the Chairmanship of Shri H.D. Shourie submitted to the Government alongwith the draft Freedom of Information Bill. (English and Hindi). - 80 copies.
- (5) Central Civil Services (Conduct) Rules, 1964 (English). - 80 copies.
- (6) Manual of Office Procedure (Diglot form-English and Hindi). - 80 copies
- (7) Manual of Departmental Security Instructions (English) - 80 copies.
- (8) Universal Declaration of Human Rights (English and Hindi) - 80 copies

(9)(i) Tamil Nadu

- (a) Tamil Nadu Right to Information Act, 1997  
(English)
- (b) Tamil Nadu Right to Information Rules, 1997  
(English)
- (c) Tamil Nadu Right to Information  
(Amendment) Rules, 1999(English)

(ii) Rajasthan

- (a) Rajasthan Right to Information Act, 2000  
(English and Hindi).

(iii) Goa

- (a) Goa Right to Information Act, 1997  
(English)

(iv) Karnataka

- (a) Karnataka Right to Information Ordinance, 2000  
(English)

80 copies  
each

10. List of eminent organisations/persons  
connected with the subject.

2. The name and address of the nodal officer of the Department of Personnel & Training, who shall be coordinating with the Rajya Sabha Secretariat on the subject, is as under:-

‘Shri Harinder Singh,  
Joint Secretary,  
Department of Personnel & Training,  
Room No.111, North Block,  
New Delhi – 110001.  
Tele: 3011276 (Office) 2250870 (Residence)’

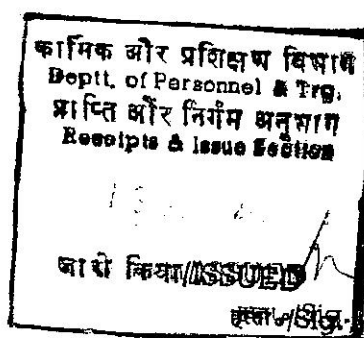
3. The receipt of the communication, along with enclosures, may kindly be acknowledged.

( Rakesh Malhotra)

Under Secretary to the Government of India.

To

Shri Tapan Chatterjee,  
Deputy Secretary,  
Rajya Sabha Secretariat,  
Parliament House Annexe,  
New Delhi – 110001.



**List of organisations/ eminent persons connected with the**  
**"Freedom of Information Bill, 2000"**

1. Consumer Education & Research Society  
(Prof. Manubhai Shah, Managing Trustee),  
"Suraksha Sankool", Thaltej,  
Ahmedabad-Gandhinagar Highway,  
Ahmedabad- 380 054.
2. Dr. Madhav Godbole,  
IAS (Retd.),  
"Saangaatee",  
73-2-2, Bhakti Marg,  
Erandawan,  
Pune- 411004.
3. Ms. Maza Daruwala,  
Director,  
Commonwealth Human Rights Initiative,  
F1/12 A, Hauz Khas Enclave,  
New Delhi- 110 016.
4. Shri A.G. Noorani,  
Girnar Building,  
Lala Jagmohandas Road,  
Mumbai- 400036.
5. Indian Merchants Chamber,  
Indian Merchants' Chamber Marg,  
Churchgate,  
Mumbai- 400 020.
6. Press Council of India,  
( Justice P.B. Sawant, Chairman),  
Faridkot House,  
Copernicus Marg,  
New Delhi-11- 0 001.
7. Common Cause  
(Shri H.D. Shourie, Director),  
A-31, West End,  
New Delhi -110021.

8. Lok Sewak Sangh,  
Lajpat Bhawan,  
Lajpat Nagar,  
New Delhi-110024.
9. Warangal Consumers Council,  
Nakkalagutta, Hanamkonda,  
Warangal-506001 (A.P).
- 10 Mrs. Aruna Roy,  
C/o SWRC,  
Village Tilonia,  
Via Madanganj,  
Ajmer District,  
Rajasthan- 305816
11. Parisar(Yamuna),  
I.C.S.Colony,  
Ganesh Khind Road,  
Pune- 411 007.
12. Dr. Raghubir Singh,  
Secretary,  
National Commission to review the  
Working of the Constitution,  
Vigyan Bhawan Annexe,  
Maulana Azad Road,  
New Delhi.

PROCEEDINGS OF THE DEPARTMENT-RELATED PARLIAMENTARY  
STANDING COMMITTEE ON HOME AFFAIRS. HELD AT 3.00 P.M., ON  
MONDAY, THE 23<sup>RD</sup> OCTOBER, 2000 IN COMMITTEE ROOM 'A', PARLIAMENT  
HOUSE ANNEXE, NEW DELHI.

(CHAIRMAN - SHRI PRANAB MUKHERJEE)

At the outset, the Chairman welcomed the Members and conveyed to them Diwali greetings. He reminded the Members that the meeting fixed for the 25<sup>th</sup> October had been cancelled. He said that there was a busy schedule, because whatever work is entrusted to the Committee, the Committee should try to do justice to it.

The Chairman expressed his gratitude to the Members, particularly, to Shri Sahu -- who was the Convenor during the study tour -- for visiting the North-East. He congratulated Shri Sahu for conducting the business during the study tour in an excellent manner. He said that the Committee would consider the report presented by them.

VP/15

The Chairman informed the Members that tomorrow, the Committee would take evidence on the Lotteries Bill. Representatives from four State Governments would be appearing before the Committee. As for today's agenda, the Chairman said that the Secretary (Personnel) would be making a presentation on the Freedom of Information

Witnesses

Ministry of Personnel, Public Grievances and Pensions.

Shri B.B. Tandon, Secretary,

Shri Harinder Singh, Joint Secretary

Smt. S. Bandopadhyay, Director

Shri Rakesh Malhotra, Under Secretary.

...

**CHAIRMAN:** Mr. Tandon, I welcome you and your colleagues to this meeting of the Parliamentary Standing Committee on Home Affairs. We are examining the proposed legislation, that is, the Freedom of Information Bill. All of us are fully aware that this Bill has a long history. Especially for the last three - four years, this issue has been agitating the mind of the common people and the policy-makers. Various committees and expert groups were appointed to examine it in detail. The issue was discussed in the conference of Chief Ministers also. It was discussed at some level in the Cabinet and, thereafter, referred to a Group of Ministers, who also examined it in different phases since 1997. This issue has been debated and discussed. So far as we are concerned, we ourselves, in our 38<sup>th</sup> report, while examining the Demands for Grants of the Department of Personnel, made our observations, in paragraph 26. There we pointed out: "The right to information will go a long way in firmly establishing the culture of accountability. The principle of the public's right of access to information should preferably be provided

for how we work. But my intention was to finish the pending business. We devoted our time and energy during the recess after the Budget Session to consider the two Companies Bills and submitted the report. We expected that it would come in the July session. But it did not come. I hope we will have it in the winter session. I understand, the Government is doing accordingly.

With these words, I welcome you, Mr. Tandon. Since you have appeared before this Committee umpteen number of times, it is needless to mention this. Nonetheless, it is a ritual and a formality to remind that the evidence that you are placing before this Committee should be considered confidential till the Committee submits its report to both Houses of Parliament.

Now I request you to take the floor. You can take the assistance of your colleagues. As per the practice, clarifications will be sought. You can respond to them immediately or respond to them in writing later on. It is up to you.

**SHRI B. B. TANDON:** Thank you very much, Sir. At the outset, with your permission, once again, I would like to thank you and all the hon. Members of this august Committee for having given me this opportunity to make a brief presentation on this very important Bill, the Freedom of Information Bill, 2000.

You have already given the background of the stages through which the process has been gone through. With your permission, I would like to highlight briefly some of the stages through which this proposed legislation had passed.

sponsive governance and also to examine the framework of rules with reference to the Civil Services (Conduct) Rules and the Manual of Office Procedure. The Group submitted its report on May 21, 1997. It included the proposed Bill titled "The Freedom of Information Bill, 1997." The Working Group also recommended suitable amendments to the Official Secrets Act, 1923, the Indian Evidence Act, 1872, the Code of Civil Procedure, 1908, the Code of Civil Procedure, 1973, the Civil Services (Conduct) Rules, and security instructions, with a view to bringing them in harmony with the proposed Bill.

Sir, the need to enact a law on right to information was recognised and adopted unanimously by the Chief Ministers' Conference on Effective and Responsive Government, held on the 24<sup>th</sup> of May, 1997, under the chairmanship of the then Prime Minister, Deve Gowdaji. You have already highlighted this point.

The draft Bill submitted by the Working Group was subsequently deliberated on by the Group of Ministers constituted by the Government to ensure that free flow of information was available to the public, protecting, *inter alia*, the national interest, the sovereignty and integrity of the country and its relations with foreign countries. Three successive Governments constituted the Group of Ministers. The Group considered the draft Bill in eight sittings, held during the period from October, 1997 to February, 2000 and approved a few changes. While approving the draft, the Group of Ministers also took note of the legislations enacted by other countries, particularly the USA, Canada and

Court, the High Courts, the Subordinate Courts, including their administrative offices, constitutional authorities like the Election Commission, Comptroller and Auditor General of India and the Union Public Service Commission.

KR/1D

This is as per clause 2 of the Act. Certain public authorities that are specified in Part A and Part B to the Schedule of the Bill have been exempted from being covered within the ambit of the proposed legislation. These are the intelligence and security agencies like the Intelligence Bureau, RAW, etc. This is under clause 16 of the Bill. The Bill lays down the machinery for 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. Sir, this is provided under clause 5. Under clause 6, person desirous of obtaining information shall make a request in writing or through electronic means to the concerned Public Information Officer, specifying the price for the information sought by him for providing the same. Under clause 7, a timelimit of 30 days has been prescribed for compliance with the request for information under the proposed legislation, which can be extended up to 50 days where third party interests are involved.

Sir, two very important clauses of the Bill are Clauses 8 and 9, on which there have already been a number of comments within the Parliament and outside. These relate to specific categories of information which have been exempted from disclosure. Sir, the

Clause 12 (1). They can appeal to such authority as may be prescribed by the Government. The second appeal lies to the Central Government or State Governments or the competent authority. On a request for information being refused, the applicant can prefer an appeal to the prescribed authority within 30 days of the decision; and the time limit for the disposal of appeal is also 30 days. Here, I would like to mention that there is a deviation from the Bill which was given by the Working Group. The Shourie Committee recommended an appellate forum, which is available under the Consumer Protection Act, namely, the District Redressal Forum and the State-level forum. The Government, after deliberation, and the Group of Ministers, did not favour this, as they felt that the pendency of cases in these fora very large, that the disposal of the cases was not being done in a very quick manner. The second appellate authority is at the Central Government level, i.e. the Minister of the concerned Ministry. That is the deviation made in this Bill, from the one given by the Shourie Committee. The jurisdiction of subordinate courts to entertain any suit, application or proceedings in respect of an order made under the proposed Act has been barred. However, the jurisdiction of the High Court and the Supreme Court is there. The provisions of the proposed Bill have been made over-riding in character so that the scheme is not subverted through the operation of the other Acts. As I said earlier, the Shourie Committee had recommended amendments to the Official Secrets Act, the Indian Evidence Act. Pending that, an over-riding clause has been introduced so that implementation of this legislation is not affected

Two or three limited queries right now. Now my colleagues would seek clarifications.

You can respond together at the end.

MKS/HMS/3.30/E

**MAJ. GEN. (RETD) B.C. KHANDURI:** Mr. Tandon, I have four queries. First is, while drafting this Bill, has the present security environment, both external and internal, been kept in mind? If so, what are the areas where this Bill has been constrained because of the present conditions? And linked up with this, the Shourie Committee had talked of phasing of this Bill? I presume, I visualise that in stage one, something would start and in stage two, we would go further. Like that, we will be in stage three. Have you considered this aspect while drafting this Bill? If phasing has been done, which aspects have been left out for subsequent phasing?

My second query is this. The Chairman has also mentioned just now that this system of implementation requires a lot of manpower, both at the level of Information Officer and in the various Departments, because this Bill says you must have a speaking sort of thing. The mind thinks over it and the officer puts his views on it. When the process starts, then you are going to have a lot of delays in the existing system, and decision is the rule. You are encouraging it further. Have you examined how it has been covered? And in this, one aspect is the additional manpower. Have you made some matching reduction? Do you think that some manpower is required? There will be an effect of this speaking sort of notes, minutes that have been written on those Bills.

to who can get certain types of documents. Classification of documents has to be changed and classification of authority has to be redefined. By making rules only, it would not be possible to bring about good results of the Bill to the people at large.

So far as the implementation part of it is concerned, I have my doubts in the sense that in clause 2, the competent authority has been indicated. In sub-clause (b) of clause 2, the Speaker, the Chief Justice, the Chief Justice of the High Court etc. will make rules. Subsequently, the provisions will be made in the rules; in what manner, they have to be implemented. But the rules made by the competent authority are not being placed before the Parliament. Since Parliament is the authority to go into the rules, and after the competent authority has issued certain instructions in the fitness of things, those rules, whosoever has made, should be placed before the Parliament, and the Parliament, as representative of the people, should know as to what the instructions given are.

Now I will invite your attention to rule 116 of the manual of Office Procedure wherein the Director of Grievances has been appointed and since the Director has been appointed, and later on, there will be a public information officer, according to this proposed Act, there might be some difficulty in the implementation of the Act, and the procedure to be adopted by that officer himself. It would be proper if the Rules of Procedure, the manual of proceedings and other relevant instructions issued by the Government, from time to time, are thought of in this Committee; then all the relevant procedures and rules are placed before the Committee in a comparative form so that the

British period also. Who will decide it? Now it seems to me that, according to this Bill, public information will be official and wherever the appeal is going to be made will be official.

**VK-NB/1F**

Then, the Minister concerned is also a part of the Ministry. Where does an ordinary man or an outsider stand? How does he get the information? Is there any other mode of appeal? I agree that the consumer courts and other courts are overburdened. But this Bill does not give any power. There is nothing transparent. Already, so many scams have taken place. I personally feel that this is a very defective Bill. You will get a lot of criticism from the public.

**डॉ. रघुवंश प्रसाद सिंह :** अध्यक्ष महोदय, पहला स्पष्टीकरण मैं यह चाहता हूँ कि राइट टु इनफॉर्मेशन नाम अब फ्रीडम ऑफ इनफॉर्मेशन हो गया है । राइट टु इनफॉर्मेशन के फ्रीडम ऑफ इनफॉर्मेशन होने का क्या कारण है ? यह कब से बदला है, क्यों बदला है, अच्छा होने के लिए बदला है या और कोई बात है ? सवाल यह है कि राइट टु इनफॉर्मेशन के फ्रीडम ऑफ इनफॉर्मेशन होने से क्या यह ज्यादा सुहावना लगता है ? किस स्टेज से, किस कारण से यह हुआ है ?

सवाल नंबर दो कि मिनिस्टर लोग पहले पद की गोपनीयता की शपथ लेते थे । उसी के चलते लोग मानते हैं कि अफसर लोग सही सूचनाएं नहीं देते हैं और कह देते हैं कि गोपनीय बात है । इसीलिए सवाल उठा कि राइट टु इनफॉर्मेशन लोगों को होना चाहिए ताकि उन्हें जब सूचनाएं चाहिए तब वे ले सकें । एक प्रकार की ट्रांसपेरेंसी हो । सभी लोग जानें कि बाहर-भीतर क्या हो रहा है ? इस बिल के आने से मिनिस्टर लोग फिर गोपनीयता की शपथ लेंगे या नहीं ?

सवाल नंबर तीन कि कुछ राज्य सरकारों ने अपना कानून बनाया है और लागू भी किया है तो उसका क्या प्रभाव पड़ा है ? हम जानना चाहते हैं कि कुछ राज्य सरकारों ने तो कानून बना लिया और इधर केन्द्र सरकार भी अपना कानून

अलग-अलग स्तर पर लागू होता है और जां कमेटी की रिपोर्ट है, सब लोग बहुत ऐमिनेंट लोग हैं, बुद्धिजीवी हैं लेकिन इसका उन लोगों को ज्ञान नहीं है । इसलिए 1923 में जब ऑफिशियल सीक्रेट्स ऐक्ट बना था ऐस्पिनॉइज के खिलाफ, वहां से बदलाव आया और नौकरशाह और सब लोग यह कोशिश कर रहे हैं कि कम से कम बदलाव हो । इसलिए वह उतना पारदर्शी नहीं बन पा रहा है जितना कि हम लोग चाहते हैं और जितनी हम लोगों ने बात की है । इस पर बहुत विस्तार में हम लोग बाद में बात करेंगे । एक-दो चीजें और मैं आपसे पूछना चाहता हूं ।

GS-KLS/1G

मैं आपका ध्यान पैरा 5 की ओर आकर्षित करना चाहता हूं -"Every public authority shall, for the purpose of this Act, appoint one or more officers as Public Information Officer." मैं क्या यह समझूं कि पहले पब्लिक इन्फॉर्मेशन आफीसर अपाइंट होगा और उसकी जिम्मेदारी होगी । जहां पर पब्लिक इन्फॉर्मेशन आफीसर अपाइंट नहीं होगा तो क्या वहां पर बाकी आफीसरों की जिम्मेदारी नहीं होगी? इस बिल में यह बात साफ होनी चाहिए । हर अधिकारी का यह फ़र्ज है कि वह इस बिल की जरूरतों को पूरा करे । अगर संभव है, संसाधन है तो सरकार पब्लिक इन्फॉर्मेशन आफीसर भी अपाइंट कर सकती हैं । मेरी राय है कि क्लॉज 5 में मेजर अमेंडमेंट्स की जरूरत है । अगर सरकार आवश्यक समझती है तो वह पब्लिक इन्फॉर्मेशन आफीसर अपाइंट करें जिसकी जिम्मेदारी क, ख, ग ..होगी । लेकिन हर अधिकारी की यह जिम्मेदारी है कि इस ऐक्ट के तहत जो कुछ भी सूचना उससे मांगी जाए उसको वह अपने स्तर पर जल्दी से जल्दी मुहैया कराये । वह इस बात को लेकर इन्फॉर्मेशन देने में देरी नहीं कर सकता है कि पब्लिक इन्फॉर्मेशन आफीसर पोस्टिड नहीं है या छुट्टी चला गया है ।

मैं आपका ध्यान पैरा 8 (1) बी की ओर दिलाना चाहता हूं -"Cabinet papers, including records of deliberations of the Council of Ministers, Secretaries and other officers.

मैं जानना चाहता हूं कि अदर आफीसरस का क्या मतलब है? क्या इसमें सब अधिकारी आ जाते हैं ? इसी तरह पैरा 9 ए में लिखा है -It is too general in nature or is of such a nature that, having regard to the

not clear in the Bill. What will be their positive contribution? Here also, the transparency aspect between the Information Officer and the public I have not been able to find.

VP/1h

**SHRI HANSRAJ BHARDWAJ:** There are certain fallacies in the Bill, because we, in India, function under the Cabinet system of Government. Under this, the first thing is, the Minister takes the Oath of Secrecy. Immediately after a Minister takes Oath of Office, he has to take an Oath of Secrecy also. Once you take the Oath of Secrecy, you cannot leak any information. For example, if our Prime Minister and Mr. Putin hold some discussions, or, for that matter, if Minister-to- Minister meetings are held, the ordinary citizen cannot go and ask for the details. These are matters which should be protected, in the larger interest of the State. But there are certain matters which are required for the freedom of the press. Public morality and all these are essentially matters where economic crimes are committed and secrecy is prejudiced. Suppose, there is a contract; a citizen would definitely be entitled to know on what basis the contract was given. But this Bill says, it will not be disclosed. This is not a fair provision because the citizen might not be given the information. Clause 14 says that the provisions of the Official Secrets Act and every other Act in force shall cease to be operative to the extent to which they are inconsistent with the provisions of this Act. This has no meaning at all because, if you read clause 8, it says that everything which is protected here, protects all the other

cannot give one thing and hold back another. If there is sincerity of purpose, you should say, we would like to do it or we would not like to do that. In the case of Armed forces also, you cannot ask them to disclose any information. It will not be in the national interest. So, you kindly make a study on this. Ordinary citizens want that the matters concerning their interests should move fast and that no file should remain pending for long. A citizen has a right to know why a file concerning his interest is pending. Sometimes, one finds that the files remain pending for months together. I find that the rights of the citizens have been taken away by clauses 8 and 9. I agree with Mr. Kuldip Nayyar that this Bill will be criticised and that it cannot be used for the purpose for which it is meant. At one point of time, this was discussed in the Supreme Court in one of the cases. Then, a very eminent judge said that we were not a matured nation to share this type of information. Therefore, let it be kept for judicial glance. So, judicial glance was also a departure from the privilege. Earlier, the records of the Ministries were not shown to anybody. The judiciary said 'no, they should not be disclosed'. These are a few things which really matter in this. Otherwise, it is a fairly simply Bill and we can pass it.

**SHRI KULDIP NAYYAR:** Does a similar Bill exist in any other country? Would you please name the countries where a similar Bill exists?

**CHAIRMAN:** Before you give your reply, I would also like to seek one clarification.

KR/1J

All over the world, with globalisation, international tendering, one of the major

The second question raised by Mr. Kuldip Nayyar is, we are aware that certain type of information is being made available to the public who are interested in it. But the question is not of one having interest in certain statistical information. The objective is to have information which will empower the recipient of the information to achieve certain things, certain objectives. It is not just simply a tendency. The interest in seeking the information may be to achieve an objective; like, for example, going to a court of law. It is easy to get information about Cabinet discussions from the Cabinet Secretariat, internal discussions in the Department. You may like to keep out certain information, which may be classified information. They will have it from there. Then, they can draw certain conclusion from that. Eventually, how will you deal with the situation?

The third point is, Gen. Khanduri referred to the Oath of Secrecy. If I understood correctly, the Minister has to subscribe that he would not divulge the information which he is getting, as a Minister, while discharging his duties and responsibilities. But, as a Minister, if he comes to know of any information in regard to the Ministry of Defence, for example, he can use that information, he can divulge that information, if his ministerial responsibility compels him to use that information. But he can use that information only in the discharge of his duties as a Minister. When he ceases to be a Minister, that information, certain part of information, he cannot divulge. We had to fight a case whether that interpretation was correct or not. Mr. Tandon, now you can reply to our questions.

designate the same officer as the Public Information Officer, to deal with such requests. There should be no additional sanctioning of staff. However, if any request comes from the controlling Department, additional staff could be considered, provided there are matching savings and surrenders. That is the position on this.

Sir, Gen. Khanduri has raised a point whether the security environment has been kept in view; and whether the Shourie Committee has recommended phasing. This has been definitely considered. Therefore, the exemption provided is, in regard to the sovereignty and security of the country, information will not be shared. As far as phasing is concerned, the Shourie Committee had recommended the setting up of a National Council at the Central level, and a State Council at the State level. The role of the Council was to go into the question, whether, in terms of implementation, the Act is really serving the purpose for which it has been set up. After a review of the implementation, we can suggest changes, remedial measures. But the Bill which is before us does not contain this, as recommended by the Shourie Committee Bill. This is on the advice of the Law Ministry; to the effect that these Councils can be set up later, under an executive order, to review the implementation of the Bill and suggest measures. However, I leave it to the august Committee to decide on those provisions in the Shourie Committee Bill.

MKS/RCV/1k

You have raised a specific issue about the Armed Forces and the paramilitary forces.

The hon. Member has raised a point about the legal advice or the decision making process. What the Joint Secretary has written, what the Additional Secretary has written, that, in my humble opinion, would express free and frank opinion on the file. What has been rationale behind the decision, why this exemption is available, the internal discussion, all that is available in all the countries.

**MAJ. GEN. (RETD) B.C. KHANDURI:** You have exempted under clause 8 but you have not given the reasons.

**SHRI B.B. TANDON:** Sir, the official decision and the reasons for taking them would be given. The final outcome and why the decision was taken will be given. Administratively, it would be difficult to give that information.

You have mentioned that non-obstante clause is not adequate. Mr. Bhardwaj has also expressed the view. I would like to submit, I would place before the Committee the advice which the Law Ministry has given. The Law Minister has said, "For the time being, till those amendments come about, this non-obstante clause should take care of it." Since you have expressed your view, I will again go back to the Law Ministry.

Another point raised by the hon. Member is about a lacuna in the Bill. I would request the hon. Committee to recommend that the rules made by the competent authority should also be placed before the Parliament. Sir, we have provided that the Central Government rules should be placed before the Parliament. We have provided that the State Government rules should be laid before the Parliament. The competent authority

also. That issue the Shourie Committee has also deliberated.

**CHAIRMAN:** I will facilitate the Members and it will meet the requirement of Mr. Nayar. If you prepare a comprehensive study narrating the difference between the recommendations of the Shourie Committee and the Government decisions in a tabular form, stating this is the recommendation and that is the decision of the Government; that will facilitate the Members.

**SHRI KULDIP NAYYAR:** And also the Press Council Bill.

**CHAIRMAN:** The Press Council Bill was publicised.

**SHRI B.B. TANDON:** There was a national seminar. There are, in fact, four pieces of models. One is the Press Council. Then Justice Sarkar, then the NRDC, Hyderabad, and that was introduced by the then hon. Defence Minister, Shri George Fernandes. That is a private party Bill. Thirdly, of course, is the Shourie Committee Report and the fourth one is the Bill which the Government has prepared.

**CHAIRMAN:** You can tabulate their recommendations and the Government's stand.

**SHRI B.B. TANDON:** About the appeal part, I have already said that the courts have not been approached. I will give you a note on the appeal forum in other countries. In some countries, it is totally a judicial procedure. In some countries, the second appeal is at the judicial level. I will give you the information about the appellate jurisdiction also.

Shri Raghuvansh has said a very basic thing, why there is right to freedom. This issue was deliberated in the Shourie Committee Report and I will just read out four

decision-making. I would like to point out that the provision in the Bill is: "On receipt of the request, the Public Information officer shall, as expeditiously as possible, but in any case within 30 days of the receipt..." So far as time limit is concerned, we had compared other legislations also. In Canada, it is 30 days. In Australia also, it is 30 days. Of course, in UK, it is 20 days. We thought since it is coming up for the first time in India, we should have a time limit of 30 days.

The hon. Member, Shri Tripathi, stated that the workload would increase. I have already clarified this point. He also stated that the Public Information Officer would be one officer for the Ministry or the Department or any other office at the State level and the district level. It would be his duty to provide information on behalf of the entire office. If the office is very big, then there could be more than one public information officer. It is very clear that a public man seeking information would not have to run from pillar to post. It would be notified that so and so person is the Public Information Officer and all the requests would be received by him. It would be incumbent on him to provide that information.

Shri Kuldip Nayyar has raised a point about disclosure of information. Sir, it is very difficult to give a simple and straight answer. I am sure, there are a number of pronouncements in regard to public safety and public order.

**SHRI PRAKASH MANI TRIPATHI:** The clause relating to Public Information Officer needs to be gone into in greater detail.

information cannot be given in full unless you repeal the Official Secrets Act and the Indian Evidence Act. I can quite see the problem of the Government. It is very easy to give everything to everybody. But, practically, it is not possible because, for administrative reasons, you cannot disclose certain things. I can see the difficulties in enacting such a law. You have quoted the English law. I have read the White Paper. These are matters which are still at the White Paper stage.

**SHRI B.B. TANDON:** You have rightly said that the Official Secrets Act and the other Act would require amendment. It was also desired that I should indicate about similar laws in other countries. Sir, the UK Code is there.

KLS/1M

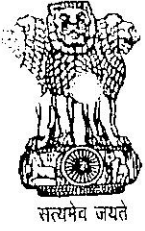
I have got the latest copy of the Act of Canada.

**CHAIRMAN:** It will be easy for the Members if you provide the information in a tabular form. You can give the information, comparing our Bill with the Acts of other countries such as Canada, Australia, etc.

**SHRI B.B. TANDON:** Right, Sir. Sir, I can cover important aspects with regard to sharing information, what are the exemptions, what are the appellate provisions, etc,

**CHAIRMAN:** About exemptions and time limit, you have more or less clarified. In some cases, it is 30 days; in some cases it is 28 days, etc.

**SHRI B.B. TANDON:** The Australian Act, as per my information, came into being in 1989. So, it has been in force for 11 years. That also I will give. Then, of course, the



संयुक्त सचिव  
JOINT SECRETARY

BY DIPLOMATIC BAG

भारत सरकार

कर्मिक और प्रशिक्षण विभाग

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

नॉर्थ ब्लॉक, नई दिल्ली-110001

GOVERNMENT OF INDIA  
DEPARTMENT OF PERSONNEL & TRAINING  
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES  
AND PENSIONS  
NORTH BLOCK, NEW DELHI-110001

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

November 16, 2000

16 Nov 2000

Dear Ambassador,

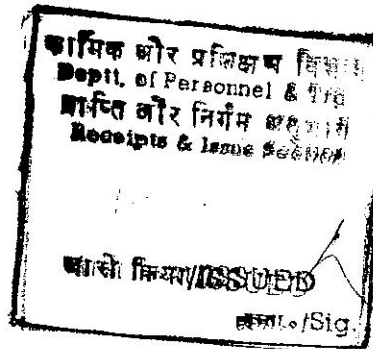
The Government of India has introduced the "Freedom of Information Bill, 2000" in the Lok Sabha on 25<sup>th</sup> July, 2000 with a view to promote openness, transparency and accountability in the administration and to ensure greater participation of the people in decision making. It is learnt that a similar type of legislation already exists in France. I shall be grateful if you could kindly arrange to send us an up-to-date copy of the relevant Act/Rules on the subject, a copy each of the amendments made to the Act after its first inception, and also favour us with an evaluation report on the implementation/working of the Act. As the information is required urgently, this may kindly be accorded priority basis.

With regards,

Yours sincerely,

*Harinder Singh*  
(Harinder Singh)

Shri K.Sibbal,  
Ambassador,  
Embassy of India,  
15, Rue Alfred Deho Dence,  
75016 PARIS.  
France.





संयुक्त सचिव  
JOINT SECRETARY

भारत सरकार  
कार्मिक और प्रशिक्षण विभाग  
कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय  
नॉर्थ ब्लॉक, नई दिल्ली-110001  
GOVERNMENT OF INDIA  
DEPARTMENT OF PERSONNEL AND TRAINING  
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES  
AND PENSIONS  
NORTH BLOCK, NEW DELHI-110001

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

November 16, 2000

Dear Shri Nath

16 Nov 2000

As you may be aware, the Government of India has introduced the "Freedom of Information Bill, 2000" in the Lok Sabha on 25<sup>th</sup> July, 2000 so as to promote openness, transparency and accountability in the administration and to ensure greater participation of the people in the decision making. The Bill is presently before the Department-related Parliamentary Standing Committee on Home Affairs for examination and report thereon.

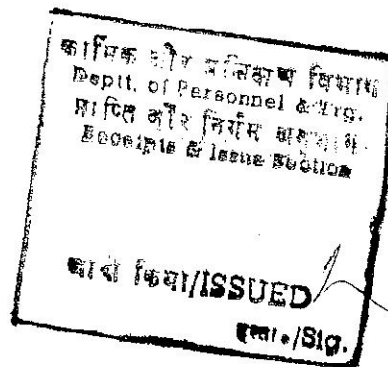
2. We understand that the Government of Goa has already enacted the "Goa Right to Information Act, 1997" in order to provide to its citizens the Right of access to information about the administration. I presume that the State Government would have made rules for operationalising the Act and also carried out an evaluation of the working of the Act after it became operational. May I request you to kindly send us a copy of the above rules together with the evaluation report as the same is urgently required for further consideration of the proposed legislation. In case the State Government proposes to amend the Act/Rules further, a brief note on the same may also please be sent.

With regards,

Yours sincerely,

Harinder Singh  
(Harinder Singh)

Shri Ashok Nath  
Chief Secretary,  
Government of Goa,  
Panaji.



29



V.B. Dhavle  
First Secretary (D&I)

J. No. 26(K)  
भारत का राजदूतावास, दी हेग  
**EMBASSY OF INDIA**  
BUI TENRUSTWEG-2  
THE HAGUE  
Tel. No. 070-3469771  
Telex No. 33543  
Fax No. 070-3617072

No. Hag/Pol/312/5/00

December 1, 2000

Dear Sir,

Please refer to your letter No.34011/1(s)/97-Estt.(B) dated November 16 addressed to Ambassador Shri Prabhakar Menon.

2. We have been informed by the relevant departments of the Dutch Government that the complete text of the 'Freedom of Information Act 1991' and amendments thereto run into 584 pages. The text of this Act is available in Dutch only. The same can be obtained from the State printing office at a cost of Dfl 1430.80 (1 Dfl = Rs.18.18) excluding sales tax. The Embassy will get a discount of 30% whilst purchasing this text. We shall be procuring a copy of the same and raising a debit to the DoPT.

3. The Embassy does not have a professional translator. Therefore, the text of this Act and amendments thereto will have to be translated by some professional agency in the Netherlands. The cheapest quotation by a qualified translation agency is Dfl 65,000 (approximately Rs.12 lakhs) for translating 584 pages. The translation will take approx. six months to complete.

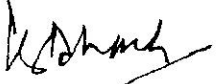
4. I would like to seek your guidance as to whether we should proceed with getting the text and amendments thereto translated in the Netherlands? Alternatively, you could consider having this text translated in India if such a facility exists. Upon hearing from you, we shall take necessary action regarding the translation of this text.

5. We have been able to procure a copy of the summary of the Act in English. The same is enclosed for your information. Also enclosed is a study prepared by RAND Europe for the Ministry of Home Affairs on the Implementation and Effects of the U.S. Freedom of Information

Act. This study compares provisions between the Dutch and American Acts.

6. Various highlights of the Act are also available on the following website: [www.mindzk.nl](http://www.mindzk.nl).

Yours sincerely,

  
(V.B. Dhavle)

Shri Harinder Singh  
Joint Secretary  
DoPT  
Ministry of Personnel, Public Grievances & Pensions  
North Block  
New Delhi

**CONFIDENTIAL**  
**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 29<sup>th</sup> December, 2000

**OFFICE MEMORANDUM**

**Subject:- Examination of the Freedom of Information Bill, 2000 by the Department-related Parliamentary Standing Committee on Home Affairs.**

The undersigned is directed to refer to the Rajya Sabha Secretariat's letter No. RS.6(6)/2000-C.S.(H.A.) dated the 14<sup>th</sup> November, 2000 on the subject mentioned above and to forward herewith 80 copies each of the following documents in partial fulfillment of the Assurances given by Secretary (Personnel) during the meeting of the Department-related Parliamentary Standing Committee on Home Affairs held on 23<sup>rd</sup> October, 2000:-

- (i) Press Council of India's 'Right to Information Bill, 1996';
- (ii) Exemptions in the UK Code of Practice vis-à-vis overseas Freedom of Information Acts;
- (iii) Comparative statement of the exemptions contained in the Government's 'Freedom of Information Bill, 2000' vis-a-vis 'Freedom of Information Bill, 1997' given by the Shourie Working Group;
- (iv) Comparative statement of the recommendations given in the Press Council of India's 'Right to Information Bill, 1996', Shourie Working Group's 'Freedom of Information Bill, 1997', 'Right to Information Bill, 1997' finalised at the workshop held by NIRD in September, 1997 and the Government's 'Freedom of Information Bill, 2000.

2. During the aforesaid meeting of the Committee, the Honourable member Shri Raghuvansh Prasad Singh had sought to know whether after enactment of the 'Freedom of Information Bill, 2000', the Ministers will still take the oath of secrecy or not. In this connection, it may be clarified that as part of the 'public authority' within the meaning of the proposed Act, the Minister can communicate and give information to the public save as is barred from disclosure under the 'exemption' clause. There is, thus, no conflict between the 'oath of secrecy' and the 'Freedom of Information Bill, 2000' and the Minister shall be required to take the oath as before.

4. As regards evaluation of the working of similar legislation enacted by other democratic countries, the reports from the concerned Indian Embassies/High Commissions are still awaited and they are being reminded to expedite their replies. Similarly, the Governments of Rajasthan, Tamil Nadu, Goa and Maharashtra are being reminded to expedite evaluation reports of their respective acts. A further communication shall be sent to the Rajya Sabha Secretariat on receiving the information from the Embassies/High Commissions/State Governments.

IRL

(RAKESH MALHOTRA)

Under Secretary to the Government of India.

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✓  
Rajya Sabha Secretariat,  
(Shri Tapan Chatterjee, Deputy Secretary),  
Parliament House Annexe,  
New Delhi.



# Exemptions: the Code and overseas FOI

Exemptions in UK Code of Practice	Australia	New Zealand	Ireland	Netherlands	USA	France	Canada	Japan	India
1. Defence, Security and international relations	YES	YES	YES	YES	YES	YES	YES	Yes	Yes
2. Internal discussion and advice	YES	YES	YES	YES	YES	YES	YES	Yes	Yes
3. Communications with the Royal Household	YES	YES							
4. Law enforcement and legal proceedings	YES	YES	YES	YES	YES	YES	YES	Yes	Yes
5. Immigration and nationality									
6. Effective management of the economy and collection of taxes	YES	YES	YES	YES	In part	YES	YES		Yes
7. Effective management and operations of the public service	YES		YES	YES	YES		YES	Yes	
8. Public employment, public appointments and honours			In part						
9. Unreasonable, vexatious or voluminous requests	YES		YES					In part	Yes
10. Publication and prematurity in relation to publication	YES	YES					YES		Yes
11. Research, statistics, analysis	YES		YES		In part		YES	Yes	
12. Privacy of an individual	YES	YES	YES	YES	YES	YES	YES	Yes	Yes
13. Third party's commercial confidences	YES	YES	YES	YES	YES	YES	YES	Yes	Yes
14. Information given in confidence	YES	YES	YES	YES	YES		YES	Yes	Yes
15. Statutory and other restrictions	YES		YES		YES	YES	YES		

Source: White paper on Freedom of Information.

## EXEMPTIONS

### SHOURIE WORKING GROUP's 'FREEDOM OF INFORMATION BILL, 1997'

vis-à-vis

### GOVERNMENT's 'FREEDOM OF INFORMATION BILL, 2000'

S.No	Exemption	ShourieWorking Group's 'Freedom of Information Bill, 1997'	Govt's 'Freedom of Information Bill, 2000'
1.	Information, the disclosure of which would prejudicially affect the sovereignty and integrity of India, security of the State, conduct of international relations.	Yes	Yes
2.	Information, the 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 or agencies.	Yes	Yes
3.	Information, the disclosure of which may result in the breach of privileges of Parliament or contravention of a lawful order of a Court.	Yes	Yes (also protects privileges of State legislature).
4.	Minutes or records of advice including legal advice, opinions or recommendations made by any officer of a public authority during the decision making process prior to the executive decision of policy formation. (in short deliberative process)	Yes	Yes
5.	Trade or commercial secrets protected by law or information, the disclosure of which would prejudicially affect the legitimate economic and commercial interests of a public authority or would cause unfair gain or loss to any person.	Yes	Yes

No	Exemption	Shourie Working Group's 'Freedom of Information Bill, 1997'	Govt's 'Freedom of Information Bill, 2000'
6	Cabinet papers	Yes	Yes (in addition, includes records of deliberations of Council of Ministers, Secretaries and other officers).
7	Information, the disclosure of which would prejudicially affect public safety, detection and investigation of an offence or which may lead to an incitement to commit an offence or prejudicially affect fair trial or adjudication of a pending case.	Yes	Yes
8.	Operations of intelligence organisations;	Yes	Yes (also includes security organisations).
9.	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, would involve disproportionate diversion of the resources of a public authority or would adversely interfere with the functioning of such authority.	Yes	Yes
10	request relates to information that is required by law, rules, regulations or orders to be published at a particular time.	Yes	Yes (with the assumption that such information is likely to be published within thirty days).
11.	request relates to information that is contained in published material available to public.	Yes	Yes
12.	Information which would cause unwarranted invasion of the privacy of any person.	Yes	Yes
13.	Information the disclosure of which would not subserve any public interest.	Yes	No
14.	Information the disclosure of which would prejudicially affect the management of services under, and operations of, public authorities.	Yes	No

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**RECOMMENDATIONS MADE IN THE PRESS COUNCIL OF INDIA BILL (JUSTICE SAWANT), SHOURIE WORKING GROUP BILL, NIRD BILL (SHRI GEORGE FERNANDES) AND GOVT'S FREEDOM OF INFORMATION BILL, 2000**

S.No.	Provision	Press Council of India's 'Right to Information Bill, 1996'	Shourie Group's 'Freedom of Information Bill, 1997'	NIRD Bill (Shri George Fernandes) – 'Right to Information Bill, 1997'	Government's 'Freedom of Information Bill, 2000'
1	Thrust of the Bill	Every citizen shall have right to information	Every citizen shall have freedom of Information	Every citizen shall have right to information	All citizen shall have freedom of information
2	<u>Applicability</u> (i) to Govt. sector (ii) to private sector (iii) to intelligence/security organisations.	Yes Yes Yes	Yes No Yes	Yes Yes Yes	Yes No No
3	Every public authority to maintain its records, duly catalogued and indexed, and grant access to information therefrom.	Yes	Yes	Yes	Yes
4	Every public authority to publish suo-moto the particulars of the organisation, powers and duties of its officers, the norms, rules and regulations used by its employees, details of facilities available and the name/particulars of the Public Information Officer.	No	Yes	Yes	yes
5	Every public authority to give reasons for its decisions to those affected.	No	Yes	Yes	Yes
6	Every public authority to publish relevant facts and analysis when major policies or decisions are announced.	No	Yes	Yes	Yes
7	Factual information in relation to a project, as affects the general public, available with the public authority, in relation to a project to be published before undertaking the project.	Yes	Yes	Yes	Yes

S.No.	Provision	Press Council of India's 'Right to Information Bill, 1996'	Shourie Group's 'Freedom of Information Bill, 1997'	NIRD Bill (Shri George Fernandes) - 'Right to Information Bill, 1997'	Government's 'Freedom of Information Bill, 2000'
8	Appointment of visitors committee for each custodial establishment such as police lock up, jail, mental asylum, remand house, women's home etc.	Yes	No	Yes	No
9	<b>Exemptions</b>				
	(i) Sovereignty, integrity, security of India and international relations;	Yes	Yes	Yes	Yes
	(ii) Public order, detection /investigation/ of crime or incitement to an offence;	Yes	Yes	Yes	Yes
	(iii) Privacy of an individual;	Yes	Yes	Yes	Yes
	(iv) Trade and commercial secrets protected by law;	Yes	Yes	Yes	Yes
	(v) Legitimate economic and commercial interests of a public authority	No	Yes	No	Yes
	(vi) Management of services and operation of public authorities.	No	Yes	No	No
	(vii) Conduct of Centre-State relations;	Yes	Yes	Yes	No
	(viii) Cabinet papers/deliberations of Council of Ministers and other officers;	No	Yes	No	Yes
	(ix) Information which would not subserve public interest.	No	Yes	No	Yes
	(x) Deliberative process;	No	Yes	No	Yes
	(xi) Breach of Parliamentary/State legislature privilege or contempt of Court;	No	Yes	No	Yes
	(xii) Too general, vexatious or voluminous request;	No	Yes	No	Yes
	(xiii) Publication and prematurity in relation to publication.	No	Yes	No	Yes
	(xiv) Third party commercial confidence	No	Yes	No	Yes

S.No.	Provision	Press Council of India's 'Right to Information Bill, 1996'	Shourie Group's 'Freedom of Information Bill, 1997'	NIRD Bill (Shri George Fernandes) - 'Right to Information Bill, 1997'	Government's 'Freedom of Information Bill, 2000'
10	Exemptions not to apply to information more than 25 years old.	No	No	No	Yes
11	Appointment of designated officer/ Public Information Officer for supplying information.	No	Yes	Yes	Yes
12	Information to be furnished within 30 days.	Yes	Yes	Yes	Yes
13	Information on life/ liberty of an individual to be furnished within 48 hours.	Yes	No	Yes	No
14	Charging of fees.	Yes	Yes	Yes	Yes
15	Refusal of information and reasons therefor to be given in writing.	Yes	Yes	Yes	Yes
16	Severability of non-exempted information from exempted information.	No	Yes	Yes	Yes
17	Internal review of refusal of request for information and time-limit for disposal.	No	Yes 30 days	No	No
18	First Appeal / Appellate authority and time limit for disposal.	Principal Civil Judge 30 days.	Consumers Forum 30 days.	District Judge or Principal Civil Judge 30 days.	To be specified. 30 days.
19	Second appeal/ Appellate authority and time limit for disposal,	No	No	No	Central Govt./State Govt./ competent authority 30 days.
20	Penalties for delay in furnishing information or for furnishing false information.	Yes	No	Yes	No
21	Offences by Companies/Societies etc.	Yes	No	Yes	No
22	Protection of action taken in good faith.	Yes	Yes	Yes	Yes
23	Act to have over-riding effect.	Yes	Yes	Yes	Yes

S.No.	Provision	Press Council of India's 'Right to Information Bill, 1996'	Shourie Group's 'Freedom of Information Bill, 1997'	NIRD Bill (Shri George Fernandes) – 'Right to Information Bill, 1997'	Government's 'Freedom of Information Bill. 2000'
24	Bar of jurisdiction of Courts.	No	No	No	Yes
25	Central Government to make rules for carry out the provisions of the Act.	Yes	Yes	Yes	Yes
26	State Government to make rules for carrying out the provisions of the Act.	Yes	Yes	Yes	Yes
27	Rule making power by competent authority.	No	No	No	Yes
28	Rules to be laid before Parliament/ State legislatures.	Yes	Yes	Yes	Yes
29	Central Government to have powers for 2 years to make rules for removing difficulties.	No	No	No	Yes
30	Setting up of National Council to review the Act and operation of rules.	No	Yes	Yes	No
31	Setting up of State Councils.	No	Yes	Yes	No
32	Offence under the Act to be cognizable	Yes	No	Yes	No

**SECRET**  
**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 9<sup>th</sup> January, 2001

9 JAN 2001

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

Legislative Department may please refer to their Memo No. 1(57)/97-Leg.1 dated the 11<sup>th</sup> January and 17<sup>th</sup> January, 2000 on the subject mentioned above.

2. The question whether the provisions of the proposed Freedom of Information Act should be given an overriding effect or its provisions should be subject to those of other laws, was examined by the Working Group on Right to Information and Promotion of Open and Transparent Government under the Chairmanship of Shri H.D. Shourie. Notwithstanding that even in advanced countries like the USA, Canada and Australia, the provisions of such Acts are subject to those of other laws, the Working Group felt that the Freedom of Information Act might be frustrated by resort to other legislation unless there is a *non-obstante* clause. On the consideration that whatever information needs to be protected would be covered by the exemptions provided in the Act, the Working Group accordingly suggested the following *non-obstante* clause in the draft Bill given in its Report :-

*"18. The Act to have overriding effect.*

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

The draft Bill given by the Working Group was subsequently deliberated by the Group of Ministers and, in consultation with the Legislative Department, the above clause was modified to read as under:-

*"14. The provisions of the Official Secrets Act, 1923, and every other Act in force shall cease to be operative to the extent to which they are inconsistent with the provisions of this Act."*

When the "Freedom of Information Bill, 2000", as introduced in the Lok Sabha on the 25<sup>th</sup> July, 2000, came up before the Department-related Parliamentary Standing Committee on Home Affairs, some Members had expressed

apprehensions over the adequacy of the aforesaid provisions contained in clause 14 of the Bill. The Committee was, thereupon, assured that this aspect would be examined in consultation with the Ministry of Law, Justice & C.A. Accordingly, the Legislative Department are requested to have a fresh look at the *non-obstante* clause and confirm whether the provisions contained therein would be adequate to the requirements.

3. This may kindly be accorded priority.

21 June 57  
( HARINDER SINGH )  
Joint Secretary

Ministry of Law, Justice & C.A.,  
(Ms. Sushma Jain, Joint Secretary & Legislative Counsel),  
Legislative Department,  
Shastri Bhavan,  
New Delhi.



126/10/2000  
19/1

S.No 47(R)



Letter No: 12444/2000-1  
Public (Estt.I & Leg.) Department,  
Secretariat, Chennai-600 009  
Dated: 18.1.2001

From  
Thiru M.F.Farooqui, I.A.S.,  
Secretary to Government.

To  
Thiru Harinder Singh,  
Joint Secretary to Government of India,  
Department of Personnel and Training,  
Ministry of Personnel, Public Grievances  
and Pensions,  
North Block,  
New Delhi-100 001(w.e)

Sir,

Sub: Government of India's Freedom of Information Bill, 2000 – Evaluation  
Report and Amendment to Tamil Nadu Right to Information Act, 1997 –  
Details – Furnished.

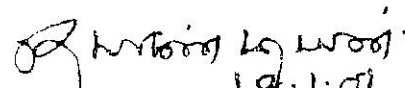
Ref: Your D.O.Letter No.34011/1(S)/97, Estt.(B), Dated: 16.11.2000 and  
dated: 3.1.2001

\*\*\*

I am directed to invite a reference to the D.O.letters cited on the above subject and to state that this State Government have enacted the "Tamil Nadu Right to Information Act, 1997" and the rules, viz., "Tamil Nadu Right to Information Rules, 1998" framed thereunder were published in the Government Gazette. (A copy of Act and Rules are enclosed for information).

2. In this connection I am to state that the purpose of the enactment of this Act is that every Governmental action should be transparent to the Public and this can be achieved only if awareness is created among the Public about the Act. This State Government have therefore issued instructions to all the Secretaries to Government to instruct the officers under their control to put up in the Notice Board of the Offices, the salient features of this Act, so that, there will be greater awareness about the Act among the public. The Secretaries to Government have also been directed to watch the number of applications received under the above said Act and the particulars regarding the action taken thereon may be collected by them from the officers under their control every year, by prescribing a periodical and to review them at the Government level. I am therefore to inform that it will take some more time to evaluate the working of this Act.

Yours faithfully,

  
for Secretary to Government

18.1.01

29(S)/2007-8(HCB)  
21/12/00 Dir (G.I.)  
19/01  
US/B/RM

Im 58(I)

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2/1  
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**CONFIDENTIAL**  
**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 Feb., 2001.

- 6 FEB 2001

**OFFICE MEMORANDUM**

Subject:- Examination of the Freedom of Information Bill, 2000 by the Department-related Parliamentary Standing Committee on Home Affairs.

The undersigned is directed to refer to the Rajya Sabha Secretariat's letter No. RS. 6(6)/2000-C.S.(H.A.) dated the 14<sup>th</sup> November, 2000 on the subject mentioned above and to forward herewith 80 copies each of the following documents in partial fulfillment of the Assurances given by Secretary (Personnel) during the meeting of the Department-related Parliamentary Standing Committee on Home Affairs held on 23<sup>rd</sup> October, 2000:-

- (i) Comparative statement on the provisions made in the 'Right to Information/Freedom of Information' Acts enacted by various countries vis-a-vis 'Freedom of Information Bill, 2000'; and
- (ii) 'Freedom of Information Bill, 2000' and Foreign Acts- appeal and penal provisions.

As for the Report of the Committee which had visited U.K. in the year 1990, and a reference to which was made by Shri Kuldip Nayyar, M.P. during the meeting held on 23<sup>rd</sup> October, 2000 (p. 16 of the Proceedings ), it may be stated that an Inter-Ministerial Task Force was set up by the Ministry of Home Affairs to examine the feasibility of enacting a statutory Right of Public Access to Government-held information. The Task Force, which had visited the United Kingdom, Sweden, USA and Canada to study the actual functioning of the systems in these countries, submitted its report to the Home Ministry on 31<sup>st</sup> May, 1991. This Report is now not available with the Ministry of Home Affairs and unfortunately a copy thereof available with this Department too is incomplete as some of the last pages of Volume-I are misplaced. However, the same is being sent herewith for being shown to the Honourable M.P., if considered necessary.

3. As for the evaluation reports on the working of similar Acts legislated by various other countries and also some of the State Governments in India, the information has not been received from the concerned authorities who are being reminded in the matter once again. These reports shall be furnished to the Rajya Sabha Secretariat as soon as replies are received from the concerned Indian Embassies/High Commissions as also the State Governments.



(RAKESH MALHOTRA)

Under Secretary to the Government of India.



✓  
Rajya Sabha Secretariat  
(Shri Tapan Chatterjee, Deputy Secretary),  
Parliament House Annexe,  
New Delhi.



**Comparative Statement on the Provisions made in the 'Right to Information/Freedom of Information' Acts enacted by various countries vis-à-vis 'Freedom of Information Bill, 2000'**

S.No.	Provision	New Zealand	Ireland	USA	Japan	Australia	Canada	Netherlands	India
1.	Non-applicability of Act to intelligence/security organisations etc.			Records only		Yes			Yes
2.	Publication of information about public bodies, their functions, duties, procedural regulations governing access, names of Information Officers, etc.	Yes	Yes	Yes		Yes	Yes		Yes
3.	Exemptions	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
4.	Exemptions not to apply to informations more than 25 years.								Yes
5.	Severability	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
6.	Access to personal information	Yes	Yes			Yes	Yes		
7.	Third Party Information		Yes		Yes	Yes	Yes	Yes	Yes
8.	Charging of Fees	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
9.	Reduction/waiver of fees		Yes	Yes		Yes	Yes	Yes	
10.	Transfer of request	Yes	Yes		Yes	Yes	Yes	Yes	
11.	Response times to FOI access requests	20 working days	28 days	20 working days	30 days	30 days	30 days	2 weeks	30 days
12.	Extension of time for response to FOI requests.	Yes	Yes	Yes	Yes	Yes	Yes	Yes	
13.	Reasons for refusal of requests to be given	Yes	Yes	Yes	Yes	Yes	Yes		Yes
14.	Review (Internal) ( <i>non-judicial</i> )		Yes	Yes	Yes	Yes			Yes-2 tier



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**'FREEDOM OF INFORMATION BILL, 2000'  
AND FOREIGN ACTS  
APPEAL AND PENAL PROVISIONS**

**USA – FREEDOM OF INFORMATION ACT, 1966**

Any person making a request to any agency for record under the Act can, on adverse determination (*refusal*), make an appeal to the head of the agency. If on appeal the denial of a request for records is in whole or in part upheld, the agency shall notify the person making such requests of the provisions for judicial review of that determination.

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

*Punitive provision*

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

## **Japan-law on Access to Information**

Under the Cabinet order, the head of the administrative organ may delegate to an employee of the said administrative organ the authority and functions under the Act including decisions on disclosure request. When not disclosing any of the administrative document concerned with a disclosure request, the head of the administrative organ shall make a decision to the effect of non-disclosure and notify the requester to that effect in writing. When there is an appeal of a disclosure decision, etc. in accordance with the Administrative Complaint Investigation Law, the head of the administrative organ who is expected to make a ruling or decision on the appeal, excluding cases that fall within either of the following subparagraphs, shall make a reference to the Information Disclosure Review Board:-

- (i) When the appeal is unlawful and is rejected.
- (ii) When upon a ruling or decision the disclosure decision, etc. concerned with the appeal is revoked or altered, and all the administrative documents concerned with the appeal are to be disclosed.

The Information Disclosure Review Board, as aforesaid, is established within the Prime Minister's Office in order to examine and deliberate appeals in response to references from the heads of administrative organs concerning appeals of disclosure decisions etc.

In regard to law suit demanding the revocation of a disclosure decision etc. or the revocation of a ruling or decision regarding the appeal of a disclosure decision etc., in addition to the Court provided for by the Administrative Case Litigation Law, the plaintiff (requester) may also file an information disclosure law suit with the district court of the seat of the high court that has jurisdiction over the seat of the plaintiff's residence, etc.

### *Punitive Provision:*

*The person who, in violation of the law, discloses secrets shall be sentenced to a maximum of one year of imprisonment with hard labour, or a maximum fine of 300,000 yen.*

### **Ireland-Freedom of Information Act, 1997**

Under the Act, the head of the public body is the competent authority to take decisions on the request made by a person for access to information. However, the Act also provides that the head may delegate in writing to a member of the staff of the public body concerned any of the functions of the head under this Act. Where a decision on a request for access to information was taken by a person to whom the function concerned stood delegated, the head of the public body concerned, on an application by the requester, may review the decision taken under the delegated authority. A person not satisfied with the decision of the head of the public body, may make an application to the Information Commissioner (an independent authority appointed by the President), for review of such a decision. A party to the aforesaid review by the Information Commissioner, or any other person affected by the decision of the Commissioner following such a review, may appeal to the High Court on a point of law from the decision.

### **India- Freedom of Information Bill, 2000**

Any person aggrieved by a decision of the Public Information Officer (PIO) may prefer an appeal to such authorities as may be prescribed. A second appeal against the decision of the PIO shall lie to the Central Government or the State Government as the case may be.

The proposed Act also lays down that no Court shall entertain any suit, application or other proceedings in respect of any order made under this Act. This provision is to avoid delay which is inherent in getting a decision in the lower Courts but the writ jurisdiction of Supreme Court and the High Courts under Articles 32 and 226 is not barred because the Constitution has not been amended for this purpose.

### **Netherlands-Freedom of Information Act, 1991**

The text of this Act is available in Dutch only. However, from the copy of the summary of the Act in English provided by the Indian Embassy, it is seen that a negative decision on disclosure of information can be reviewed by a (administrative or civil) court of law.

### **Australia-Freedom of Information Act, 1982**

The Act provides that a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations by an officer of the agency acting within the scope of authority exercisable by him in accordance with arrangements approved by the responsible Minister or the principal officer of the agency. Where a decision has been made in relation to a request to an agency, otherwise than by the responsible Minister or principal officer of the agency, the applicant may request for an internal review of the decision. The decision on internal review can be further reviewed by the Administrative Appeal Tribunal on an application made by the requester. Where the decision on a request for information is taken by the Minister or the principal officer, the applicant can approach the Administrative Appeal Tribunal for a review of such decision of the agency.

A requester is also entitled to make a complaint to the Ombudsman (under the Ombudsman's Act, 1976) concerning action taken by an agency in the exercise of powers or the performance of functions under the Act. Where such a complaint is made to the Ombudsman, the requester is precluded from making an application to the Tribunal for a review of the decision until the Ombudsman has informed the requester of the result of the complaint made to him.

### **Canada- Access to Information Act**

Where the head of the Government institution refuses to give access to a record requested under the Act or a part thereof, he shall give a notice to the requester stating the grounds on which refusal was based as also that the requester has a right to make a complaint to the Information Commissioner about the refusal. Consistent with the declared intention that decisions on the disclosure of Government information should be reviewed independently of government, the Information Commissioner is an independent authority appointed by the Governor in Council with the approval of the Senate and the House of Commons. The Information Commissioner has powers to investigate complaints received under the Act and shall report the results of the investigation to the complainant. The findings of the

investigation and any recommendations that the Commissioner considers appropriate shall also be provided to the concerned Head of the Government institution for implementation.

Any person who has been refused access to a record requested under this Act or a part thereof may, if a complaint has been made to the Information Commissioner in respect of the refusal, apply to the Federal Court for a review of the matter within 45 days after the time the result of the investigation of the complaint by the Information Commissioner is reported to the complainant. An application for such a review shall be heard and determined in a summary way in accordance with any special rules made in respect of such applications under the Federal Court Act.

### **New Zealand – Official Information Act, 1982**

*The complete text of the Act has not been received from the Indian High Commission.*



Ramesh Chander  
Counsellor (Pol. & Inf.)



भारत का राजदूतावास, टोकियो  
Embassy of India,  
2-11, Kundan-Minami 2-chome  
Chiyoda-ku, TOKYO 102-0074  
Telex : 2324886 INDEMB J  
Phone : 03 (3262)2391 to 97  
Fax : 03 (3234) 4866  
E-Mail : indembjp@gol.com

No.TOK/103/2100

13 December 2000

Dear Sir,

This is in continuation of our letter dated 24<sup>th</sup> November 2000 regarding relevant Acts/Rules on the 'Public Disclosure Law' in Japan.

I am sending herewith Main points of the Law concerning Access to Information held by Administrative Organs in Japan. The Law has been amended. The translation of the amendment is also enclosed.

With Separate,

Yours sincerely,

(Ramesh Chander)

Shri Harinder Singh,  
Joint Secretary  
Deptt. of Personnel & Training,  
Ministry of Personnel & Public Grievances,  
North Block,  
New Delhi

153(S)/2001- EsHCB)  
14.3.2001

# Law Concerning Access to Information Held by Administrative Organs JAPAN

September 1999

Management and Coordination Agency

This is the English version of the "Law Concerning Access to Information Held by Administrative Organs" translated by Mr. Katsuya UGA, Professor of the University of Tokyo, at the request of the Management and Coordination Agency.

S. no. 67(D)

**CONFIDENTIAL**  
**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 March, 2001.

**OFFICE MEMORANDUM**

23 MAR 2001

23 MAR 2001

Subject:- Examination of the Freedom of Information Bill, 2000 by the Department-related Parliamentary Standing Committee on Home Affairs.

The undersigned is directed to refer to the Rajya Sabha Secretariat's letter No. RS. 6(6)/2000-C.S.(H.A.) dated the 14<sup>th</sup> November, 2000 on the subject mentioned above and to say that in partial fulfillment of the Assurances given by Secretary (Personnel) during the meeting of the Department-related Parliamentary Standing Committee on Home Affairs held on 23<sup>rd</sup> October, 2000, a Note each on the -

- (i) the evaluation of 'Right to Information/Freedom of Information' Acts enacted by various countries; and
- (ii) 'Right to Information' Acts enacted by various State Governments in India

is sent herewith along with its enclosures.

*R. Malhotra*

(RAKESH MALHOTRA)

Under Secretary to the Government of India.

Rajya Sabha Secretariat  
(Shri Tapan Chatterjee, Deputy Secretary),  
Parliament House Annexe,  
New Delhi.



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**FREEDOM OF INFORMATION BILL, 2000  
EVALUATION OF THE WORKING OF SIMILAR  
LEGISLATION ENACTED BY OTHER COUNTRIES**

-----  
*(information furnished by the respective Indian Embassies/High  
Commissions)*

**UNITED STATES OF AMERICA**

The Freedom of Information Act, signed into law in 1966, established for the first time effective statutory right of access to government information. The basic purpose of the Freedom of Information Act is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the governors accountable to be governed. In order to take better advantage of the capabilities of the digital media not only to make internal operations more efficient but also to create better relationships with the requesters who seek government information, the Act was amended in 1996 (Electronic Freedom of Information Act Amendments of 1996) thus creating a requirement for electronically held information to be made available in electronic form. A copy of the Act, together with 1996 amendments, is enclosed.

A study Report on the implementation and effects of Freedom of Information Act is appended to The Netherlands 'Government Information (Public Access) Act, 1991'.

**JAPAN**

The Japanese Government has enacted the following law for making itself accountable to the people for its various operations, etc.:

‘Law Concerning Access to Information held by  
Administrative Organs’

A copy of the Law is enclosed.

2. The above Law was passed and came into effect in May, 1999. There have been two amendments on July 16, 1999 and December 22, 1999. An English translation of the amendments is also enclosed.

3. Further, the Law would come into force only beginning 1<sup>st</sup> April, 2001 and the issue of an evaluation report on the working/implementation of the Act will arise only after that date.

### AUSTRALIA

In 1982, Australia enacted the 'Freedom of Information Act, 1982' and it commenced operation on 1<sup>st</sup> December, 1982. A copy of the Act, as on 19<sup>th</sup> January, 1995, is enclosed.

2. The Australian Law Reform Commission and the Administrative Review Council have carried out a comprehensive review of the Act and a copy of their Report is enclosed. Also enclosed is a copy of the Annual Report 1999-2000 by the Attorney General to the Parliament on the Operation of the Act.

3. The Senate Legal and Constitutional Legislation Committee is inquiring into the 'Freedom of Information Amendment (Open Government) Bill, 2000'. The Committee is due to report by 31<sup>st</sup> March, 2001 and a copy of Second reading speech to the Bill is enclosed.

### THE NETHERLANDS

The text of the 'Government Information (Public Access) Act, 1991' and amendments thereto enacted by Dutch Government run into 584 pages. *The text of this Act is available in Dutch only.* However, a copy of the summary of the Act *in English* has been procured and enclosed. Also enclosed with the summary is a study prepared by RAND Europe for the Ministry of Home Affairs on the Implementation and Effects of the U.S. Freedom of Information Act. This study compares between the Dutch and the American Acts.

### CANADA

Canada joined the ranks of the small group of countries which have given their citizens the legal right to government information when the Government enacted the 'Access to Information Act, R.S.C.1985'. A copy of the Act, which came into force on July 1, 1983, is enclosed. A

Report, reviewing the functioning of the Act in its first 10 years, is also enclosed together with the following material:

- (i) Recommendations of the Information Commissioner for further strengthening of the Access to Information Act;
- (ii) Access to Information Act with respect to Information Technology; and
- (iii) Executive Summary of the Implementation of the Access to Information Act.

2 Under the Access to Information Act, the Government of Canada appoints an Information Commissioner who submits an Annual Report to the Canadian Parliament on the activities of his office. He is also authorised to submit a special report to Parliament in which he may make recommendation regarding his powers, duties and functions.

3. The Information Commissioner is generally held in high regard by the Government and his recommendations made to Parliament are taken seriously. The general view is that the Access to Information Act has made the Government more transparent and empowered the people to a large extent in obtaining information from the Government on its various policies and economic/commercial activities.

4. The Canadian media has used the Access to Information Act and the office of the Information Commissioner very extensively in obtaining information from the Government departments. Many substantive and useful reports in the media are based on information obtained under the Access to Information Act.

5. There are, however, complaints from time to time that it is still very difficult to obtain full information from Government agencies, like Department of National Defence, Canadian Security Intelligence Service, etc. There have been calls for further strengthening the office of the Information Commissioner and making him less dependent on the Government.

6. The overall assessment is that the Access to Information Act and the office of the Information Commissioner are serving a useful purpose in making the Government more transparent. Even though there are demands for investing more powers in the Information Commissioner, nobody is saying that the Act has not fulfilled its purpose: a fact which testifies to its success.

## NEW ZEALAND

With a view to make official information more freely available, to provide for proper access by each person to official information relating to that person, to protect official information to the extent consistent with the public interest and the preservation of personal privacy, to establish procedures for the achievement of those purposes and to repeal the Official Secrets Act 1951, the Government of New Zealand enacted on 17<sup>th</sup> December, 1982, the 'Official Information Act, 1982'. The Act came into force on the 1<sup>st</sup> July, 1983 and a copy of the same is enclosed.

The Official Information Act was subsequently reviewed by the Law Commission of New Zealand. A copy of the report of the Law Commission, together with a copy of the report of the Ombudsmen for the year ended 30<sup>th</sup> June, 2000 on the Official Information Act, is also enclosed.

## IRELAND

With a view to enable members of the public to obtain access, to the greatest extent possible consistent with the public interest and the right to privacy, to obtain information in the possession of public bodies and to enable persons to have personal information relating to them in the possession of such bodies corrected and, accordingly, to provide for a right of access to records held by such bodies, the Government of Ireland enacted on 21<sup>st</sup> April, 1997, the 'Freedom of Information Act, 1997'. The Act came into effect in 1998 and a copy of the same is enclosed.

2. As for the evaluation report on the working of the aforesaid Act, a report has been prepared which is yet to receive clearance from the concerned Parliamentary Committee. Until such time, the Government of Ireland would not be disclosing details thereof.

**FREEDOM OF INFORMATION BILL, 2000  
EVALUATION OF THE WORKING OF SIMILAR  
LEGISLATION ENACTED BY VARIOUS  
STATE GOVERNMENTS**

**TAMIL NADU**

The 'Tamil Nadu Right to Information Act, 1997' was notified on the 5<sup>th</sup> May, 1997 and the 'Tamil Nadu Right to Information Rules, 1997' were notified on 6<sup>th</sup> May, 1998.

The purpose of the enactment of the above Act is that every Governmental action should be transparent to the public and this can be achieved only if awareness is created among the public about the Act. The State Government have, therefore, issued instructions to all the Secretaries to the Government to instruct the officers under their control to put up in the Notice Board of the Offices, the salient features of the Act so that there will be greater awareness about the Act among the public. The Secretaries have also been directed to watch the number of applications received under the above said Act and collect from the concerned officers the particulars regarding action taken thereon for an annual review at the Governmental level. In the circumstances, the State Government have informed that it would take them some more time to evaluate the working of the Act.

**MAHARASHTRA**

The 'Maharashtra Right to Information Act, 2000' was enacted by the State Government vide Notification dated 19<sup>th</sup> August, 2000. On 4<sup>th</sup> December, 2000, the State Government notified the 'Maharashtra Right to Information Rules, 2000'. On the same date, the State Government also notified that the 'Maharashtra Right to Information Act, 2000' shall come into force with effect from 11<sup>th</sup> December, 2000.

2. As the aforesaid Act has come into operation only recently, and the period of implementation is very short, the State Government have informed that an evaluation of its working can be made only after some time.

**RAJASTHAN**

The 'Rajasthan Right to Information Act, 2000' was notified on 12<sup>th</sup> May, 2000 and the State Government have notified the 'Rajasthan Right to Information Rules, 2001' on 25<sup>th</sup> January, 2001. As such, an evaluation of the Act can be made only after it has been operational for a reasonable length of time.

1712/2004-544  
2-5 (2001)  
315/2001  
J.M. 73(R)

PARLIAMENT OF INDIA  
RAJYA SABHA SECRETARIAT

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NO. R.S.6(6)/2000-CS(HA)

1 May, 2001

To

Shri B.B. Tandon,  
Secretary to the Government of India,  
Ministry of Personnel, Public Grievances and Pensions,  
New Delhi

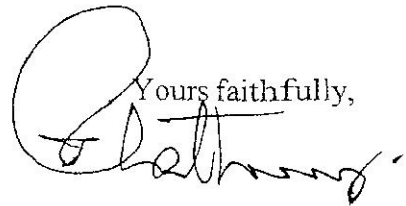
Subject: Examination of the Freedom of Information Bill, 2000 by the  
Department-related Parliamentary Standing Committee on Home  
Affairs.

Sir,

I am directed to state that the Department-related Parliamentary Standing Committee on Home Affairs had heard a number of organizations/individuals on the captioned Bill. During the course of their deposition before the Committee and also subsequently, oral/written comments/suggestions on various clauses of the Bill have been made by them, which have been compiled in a tabular form and enclosed.

2. It is now requested that the Government's comments in respect of each suggestion/comment may kindly be furnished to this Secretariat **not later than 11 May, 2001**, for consideration of the Committee.

205(5)/2004-544(B)  
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Yours faithfully,  


(TAPAN CHATTERJEE)  
DIRECTOR.

**VIEWS/SUGGESTIONS OF INDIVIDUALS/ORGANISATIONS ON FREEDOM OF  
INFORMATION BILL, 2000**

**PART 1: COMMENTS AND SUGGESTIONS ON THE BILL**

**TITLE OF THE Bill**

<b>Name of Organisation/ individual</b>	<b>Comments/ Suggestions</b>	<b>Response of Government</b>
<b>Commonwealth Human Rights Initiative</b>	The Bill should be titled "Right to Information Bill". The object of the Bill should be to operationalise the Constitutional Right to Freedom of Information implicit in the Fundamental Right to Freedom of Speech and Expression and Right to Life and Liberty and Right to Equality enshrined in the Constitution. The Preamble and the Title as they are currently worded seems to indicate that the freedom of information is being provided by this Bill, while in reality this is a fundamental right recognised under the Constitution.	
<b>Shri Madhav Godbole</b>	The Bill should be titled "Right to Information Bill"	
<b>Shri A.G. Noorani</b>	The Right to Information is a part of the right to freedom of speech and expression, the Right to Freedom of Speech and Expression includes the right to information. The Act should be called Right to Information Act.	
<b>Consumer Education and Research Centre</b>	The Bill should be titled "Right to Information Bill"	
<b>Mazdoor Kisan Shakti Sanghathan</b>	The Bill should be titled "Right to Information Bill"	

# PREAMBLE OF THE BILL

Name of Organisation/ Individual	Comments/ Suggestions	Response of Government
Commonwealth Human Rights Initiative	The Preamble should be reworded to clarify that the law is casting a duty upon the state and laying down systems to give information to the people in order to give effect to the fundamental right to information. The right to information under the Bill should be available not just to Citizens but to all persons.	
Shri Madhav Godbole	The words "consistent with public interest" appearing in the Preamble of the Bill should be deleted as it leaves scope for debate on what is public interest and whose public interest is it.	
Consumer Education and Research Centre	The Preamble to the Bill must clearly state that this Right to Information is a recognition of the Fundamental rights under Article 21 as it an integral part of the Right to Life, Right to Equality and Right to Freedom of Speech and Expression. The Right to Information under the Bill should be available to all persons and should not be limited only to Citizens.	

# CLAUSE 1: DATE OF BILL BECOMING EFFECTIVE

Name of Organisation/ Individual	Comments/ Suggestions	Response of Government
Commonwealth Human Rights Initiative	Section 1(3) should be reworded to lay down a time period within which the law will come into force. The clause may be reworded as follows " <i>It shall come into force on such date as the Central Government may notify, which date shall not be later than six months from the date of the passage of the law. Provided that the Act shall automatically come into force at the expiry of the said six months.</i> "	
Shri Madhav Godbole	The Bill should provide for a specific date, a period of three months from the date of passage of the Bill, from which the act will come into effect. This will provide some kind of finality to the date from which the Bill will come into effect.	

## CLAUSE 2: DEFINITIONS

Clause 2(a),(b) and (f)		
Name of Organisation/ Individual	Comments/ Suggestions	Response of Government
Commonwealth Human Rights Initiative	<p>Sections 2(a) and (b) - Definition of "Appropriate Government" and "Competent Authority" do not take into account any aspect of local bodies. The Definitions must include municipal and local bodies.</p> <p>Sections (c), (d) and (f) - The definitions are restricted to public bodies, this should be amended to include semi-governmental bodies, private bodies and all organisations that are engaged in the carrying on activities that affect the public or large sections of the public.</p>	
Mazdoor Kisan Shakti Sanghathan	<p>Section 2(a) and (f) defines 'Public authority' this definition must be expanded to include in addition to what has already been stated (ii) the Administrative Offices of the Courts; (iii) a company, corporation, trust, firm, society, cooperative society, or associations whether owned or controlled by the Government or by private individuals and institutions and (iv) any other person information from whom is required for the exercise or protection of any right'.</p> <p>In the alternative the definition of "Public Authority" could be amended to include a body owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government. This would bring into the purview of the Bill all bodies that receive, directly or indirectly, any public funds, so is to make them accountable to public scrutiny going in further.</p>	

Clause 2 contd.....

Clause 2 (c ), (d) and (h)

Commonwealth Human Rights Initiative	Sections (c), (d) - The definitions are restricted to obtaining information from public bodies, this should be amended to include semi-governmental bodies, private bodies and all organisations that are engaged in the carrying on activities that affect the public or large sections of the public.	
Mazdoor Kisan Shakti Sanghathan	Section 2(c) the definition of ' <i>freedom of information</i> ' should be amended to include taking samples of materials and goods offered for sale.  Section 2(h) the definition of ' <i>record</i> ' should be amended to include materials and samples of goods.	
Shri A.G. Noorani	Section 2(d) defines "information" and 2(h) "record", the word "information " should be amended to include a <i>record</i> .	
Shri B.G. Deshmukh	Section 2(d) information should include conduct of public servants specifically, apart from administration, and , and should also include documents relating to information.	

### CLAUSE 3: FREEDOM OF INFORMATION

Name of Organisation/ Individual	Comments/ Suggestions	Response of Government
Commonwealth Human Rights Initiative	Section 3 should be amended, since right to information is a fundamental right guaranteed under the Constitution and is not a right provided by the Freedom of Information Bill. The Bill seeks to operationalise the right to information available to all persons under the Constitution the Section should be amended and should read: "Every Public Authority shall be under a duty to provide access to information in accordance with this Act."	
Shri Madhav Godbole	The Constitution recognises the right to information as a fundamental right and this has been upheld by various Supreme Court decisions. The Statement of reasons and objects of the Bill states that the Bill is in accordance with Article 19 of the Constitution as well as Article 19 of the Universal Declaration of Human Rights. These documents talk about the right to information and not freedom of information. Section 3 of the Bill needs to be amended to reflect that the Bill recognises the "Right to Information" inherent in the Constitution.	
Shri A.G. Noorani	The Bill should say that all citizens have the freedom of information. Freedom of information is not being granted by the Bill, its is already there in the Constitution.	
Mazdoor Kisan Shakti Sangathan	The Bill should seek to operationalise the Constitutional right to information and must recognise that information is an entitlement and not a favour.	

#### CLAUSE 4: OBLIGATIONS ON PUBLIC AUTHORITIES

Name of Organisation/ Individual	Comments/ Suggestions	Response of Government
Commonwealth Human Rights Initiative	<p>Section 4 of the Bill is grossly inadequate in dealing with the obligations of public authorities. While enacting a legislation on right to information one must recognise there are certain kinds of information which must be mandatorily available to the people and there are certain other kind which can be made available on request.</p> <p>Section 4 should be modified and the following should be added to the list of information set out in <b>Section 4(b)</b> that is to be mandatorily disclosed to the public:</p> <ul style="list-style-type: none"> <li>-The description of the subjects on which the public authority holds records and the categories of records held on the subject.</li> <li>-Details of notifications, orders directions passed by that public authority or are applicable to that public authority.</li> <li>-The description of the services available to the members of the public from the public authority and how to gain access to such services.</li> </ul> <p>In <b>Section 4</b>, the definition of the word "<b>Publish</b>" needs to be added, mere publication in the official gazette will not be enough since this document is not easily available to the common person, thereby defeating the very purpose of the provision. The term "<b>Publish</b>" should be defined such that the material is easily accessible to the common person and should mean publication through mass communication channels such as radio, television, newspapers and other such means.</p>	

Clause 4 contd....

Shri B.G. Deshmukh	Section 4(b) - it should be specifically stated that the mandatory and voluntary disclosures in this section should be published annually.
Shri Madhav Godbole	<p>Section 4(d) states that every public authority shall, "give reasons for its decisions whether administrative or quasi - judicial to those affected by those decisions". This section needs to be amended to adding the words "<i>and others, as widely as possible</i>" after the words "to those affected by those decisions".</p> <p>Section 4(e) should be amended to include the words "<i>and</i>" after the words "<b>public generally</b>" and once again after the words "<b>persons affected</b>". Further, the words "<b>maintenance of democratic principles</b>" should be substituted by the words "<i>natural justice and promotion of democratic principles</i>".</p>
Consumer Education and Research Centre	<p>The Bill must provide for mandatory upgrading of information by the authorities required to provide this information to the public. This upgrading should be done within a specified time limit and systems must be computerised.</p> <p>The Bill should provide for pro-active disclosure of information by public authorities especially information regarding life, safety, health and environment.</p>
Shri A.G. Noorani	The current provision for suo motto disclosures are not sufficient. There should be an obligation on the government to publicise certain kinds of information such as sanction of projects, awarding of tenders, giving major licenses.

Clause 4 contd.....

<p><b>Mazdoor Kisan Shakti Sanghathan</b></p>	<p>Section 4 of the Bill explicitly places duties on public authorities to maintain records and to give reasons for their decisions. However, it is recommended that the positive duty of public authorities to inform the public, even if information is not sought, should be expanded under this Section, to include all information required by citizens to protect their rights and to enforce transparent and accountable governance. The list of suo moto disclosures should be illustrative and not exhaustive in nature.</p> <p>The Bill is silent on the matter of publication of information. Publication should be understandable and communicable. The Bill should provide that publication should be "by electronic or Print Media or by beating of drums or any other suitable method" and should be in vernacular languages. Where information is concerning the life and liberty of a person, Section 4 should incorporate the guidelines set down by the Supreme Court in D.K Basu v State of West Bengal.</p>	
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## CLAUSE 5: APPOINTMENT OF PUBLIC INFORMATION OFFICERS

Name of Organisation/ Individual	Comments/ Suggestions	Response of Government
Commonwealth Human Rights Initiative	<p>Section 5 should mention the level in the administrative ladder at which the public information officer would be appointed. Further, the law must clearly state that the responsibility of providing information under the Bill should be with each and every officer of the Public Authority. The Bill should also provide for the delegation of the authority of the Public Information Officer. The following clause could be added to Section 5 and be numbered as Section 5(5).</p> <p>Section 5(5)</p> <p>f) For the purpose of this Act each public authority must designate such number of personnel of the public authority as <b>deputy information officers</b> as are necessary to render the public authority as accessible as possible to the people.</p> <p>g) The Public Information Officer of each public authority shall have direction and control over deputy information officer of that public authority.</p> <p>h) The public information officer of a public authority may delegate a power or duty conferred or imposed on that public information officer to any deputy information officer of that public authority.</p> <p>Any power or duty delegated herein must be exercised or performed subject to such conditions as the person who made the delegation considers it necessary.</p>	

Clause 5 Contd.....

	<p>i) Any delegation made herein</p> <p>iv) Must be in writing</p> <p>v) does not prohibit the person who made the delegation from exercising the power concerned or from doing the duty concerned himself; and</p> <p>vi) may at any time be withdrawn or amended in writing by that person.</p> <p>j) Any right or privilege acquired or any liability or obligation incurred as a result of a decision in terms of a delegation as set out herein is not affected by a subsequent withdrawal or amendment of that decision.</p>	
Shri A.G. Noorani	<p>The designation of "<b>Public Information Officer</b>" is wrong since there are already 'press information officers' and 'information officers' in the government, the officer appointed must be called "<b>Commissioner for Information</b>". This Commissioner for Information must present an annual report to the Parliament and to the respective State Assemblies on the working of the Law.</p>	
Mazdoor Kisan Shakti Sangathan	<p><b>In Section 5</b>, which provides for the appointment of public information officers in every public authority, it needs to be added that the ultimate responsibility to ensure adherence to the provisions of the Bill vests with the head of each public authority, and they are vicariously liable in the event of any violation by their subordinates.</p>	

# CLAUSE 6: REQUEST FOR OBTAINING INFORMATION

Name of Organisation/ Individual	Comments/ Suggestions	Response of Government
Commonwealth Human Rights Initiative	Section 6 should be reworded to make the procedure simpler and clearer. Since the intent of the Bill is to put in place an effective procedure for enforcing the right to information, the procedural issues must be detailed and clearly stated. The Bill should provide for acknowledgement of a request for information made to a public information officer.	
Mazdoor Kisan Shakti Sangathan	The Bill should provide for a set format for applying for disclosure of information. All possible assistance must be provided to people who apply for information. There should be a provision for recording all applications made for information. An acknowledgement must be given for a request for information. The right of inspection of information must be provided.	

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## CLAUSE 7: DISPOSAL OF REQUESTS

Name of Organisation/ Individual	Comments/ Suggestions	Response of Government
<b>Commonwealth Human Rights Initiative</b>	<p>In Section 7, a provision for requests for urgent information and for waiver of fees in certain cases must be included and the section reworded to accommodate these requests.</p> <p>The Law must clearly state the fee that can be charged (which should not be excessive and unreasonable) and must also contain provision for waiver of fees in cases where demand for information is made from people who are unable to pay the same or in cases where information is sought in public interest or for protection of life and liberty.</p> <p>The Section must contain a provision for deemed refusal in cases where there is no response to the request within the stipulated time limit.</p> <p>The law must clearly state that where information sought is regarding the life and liberty of a person, the same must be provided within 24 hours. People request information because they need to fulfil a specific need; they must not be made to wait for 30 days in such instances.</p>	
<b>Consumer Education and Research Centre</b>	<p>The time specified for response to requests is very long, 30 days is too long to wait for information. People request information because it is needed and is relevant to a person at a given point in time. Certain type of information which affects life and liberty of persons should be provided within 24 or 48 hours.</p>	

Clause 7 Contd .....

<p><b>Shri A.G. Noorani</b></p>	<p>There must be a provision which states that if information is not provided within 30days it is deemed to have been refused.</p>	
<p><b>Mazdoor Kisan Shakti Sanghathan</b></p>	<p>The proviso clause to Section 7 (1) must be deleted, because it leaves loopholes to enable public authorities to delay supply of information. There is no reason why the cost of providing information cannot be realistically assessed at the time the application seeking information is initially made.</p> <p>This is also related to the fees chargeable for supplying information, which has been left under Section 18(2)(a) to the Rules. The Bill itself should lay down that the fee that can be charged cannot be higher than the actual cost of reproducing the document containing the information, and should not include the costs of actually creating the document. After all, the creation of the document containing the information was anyway the duty of the public authority, independent of the application for the copy of the information.</p> <p>Information that is necessary, urgent and is required for the protection of the life and liberty of persons should be provided within a much shorter period of time - e.g.: the Goa Act says within 48 hours.</p> <p>If information is not provided within a stipulated time period, it must be deemed to be a refusal and appeal must be allowed, even though there has been no express rejection of the request.</p>	
<p><b>Shri B.G. Deshmukh</b></p>	<p><b>Section 7(1)</b> it must be stated that the information asked for shall be provided either in English, Hindi or in language of the state,</p>	

# CLAUSE 8: EXEMPTION FROM DISCLOSURE OF INFORMATION

Name of Organisation/ Individual	Comments/ Suggestions	Response of Government
Commonwealth Human Rights Initiative	<p>Sections 8 and 9 of the Bill set out the exemptions from disclosure and the grounds for refusal of access to information. While some of these are necessary and reasonable, wide ranging exemptions can defeat the very purpose of the legislation. Since the object of the legislation is to give effect to the fundamental right to information under the Constitution of India, the restrictions in this right should be limited to the restriction set out in the Constitution of India. The exemptions to access to information laid down in the Bill go far beyond the limits prescribed by the Constitution of India and take in factors which are extraneous to the reasonable restrictions envisaged by the Constitution of India.</p> <p>The right to information should be restricted only by "imposing reasonable restrictions in the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement of an offence", as set out in the Constitution of India.</p>	
Consumer Education and Research Centre	<p>Section 8 and 9 contain omnibus clauses under which information can be refused to the public, these clauses need to be amended to make the exemptions more narrow and well defined. The Bill must clearly provide that all information that cannot be denied to the members of the parliament/legislature should not be denied to the public.</p>	

Clause 8 contd .....

Clause 8(1)(a)		
Name of Organisation/ Individual	Comments/ Suggestions	Response of Government
JUSTICE P.B. Sawant	<p>Section 8(1)(a) ".... Strategic scientific or economic interest of India or conduct of International Relations".</p> <p>Unless the abovementioned words are relatable to the Security of the State or friendly relations with foreign states, respectively, as mentioned in Article 19(2) of the Constitution of India will be violative of 19(1)(a).</p>	
Shri Madhav Godbole	<p>Section 8(1) seeks to deny large amounts of crucial and important information to the people. It is necessary in this context to note that under the Rules of Transaction of Business formulated by the Government of India certain matter have to be necessarily put up to the cabinet for a decision. To deny access to all such matters after decision is taken cannot be justified. Deliberations of cabinet secretaries should not be put on par with deliberations of cabinet and cabinet committees. The notings on the file made by government officials should be made known to the public after decisions are taken on concerned files. Pros and cons of decisions or cases are viewed in the cabinet note and people outside ought to know the basis on which the cabinet made certain decisions.</p> <p>In Sections 8(1)(a) the words "or conduct of international relations", must be deleted, the term "international relations" is very wide and ambiguous.</p>	

Clause 8 contd....

Clause 8(1) ( c), (d), (e) and (g)		
Name of Organisation/ Individual	Comments/ Suggestions	Response of Government
Shri Madhav Godbole	Section 8(1) sub-sections (c), (d) and (e) cover the entire working of the government, by including these in the exemption clause. The working of the government from the cabinet committee to the secretaries committee is not being made available to the people. These provisions brings on par the cabinet committee and the Secretaries committee and must be done away with, nothing belonging to the cabinet must be a secret forever.	
JUSTICE P.B. Sawant	<p>Section 8(1)(c) will be violative of Article 19(1)(a) since it does not appear to be covered by Article 19(2) or any other provision of the Constitution.</p> <p>Section 8(1) (e) - if the provision means that the minutes or records of advise etc mentioned therein will not be covered by any of the exceptions mentioned in Article 19(2) or any other Constitutional Provision. It will also be contrary to the substance of the law laid down in S.P Gupta's case.</p>	
Mazdoor Kisan Shakti Sanghathan	The Supreme Court has interpreted that the Right to Information flows from Article 19 of the Constitution of India. Therefore any restrictions on this right has to be justifiable only on the exceptions set out in Article 19(2) of the Constitution. The Bill envisages several exemptions to providing information, which go beyond the reasonable restrictions envisaged in the Constitution, hence these exceptions are unconstitutional. Therefore the list of exceptions in the proposed Bill must be cut short.	

Clause 8 contd .....

	<p>It is recommended that information that is available to the members of parliament and/ or members of the state legislative assembly/council should not be denied to any person.</p> <p><b>Section 8(1)(d)</b> while advising to cabinet and deliberations of the cabinet prior to arriving at the decision may be exempt, cabinet records should not be exempt.</p> <p><b>Section 8(1)(e)</b> should be deleted because in order to hold public authorities accountable, it is not enough to know what decision was ultimately taken but also to know the content of the advice and recommendations made by various authorities in reaching the decision.</p>	
Shri A.G. Noorani	<p>The Bill states that information that prejudicially affects Centre-State relationships need not be given. The language is too wide, and anything can be termed prejudicial.</p> <p><b>Section 8(1)(g)</b> the word "information the disclosure of which may result in breach of privilege" should be substituted with the words "<i>information the disclosure of which will violate the law of Parliamentary Privilege</i>".</p>	

Clause 8 contd....

Clause 8(2) and Proviso to Section 8(2):		
Name of Organisation/ Individual	Comments/ Suggestions	Response of Government
Shri A.G. Noorani	<p><b>Proviso to Section 8(2)</b> - the proviso gives finality to the order of the central Government regarding disclosing archived records, this clause is highly restrictive in nature. Further the clause is only applicable to "any occurrence, event or matter which has taken place, occurred or happened 25 years before the date the on which the request is made". The proviso excludes "Records" and "Information" as defined in the Bill itself, making access to archived records impossible.</p>	
Shri Madhav Godbole	<p><b>Section 8(2)</b> the period of 25 years proposed for releasing information under this Section is unconscionably long. It is suggested that 25 years be substituted with 15 years. The Government should set up a <b>Records Commission</b>, which will consist of eminent public figures and government representatives and will continuously monitor and review the release of records for public information. It is further suggested that the <b>following proviso be added to Section 8(2):</b></p> <p>"Provided that all such papers and records will be reviewed by the competent authorities every five years with a view to release all such information which can reasonably be made available to people."</p> <p><b>Proviso to Section 8(2)</b> - the words "twenty five years" may be substituted by "fifteen years". It may also be added that the decision of the Records Commission will be final unless the minister in-charge over rules the decision of the commission for reasons which shall be recorded in writing.</p>	

CLAUSE 9: GROUNDS FOR REFUSAL OF ACCESS IN CERTAIN CASES

Clause 9(a)		
Name of Organisation/ Individual	Comments/ Suggestions	Response of Government
Shri A.G. Noorani	Section 9(a), the words "is too general in nature" are too vague and give scope to officers of the government to evade giving information. Further, the words "would involve disproportionate diversion of the resources of a public authority" are used, the word "disproportionate" is rather subjective, a better word to use would be "unreasonable".	
Mazdoor Kisan Shakti Sanghathan	Section 9(a) should be deleted because it gives public authorities wide unfettered powers to reject applications for information. The spirit of the section would be served if it is clearly stated that an application cannot be made under the Bill for the creation (or aggregation) of new information that is not already required to be created (or generated) under existing laws and rules.	

Clause 9 contd ....

Clause 9(b) and (c)		
Name of Organisation/ Individual	Comments/ Suggestions	Response of Government
Commonwealth Human Rights Initiative	<p>Section 9 (b) and (c) should be deleted as they are rather wide and can cause many difficulties as a wide range of information can be denied saying that they are contained in annual reports of departments or in the official gazette. Publication in government parlance means publication in the official gazette. It is not reasonable to expect a person with minimal or no literacy skills to search for documents in the official gazette or reports which are unavailable to the common person. Therefore, refusing to grant access on the ground that the information is already published or will be shortly published is not a valid or justified reason, unless the material is published in a manner that is easily accessible to the common person.</p> <p>Under Section 9, if some kinds of information can be routinely put in a publication, the law should clearly put the onus on the public authorities to publish and make available the information in sufficient quantities within a specified period of time and if necessary to price them reasonably so that they may be within the reach of the common person.</p>	

Clause 9 Contd .....

Clause 9(d)		
Name of Organisation/ Individual	Comments/ Suggestions	Response of Government
Shri Madhav Godbole	Section 9(d) relates to information which would cause unwarranted invasion of the privacy of any person, this Section needs to be qualified with the same kind of proviso as in Section 11, namely, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of privacy of any person.	

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## CLAUSE 10: SEVERABILITY

Name of Organisation/ Individual	Comments/ Suggestions	Response of Government
Commonwealth Human Rights Initiative	The provision on severability is an excellent one, however, the Bill must provide for appeals against a decision to sever some parts of the document.	
Mazdoor Kisan Shakti Sanghathan	Section 10 of the Bill should state that reasons for withholding parts of a document must be given to the requestor, and the copy of the document provided should indicate which portions of the document has been withheld. The provisions regarding severability in the Press Council Draft of 1997 should be included.	

# CLAUSE 11: THIRD PARTY INFORMATION

Name of Organisation/ Individual	Comments/ Suggestions	Response of Government
Commonwealth Human Rights Initiative	Section 11 is a standard provision that is universally accepted, however a period of 50 days for inviting third party representation is too long and will be detrimental to the interest of the requestor. The Section should provide for maximum 15 days to issue notice and 15 days to reply.	
Shri Madhav Godbole	Section 11, the words "fifty days" should be replaced by the words "thirty days" as a period of "thirty days" should be quite adequate for a third party to respond.	
Mazdoor Kisan Shakti Sanghathan	Section 11 "third party" clause is redundant and is likely to create a major loophole to enable delays. Once the Bill is operational, the third party may be presumed to know that the information is legally subject to disclosure, so it cannot legally have the information treated as confidential. The corresponding Section 12(4) should also be deleted.	

Clause 12 contd....

Name of Organisation/ Individual	Comments/ Suggestions	Response of Government
Shri A.G. Noorani	The Bill must provide for an independent tribunal to adjudicate matter concerning freedom of information. A retired judge of a High Court should be appointed to head this body, the appointment for the centre should be made in consultation with the Chief Justice of India and for the state should be made in consultation with the chief justice of the respective State High Court.	
Mazdoor Kisan Shakti Sanghathan	<p>Section 12 does not provide for appeal to an independent body outside the Government. There is no objection to one appeal within the Government, but in the event there is no redress, there must be a provision for appeal to an independent person or institution outside the government like an ombudsman.</p> <p>The Legislation should provide for one internal appeal and a second external appeal - but this appeal should be to an independent body like the Lok Pal to be constituted under the proposed Lok Pal Bill.</p> <p>In light of the argument presented with respect to Section 11, Section 12(4) should also be deleted.</p>	
Shri B.G. Deshmukh	<p>In Section 12(2) the second appeal should lie to the an Independent Statutory authority like the Vigilance Commission, Lok Pal or the Lok Ayukta and not to the Central or State Government as provided under the Act.</p> <p>In Section 12(3) the outer limit for the "extended period" should be provided - the authority must not be allowed to indefinitely postpone dealing with appeals and giving decisions.</p>	

**CLAUSE 13: PROTECTION OF ACTION DONE IN GOOD FAITH.**

Name of Organisation/ Individual	Comments/ Suggestions	Response of Government
Commonwealth Human Rights Initiative	<p>Section 13 is a very dangerous provision and gives protection to public servants for not having complied with the provisions of the Act, the provision reflects a very protective attitude towards public servants and defeats the very purpose of the legislation especially in the absence of provisions for accountability and penalties for public authorities. This provision would be meaningful only if it covers disclosures made by public authorities in public interest even if the information is barred from disclosure in terms of the Act. It is recommended that this provision be substituted by a provision for protection to whistleblowers.</p> <p>“No person is criminally or civilly liable for anything done in good faith in the exercise or performance or purported exercise or performance of any power or duty in terms of this Act.”</p>	
Shri B.G. Deshmukh	In order to avoid abuse of this provision by public servants there must be a burden on the public servant to show good reason for grant of protection.	

CLAUSE 14: ACT TO HAVE AN OVER RIDING EFFECT

Name of Organisation/ Individual	Comments/ Suggestions	Response of Government
Commonwealth Human Rights Initiative	Section 14 of the Bill should be reworded to make the import clearer. The Bill overrides any Act in force and specifically the Official Secrets Act, to the extent that they are inconsistent with the provisions of the Bill. No doubt that while in some cases this would expand the area of information made available, but the language of the provision has the potential to curb or restrict any pre-existing right and procedure for providing access to information in an expeditious and progressive manner in relation to the Bill. For example, the Goa Act provides that information has to be provided within 48 hours in cases of urgent requests related to information affecting life and liberty. This important and useful provision may be read to be "inconsistent" with the provisions of the Bill in its present form and consequently may be overridden.	
Shri Madhav Godbole	In the first line of this Section after the words " <b>every other Act</b> " the words " <b>rules and manuals</b> " may be added. So that all rules and manuals which are inconsistent with the Act may cease to be operative.	
Consumer Education and Research Centre	There must be a clear repeal of the Official Secrets Act of 1923.	
Shri A.G. Noorani	The Official Secrets Act should be amended, as it is an obsolete legislation which is based on the UK Act of 1909, this Act is unconstitutional due to the strides we have made since then. There should be no doubt that the Official Secrets Act will be overridden by the Freedom of Information Law, necessary amendments need to be made to the Official Secrets Act.	

# CLAUSE 15: BAR OF JURISDICTION OF COURTS

Name of Organisation/ Individual	Comments/ Suggestions	Response of Government
Commonwealth Human Rights Initiative	Section 15 should be deleted and replaced with a provision to appeal to an appropriate judicial forum. In the absence of an alternative remedy this section is untenable and ultra vires the Constitution.	
Shri Madhav Godbole	The justification for this provision is not clear, further it is likely to be struck down by the courts. There is no reason why a common citizen should be forced to take recourse to writ remedy, which is expensive. It is recommended that this Section be deleted.	
Consumer Education and Research Centre	This Section excludes the jurisdiction of the courts and is a violation of the fundamental rights of the Citizens, unless an effective separate, efficacious and independent remedy is provided.	
Shri A.G. Noorani	Omission to provide an independent appellate body is a major flaw in the Bill. Section 15 bars the jurisdiction of the Courts, no restriction will be judged "reasonable" by the Courts unless an alternative remedy is provided by way of an independent quasi-judicial appellate authority to decide contested cases.	

**CLAUSE 16: ACT NOT TO APPLY TO CERTAIN ORGANISATIONS**

Name of Organisation/ Individual	Comments/ Suggestions	Response of Government
<b>Commonwealth Human Rights Initiative</b>	<p>Section 16 (1) and the Schedule should be reworded to narrow down the blanket exclusion given to entire organisations, excluding certain organisations completely from the purview of this legislation defeats the purpose of the law. There is no rationale for exempting the administrative wings of these organisation from disclosing relevant information. Further, the provision gives wide powers to the central government to add to the list of these exempt organisation. The power given to the government is completely arbitrary without any guidelines whatsoever for exercise of the same.</p> <p>Section 16 (2) should be deleted.</p>	
<b>Mazdoor Kisan Shakti Sanghathan</b>	<p>Section 16, should be deleted as it provides blanket exemptions to intelligence and security organisations to hide behind a veil of secrecy. Public scrutiny of purchases and personnel policies of such organisations, for instance, would only advance the causes of probity and justice, without in any conceivable way undermining the security and integrity of the state.</p>	

**CLAUSE 19: RULE MAKING POWER BY COMPETENT AUTHORITY**

Name of Organisation/ Individual	Comments/ Suggestions	Response of Government
Shri Madhav Godbole	This Section lays down that certain matter such as fees to be charged for getting copies of documents are to be prescribed by the Rules. This is unacceptable, but it must be laid down in the Act itself that the fees payable shall not exceed the actual cost incurred in preparation of photocopy, etc.	

**PART 2: OTHER IMPORTANT ISSUES THAT ARE NOT COVERED BY THE BILL**

NO.	COMMENTS AND SUGGESTIONS OF WITNESSES	RESPONSE OF THE GOVERNMENT
1.	<b>APPLICABILITY OF THE ACT:</b> The applicability of the Act should not be restricted to only citizens, information should be available to all PERSONS under the Act. The Supreme Court has recognized that Right to Know is an integral part of Right to Life and Liberty and Right to Equality. Since the Right to Life and Liberty and Right to Equality are available to all persons and not restricted to only citizens, the right to information should be available to all persons	
2.	<b>AMBIT OF THE BILL:</b> The Bill should apply to the private sector, co-operatives, political parties, non-government organisations, trusts, trade unions, societies and all other organisations and associations. Private companies and individuals that do work or have business that affects public interest should come within the purview of the law. People have the right to know about information that affects their interest, in terms of their health, safety, environment and life in general.	
3.	<b>COMPULSORY DISCLOSURE OF INFORMATION IN PUBLIC INTEREST:</b> the Bill must provide for compulsory and mandatory disclosure of information by public and private bodies of information that relates to public health, safety, human rights and environment. The Bill must provide for a communities right to know information that affects their health, safety, environment and human rights.	

4.	<p><b>EXEMPTION FROM PAYMENT OF FEES:</b> The Bill must clearly lay down exemptions to certain groups/ individuals who for genuine reasons cannot pay the fees stipulated. There must be a procedure laid down for collection of fees and when fees will be collected - at the application stage or when the information is actually provided.</p>	
5.	<p><b>PENALTY CLAUSES:</b> The absence of penalty clauses is fatal the Bill which renders all its provisions toothless. There has to be penalty for giving incorrect, incomplete, or misleading information and a higher penalty of giving wrong information and for repeatedly giving wrong information. Penalties must include the right to award exemplary or punitive damages. Further there has to be a right to initiate disciplinary action against the authority that has refused information. The following Section may be incorporated in the Bill:</p> <p>(1) A person who wrongfully denies access to information, or with intent to deny a right of access to information in terms of this Act</p> <ul style="list-style-type: none"> <li>a) destroys , damages or alter a record;</li> <li>b) conceals a record;</li> <li>c) falsifies a record or makes a false record commits an offence and is liable on conviction to a fine of Rs 50,000 or to imprisonment for a period not exceeding two years.</li> </ul> <p>Any Public Authority that does not comply with the provisions of this Act, (including but not limited to the obligations set out in Section 4 of the Act), the Public Information Officer of such Public Authority shall be subject to disciplinary action, unless there are valid reasons on record that show that valid circumstances exist which prohibited the Public Authority from complying with the provisions of this Act.</p>	

6.	<b>INDEPENDENT APPEAL MECHANISM:</b> the Bill does not provide for an independent appeals mechanism which is the hallmark of Freedom of Information Legislation the world over.	
7.	<b>INDEPENDENT MONITORING AUTHORITY:</b> There has to be some kind of a provision for monitoring the implementation of the Bill. There should be councils set up for monitoring the implementation of the Bill at district, state and central level, or a annual report should be presented to Parliament or State Legislature setting out inter alia details on how many requests for information were received, how many were responded to, how many were rejected and time taken for response.	
8.	<b>INCLUSION OF LOCAL BODIES IN IMPLEMENTATION OF ACT:</b> Local bodies at grass roots level should be included and defined as competent authorities to implement the Act.	
9.	<b>PROTECTION TO WHISTLE-BLOWERS:</b> Provisions for providing protection to "Whistleblowers" must be added. The Bill should contain provisions for protection of persons who use information to expose wrong doing and also protection of officers of government who make available information in public interest. No Law on the right to information would be complete without protection to "Whistleblowers".	

10.	<p><b>GUIDE TO USE THE LEGISLATION:</b> Provisions for publication of a guide to use the Act and to publicise it must be added. Unlike other legislation's, merely notifying this legislation in the official gazette would not serve the purpose of the legislation. The Law itself must cast a duty on the public authorities to publicise the law using mass communication channels. Further the law must cast an obligation on the appropriate governments to publish a guide to use the Act, so that people are aware of the process that needs to be followed in order to access information under the Act and the recourse available to them if information is wrongfully denied to them.</p>	
11.	<p><b>CODE OF INSTRUCTIONS:</b> Code of instructions for providing information should be made available. There must be a specific provision in the Bill, which casts a duty on public authorities to prepare documents, which enable people to know from which authority, office and where information will be available.</p>	

**PART 2: OTHER IMPORTANT ISSUES THAT ARE NOT COVERED BY THE BILL**

NO	COMMENTS AND SUGGESTIONS OF WITNESSES	RESPONSE OF THE GOVERNMENT
12.	<p><b>APPLICABILITY OF THE ACT:</b> The applicability of the Act should not be restricted to only citizens, information should be available to all PERSONS under the Act. The Supreme Court has recognized that Right to Know is an integral part of Right to Life and Liberty and Right to Equality. Since the Right to Life and Liberty and Right to Equality are available to all persons and not restricted to only citizens, the right to information should be available to all persons.</p>	
13.	<p><b>AMBIT OF THE BILL:</b> The Bill should apply to the private sector, co-operatives, political parties, non-government organisations, trusts, trade unions, societies and all other organisations and associations. Private companies and individuals that do work or have business that affects public interest should come within the purview of the law. People have the right to know about information that affects their interest, in terms of their health, safety, environment and life in general.</p>	
14.	<p><b>COMPULSORY DISCLOSURE OF INFORMATION IN PUBLIC INTEREST:</b> the Bill must provide for compulsory and mandatory disclosure of information by public and private bodies of information that relates to public health, safety, human rights and environment. The Bill must provide for a communities right to know information that affects their health, safety, environment and human rights.</p>	

15.	<p><b>EXEMPTION FROM PAYMENT OF FEES:</b> The Bill must clearly lay down exemptions to certain groups/ individuals who for genuine reasons cannot pay the fees stipulated. There must be a procedure laid down for collection of fees and when fees will be collected - at the application stage or when the information is actually provided.</p>	
16.	<p><b>PENALTY CLAUSES:</b> The absence of penalty clauses is fatal the Bill which renders all its provisions toothless. There has to be penalty for giving incorrect, incomplete, or misleading information and a higher penalty of giving wrong information and for repeatedly giving wrong information. Penalties must include the right to award exemplary or punitive damages. Further there has to be a right to initiate disciplinary action against the authority that has refused information. The following Section may be incorporated in the Bill:</p> <p>(1) A person who wrongfully denies access to information, or with intent to deny a right of access to information in terms of this Act</p> <p>d) destroys , damages or alter a record;</p> <p>e) conceals a record;</p> <p>f) falsifies a record or makes a false record commits an offence and is liable on conviction to a fine of Rs 50,000 or to imprisonment for a period not exceeding two years.</p> <p>Any Public Authority that does not comply with the provisions of this Act, (including but not limited to the obligations set out in Section 4 of the Act), the Public Information Officer of such Public Authority shall be subject to disciplinary action, unless there are valid reasons on record that show that valid circumstances exist which prohibited the Public Authority from complying with the provisions of this Act.</p>	

17.	<b>INDEPENDENT APPEAL MECHANISM:</b> the Bill does not provide for an independent appeals mechanism which is the hallmark of Freedom of Information Legislation the world over.	
18.	<b>INDEPENDENT MONITORING AUTHORITY:</b> There has to be some kind of a provision for monitoring the implementation of the Bill. There should be councils set up for monitoring the implementation of the Bill at district, state and central level, or a annual report should be presented to Parliament or State Legislature setting out inter alia details on how many requests for information were received, how many were responded to, how many were rejected and time taken for response.	
19.	<b>INCLUSION OF LOCAL BODIES IN IMPLEMENTATION OF ACT:</b> Local bodies at grass roots level should be included and defined as competent authorities to implement the Act.	
20.	<b>PROTECTION TO WHISTLE-BLOWERS:</b> Provisions for providing protection to "Whistleblowers" must be added. The Bill should contain provisions for protection of persons who use information to expose wrong doing and also protection of officers of government who make available information in public interest. No Law on the right to information would be complete without protection to "Whistleblowers".	

21.	<p><b>GUIDE TO USE THE LEGISLATION:</b> Provisions for publication of a guide to use the Act and to publicise it must be added. Unlike other legislation's, merely notifying this legislation in the official gazette would not serve the purpose of the legislation. The Law itself must cast a duty on the public authorities to publicise the law using mass communication channels. Further the law must cast an obligation on the appropriate governments to publish a guide to use the Act, so that people are aware of the process that needs to be followed in order to access information under the Act and the recourse available to them if information is wrongfully denied to them.</p>	
22.	<p><b>CODE OF INSTRUCTIONS:</b> Code of instructions for providing information should be made available. There must be a specific provision in the Bill, which casts a duty on public authorities to prepare documents, which enable people to know from which authority, office and where information will be available.</p>	

(43)

(2)

Clause No.	RIGHT TO INFORMATION BILL, 2004 AS INTRODUCED IN LOK SABHA	RIGHT TO INFORMATION BILL AS SUGGESTED BY PARLIAMENTARY STANDING COMMITTEE	RECOMMENDATIONS OF GROUP OF MINISTERS	COM
P R E A M B L E	A Bill to provide for setting out the practical regime of right to information for people to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and for matters connected therewith or incidental thereto.	A Bill to provide for setting out the practical regime of right to information for people to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and for matters connected therewith or incidental thereto.  WHEREAS the Government of India has decided to introduce a Bill to provide for setting out the practical regime of right to information for people to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and for matters connected therewith or incidental thereto;  AND WHEREAS the Government of India has decided to introduce a Bill to provide for setting out the practical regime of right to information for people to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and for matters connected therewith or incidental thereto;  AND WHEREAS the Government of India has decided to introduce a Bill to provide for setting out the practical regime of right to information for people to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and for matters connected therewith or incidental thereto;  NOW, ENACTED IN PARLIAMENT, IN THE SEVENTH YEAR OF THE REPUBLIC OF INDIA, THAT the Bill shall be enacted with the amendments thereunto made by the Parliament.	Approved the formulation of the Standing Committee.	
	CHAPTER I. PRELIMINARY	CHAPTER I. PRELIMINARY		

1.	<p>(1) This Act may be called the Right to Information Act, 2000.</p> <p>(2) It extends to the whole of India except the State of Jammu and Kashmir.</p> <p>(3) It shall come into force on the one hundred and twentieth day of its enactment.</p>	<p>(1) This Act may be called the Right to Information Act, 2000.</p> <p>(2) It extends to the whole of India except the State of Jammu and Kashmir.</p> <p>(3) It shall come into force on the one hundred and twentieth day of its enactment.</p>	<p>Approved the formulation of the Standing Committee with further recommendation that keeping in view the preparatory action envisaged in clause 4(1), sub-clauses (1) and (2) of clause 5, clause 12, clause 14.A, clause 21 and clause 24, these subsections may be separately brought into force on the day the Bill is assented to by the President.</p>
2.	<p>In this Act, unless the context otherwise requires, -</p> <p>(c) "Government", in relation to a public authority established, constituted, owned, substantially financed by funds provided directly or indirectly or controlled by the Central Government or a Union territory administration, means the Central Government;</p>	<p>In this Act, unless the context otherwise requires,—</p> <p>(aa) "appropriate Government" means in relation to a public authority which is established, constituted, owned or substantially financed -</p> <p>(i) by the Central Government or the Union territory administration, the Central Government;</p> <p>(ii) by the State Government, the State Government;</p>	<p>Approved the formulation of the Standing Committee with further recommendation that</p> <p>(i) the definition of the expression 'public authority' may be suitably redrafted to</p>

	<p>(b) "competent authority" means-</p> <ul style="list-style-type: none"> <li>(i) the Speaker in the case of the House of the People or the Legislative Assembly of a Union territory and the Chairman in the case of the Council of States;</li> <li>(ii) the Chief Justice of India in the case of the Supreme Court;</li> <li>(iii) the Chief Justice of the High Court of Delhi;</li> <li>(iv) the President in the case of other authorities created by or under the Constitution;</li> <li>(v) the administrator appointed under article 239 of the Constitution;</li> </ul>	<p>(b) "competent authority" means—</p> <ul style="list-style-type: none"> <li>(i) the Speaker in the case of the House of the People or the Legislative Assembly of a State or a Union territory and the Chairman in the case of the Council of States or a Legislative Council of a State;</li> <li>(ii) the Chief Justice of India in the case of the Supreme Court;</li> <li>(iii) <u>the Chief Justice of the High Court in the case of a High Court;</u></li> <li>(iv) <u>the President or the Governor, as the case may be,</u> in the case of other authorities created by or under the Constitution;</li> <li>(v) the administrator appointed under article 239 of the Constitution;</li> </ul>	<p>indicate that in its applicability to the non-Government organizations, the Act shall cover only such of these organizations which are substantially financed, directly or indirectly, by the government; and</p> <p>(ii) the words 'and includes a public authority' occurring in the definition of the expression 'third party' as given in sub-clause (k) of the Government's Bill, may be <b>retained.</b></p>
	<p>(j) "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to-</p> <ul style="list-style-type: none"> <li>(i) inspection of work, documents, records;</li> <li>(ii) taking notes, extracts, or certified copies of documents or records;</li> <li>(iii) taking certified samples of material;</li> <li>(iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;</li> </ul>	<p>(j) "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to-</p> <ul style="list-style-type: none"> <li>(i) inspection of work, documents, records;</li> <li>(ii) taking notes, extracts, or certified copies of documents or records;</li> <li>(iii) taking certified samples of material;</li> <li>(iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;</li> </ul>	

	<p>(a) "Commission" means the Central Information Commission constituted under section 12;</p> <p>(e) "Information Commissioner" and "Deputy Information Commissioners" mean the Information Commissioner and the Deputy Information Commissioners appointed under sub-section (3) of section 12;</p>	<p>(b) "Central Information Commissioner" and "Central Deputy Information Commissioners" mean the Central Information Commissioner and the Deputy Central Information Commissioners appointed under sub-section (3) of section 12;</p> <p>(d) "State Information Commissioner" means the State Information Commissioner constituted under sub-section (1) of section 17;</p> <p>(f) "State Information Commissioners" and "Deputy State Information Commissioners" mean the State Information Commissioners and the Deputy State Information Commissioners appointed under sub-section (3) of section 17;</p>		
	<p>(d) "information" means any material in any form, including records, documents, memos, emails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;</p>	<p>(d) "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;</p>		
	<p>(f) "prescribed" means prescribed by rules made under this Act by the Government or the competent authority, as the case may be;</p>	<p>(f) "prescribed" means prescribed by rules made under this Act by the appropriate Government or the competent authority, as the case may be;</p>		

<p>(g) "public authority" means any authority or body established or constituted:-</p> <p>(i) by or under the Constitution;</p> <p>(ii) by any other law made by Parliament;</p> <p>(iii) by notification issued or order made by the Government;</p> <p>and includes any other body owned or controlled by the Government;</p>	<p>(g) "public authority" means any <u>legal</u> authority or <u>local</u> body or <u>local</u> Self Government <u>institution</u> established or constituted. —</p> <p>(i) by or under the Constitution;</p> <p>(ii) by any other law made by Parliament;</p> <p>(iii) by <u>any other law made by State Legislature</u>;</p> <p>(iv) by notification issued or order made by the <u>appropriate</u> Government.</p> <p>and includes any <u>non-Government organisation</u> or any other body owned, controlled <u>or substantially financed by funds provided directly or indirectly</u> by the <u>appropriate</u> Government;</p>		
<p>(h) "Public Information Officer" means the Public Information Officer appointed under sub-section (1), and includes an Assistant Public Information Officer designated as such under sub-section (2), of section 5;</p>	<p>(h) "Central Public Information Officer" means the <u>Central</u> Public Information Officer appointed under sub-section (1), and includes an Assistant central Public Information Officer designated as such under sub-section (2), of section 5;</p> <p>(ii) "State Public Information Officer" means the <u>State</u> Public Information Officer appointed under sub-section (1), and includes an <u>State</u> Assistant Information Officer designated as such under sub-section (2) of section 17A.</p>		

	<p>(i) "record" includes—</p> <p>(i) any document, manuscript and file;</p> <p>(ii) any microfilm, microfiche and facsimile copy of a document;</p> <p>(iii) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and</p> <p>(iv) any other material produced by a computer or any other device;</p>	<p>(i) "record" includes—</p> <p>(i) any document, manuscript and file;</p> <p>(ii) any microfilm, microfiche and facsimile copy of a document;</p> <p>(iii) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and</p> <p>(iv) any other material produced by a computer or any other device;</p>		
	<p>(k) "third party" means a person other than the person making a request for information and includes a public authority.</p>	<p>(k) "third party" means a person other than the person making a request for information.</p>		
	CHAPTER II	CHAPTER II		
	RIGHT TO INFORMATION AND OBLIGATIONS OF PUBLIC AUTHORITIES	RIGHT TO INFORMATION AND OBLIGATIONS OF PUBLIC AUTHORITIES		
3.	Subject to the provisions of this Act, all citizens shall have the right to information.	Subject to the provisions of this Act, all citizens shall have the right to information	Approved the formulation of the Standing Committee.	

<p>4.</p>	<p>(1) Every public authority shall-</p> <p>(a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated;</p> <p>(b) publish before the commencement of this Act,-</p> <p>(i) the particulars of its organisation, functions and duties;</p> <p>(ii) the powers and duties of its officers and employees;</p> <p>(iii) the procedure followed in the decision making process, including channels of supervision and accountability;</p> <p>(iv) the norms set by it for the discharge of its functions;</p> <p>(v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;</p> <p>(vi) a statement of the categories of documents that are held by it or under its control;</p> <p>(vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or thereof;</p> <p>(viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advise, and as to whether meetings of those</p>	<p>(1) Every public authority shall-</p> <p>(a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated;</p> <p>(b) publish before the commencement of this Act,—</p> <p>(i) the particulars of its organisation, functions and duties;</p> <p>(ii) the powers and duties of its officers and employees;</p> <p>(iii) the procedure followed in the decision making process, including channels of supervision and accountability;</p> <p>(iv) the norms set by it for the discharge of its functions;</p> <p>(v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;</p> <p>(vi) a statement of the categories of documents that are held by it or under its control;</p> <p>(vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or thereof;</p> <p>(viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advise, and as to whether meetings of those</p>	<p>Approved the formulation of the Standing Committee with further recommendation that</p> <p>(i) <u>sub-clause (1)(e)</u> shall be <u>deleted</u>;</p> <p><u>and</u></p> <p>(ii) the words 'and comprehensible' occurring in sub-clause (3) may be <u>deleted</u>.</p>	
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<p>5.</p>	<p>(1) Every public authority shall, within one hundred days of the enactment of this Act designate as many officers as Public Information Officers in all administrative units or offices under it as may be necessary to provide information to persons requesting for the information under this Act.</p> <p>(2) Without prejudice to the provisions of sub-section (1), every public authority shall designate an officer, within one hundred days of the enactment of this Act, at each sub-divisional level or other sub-district level as an Assistant Public Information Officer to receive the applications for information or appeals under this Act for forwarding the same forthwith to it or to the Government:</p> <p>Provided that where an application for information or appeal is given to an Assistant Public Information Officer, a period of five days shall be added in computing the period for response specified under sub-section (1) of section 7.</p> <p>(3) Every Public Information Officer shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information.</p> <p>(4) The Public Information Officer may seek the assistance of any other officer as he or she considers it necessary for the proper discharge of his or her duties.</p> <p>(5) Any officer whose assistance has been sought under sub-section (4), shall render all assistance to the Public Information Officer seeking his or her assistance and for the purposes of any contravention of the provisions of this Act such other officer shall be treated as a Public Information Officer.</p>	<p>(7) Every public authority shall, within one hundred days of the enactment of this Act, designate as many officers as <u>the Central Public Information Officers or the State Public Information Officers</u>, as the case may be, in all administrative units or offices under it as may be necessary to provide information to persons requesting for the information under this Act.</p> <p>(2) Without prejudice to the provisions of sub-section (7), every public authority shall designate an officer, within one hundred days of the enactment of this Act, at each sub-divisional level or other sub-district level as <u>the Central Assistant Public Information Officer or the State Assistant Public Information Officer</u>, as the case may be, to receive the applications for information or appeals under this Act for forwarding the same forthwith to it or to the <u>appropriate</u> Government:</p> <p>Provided that where an application for information or appeal is given to a <u>Central or State</u> Assistant Public Information Officer, a period of five days shall be added in computing the period for response specified under sub-section (7) of section 7.</p> <p>(3) Every <u>Central or State</u> Public Information Officer shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information.</p>	<p>Approved the formulation of the Standing Committee with further recommendation that <u>sub-clauses (4) and (5), as in the Government's Bill, may be retained.</u></p>	
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<p>6.</p>	<p>(1) A person who desires to obtain any information under this Act shall make a request in writing or through electronic means in English or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to -</p> <p>(a) the Public Information Officer of the concerned public authority;</p> <p>(b) the Assistant Public Information Officers.</p> <p>specifying the particulars of the information sought by him or her;</p> <p>Provided that where such request cannot be made in writing, the Public Information Officer shall render all reasonable assistance to the person making the request orally to reduce the same in writing.</p> <p>(2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.</p> <p>(3) Where an application is made to a public authority requesting for an information, -</p> <p>(i) which is held by another public authority; or</p> <p>(ii) the subject matter of which is more closely connected with the functions of another public authority,</p> <p>the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer.</p> <p>Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of</p>	<p>(1) A person who desires to obtain any information under this Act shall make a request in writing or through electronic means in English or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to—</p> <p>(a) the <u>Central or State</u> Public Information Officer of the concerned public authority;</p> <p>(b) the <u>Central or State</u> Assistant Public Information Officers designated by the concerned public authority.</p> <p>specifying the particulars of the information sought by him or her;</p> <p>Provided further that where such request cannot be made in writing, the <u>Central Public Information Officer or the State Public Information Officer</u> shall render all reasonable assistance to the person making the request orally to reduce the same in writing.</p> <p>(2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.</p> <p>(3) Where an application is made to a public authority requesting for an information,—</p> <p>(i) which is held by another public authority; or</p> <p>(ii) the subject matter of which is more closely connected with the functions of another public authority,</p> <p>the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer.</p> <p>9</p> <p>Provided that the transfer of an application</p>	<p>Approved the formulation of the Standing Committee with further recommendation that a suitable provision may be made whereby a person could make a request in <u>Hindi</u> also apart from English or in the official language of the area in which the application is being made.</p>
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<p>7.</p>	<p>(1) Subject to the proviso to sub-section (2) of section 5 or the proviso to sub-section (3) of section 6, the Public Information Officer on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9:</p> <p>Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.</p> <p>(2) If the Public Information Officer fails to give decision on the request for information within the period specified under sub-section (1), the Public Information Officer shall be deemed to have refused the request.</p> <p>(3) Where a decision is taken to provide the information on payment of any further fee representing the cost of providing the information, the Public Information Officer shall send an intimation to the person making the request, giving -</p> <p>(a) the details of further fees representing the cost of providing the information as determined by him, together with the calculations made to arrive at the amount in accordance with fee prescribed under sub-section (1), requesting him to deposit that 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 thirty days referred to in that sub-section;</p> <p>(b) information concerning his or her right with respect to review the decision as to the amount of fees charged or the form of access provided, including the particulars</p>	<p>(1) Subject the proviso to sub-section (2) of section 5 or the proviso to sub-section (3) of section 6, the <u>Central Public Information Officer or the State Public Information Officer</u> on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within <b>thirty days</b> of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9:</p> <p>Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.</p> <p>(2) If the <u>Central Public Information Officer or the State Public Information Officer</u> fails to give decision on the request for information within the period specified under sub-section (1), <u>such</u> Public Information Officer shall be deemed to have refused the request.</p> <p>(3) Where a decision is taken to provide the information on payment of any further fee representing the cost of providing the information, the <u>Central Public Information Officer or the State Public Information Officer</u> shall send an intimation to the person making the request, giving—</p> <p>(a) the details of further fees representing the cost of providing the information as determined by him, together with the calculations made to arrive at the amount in accordance with fee prescribed under sub-section (1), requesting him to deposit that 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 <b>thirty days</b> referred to in that sub-section: 10</p> <p>(b) information concerning his or her right with respect to review the decision as to the</p>	<p>Approved the formulation of the Standing Committee with further recommendation that the response time to a request indicated in sub-clause (1) and (3) may be substituted as '60 days' in place of '30 days'.</p> <p>The Group also approved the recommendation of the Standing Committee, as agreed to by the Department of Personnel &amp; Training to insert a sub-clause, after sub-clause 3(a), so that to provide that</p> <p>(a) the fee shall be reasonable; and</p> <p>(b) 'Below Poverty Line' families shall be provided information free of cost.</p>	
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8.	<p>(1) Notwithstanding anything contained in this Act, except as otherwise provided herein, the following information shall be exempted from disclosure, namely:-</p> <p>(a) information, the disclosure of which would,-</p> <p>(i) prejudicially affect the sovereignty and integrity of India, security, strategic, scientific or</p>	<p>(1) Nothing in the foregoing sections shall compel any public authority to disclose the following :-</p> <p>(a) information which, if disclosed will prejudicially affect the sovereignty and integrity of India or the defence and security of India or relations with foreign States and which has been classified as such in pursuance of any rule or order made by the appropriate government:</p>	<p>The Group approved the formulation as suggested by the National Advisory Council, <b>reproduced as under, subject to the deletion of the first proviso, as also the words 'or twenty five' from the second proviso. :</b></p> <p>(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any person:</p>	
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	<p>economic interest of the State, relation with foreign State; or</p> <p>(ii) lead to an incitement to commit an offence:</p> <p>(b) information, which has been expressly forbidden to be disclosed by any court of law or tribunal or the disclosure of which may constitute contempt of court;</p> <p>(c) information, the disclosure of which may result in a breach of privileges of Parliament or the Legislature of a State;</p> <p>(d) information, including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party:</p> <p>Provided that such information may be disclosed, if the Public Information Officer is satisfied that a larger public interest warrants the disclosure of such information:</p> <p>(e) information available to a person in his fiduciary relationship:</p> <p>Provided that such information may be disclosed, if the Public Information Officer is satisfied that a larger public interest warrants the disclosure of such information;</p> <p>(f) information received in confidence from a foreign government;</p> <p>(g) information, the disclosure of which would endanger the life or physical safety of any person or cause to identify the source of information or assistance given in confidence of law enforcement or security purposes;</p> <p>(h) information, the disclosure of which would impede the process of investigation or apprehension or</p>	<p>(b) information, which has been expressly forbidden to be disclosed by any court of law or tribunal or the disclosure of which may constitute contempt of court;</p> <p>(c) legitimate trade secrets, and commercial or financial information obtained from or furnished by a third party or condition of strict confidentiality;</p> <p>(d) information the disclosure of which will lead to identification of an informer or his sources of information or which would endanger the life or safety of any person for having furnished material information useful to the Indian nation or would materially hamper investigations into crimes or other law enforcement activities;</p> <p>(e) the Cabinet papers, including records of deliberations of the Council of Ministers, Secretaries and other officers:</p> <p>Provided that the decisions of the Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken, shall be made public after the decision has been taken, and the matter is complete, or over;</p> <p>Provided further that those matters which come under the exemptions listed in this section shall not be disclosed;</p> <p>(f) information not related to operations of appropriate government or its instrumentalities and disclosure of which would constitute a clear unwarranted invasion of privacy of an individual.</p>	<p>no obligation to give any person:</p> <p>(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;</p> <p>(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court ;</p> <p>c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature ;</p> <p>d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the Competent Authority is</p>
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9.	Without prejudice to the provisions of section 8, a Public Information Officer may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.	Without prejudice to the provisions of section 8, a Central or State Public Information Officer may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.	Approved the formulation of the Standing Committee.	
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10.	<p>(1) Where a request for access to information is rejected on the ground that it is in relation to information which is exempt from disclosure, then, notwithstanding anything contained in this Act, access may be provided to that part of the record which does not contain any information which is exempt from disclosure under this Act and which can reasonably be severed from any part that contains exempt information.</p> <p>(2) Where access is granted to a part of the record under sub-section (1), the Public Information Officer shall give a notice to the applicant, informing,-</p> <ul style="list-style-type: none"> <li>(a) that only part of the record requested, after severance of the record containing information which is exempt from disclosure, is being provided;</li> <li>(b) the reasons for the decision including any findings on any material question of fact, referring to the material on which those findings were based;</li> <li>(c) the name and designation of the person giving the decision;</li> <li>(d) the details of the fees determined by him or her and the amount of fee which the applicant is required to deposit, and</li> <li>(e) his or her rights with respect to review of the decision regarding non-disclosure of part of the information, the amount of fee charged or the form of access provided, including the particulars of the appellate authority, time limit, process and any other forms.</li> </ul>	<p>(1) Where a request for access to information is rejected on the ground that it is in relation to information which is exempt from disclosure, then, notwithstanding anything contained in this Act, access may be provided to that part of the record which does not contain any information which is exempt from disclosure under this Act and which can reasonably be severed from any part that contains exempt information.</p> <p>(2) Where access is granted to a part of the record under sub-section (1) the Public Information Officer shall give a notice to the applicant, informing,-</p> <ul style="list-style-type: none"> <li>(a) that only part of the record requested, after severance of the record containing information which is exempt from disclosure, is being provided;</li> <li>(b) the reasons for the decision, including any findings on any material question of fact, referring to the material on which those findings were based;</li> <li>(c) the name and designation of the person giving the decision;</li> <li>(d) the details of the fees determined by him or her and the amount of fee which the applicant is required to deposit, and</li> <li>(e) his or her rights with respect to review of the decision regarding non-disclosure of part of the information, the amount of fee charged or the form of access provided, including the particulars of the appellate authority, time limit, process and any other forms.</li> </ul>	Approved the formulation of the Standing Committee.	
11.	(1) Where a public authority intends to disclose any information or record, or part thereof on a request made under this Act,	(1) Where a public authority intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or	Approved the formulation of the Standing Committee with further recommendation that the time	

	shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 15 against the decision.	(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 15 against the decision.		
	CHAPTER III: THE CENTRAL INFORMATION COMMISSION	CHAPTER III: THE CENTRAL INFORMATION COMMISSION		
12.	<p>(1) The Central Government shall, by notification in the Official Gazette, constitute a body to be known as the Central Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.</p> <p>(2) The Commission shall consist of -</p> <p>(a) the Information Commissioner; and</p> <p>(b) such number of Deputy Information Commissioners not exceeding ten as may be deemed necessary.</p> <p>(3) The Information Commissioner and the Deputy Information Commissioners shall be appointed by the President on the recommendation of a committee consisting of-</p> <p>(i) the Prime Minister, who shall be the Chairperson of the committee;</p> <p>(ii) the Leader of Opposition in the Lok Sabha; and</p> <p>(iii) the Chief Justice of India</p> <p><i>Explanation.-</i> For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the House of the</p>	<p>(1) The Central Government shall, by notification in the Official Gazette, constitute a body to be known as the Central Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.</p> <p>(2) The Central Information Commission shall consist of -</p> <p>(a) the <i>Central Information Commissioner</i>; and</p> <p>(b) such number of <i>Central Deputy Information Commissioners</i> not exceeding ten as may be deemed necessary.</p> <p>(3) The Central Information Commissioner and the Central Deputy Information Commissioners shall be appointed by the President on the recommendation of a committee consisting of-</p> <p>(i) the Prime Minister, who shall be the Chairperson of the committee;</p> <p>(ii) the Leader of Opposition in the Lok Sabha; and</p> <p>(iii) <i>the Chief Justice of India.</i></p> <p><i>Explanation.-</i> For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the House of the People has not been recognised as such, the Leader of the single largest group in opposition of the Government in the House of the People shall be</p>	<p>Approved the formulation of the Standing Committee with further recommendation that the</p> <p>(i) Central Information Commissioner shall be designated as Chief Information Commissioner and the Central Deputy Information Commissioner as Information Commissioner;</p> <p>(ii) third member of the Committee shall be a Minister nominated by the Prime Minister in place of the Chief Justice of India;</p> <p>The Group also recommended that sub-clause (6) in the Government's Bill debarring the Chief Information Commissioner and the Information Commissioner from being a Member of Parliament, holding any office of profit under the Govt., etc., should be <u>retained</u>.</p>	

<p>People has not been recognised as such, the Leader of the single largest group in opposition of the Government in the House of the People shall be deemed to be the Leader of the Opposition.</p> <p>(4) The general superintendence, direction and management of the affairs of the Commission shall vest in the Information Commissioner who shall be assisted by the Deputy Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the Commission autonomously without being subjected to directions by any other authority under this Act.</p> <p>(5) The Information Commissioner and the Deputy Information Commissioners shall be persons of eminence in public life with wide knowledge and experience of administration and governance.</p> <p>(6) The Information Commissioner or a Deputy Information Commissioner shall not be a member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.</p> <p>(7) The headquarters of the Commission shall be at Delhi and the Commission may with the previous approval of the Central Government, establish offices at other places in India.</p> <p>(8) Every Deputy Information Commissioner shall perform his functions within such area as may be specified by the Central Government.</p>	<p>deemed to be the Leader of the Opposition.</p> <p>(4) The general superintendence, direction and management of the affairs of the Central Information Commission shall vest in the Central Information Commissioner who shall be assisted by the Central Deputy Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the Central Information Commission autonomously without being subjected to directions by any other authority under this Act.</p> <p>(5) The Central Information Commissioner and the Central Deputy Information Commissioners shall be persons of eminence in public life with wide knowledge and experience of administration and governance.</p> <p style="text-align: center;">*****</p> <p>(7) The headquarters of the Central Information Commission shall be at Delhi and the Central Information Commission may, with the previous approval of the Central Government, establish offices at other places in India.</p> <p style="text-align: center;">*****</p>	
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<p>13.</p>	<p>(1) The Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment.</p> <p>Provided that the Central Government may extend the term of five years by one more year if recommended by the Committee referred to in sub-section (3) of Section 12.</p> <p>Provided further that no Information Commissioner shall hold office as such after he has attained the age of sixty-five years.</p> <p>(2) Every Deputy Information Commissioner shall hold office for a term of four years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier.</p> <p>Provided that every Deputy Information Commissioner shall, on vacating his office under this sub-section, be eligible for appointment as the Information Commissioner in the manner specified in sub-section (3) of section 12.</p> <p>Provided further that where the Deputy Information Commissioner is appointed as the Information Commissioner, his term of office shall not be more than five years in aggregate as the Deputy Information Commissioner and the Information Commissioner.</p> <p>(3) The Information Commissioner or a Deputy Information Commissioner, shall before he enters upon his office make and subscribe before the President or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.</p>	<p>(1) The Central Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment.</p> <p><b>Provided that the Central Government may extend the term of five years by one more year if recommended by the Committee referred to in sub-section (3) of Section 12:</b></p> <p>Provided further that no Central Information Commissioner shall hold office as such after he has attained the age of sixty-five years.</p> <p>(2) Every Central Deputy Information Commissioner shall hold office for a term of four years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier.</p> <p>Provided that every Central Deputy Information Commissioner shall, on vacating his office under this sub-section, be eligible for appointment as the Information Commissioner in the manner specified in sub-section (3) of section 12.</p> <p>Provided further that where the Central Deputy Information Commissioner is appointed as the Information Commissioner, his term of office shall not be more than five years in aggregate as the Deputy Information Commissioner and the Information Commissioner.</p> <p>(3) The Central Information Commissioner or a Deputy Information Commissioner, shall before he enters upon his office make and subscribe before the President or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.</p>	<p>Approved the formulation of the Standing Committee with further recommendation that</p> <ul style="list-style-type: none"> <li>(i) the Chief Information Commissioner or the Information Commissioner shall have a single tenure of 5 years or till he attains the age of 65 years, whichever is earlier;</li> <li>(ii) no extension of tenure shall be given; and</li> <li>(iii) where the Information Commissioner is appointed as Chief Information Commissioner, his tenure shall not be more than 5 years in aggregate.</li> </ul>	
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<p>(4) The Information Commissioner or a Deputy Information Commissioner may, at any time, by writing under his hand addressed to the President, resign from his office:</p> <p>Provided that the Information Commissioner or a Deputy Information Commissioner may be removed in the manner specified under section 14.</p> <p>(5) The Information Commissioner or a Deputy Information Commissioner shall, on cessation of his office, not be eligible for -</p> <p>(a) any diplomatic assignment, assignment as administrator of a Union territory or such other assignment or appointment which is required by law to be made by the President by warrant under his hand and seal;</p> <p>(b) further employment to any office of profit under the Government of India or the Government of a State.</p> <p>(6) The salaries and allowances payable to and other terms and conditions of service of -</p> <p>(a) the Information Commissioner shall be the same as that of a Secretary to the Government of India;</p> <p>(b) the Deputy Information Commissioner shall be the same as that of a Joint Secretary or an Additional Secretary to the Government of India.</p> <p>Provided that if the Information</p>	<p>(4) The Central Information Commissioner or a Deputy Information Commissioner may, at any time, by writing under his hand addressed to the President, resign from his office.</p> <p>Provided that the Central Information Commissioner or a Central Deputy Information Commissioner may be removed in the manner specified under section 14.</p> <p>*****</p> <p>(5) The salaries and allowances payable to and other terms and conditions of service of -</p> <p>(a) the Central Information Commissioner shall be the same as that of a Chief Election Commissioner of India;</p> <p>(b) the Central Deputy Information Commissioner shall be the same as that of a Election Commissioner of India.</p> <p>Provided that if the Central Information Commissioner or a Central Deputy Information Commissioner at the time of his appointment is,</p>	
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Commissioner or a Deputy Information Commissioner, at the time of his appointment is, in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the Information Commissioner or a Deputy Information Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity:

Provided further that if the Information Commissioner or a Deputy Information Commissioner, at the time of his appointment is, in receipt of retirement benefits in respect of any previous service rendered in a Corporation established by or under any Central Act or State Act or a Government company owned or controlled by the Central Government or the State Government, his salary in respect of the service as the Information Commissioner or the Deputy Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits:

Provided also that the salaries, allowances and the other conditions of service of the Information Commissioner and the Deputy Information Commissioners shall not be varied to their disadvantage after their appointment.

(7) The Central Government shall provide the Information Commissioner and the Deputy Information Commissioners with

in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the Information Commissioner or a Deputy Information Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity:

Provided further that if the Central Information Commissioner or a Central Deputy Information Commissioner, at the time of his appointment is, in receipt of retirement benefits in respect of any previous service rendered in a Corporation established by or under any Central Act or State Act or a Government company owned or controlled by the Central Government or the State Government, his salary in respect of the service as the Information Commissioner or the Deputy Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits:

Provided also that the salaries, allowances and the other conditions of service of the Central Information Commissioner and the Central Deputy Information Commissioners shall not be varied to their disadvantage after their appointment.

(7) The Central Government shall provide the Central Information Commissioner and the Central Deputy Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the other terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed

	such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the other terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.			
14.	<p>(1) Subject to the provisions of sub-section (3), the Information Commissioner or any Deputy Information Commissioner shall be removed from his office only by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Information Commissioner or any Deputy Information Commissioner, as the case may be, ought on such ground be removed.</p> <p>(2) The President may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the Information Commissioner or Deputy Information Commissioner in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.</p> <p>(3) Notwithstanding anything contained in sub-section (1), the President may by order remove from office the Information Commissioner or any Deputy Information Commissioner if the Information Commissioner or a Deputy Information Commissioner, as the case may be,-</p> <p>(a) is adjudged an insolvent; or</p> <p>(b) has been convicted of an offence which in the opinion of the</p>	<p>(1) Subject to the provisions of sub-section (3), the Central Information Commissioner or any Central Deputy Information Commissioner shall be removed from his office only by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Central Information Commissioner or any Central Deputy Information Commissioner, as the case may be, ought on such ground be removed.</p> <p>(2) The President may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the Central Information Commissioner or Central Deputy Information Commissioner in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference.</p> <p>(3) Notwithstanding anything contained in sub-section (1), the President may by order remove from office the Central Information Commissioner or any Central Deputy Information Commissioner if the Central Information Commissioner or a Central Deputy Information Commissioner, as the case may be,-</p> <p>(a) is adjudged an insolvent; or</p> <p>(b) has been convicted of an offence which, in the opinion of the President, involves moral turpitude or</p>	Approved the formulation of the Standing Committee.	

	<p>President, involves moral turpitude, or</p> <p>(c) engages during his term of office in any paid employment outside the duties of his office; or</p> <p>(d) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or</p> <p>(e) has acquired such financial or other interest as is likely to affect prejudicially his functions as an Information Commissioner or a Deputy Information Commissioner.</p> <p>(4) If the Information Commissioner or any Deputy Information Commissioner in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of India or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.</p>	<p>(c) engages during his term of office in any paid employment outside the duties of his office; or</p> <p>(d) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or</p> <p>(e) has acquired such financial or other interest as is likely to affect prejudicially his functions as an Central Information Commissioner or a Central Deputy Information Commissioner.</p> <p>(4) If the Central Information Commissioner or any Central Deputy Information Commissioner is in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of India or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.</p>		
		<p>CHAPTER III A</p> <p>THE STATE INFORMATION COMMISSION AND PUBLIC INFORMATION OFFICER</p>		
14.A		<p>(1) Every State Government shall, by notification in the Official Gazette, constitute a body to be known as the .....name of the State) Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.</p> <p>(2) The State Commission shall consist of—</p> <p>(a) the State Information Commissioner; and</p> <p>(b) such number of State Deputy Information Commissioners not exceeding ten as may be deemed necessary.</p> <p>(3) The State Information Commissioner and the</p>	<p>Approved the formulation of the Standing Committee with further recommendation that</p> <p>(i) the nomenclature of the State Information Commissioner and State Deputy Information Commissioner shall be revised as 'State Chief Information Commissioner' and 'State Information Commissioner'</p>	

	<p>State Deputy Information Commissioners shall be appointed by the Governor on the recommendation of a committee consisting of-</p> <p>(i) the Chief Minister, who shall be the Chairperson of the committee;</p> <p>(ii) the Leader of Opposition in the Legislative Assembly; and</p> <p>(iii) the Chief Justice of High Court.</p> <p><i>Explanation.</i>—For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the Legislative Assembly has not been recognised as such, the Leader of the single largest group in opposition of the Government in the Legislative Assembly shall be deemed to be the Leader of the Opposition.</p> <p>(4) The general superintendence, direction and management of the affairs of the State Commission shall vest in the State Information Commissioner who shall be assisted by the State Deputy Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the State Commission autonomously without being subjected to directions by any other authority under this Act.</p> <p>(5) The State Information Commissioner and the State Deputy Information Commissioners shall be persons of eminence in public life with wide knowledge and experience of law, science and technology, social service, management, journalism, mass media or administration and governance.</p> <p>(6) The headquarters of the State Commission shall be at such place as the State Government may, by notification in the Official Gazette, specify and the State Information Commission may, with the</p>	<p>respectively:</p> <p>(ii) in sub-clause (3), the third Member of the Committee shall be a <b>Minister nominated by the Chief Minister</b> instead of the <b>Chief Justice of High Court</b>.</p>	
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		previous approval of the State Government, establish offices at other places in the State.		
14.B		<p>(1) The State Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment.</p> <p>Provided that the State Government may extend the term of five years by one more year if recommended by the committee referred to in sub-section (3) of section 14A:</p> <p>Provided further that no State Information Commissioner shall hold office as such after he has attained the age of sixty-five years.</p> <p>(2) Every State Deputy Information Commissioner shall hold office for a term of four years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier.</p> <p>Provided that every State Deputy Information Commissioner shall on vacating his office under this sub-section, be eligible for appointment as the State Information Commissioner in the manner specified in sub-section (3) of section 14A:</p> <p>Provided further that where the State Deputy Information Commissioner is appointed as the State Information Commissioner, his term of office shall not be more than five years in aggregate as the State Deputy Information Commissioner and the State Information Commissioner</p> <p>(3) The State Information Commissioner or a State Deputy Information Commissioner, shall before he enters upon his office make and subscribe before the Governor or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.</p> <p>(4) The State Information Commissioner or a</p>	<p>Approved the formulation of the Standing Committee with further recommendation</p> <p>(i) the State Chief Information Commissioner or the State Information Commissioner shall have a single tenure of 5 years or till he attains the age of 65 years, whichever is earlier:</p> <p>(ii) no extension of tenure shall be given; and</p> <p>(iii) where the State Information Commissioner is appointed as State Chief Information Commissioner, his tenure shall not be more than 5 years in aggregate.</p>	

		<p>State Deputy Information Commissioner may, at any time, by writing under his hand addressed to the Governor, resign from his office:</p> <p>Provided that the State Information Commissioner or a State Deputy Information Commissioner may be removed in the manner specified under section 14C.</p> <p>*****</p> <p>(5) The salaries and allowances payable to and other terms and conditions of service of—</p> <p>(a) the State Information Commissioner shall be the same as that of the Election Commissioner of India:</p> <p>(b) the State Deputy Information Commissioner shall be the same as that of the Chief Secretary to the State:</p> <p>Provided that if the State Information Commissioner or a State Deputy Information Commissioner, at the time of his appointment is, in receipt of a pension (other than a disability or wound pension) in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the State Information Commissioner or a State Deputy Information Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity.</p> <p>Provided further that if the State Information Commissioner or a State Deputy Information Commissioner is, at the time of his appointment is, in receipt of retirement benefits in respect of any previous service rendered in a Corporation established by or under any Central Act or State Act or a Government company owned or controlled by the Central Government or the State Government, his salary in respect of the</p>	
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		<p>service as the State Information Commissioner or the State Deputy Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits.</p> <p>Provided also that the salaries, allowances and the other conditions of service of the State Information Commissioner and the State Deputy Information Commissioners shall not be varied to their disadvantage after their appointment.</p> <p>(7) The State Government shall provide the State Information Commissioner and the State Deputy Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the other terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.</p>		
14C.		<p>(1) Subject to the provisions of sub-section (3) the State Information Commissioner or any State Deputy Information Commissioner shall be removed from his office only by order of the Governor on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the Governor, has, on inquiry, reported that the State Information Commissioner or any State Deputy Information Commissioner, as the case may be, ought on such ground be removed.</p> <p>(2) The Governor may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the State Information Commissioner or State Deputy Information Commissioner in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the Governor has passed orders on receipt of the report of the Supreme Court on such reference.</p>	Approved the formulation of the Standing Committee.	

(3) Notwithstanding anything contained in sub-section (1), the Governor may by order remove from office the State Information Commissioner or any State Deputy Information Commissioner if the Information Commissioner or a Deputy Information Commissioner, as the case may be,—

(a) is adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of the Governor, involves moral turpitude; or

(c) engages during his term of office in any paid employment outside the duties of his office; or

(d) is, in the opinion of the Governor, unfit to continue in office by reason of infirmity of mind or body; or

(e) has acquired such financial or other interest as is likely to affect prejudicially his functions as an State Information Commissioner or a State Deputy Information Commissioner.

(4) If the State Information Commissioner or any State Deputy Information Commissioner in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of India or participates in any way in the profit thereof or in any benefit or emolument arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.

CHAPTER III B  
POWERS AND FUNCTIONS OF THE

		INFORMATION COMMISSIONS, APPEAL AND PENALTIES	
15.	<p>(1) Subject to the provisions of this Act, it shall be the duty of the Commission to receive and inquire into a complaint from any person:-</p> <p>(a) who has been unable to submit a request to a Public Information Officer, either by reason that no such officer has been appointed under this Act, or because the Assistant Public Information Officer has refused to accept his or her application for forwarding the same to the public authority or the Government;</p> <p>(b) who has been refused access to any information requested under this Act;</p> <p>(c) who has not been given a response to a request for information or access to information within the time limits specified under this Act;</p> <p>(d) who has been required to pay an amount of fee which he or she considers unreasonable;</p> <p>(e) who believes that he or she has been given incomplete, misleading or false information under this Act; and</p> <p>(f) in respect of any other matter relating to requesting or obtaining access to records under this Act.</p> <p>(2) Where the Commission is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.</p>	<p>(1) Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or the State Information Commission, as the case may be, to receive and inquire into a complaint from any person.—</p> <p>(a) who has been unable to submit a request to a Central or State Public Information Officer, either by reason that no such officer has been appointed under this Act, or because the Central or the State Assistant Public Information Officer has refused to accept his or her application for forwarding the same to the public authority or the appropriate Government;</p> <p>(b) who has been refused access to any information requested under this Act;</p> <p>(c) who has not been given a response to a request for information or access to information within the time limits specified under this Act;</p> <p>(d) who has been required to pay an amount of fee which he or she considers unreasonable;</p> <p>(e) who believes that he or she has been given incomplete, misleading or false information under this Act; and</p> <p>(f) in respect of any other matter relating to requesting or obtaining access to records under this Act.</p> <p>(2) Where the Central Information Commission or the State Information Commission is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.</p>	<p>Approved the formulation of the Standing Committee.</p>

	<p>(3) The Commission shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:-</p> <ul style="list-style-type: none"> <li>(a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;</li> <li>(b) requiring the discovery and inspection of documents;</li> <li>(c) receiving evidence on affidavit;</li> <li>(d) requisitioning any public record or copies thereof from any court or office;</li> <li>(e) issuing summons for examination of witnesses or documents; and</li> <li>(f) any other matter which may be prescribed.</li> </ul> <p>(4) Notwithstanding any thing consistent contained in any other Act of Parliament, the Commission may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds.</p>	<p>in respect thereof.</p> <p>(3) The <u>Central Information Commission or the State Information Commission</u> shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—</p> <ul style="list-style-type: none"> <li>(a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;</li> <li>(b) requiring the discovery and inspection of documents;</li> <li>(c) receiving evidence on affidavit;</li> <li>(d) requisitioning any public record or copies thereof from any court or office;</li> <li>(e) issuing summons for examination of witnesses or documents; and</li> <li>(f) any other matter which may be prescribed.</li> </ul> <p>(4) Notwithstanding anything inconsistent contained in any other Act of Parliament <u>or the State Legislature, as the case may be, the Central Information Commission or the State Information Commission</u> may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds.</p>	
16.	<p>(1) Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Public Information Officer, may within thirty days from the expiry of such period or from</p>	<p>(1) Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the <u>Central Public Information Officer or the State Public Information Officer</u>, may within thirty days</p>	<p>Approved the formulation of the Standing Committee with further recommendation that <u>sub-clause 8(c)</u> and <u>sub-clause 11</u> shall be <u>deleted</u>.</p>

<p>the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Public Information Officer in each public authority:</p> <p>Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.</p> <p>(2) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Commission:</p> <p>Provided that the Commission may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.</p> <p>(3) Where an appeal is preferred against an order made by the Public Information Officer under section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.</p> <p>(4) If the decision of the Public Information Officer against which an appeal is preferred relates to information of a third party, the Commission shall give a reasonable opportunity of being heard to that third party.</p> <p>(5) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the public authority which denied the request.</p>	<p>from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the <u>Central Public Information Officer or the State Public Information Officer, as the case may be</u> in each public authority:</p> <p>Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.</p> <p>(2) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the <u>Central Information Commission or, as the case may be, the State Information Commission</u>:</p> <p>Provided that the <u>Central or the State Information Commission</u> may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.</p> <p>(3) Where an appeal is preferred against an order made by the <u>Central or the State</u> Public Information Officer under section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.</p> <p>(4) If the decision of the <u>Central or the State</u> Public Information Officer against which an appeal is preferred relates to information of a third party, the <u>Central Information Commission or, as the case may be, the State Information Commission</u> shall give a reasonable opportunity of being heard to that third party.</p> <p>(5) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the public authority which denied the request.</p> <p>(6) An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty</p>	
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<p>(6) An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.</p> <p>(7) The decision of the Commission shall be binding.</p> <p>(8) In its decision, the Commission has the power to:-</p> <p>(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including -</p> <ul style="list-style-type: none"> <li>(i) by providing access to information if so requested, in a particular form;</li> <li>(ii) by appointing a Public Information Officer;</li> <li>(iii) by publishing certain information or categories of information;</li> <li>(iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;</li> <li>(v) by enhancing the provision of training on the right to information for its officials;</li> <li>(vi) by providing it with an annual report in compliance with</li> </ul>	<p>section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.</p> <p>(7) The decision of the <u>Central or State Information</u> Commission shall be binding.</p> <p>(8) In its decision, the <u>Central or State Information</u> Commission has the power to:-</p> <p>(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including--</p> <ul style="list-style-type: none"> <li>(i) by providing access to information, if so requested, in a particular form;</li> <li>(ii) by appointing a <u>Central or a State</u> Public Information Officer;</li> <li>(iii) by publishing certain information or categories of information;</li> <li>(iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;</li> <li>(v) by enhancing the provision of training on the right to information for its officials;</li> <li>(vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;</li> </ul> <p>(b) require the public authority to compensate the complainant for any loss or other detriment suffered;</p>	
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	<p>clause (b) of sub-section (1) of section 4:</p> <p>(b) require the public authority to compensate the complainant for any loss or other detriment suffered;</p> <p>(c) impose any of the penalties provided under this Act;</p> <p>(d) reject the application.</p> <p>(9) The Commission shall give notice of its decision, including any right of appeal, to the complainant and the public authority.</p> <p>(10) The Commission shall decide the appeal in accordance with such procedure as may be prescribed.</p> <p>(11) An appeal against the decision of the Commission, shall lie in the High Court on any point of fact and law.</p>	<p>(c) <i>impose any of the penalties provided under this Act;</i></p> <p>(d) reject the application.</p> <p>(9) The <u>Central or the State Information Commission</u> shall give notice of its decision, including any right of appeal, to the complainant and the public authority.</p> <p>(10) The <u>Central or the State Information Commission</u> shall decide the appeal in accordance with such procedure as may be prescribed.</p> <p><b><i>(11) An appeal against the decision of the <u>Central or the State Information Commission</u> shall lie in the High Court on any point of fact and law.</i></b></p>		
17.	<p>(1) Notwithstanding anything contained in section 20, where the Commission at the time of deciding any appeal is of the opinion that the Public Information Officer has persistently failed to provide information without any reasonable cause within the period specified under sub-section (1) of section 7, the Commission may authorise any officer of the Central Government to file a complaint against such Public Information Officer before a Judicial Magistrate of First Class.</p> <p>(2) Any Public Information Officer who is in default under sub-section (1) shall be liable on conviction to fine which may extend to rupees twenty-five thousand or a term of imprisonment which may extend to five years, or with both.</p>	<p>(1) Notwithstanding anything contained in section 20, where the <u>Central Commission</u> or the State Commission, as the case may be, at the time of deciding any <u>complaint or appeal</u> is of the opinion that the <u>Central or the State Public Information Officer</u> or the State Public Information Officer, as the case may be, has *** failed to provide information without any reasonable cause, within the period specified under sub-section (1) of section 7, <u>the burden of proving that he acted reasonably and diligently shall be upon him</u>, the <u>Central Commission</u> or the State Commission shall ***** file a complaint against such <u>Central or State Public Information Officer</u>, before a Judicial Magistrate of First Class.</p> <p>(2) Any <u>Central or State Public Information Officer</u> or State Public Information Officer, as the case may be, who is in default under sub-section (1) shall</p>	<p>GOM did <u>not</u> agree to the formulation in the Government's Bill, the Standing Committee's Bill as also the revised formulation proposed by Department of Personnel &amp; Training. It accordingly directed the Ministry of Law &amp; Justice to prepare an alternative formulation taking into consideration the observations made by the Group.</p>	<p>Further to the recommendation Ministry has proposed the f</p> <p>(1) Notwithstanding any where the Central Information Commission, at deciding any complaint or Central Public Information Officer, as it provide information within the period specified under the Central Information Commission, a</p> <p>(a) recommend to the Government, for action against the Information Officer</p>

		<p>be liable on conviction to fine which may extend to rupees twenty-five thousand or a term of imprisonment which may extend to five years, or with both.</p> <p>(3) <u>Without prejudice to the provisions of sub-sections (1) and (2), the Central Commission or the State Commission, as the case may be, may recommend for disciplinary action against the Central Public Information Officer under the service rules applicable to him.</u></p>		<p>Officer as the case may be, the Conduct Rules, Public Information Office</p> <p>(b) in case such Public Information Commission, may Government or the Public Information Office First Class</p> <p>(2) On any complaint filed under that clause, then he fine which may extend to r imprisonment which may e</p>
	CHAPTER IV MISCELLANEOUS	CHAPTER IV MISCELLANEOUS		
18.	No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule made thereunder.	No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule made thereunder.	Approved the formulation of the Standing Committee.	
19.	The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.	The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.	Approved the formulation of the Standing Committee.	
20.	No court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall	No court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called	Approved the formulation of the Standing Committee.	

	be called in question otherwise than by way of an appeal under this Act	in question otherwise than by way of an appeal under this Act.		
21.	<p>(1) Nothing contained in this Act shall apply to the intelligence and security organizations specified in the Second Schedule, being organizations established by the Central Government or any information furnished by such organisations to that Government.</p> <p><b>Provided that the information pertaining to the allegations of corruption shall not be excluded under this sub-section.</b></p> <p>(2) The Central Government may, by notification in the Official Gazette, amend the Schedule by including therein any other intelligence or security organisation established by that Government or omitting therefrom any organisation already specified therein and on the publication of such notification, such organization shall be deemed to be included in or, as the case may be, omitted from the Schedule.</p> <p>(3) Every notification issued under sub-section (2) shall be laid before each House of Parliament.</p>	<p>(1) Nothing contained in this Act shall apply to the <b>intelligence and security</b> organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government.</p> <p><b>Provided that the information pertaining to the allegations of <u>violation of human rights or corruption</u> shall not be excluded under this sub-section.</b></p> <p>(2) The Central Government may, by notification in the Official Gazette, amend the Schedule by including therein any other intelligence or security organisation established by that Government or omitting therefrom any organisation already specified therein and on the publication of such notification, such organisation shall be deemed to be included in or, as the case may be, omitted from the Schedule.</p> <p>(3) Every notification issued under sub-section (2) shall be laid before each House of Parliament.</p> <p>(4) Nothing contained in this Act shall apply to such intelligence and security organisations which may be specified, by a notification in the Official Gazette, by a State Government from time to time.</p> <p>(5) Every notification issued under sub-section (4) shall be laid before the State Legislature.</p>	<p>Approved the formulation of the Standing Committee with further recommendation that</p> <p>(i) the proviso to sub-clause (1) shall be <b>deleted</b>; and</p> <p>(ii) in addition to the security and intelligence organizations, the armed forces shall also be excluded from the purview of the Act.</p>	
22.	(1) The Commission shall, as soon as practicable after the end of each year, prepare a report on the implementation of	(1) The Central Information Commission or the State Information Commission, as the case may be, shall, as soon as practicable after the end of	Approved the formulation of the Standing Committee.	

<p>the provisions of this Act during that year and forward a copy thereof to the Central Government.</p> <p>(2) Each Ministry or Department shall, in relation to the public authorities within their jurisdiction, collect and provide such information to the Commission as is required to prepare the report under this section and comply with the requirements concerning the furnishing of that information and keeping of records for the purposes of this section.</p> <p>(3) Each report shall state in respect of the year to which the report relates, -</p> <p>(a) the number of requests made to each public authority;</p> <p>(b) the number of decisions where applicants were not entitled to access to the documents pursuant to the requests, the provisions of this Act under which these decisions were made and the number of times such provisions were invoked;</p> <p>(c) the number of appeals referred to the Commission for review, the nature of the appeals and the outcome of the appeals;</p> <p>(d) particulars of any disciplinary action taken against any officer in respect of the administration of this Act;</p> <p>(e) the amount of charges collected by each public authority under this Act;</p> <p>(f) any facts which indicate an effort by the public authorities</p>	<p>each year prepare a report on the implementation of the provisions of this Act during that year and forward a copy thereof to the Central Government or the State Government.</p> <p>(2) Each Ministry or Department shall, in relation to the public authorities within their jurisdiction, collect and provide such information to the Central <u>Information</u> Commission or the State <u>Information</u> Commission, as the case may be, as is required to prepare the report under this section and comply with the requirements concerning the furnishing of that information and keeping of records for the purposes of this section.</p> <p>Each report shall state in respect of the year to which the report relates, -</p> <p>(a) the number of requests made to each public authority;</p> <p>(b) the number of decisions where applicants were not entitled to access to the documents pursuant to the requests, the provisions of this Act under which these decisions were made and the number of times such provisions were invoked;</p> <p>(c) the number of appeals referred to the <u>Central Information Commission</u> or, as the case may be, the <u>State Information</u> Commission for review, the nature of the appeals and the outcome of the appeals;</p> <p>(d) particulars of any disciplinary action taken against any officer in respect of the administration of this Act;</p> <p>(e) the amount of charges collected by each public authority under this Act;</p>	
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	<p>to administer and implement the spirit and intention of this Act:</p> <p>(g) recommendations for reform, including recommendations in respect of the particular public authorities, for the development, improvement, modernisation, reform or amendment to this Act or other legislation or common law or any other matter relevant for operationalising the right to access information.</p> <p>(4) The Central Government may, as soon as practicable after the end of each year, cause a copy of the report of the Commission referred to sub-section (1) to be laid before each House of Parliament.</p> <p>(5) If it appears to the Commission that the practice of a public authority in relation to the exercise of its functions under this Act does not conform with the provisions or spirit of this Act, it may give to the authority a recommendation specifying the steps which ought in its opinion to be taken for promoting such conformity.</p>	<p>(f) any facts which indicate an effort by the public authorities to administer and implement the spirit and intention of this Act,</p> <p>(g) recommendations for reform, including recommendations in respect of the particular public authorities, for the development, improvement, modernisation, reform or amendment to this Act or other legislation or common law or any other matter relevant for operationalising the right to access information.</p> <p>(4) The <u>Central Government or the State Government</u> may, as soon as practicable after the end of each year, cause a copy of the report of the <u>Central Information Commission or the State Information Commission</u> referred to sub-section (7) to be laid before each House of Parliament <u>or, as the case may be, before each House of the State Legislature where there are two Houses, and where there is one House, of the State Legislature, before that House.</u></p> <p>(5) If it appears to the <u>Central Information or the State Information Commission</u> that the practice of a public authority in relation to the exercise of its functions under this Act does not conform with the provisions or spirit of this Act, it may give to the authority a recommendation specifying the steps which ought in its opinion to be taken for promoting such conformity.</p>		
23.	(1) The Central Government may, to the extent of availability of financial and other resources,-	(1) The <u>appropriate</u> Government may, to the extent of availability of financial and other resources,-	Approved the formulation of the Standing Committee.	

<p>(a) develop and organize educational programmes to advance the understanding of the public, in particular of disadvantaged communities as to how to exercise the rights contemplated under this Act;</p> <p>(b) encourage public authorities to participate in the development and organisation of programmes referred to in clause (a) and to undertake such programmes themselves;</p> <p>(c) promote timely and effective dissemination of accurate information by public authorities about their activities; and</p> <p>(d) train Information Officers of public authorities and produce relevant training materials for use by the public authorities themselves.</p> <p>(2) The Government shall, within eighteen months from the commencement of this Act, compile in its official language a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right specified in this Act.</p> <p>(3) The Government shall, if necessary, update and publish the guidelines referred to in sub-section (2) at regular intervals which shall, in particular and without prejudice to the generality of sub-section (2), include—</p> <p>(a) the objects of this Act;</p> <p>(b) the postal and street address, the phone and fax number and, if available, electronic mail address of</p>	<p>(a) develop and organise educational programmes to advance the understanding of the public, in particular of disadvantaged communities as to how to exercise the rights contemplated under this Act;</p> <p>(b) encourage public authorities to participate in the development and organisation of programmes referred to in clause (a) and to undertake such programmes themselves;</p> <p>(c) promote timely and effective dissemination of accurate information by public authorities about their activities; and</p> <p>(d) train <u>Central Information Officers or State Information Officers</u> of public authorities and produce relevant training materials for use by the public authorities themselves.</p> <p>(2) The <u>appropriate</u> Government shall, within eighteen months from the commencement of this Act, compile in its official language a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right specified in this Act.</p> <p>(3) The <u>appropriate</u> Government shall, if necessary, update and publish the guidelines referred to in sub-section (2) at regular intervals which shall, in particular and without prejudice to the generality of sub-section (2), include—</p> <p>(a) the objects of this Act;</p> <p>(b) the postal and street address, the phone and fax number and, if available, electronic mail address of</p>	
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	<p>the Public Information Officer of every public authority appointed under sub-section (1) of section 5;</p> <p>(c) the manner and the form in which request for access to an information shall be made to a public authority;</p> <p>(d) the assistance available from and the duties of the Public Information Officers of a public authority under this Act;</p> <p>(e) the assistance available from the Commission;</p> <p>(f) all remedies in law available regarding an act or failure to act in respect of a right or duty conferred or imposed by this Act including the manner of filing an appeal to the Commission;</p> <p>(g) the provisions providing for the voluntary disclosure of categories of records in accordance with section 4;</p> <p>(h) the notices regarding fees to be paid in relation to requests for access to an information; and</p> <p>(i) any additional regulations or circulars made or issued in relation to obtaining access to an information in accordance with this Act.</p> <p>(4) The Government must, if necessary, update and publish the guidelines at regular intervals.</p>	<p>available, electronic mail address of the <u>Central Public Information Officer or the State Public Information Officer</u> of every public authority appointed under sub-section (1) of section 5;</p> <p>(c) the manner and the form in which request for access to an information shall be made to a public authority;</p> <p>(d) the assistance available from and the duties of the <u>Central Public Information Officer or the State Public Information Officers</u> of a public authority under this Act;</p> <p>(e) the assistance available from the <u>Central Information Commission or the State Information Commission</u>;</p> <p>(f) all remedies in law available regarding an act or failure to act in respect of a right or duty conferred or imposed by this Act including the manner of filing an appeal to the Central Information Commission or, as the case may be, the State Information Commission;</p> <p>(g) the provisions providing for the voluntary disclosure of categories of records in accordance with section 4;</p> <p>(h) the notices regarding fees to be paid in relation to requests for access to an information; and</p> <p>(i) any additional regulations or circulars made or issued in relation to obtaining access to an information in accordance with this Act.</p> <p>(4) The <u>appropriate</u> Government must, if necessary, update and publish the guidelines at regular intervals.</p>		
24.	(1) The Central Government may, by notification in the Official Gazette, make	(1) The <u>appropriate</u> Government may, by notification in the Official Gazette, make	Approved the formulation of the Standing Committee with further	

	<p>rules to carry out the provisions of this Act.</p> <p>(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-</p> <p>(a) intervals at which matters referred to in sub-clauses (i) to (xvii) of clause (b) of sub-section (1) of section 4 shall be published;</p> <p>(b) the cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4;</p> <p>(c) the fee payable under sub-section (1) of section 6;</p> <p>(d) the fee payable under sub-sections (1) and (5) of section 7;</p> <p>(e) the salaries and allowances payable to and the terms and conditions of service of the officers and other employees, under sub-section (7) of section 13;</p> <p>(f) the procedure to be adopted by the Commission in deciding the appeals under sub-section (10) of section 16; and</p> <p>(g) any other matter which is required to be, or may be, prescribed.</p>	<p>rules to carry out the provisions of this Act.</p> <p>(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—</p> <p><b>(a) intervals at which matters referred to in sub-clauses (i) to (xvii) of clause (b) of sub-section (1) of section 4 shall be published;</b></p> <p>(b) the cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4;</p> <p>(c) the fee payable under sub-section (f) of section 6;</p> <p>(d) the fee payable under sub-sections (f) and (5) of section 7;</p> <p>(e) the salaries and allowances payable to and the terms and conditions of service of the officers and other employees under sub-section (7) of section 13 or under sub-section (7) of section 14B Central;</p> <p>(f) the procedure to be adopted by the Commission in deciding the appeals under sub-section (10) of section 16; and</p> <p>(g) any other matter which is required to be, or may be, prescribed.</p>	<p>recommendation that item (a) of sub-clause (2) shall be deleted</p>
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25.	<p>(1) The competent authority may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.</p> <p>(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-</p> <p>(i) intervals at which matters referred to in sub-clauses (i) to (xvii) of clause (b) of sub-section (1) of section 4 shall be published;</p> <p>(ii) the cost of the medium of print cost price of the materials to be disseminated under sub-section (4) of section 4;</p> <p>(iii) the fee payable under sub-section (1) of section 6;</p> <p>(iv) the fee payable under sub-section (1) of section 7;</p> <p>(v) any other matter which is required to be, or may be, prescribed.</p>	<p>(1) The competent authority may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.</p> <p>(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—</p> <p>(i) intervals at which matters referred to in sub-clauses (i) to (xvii) of clause (b) of sub-section (1) of section 4 shall be published;</p> <p>(ii) the cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4;</p> <p>(iii) the fee payable under sub-section (1) of section 6;</p> <p>(iv) the fee payable under sub-section (1) of section 7, and</p> <p>(v) any other matter which is required to be, or may be, prescribed.</p>	<p>Approved the formulation of the Standing Committee with further recommendation that item (i) of sub-clause (2) shall be deleted.</p>	
26.	<p>(1) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of 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.</p>	<p>(1) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised of 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.</p>	<p>Approved the formulation of the Standing Committee with further recommendation that in sub-clause (2), after the words 'Every rule made', the words 'by the State Government' shall be added.</p>	

		anything previously done under that rule. <u>(2) Every rule made under this Act shall, as soon as may be after it is made, be laid before each House of the State Legislature where there are two Houses, and where there is one House of the State Legislature, before that House.</u>		
27.	<p>(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removal of the difficulty:</p> <p>Provided that no such order shall be made after the expiry of a period of two years from the date of the commencement of this Act.</p> <p>(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.</p>	<p>(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removal of the difficulty:</p> <p>Provided that no such order shall be made after the expiry of a period of two years from the date of the commencement of this Act.</p> <p>(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.</p>	Approved the formulation of the Standing Committee.	
28.	The Freedom of Information Act, 2002 is hereby repealed.	The Freedom of Information Act, 2002 is hereby repealed	Approved the formulation of the Standing Committee.	

	<p>THE FIRST SCHEDULE [Sec sub-section (3) of section 13]</p> <p>Form of oath or affirmation to be made by the Information Commissioner or the Deputy Information Commissioner</p> <p>"I, ..... having been appointed Information Commissioner/Deputy Information Commissioner swear in the name of God that I will bear true faith and solemnly affirm allegiance to the Constitution of India as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgement perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws."</p>	<p>THE FIRST SCHEDULE [See sub-section (3) of section 13 and sub-section (2) of section 14B]</p> <p>Form of oath or affirmation to be made by the <u>Central Information Commissioner/ State Information Commissioner or the Central Deputy Information Commissioner/State Deputy Information Commissioner</u></p> <p>"I, ..... having been appointed <u>Central information Commissioner/State Information Commissioner/Central Deputy Information Commissioner/State Deputy Information Commissioner</u> swear in the name of God that I will bear true faith and allegiance to the solemnly affirm Constitution of India as by law established, that I will uphold the sovereignty and integrity of India that I will duly and faithfully and to the best of my ability, knowledge and judgment perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws."</p>	<p>Approved the formulation of the Standing Committee.</p>	
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	<p>THE SECOND SCHEDULE (See section 21)</p> <p>INTELLIGENCE AND SECURITY ORGANISATIONS ESTABLISHED BY THE CENTRAL GOVERNMENT.</p> <ol style="list-style-type: none"> <li>1. Intelligence Bureau.</li> <li>2. Research and Analysis Wing of the Cabinet Secretariat.</li> <li>3. Directorate of Revenue Intelligence.</li> <li>4. Central Economic Intelligence Bureau.</li> <li>5. Directorate of Enforcement.</li> <li>1. Narcotics Control Bureau.</li> <li>2. Aviation Research Centre.</li> <li>3. Special Frontier Force.</li> <li>4. Border Security Force.</li> <li>5. Central Reserve Police Force.</li> <li>6. Indo Tibetan Border Police.</li> <li>7. Central Industrial Security Force.</li> <li>8. National Security Guards.</li> <li>9. Assam Rifles.</li> <li>10. Special Service Bureau.</li> <li>11. Special Branch (CID), Andaman and Nicobar.</li> <li>12. The Crime Branch-CID, - CB, Dadra and Nagar Haveli.</li> <li>18. Special Branch, Lakshadweep Police.</li> </ol>	<p>THE SECOND SCHEDULE (See section 21)</p> <p>INTELLIGENCE AND SECURITY ORGANISATION ESTABLISHED BY THE CENTRAL GOVERNMENT</p> <ol style="list-style-type: none"> <li>1. Intelligence Bureau.</li> <li>2. Research and Analysis Wing of the Cabinet Secretariat.</li> <li>3. Directorate of Revenue Intelligence.</li> <li>4. Central Economic Intelligence Bureau.</li> <li>5. Directorate of Enforcement.</li> <li>6. Narcotics Control Bureau.</li> <li>7. Aviation Research Centre.</li> <li>8. Special Frontier Force.</li> <li>9. Border Security Force.</li> <li>10. Central Reserve Police Force.</li> <li>11. Indo Tibetan Border Police.</li> <li>12. Central Industrial Security Force.</li> <li>13. National Security Guards.</li> <li>14. Assam Rifles.</li> <li>15. Special Service Bureau.</li> <li>16. Special Branch (CID), Andaman and Nicobar.</li> <li>17. The Crime Branch-CID, - CB, Dadra and Nagar Haveli.</li> <li>18. Special Branch, Lakshadweep Police.</li> </ol>	<p>Approved the formulation of the Standing Committee.</p>	
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