

## Part IV

### FOR PUBLIC INFORMATION OFFICERS

The Public Information Officer of a public authority plays a pivotal role in making the right of citizens to information a reality. The Act casts specific duties on him and makes him liable for penalty in case of default. It is, therefore, essential for a Public Information Officer to study the Act carefully and understand its provisions correctly. Besides the issues discussed elsewhere in this document, a Public Information officer should keep the following aspects in view while dealing with the applications under the Act.

#### Applications Received Without Fee

2. Soon after receiving the application, the Public Information Officer should check whether the applicant has made the payment of application fee or whether the applicant is a person belonging to a Below Poverty Line (BPL) family. If application is not accompanied by the prescribed fee or the BPL Certificate, it cannot be treated as an application under the RTI Act. It may, however, be noted that Public Information Officer should consider such application sympathetically and try to supply information sought by way of such an application.

#### Transfer of Application

3. Some times requests are made to a public authority for information which do not concern that public authority or only a part of which is available with the public authority to which the application is made and remaining or whole of the information concerns another public authority or many other public authorities.

4. Section 6 (1) of the RTI Act, 2005 provides that a person who desires to obtain any information shall make a request to the public information officer of the concerned public authority. Section 6(3) provides that where an application is made to a public authority requesting for any information which is held by another public authority or the subject matter of which is more closely connected with the functions of another public authority, the public authority. The provisions of sub-section (1) and sub-section (3) of Section 6, suggested that the Act requires an information seeker to address the application to the Public Information Officer of the 'concerned public authority'. However, there may be cases in which a person of ordinary prudence may believe that the information sought by him/her would be available with the public authority to which he/she has addressed the application, but is actually held by some other public authority. In such cases, the applicant makes a bona fide mistake of addressing the application to the Public Information Officer of a wrong public authority. On the other hand where an applicant addresses the application to the Public Information Officer of a public authority, which to a person of ordinary prudence, would not appear to be the concern of that public authority, the applicant does not fulfill his responsibility of addressing the application to the 'concerned public authority'.

5. Given herein under are some situations which may arise in the matter and action required to be taken in such cases:

- (i) A person makes an application to public authority for some information which concerns some another public authority. In such a case, the Public Information Officer receiving the application should transfer the application to the concerned public authority under intimation to the applicant. However, if the Public Information Officer of the public authority is not able to find out as to which public authority is concerned with the information even after making reasonable efforts to find out the concerned public authority, he should inform the applicant that the information is not available with his public authority and that he is not aware of the

particulars of the concerned public authority to which the application could be transferred. It would, however, be the responsibility of the PIO, if an appeal is made against his decision, to establish that he made reasonable efforts to find out the particulars of the concerned public authority.

- (ii) A person makes an application to a public authority for information, only a part of which is available with that public authority and a part of the information concerned some 'another public authority'. In such a case, the Public Information Officer should supply the information concerning his public authority and a copy of the application should be sent to that another public authority under intimation to the applicant.
- (iii) A person makes an application to a public authority for information, a part of which is available with that public authority and the rest of the information is scattered with more than one other public authorities. In such a case, the Public Information Officer of the public authority receiving the application should give information relating to it and advise the applicant to make separate applications to the concerned public authorities available with it but is scattered with more than one other public authorities, the Public Information Officer should inform the applicant that information is not available with the public authority and that the applicant should make separate applications to the concerned public authorities for obtaining information from them. It may be noted that the Act requires the supply of such information only which already exists and is held by the public authority or held under the control of the public authority. It is beyond the scope of the Act for a public authority to collect the information from various public authorities to supply it to the applicant. At the same time, since the information is not related to any one other particular public authority, it is not the case where application should be transferred under sub-section (3) of Section 6 of the Act. It is pertinent to note that sub-section (3) refers to 'another public authority' and not to 'other public authorities'. Use of singular form in the Act in this regard is important to note.
- (iv) If a person makes an application to a public authority of Central Government for some information which is the concern of a public authority under any State Government or the Union territory Administration, the Public Information Officer of the public authority receiving the application should inform the applicant that the information may be had from the concerned State Government/UT Administration. Application, in such a case, need not be transferred to the State Government/UT Administration.

6. In brief, if the application is accompanied by the prescribed fee or the Below Poverty Line Certificate, the Public Information Officer should check whether the subject matter of the application or a part thereof concerns some other public authority. If the subject matter of the application concerns any other public authority, it should be transferred to that public authority. If only a part of the application concerns the other public authority, a copy of the application may be sent to that public authority, clearly specifying the part which relates to that public authority. While transferring the application or sending a copy thereof, the concerned public authority should be informed that the application fee has been received. The applicant should also be informed about the transfer of his application and the particulars of the public authority to whom the application or a copy thereof has been sent.

7. Transfer of application or part thereof, as the case may be, should be made as soon as possible and in any case within five days from the date of receipt of the application. If a Public

Information Officer transfers an application after five days from the receipt of the application, he would be responsible for delay in disposal of the application to the extent of number of days which he takes in transferring the application beyond 5 days.

8. The Public Information Officer of the public authority to whom the application is transferred, should not refuse acceptance of transfer of the application on the ground that it was not transferred to him within 5 days.

9. A public authority may designate as many Public Information Officers for it as it may deem necessary. It is possible that in a public authority with more than one Public Information Officer an application is received by the Public Information Officer other than the concerned Public Information Officer. In such a case the Public Information Officer received the application should transfer it to the concerned Public Information Officer immediately preferably the same day. Time period of five days for transfer of the application applies only when the application is transferred from one public authority to another public authority and not for transfer from the Public Information Officer to another in the same public authority.

#### Rendering Assistance to Applicants

10. The RTI Act provides that the Public Information Officer has a duty to render reasonable assistance to the persons seeking information. As per provisions of the Act a person who desires to obtain any information is required to make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is made. If a person seeking information is not able to make such request in writing the Public Information Officer should render reasonable assistance to him to reduce the same in writing.

11. Where access to a record is required to be provided to a sensorily disable person, the Public Information Officer provide assistance to such person to enable him to access the information. He should also provide such assistance to the person as may be appropriate for the inspection of records where such inspection is involved.

#### Assistance Available to PIO

12. The Public Information Officer may seek the assistance of any other officer as he or she considers necessary for the proper Information Officer, would render all assistance to him. Such an officer shall be deemed to be a Public Information Officer and would be liable for contravention of any provisions of the Act the same way as any other Public Information Officer. It would be advisable for the Public Information Officer to inform the officer whose assistance is sought about the above provision, at the time of seeking his assistance.

13. Some Public Information Officers, on the basis of above referred provision of the Act, transfer the RTI applications received by them to other officers and direct them to send information to the applicants as deemed Public Information Officer. Thus they use the above referred provision to designate other officers as Public Information Officer. According the Act, it is the responsibility of the officer who is designated as the Public Information Officer by the public authority to provide information to the applicant or reject the application for any reasons specified in Sections 8 and 9 of the Act. The Act enable the Public Information Officer to seek assistance of any other officer to enable him to provide information to the information seeker but it does not give him authority to designate any other officer as Public Information Officer and direct him to send reply to the applicant. The import of the provision is that, if the officer whose assistance is sought by the Public Information Officer, does not render necessary help to him, the Information Commission may impose penalty on such officer or recommend disciplinary action against him the same way as the Commission may impose penalty on or recommend disciplinary action against the Public Information Officer.

### Supply of Information

14. The answering Public Information Officer should check whether the information sought or a part thereof is exempt from disclosure under Section 8 or Section 9 of the Act. Request in respect of the part of the application which is so exempt may be rejected and rest of the information should be provided immediately or after receipt of additional fees, as the case may be.

15. Where a request for information is rejected the Public Information Officer should communicate to the person making the request -

- (i) the reasons for such rejection.
- (ii) the period within which an appeal against such rejection may be preferred; and
- (iii) the particulars of the authority to whom an appeal can be made.

16. If additional fee is required to be paid by the applicant as provided in the Fee and Cost Rules, the Public Information Officer should inform the applicant.

- (i) the details of further fees required to be paid;
- (ii) the calculations made to arrive at the amount of fees asked for;
- (iii) the fact that the applicant has a right to make appeal about the amount of fees so demanded;
- (iv) the particulars of the authority to whom such an appeal can be made; and
- (v) the time limit within which the appeal can be made.

### Supply of Part Information by Severance

17. Where a request is received for access to information which is exempt from disclosure but a part of which is not exempt and such part can be severed in such a way that the severed part does not contain exempt information then access to that part of the information/record may be provided to the applicant. Where access is granted to a part of the record in such a way, the Public Information Officer should inform the applicant that the information asked for is exempt from disclosure and that only part of the record is being provided after severance which is not exempt from disclosure. While doing so, he should give the reasons for the decision, including any findings on any material question of fact, referring to the material on which those findings were based. The Public Information Officer should take the approval of appropriate authority before supply of information in such a case and should inform the name and designation of the person giving the decision to the applicant also.

### Time Period for Supply of Information

18. The Public Information Officer should supply the information within thirty days of the receipt of the request. Where the information sought for concerns the life or liberty of a person, the same should be provided within forty eight hours of the receipt of the request. If request for information is received through the APIO, the information may be provided within 35 days of receipt of application by the AIO, the information may be provided with 35 days of receipt of application by the APIO in normal course and 48 hours plus 5 days in case the information sought concerns the life or liberty of a person.

19. In case of an application transferred from one public authority to another public authority, reply should be provided by the concerned public authority within 30 days of the receipt of the application by that public authority in normal course and within 48 hours in case the information sought concerns the life or liberty of a person.

20. The Public Information Officers of the intelligence and security organizations specified in the Second Schedule of the Act may receive applications seeking information pertaining to allegations of corruption and human rights violations. Information in respect of allegations of violation of human rights, which is provided only after the approval of the Central Information Commission, should be provided within forty-five days from the date of the receipt of request. Time limit prescribed for supplying information in regard to allegations of corruption is the same as in other cases.

21. Where the applicant is asked to pay additional fee, the period intervening between the dispatch of the intimation about payment of fee and the payment of fee by the applicant shall be excluded for the purpose of calculating the period of reply. The following table shows the maximum time which may be taken to dispose off the applications in different situations;

| Sr. No. | Situation   | Time limit for disposing off applications   |
|---------|---|---|
| 1.      | Supply of information in normal course.   | 30 days   |
| 2.      | Supply of information if it concerns the life or liberty of a person  | 48 hours  |
| 3.      | Supply of information if the application is received through APIO.  | 05 days shall be added to the time period indicated at Sr. No. 1 and 2.   |
| 4.      | Supply of information if application/request is received after transfer from another public authority :<br>(a) In normal course.<br><br>(b) In case the information concerns the life or liberty of a person.             | (a) Within 30 days of the receipt of the application by the concerned public authority.<br><br>(b) Within 48 hours of receipt of the application by the concerned public authority. |
| 5.      | Supply of information by organizations specified in the Second Schedule :<br>(a) If Information relates to allegations of violation of human rights.<br><br>(b) In case information relates to allegations of corruption. | (a) 45 days from the receipt of application.<br><br>(b) Within 30 days of the receipt of application.   |
| 6.      | Supply of information if it relates to third party and the third party has treated it as confidential.  | Should be provided after following the procedure given in para 23 to 28 of this part of the document.   |
| 7.      | Supply of information where the applicant is asked to pay additional fee.   | The period intervening between informing the applicant about additional fee and the payment of fee by the applicant shall be excluded for calculating the period of reply.          |

22. If the Public Information Officer fails to give decision on the request for information within the prescribed period, he shall be deemed to have refused the request. It is pertinent to note that if a public authority fails to comply with the specified time limit, the information to the concerned applicant would have to be provided free of charge.

### Disclosure of Third Party Information

23. Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, is exempt from disclosure. Such an information shall not be disclosed unless the competent authority is satisfied that larger public interest warrants the disclosure of such information.

24. If an applicant seeks any information which relates to or has been supplied by a third party and that third party has treated that information as confidential, the Public Information Officer shall consider whether the information should be disclosed or not. The guiding principle in such cases is that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party. However, the Public Information Officer would have to follow the following procedure before disclosing such information.

25. If the Public Information Officer intends to disclose the information, he shall within five days from the receipt of the application, give a written notice to the third party that the information has been sought by the applicant under the RTI Act and that he intends to disclose the information. He shall request the third party to make a submission in writing or orally, regarding whether the information may be disclosed. The third party shall be given a time of ten days, from the date of receipt of the notice by him, to make representation against the proposed disclosure, if any.

26. The Public Information Officer shall make a decision regarding disclosure of the information keeping in view the submission of the third party. Such a decision should be taken within forty days from the receipt of the request for information. After taking the decision, the Public Information Officer should give a notice of his decision to the third party in writing. The notice given to the third party should include a statement that the third party is entitled to prefer an appeal under section 19 against the decision.

27. The third party can prefer an appeal to the First Appellate authority against the decision made by the Public Information Officer within thirty days from the date of the receipt of notice. If not satisfied with the decision of the First Appellate Authority, the third party can prefer a second appeal to the Information Commission.

28. If an appeal has been filed by the third party against the decision of the Public Information Officer to disclose the third party information, the information should not be disclosed till the appeal is decided.

### Suo Motu Disclosure

29. The Act makes it obligatory for every public authority to make suo-motu disclosure in respect of the particulars of its organization, functions, duties and other matters, as provided in section 4 of the Act. The information so published, according to sub-section (4) of section 4, should be easily accessible with the Public Information Officer in electronic form. The Public Information Officer should, therefore, make concerted efforts to ensure that the requirements of the Section 4 of the RTI Act 2005 are met and maximum information in respect of the public authority is made available on the internet. It would help him in two ways. First, the number of applications under the Act would be reduced and secondly, it would facilitate his work of providing information inasmuch as most of the information would be available to him at one place.

### Imposition of Penalty

30. An applicant under the Act has a right to appeal to the Information commission and also to make complaint to the Commission. Where the Information Commission at the time of deciding any complaint or appeal is of the opinion that the Public Information Officer has without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished subject to the condition that the total amount of such penalty shall not exceed twenty-five thousand rupees. The Public Information Officer shall, however, be given a reasonable opportunity of being heard before any penalty is imposed on him. The burden of providing that he acted reasonably and diligently and in case of denial of a request that such denial was justified shall be on the Public Information Officer.

### Disciplinary Action Against PIO

31. Where the Information Commission at the time of deciding any complaint or appeal is of the opinion that the Public Information Officer has without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it may recommend disciplinary action against the Public Information Officer.

### Protection for Work Done in Good Faith

32. Section 21 of the Act provides that 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 the Act or any rule made there under. A Public Information Officer should, however, note that it would be his responsibility to prove that his action was in good faith.

### Annual Report of the CIC

33. the Central Information Commission prepares a report on the implementation of the provisions of the RTI Act every year, which is laid before each House of the Parliament. this report, inter-alia, has to include information about the number of requests made to each public authority, the number of decisions where the applicants were not entitled to access to documents requested for, the provisions of the Act under which these decisions were made and the number of times such provisions were invoked. The amount of charges collected by each public authority under the Act. Each Ministry/Department is required to collect such information from all the public authorities under its jurisdiction and send the same to the Commission. The Public Information Officers should maintain the requisite information in this regard so that it may be supplied to their administrative Ministry/Department soon after the end of the year, which in turn may supply to the Commission.