
RIGHT TO INFORMATION

Throughout the world, the right to information is seen by many as the key to strengthening participatory democracy and ensuring more people-centred development.

Nearly 70 countries around the world have now adopted comprehensive Freedom of Information Acts to facilitate access to records held by government bodies and another fifty have pending efforts.



In India also, the Government enacted Right to Information (RTI) Act in 2005 which came into force w.e.f. October 12, 2005. It may be pointed out that the Right to Information Bill was passed by the Lok Sabha on May 11, 2005 and by the Rajya Sabha on May 12, 2005 and received the assent of the President on June 15, 2005.



The Right to Information Act, 2005 was enacted to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.



According to statement of objects and reasons of the Right to Information (Amendment) Bill, 2019, section 13 of the Act provides for the term of office and conditions of service of the Chief Information Commissioner and Information Commissioners.

RIGHT TO KNOW

Case law R. P. Limited v Indian Express Newspapers -

The Supreme Court read into Article 21 the right to know. The Supreme Court held that right to know is a necessary ingredient of participatory democracy.

Article 21 (Right of freedom of life and liberty) confers on all persons a right to know which include a right to receive information.

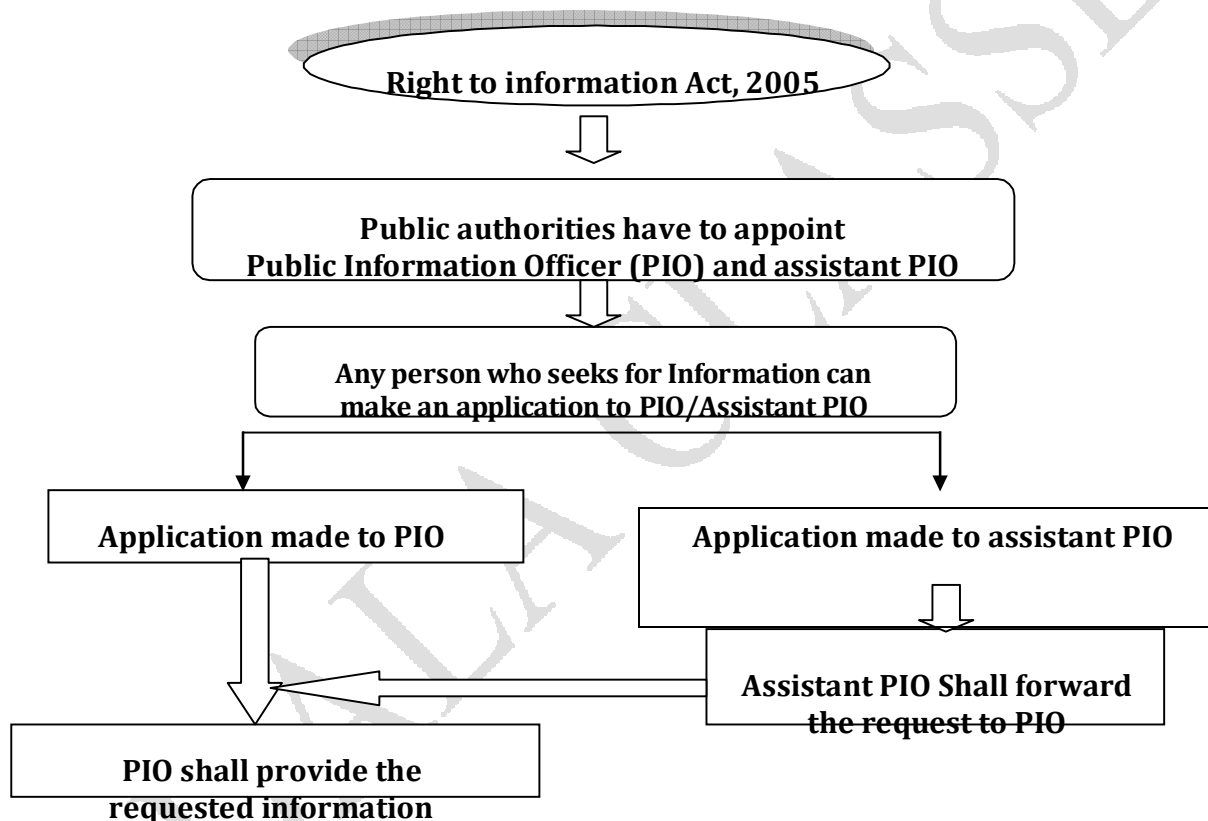
Constitutional validity of the Act-

Article 19(1) (a) of our Constitution guarantees to all citizens freedom of speech and expression. Right to freedom of speech and expression in Art.19 (1)(a) carries with it the right to propagate and circulate one's views and opinions subject to reasonable restrictions.

The prerequisite for enjoying this right is knowledge and information. Information adds something "new to our awareness and removes vagueness of our ideas".

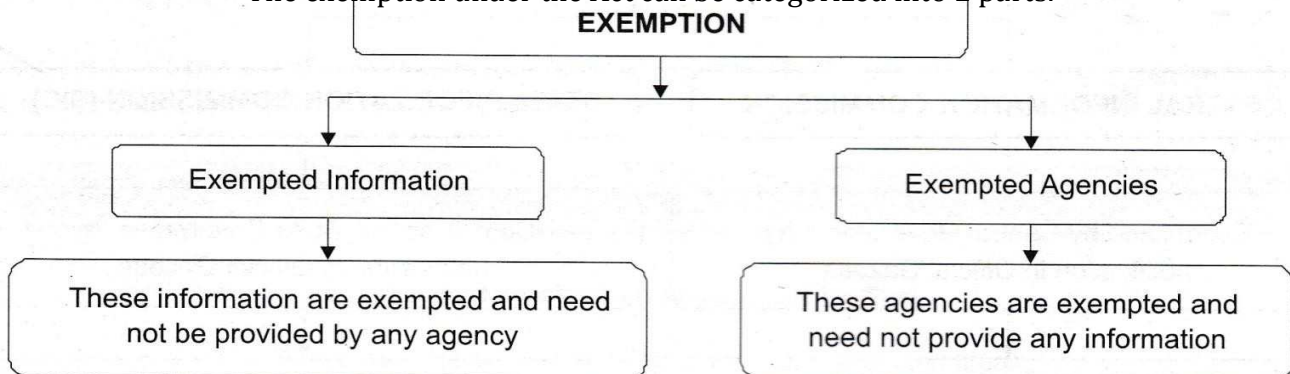
FEATURES OF THE ACT

- ✓ The Act extends to the **whole of India** including the states of Jammu and Kashmir.
- ✓ It shall **apply to Public Authorities**.
- ✓ **All citizens shall have the right to information**, subject to provisions of the Act.
- ✓ The Public Information Officers/Assistant Public Information Officers will be responsible to deal with the requests for information and also to assist persons seeking information.
- ✓ Fee will be payable by the applicant depending on the nature of information sought.
- ✓ Certain categories of information have been exempted from disclosure under Section 8 and 9 of the Act.
- ✓ Intelligence and security agencies specified in Schedule II to the Act have been exempted from the ambit of the Act, subject to certain conditions.



EXEMPTION UNDER THE ACT

The exemption under the Act can be categorized into 2 parts.



1. **EXEMPTED AGENCIES (Non-applicability)**

The Act is not applicable to the Central intelligence and security organizations specified in the Second Schedule to the Act. In addition to the above State Government can also exempt Agencies. The exclusion is not absolute.

Even the exempted Organizations have to provide information related to:

- *Allegations of corruption.*
- *Allegation of human rights violations - This shall be given only with the approval of the Central Information Commission within 45 days from the date of the receipt of request.*

ORGANIZATIONS TERTED AS INTELLIGENCE AND SECURITY ORGANIZATION {SECOND SCHEDULE}-

- | | |
|---|---|
| ○ Intelligence Bureau (IB) | ○ Central Reserve Police Force (CRPF). |
| ○ Research and Analysis Wing of the Cabinet Secretariat (R&AW). | ○ Indo-Tibetan Border Police (ITBP) |
| ○ Directorate of Revenue Intelligence. | ○ Central Industrial Security Force (CISF) |
| ○ Central Economic Intelligence Bureau. | ○ National Security Guards (NSG) |
| ○ Directorate of Enforcement. | ○ Assam Rifles. |
| ○ Narcotics Control Bureau. | ○ Special Service Bureau. |
| ○ Aviation Research Centre. | ○ Special Branch {CID}, Andaman and Nicobar. |
| ○ Special Frontier Force. | ○ The Crime Branch-C.I.D.-CB, Dadra and Nagar Haveli. |
| ○ Border Security Force (BSF). | ○ Special Branch, Lakshadweep Police. |

2.

Certain categories of information have been exempted from disclosure under the Act.

These are:

- a. Disclosure that prejudicially affects the sovereignty and integrity of India;
- b. Disclosure that will lead to incitement of an offence;
- c. Information which has been expressly forbidden by any court or tribunal or the disclosure of which may constitute contempt of court;
- d. Where disclosure would cause a breach of privilege of Parliament or the State Legislature;
- e. Information including commercial confidence, trade secrets or intellectual property, where disclosure would harm competitive position of a third party, or available to a person in his fiduciary relationship, unless larger public interest so warrants;
- f. Information received in confidence from a foreign government;
- g. Information the disclosure of which endangers life or physical safety of any person or identifies confidential source of information or assistance;
- h. Information that would impede the process of investigation or apprehension or prosecution of offenders;
- i. Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers;

DEFINITIONS

❖ Public authority

“Public authority” means any authority or body or institution of self government established or constituted

- By or under the Constitution;
 - By any other law made by Parliament;
 - By and other law made by State Legislature;
 - By notification issued or order made by the appropriate Govt.
- [Section 2(h)]



❖ Record

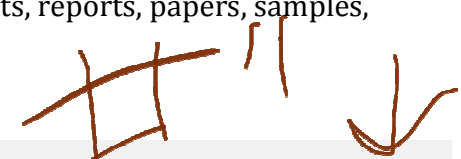
“Record” includes –

- A. any document, manuscript and file;
 - B. any microfilm, microfiche and facsimile copy of a document;
 - C. any reproduction of image or images embodied in such microfilm (whether enlarged or not); and
 - D. any other material produced by a computer or any other device;
- [Section 2(l)]

❖ Information

“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.

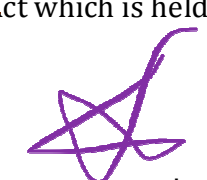
[Section 2(f)]



❖ Right to information

“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 –

- taking notes, extracts, or certified copies of documents or records;
 - inspection of work, documents, records;
 - taking certified samples of material;
 - 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;
- [Section 2(j)]



❖ Third party

“Third party” means a person other than the citizen making a request for information and includes a public authority.

[Section 2(n)]

OBLIGATION OF THE PUBLIC AUTHORITIES

Every public authority under the Act has been entrusted with a duty to maintain records and publish manuals, rules, regulations, instructions, etc. in its possession as prescribed under the Act.

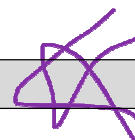
[Section 4(1) (a)]

As per Section 4(1) (b), every public authority has to publish within 120 days of the enactment of this Act:

- **Details of Organization** - functions and duties;
- **Detail of Officers/Employees** - Powers and duties of its officers and employees;
- Procedure for decision making;
- Norms set to discharge its functions;

- **Discharge of functions by employees** - The rules, regulations, instructions, manuals and --records used by its employees for discharging its functions;
- **List of Documents** - A list of documents held by it or under its control;
- **Details of Councils/Committees:**
 - Which boards, councils, committees are constituted by it?
 - Whether the meetings of these are open to the public?
 - Whether the minutes of such meetings are open to the public?
- **Directory** - Of its officers and employees;
- **Details of Monthly Remuneration** - Received by each of its officers and employees;
- **Budget** - Of the Public Authority;
- **Subsidy** - Manner of execution of subsidy programmes;
- **Electronic Form** - Details of information which are available in electronic form;
- **Facilities available for obtaining information** - Details of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
- **PIO Details** - The names, designations and other details of the Public Information Officers;
- Such other information as may be prescribed.

PUBLIC INFORMATION OFFICER (PIO) [SECTION 5]



Every public authority has to –

- Designate in all administrative units or offices Central or State Public Information Officers to provide information to persons who have made a request for the information.
- Designate at each sub-divisional level or sub-district level Central Assistant or State Assistant Public Information Officers to receive the applications for information or appeals for forwarding the same to the Central or State Public Information Officers.

DUTIES OF PIO

1. INFORMATION WITH OTHER AUTHORITY-

Where an application is made to a public authority for information which is held by another public authority, the public authority, to which to which such application is made, shall transfer that application to that other public authority within **5 days** from the date of receipt and inform the applicant immediately.

2. REJECTION OF REQUEST

Where a request has been rejected, the PIO shall communicate to the person making the request

- The reasons for such rejection;
- The period within which an appeal against such rejection may be preferred; and
- The particulars of the appellate authority.

3. INFRINGEMENT OF COPY RIGHT (SECTION 9) –

The PIO may reject the request for information where such a request would involve an infringement of copyright subsisting in a person other than a state.

4. DISCLOSURE OF PARTIAL INFORMATION (SECTION 10) -

Where a request for access to information is rejected which is exempt from disclosure, then, access may be provided to that part of the record which does not contain any exempted information.

5. THIRD PARTY INFORMATION (SECTION 11)

- If information sought has been supplied by third party or is treated as confidential by that third party, the PIO shall give a written notice to the third party within 5 days from the receipt of the request.
- Third party must be given a chance to make a representation before the PIO within 10 days from the date of receipt of such notice.

In simple

Designation of Public Information Officers (PIOs)-

Every public authority has to designate the following officers to carry out the stated work

| Designation | At which level | To carry out following work |
|--|--|---|
| Central or State PIO | All administrative units or offices | To provide information to persons who have made a request for the information |
| Central Assistant or State Assistant PIO | Sub-divisional level or Sub-district level | To receive applications and forward the same to Central or State PIO |

Note: Generally, a person is not required to give reason for making request for information.

APPLICATION FOR GETTING INFORMATION (SECTION 6-7)

The Act specifies the manner in which requests may be made by a citizen to the authority for obtaining the information. It also provides for transferring the request to the other concerned public authority who may hold the information.

Application is to be submitted in writing or electronically, with prescribed fee, to PIO-

- A. Information to be provided *within 30 days*.
- B. 48 hours where life or liberty is involved.
- C. 35 days where request is given to Asst. PIO.
- D. Time taken for calculation and intimation of fees excluded from the time frame.
- E. No action on application for 30 days is a deemed refusal.

✓ J.M.P.

If the interests of a third party are involved then time limit will be 40 days (maximum period + time given to the party to make representation).

No fee for delayed response.

(Section 6&7)

$$30 + 10 = 40$$

INFORMATION COMMISSION

CENTRAL INFORMATION COMMISSION-

Section 12 of the Act empowers the Central Government to constitute the Central Information Commission.

The CIC shall consist of

- 1. the Chief Information Commissioner; and*
- 2. Central Information Commissioners not exceeding 10.*

The Chief Information Commissioner and Information Commissioners shall be appointed by the president on the recommendation of the committee consisting of the following:

- The Prime Minister, who shall be the Chairperson of the committee;*
- The Leader of Opposition in the Lok Sabha; and*
- A Union Cabinet Minister to be nominated by the Prime Minister.*

The headquarters of State 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.

TERMS OF OFFICE

- Section 13 of the Right to Information Act provides that the Chief Information Commissioner shall hold office for such term as may be prescribed by the Central Government and shall not be eligible for reappointment. Provided that no Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.*
- Every Information Commissioner shall hold office for such term as may be prescribed by the Central Government or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such Information Commissioner: Provided that every Information Commissioner shall, on vacating his office under this sub-section be eligible for appointment as the Chief Information Commissioner in the manner specified in section 12(3).*
- Provided further that where the Information Commissioner is appointed as the Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the Information Commissioner and the Chief Information Commissioner.*
- The Chief Information Commissioner or an 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.*
- The Chief Information Commissioner or an Information Commissioner may, at any time, by writing under his hand addressed to the President, resign from his office: Provided that the Chief Information Commissioner or an Information Commissioner may be removed in the manner specified u/s 14.*

SALARIES AND ALLOWANCES

- The salaries and allowances payable to and other terms and conditions of service of the Chief Information Commissioner and the Information Commissioners shall be such **as may be prescribed by the Central Government:**
- Provided that the salaries, allowances and other conditions of service of the Chief Information Commissioner or the Information Commissioners shall not be varied to their disadvantage after their appointment:

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- The Central Government shall provide the Chief Information Commissioner and the 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 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

STATE INFORMATION COMMISSION

Section 15 of the RTI Act empowers every State Government to constitute State Information Commission.

It shall consist of the following:

- i. *State Chief Information Commissioner,*
- ii. *State Information Commissioners not exceeding 10.*

The State Chief Information Commissioner and the State Information Commissioners shall be appointed by the Governor on the recommendation of a committee consisting of-

- i. *the Chief Minister, who shall be the chairperson of the committee;*
- ii. *the Leader of Opposition in the Legislative Assembly; and*
- iii. *A Cabinet Minister to be nominated by the Chief Minister.*

TERMS OF OFFICE

- *Section 16 of the Right to Information Act provides that the State Chief Information Commissioner shall hold office for such term as may be prescribed by the Central Government and shall not be eligible for reappointment: Provided that no State Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.*
- *Every State Information Commissioner shall hold office for such term as may be prescribed by the Central Government or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such State Information Commissioner:
*Provided that every State Information Commissioner shall, on vacating his office under this subsection, be eligible for appointment as the State Chief Information Commissioner in the manner specified in sub-section (3) of section 15:
*Provided further that where the State Information Commissioner is appointed as the State Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the State Information Commissioner and the State Chief Information Commissioner.***
- *The State Chief Information Commissioner or a State 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.*
- *The State Chief Information Commissioner or a State Information Commissioner may, at any time, by writing under his hand addressed to the Governor, resign from his office: Provided that the State Chief Information Commissioner or a State Information Commissioner may be removed in the manner specified under section 17.*

SALARIES AND ALLOWANCES

- *The salaries and allowances payable to and other terms and conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall be such as may be prescribed by the Central Government.*
- *Provided that the salaries, allowances and other conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall not be varied to their disadvantage after their appointment.*

- *The State Government shall provide the State Chief Information Commissioner and the State 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 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.*

POWER AND FUNCTIONS OF INFORMATION COMMISSION-

- ✓ The Information Commission shall receive and inquire into a complaint from the following persons:
 - Any person who has been unable to submit a request to a PIO is not appointed;
 - Any person who has been refused access to any information requested under the Act.
 - Any person who has not been given information within the time limit.
 - Any person who has been required to pay fee which he considers unreasonable.
 - Any person who believes that he has been given incomplete, misleading or false information.
 - Any person in respect to any other matter relating to requesting or obtaining access to records.
- ✓ Where the Information Commission is satisfied that there are reasonable grounds to Inquire into the matter, it may initiate an inquiry.
- ✓ Information commission has same power as are vested in civil court.

General points-

- The Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and Governance.
- Then 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.

APPEAL

Any person who does not receive a decision within the specified time or is aggrieved by a decision of the PIO may file an appeal under the Act.

1. **First Appeal:** First appeal to the officer senior in rank to the PIO in the concerned Public Authority within 30 days from the expiry of the prescribed time limit or from the receipt of the decision (delay may be condoned by the Appellate Authority if sufficient cause is shown).
2. **Second Appeal:** Second appeal to the Central Information Commission or the State Information Commission as the case may be, within 90 days of the date on which the decision was given or should have been made by the First Appellate Authority (delay may be condoned by the Commission if sufficient cause is shown).



Third Party appeal against PIO's decision must be filed within 30 days before first Appellate Authority; and, within 90 days of the decision on the first appeal, before the appropriate Information Commission which is the second appellate authority.



Burden of proving that denial of information was justified lies with the PIO. First Appeal shall be disposed of within 30 days from the date of its receipt or within such extended period not exceeding a total of forty-five days from the date of filing thereof, for reasons to be recorded in writing. Time period could be extended by 15 days if necessary. (Section 19)

Section 27 of the Right to Information Act states that the appropriate Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

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:—

1. the cost of the medium or print cost price of the materials to be disseminated under section 4(4);
2. the fee payable under section 6(1);
3. the fee payable under section 7(1) & section 7(5);
4. the term of office of the Chief Information Commissioner and Information Commissioners under sub-sections (1) and (2) of section 13 and the State Chief Information Commissioner and State Information Commissioners under sub-sections (1) and (2) of section 16;
5. the salaries, allowances and other terms and conditions of service of the Chief Information Commissioner and the Information Commissioners under sub-section (5) of section 13 and the State Chief Information Commissioner and the State Information Commissioners under sub-section (5) of section 16;
6. the salaries and allowances payable to and the terms and conditions of service of the officers and other employees under sub-section (6) of section 13 and sub-section (6) of section 16;
7. the procedure to be adopted by the Central Information Commission or State Information Commission, as the case may be, in deciding the appeals under subsection (10) of section 19; and
8. any other matter which is required to be, or may be, prescribed.

PENALTIES (SECTION 20)

| | |
|--------------------------------------|--|
| Penalty Imposed By | Information Commission - CIC or SIC |
| Penalty Imposed On | Public Information Officer (PIO) |
| Fine | Rs. 250 per day upto maximum Rs. 25,000/- |
| Reason for imposing penalties | <ul style="list-style-type: none">○ If PIO does not accept an application;○ Delay in providing information without reasonable cause;○ Malafidely denying information;○ Knowingly giving incomplete, incorrect, misleading information;○ If he destroys the requested information; and○ If he obstructs furnishing of information in any manner. |