GOVERNMENT OF HIMACHAL PRADESH
ADMINISTRATIVE REFORMS ORGANISATION

A COMPENDIUM OF
RIGHT TO INFORMATION ACT/RULES

सूचना का
अधिकार

संदेश

मुझे यह जानकर बेहद प्रसन्नता है कि हिमाचल प्रदेश सरकार के प्रशासनिक सुधार विभाग द्वारा सूचना का अधिकार अधिनियम, 2005 एवं हि0 प्र0 सूचना का अधिकार नियम, 2006 का 'सार–संग्रह' संकलित किया गया है।

हमारी सरकार द्वारा 'स्वर्णिम हिमाचल दृष्टिपत्र 2017' में जनता के लिए पारदर्शी, उत्तरदायी, जवाबदेह और नागरिक केन्द्रित शासन प्रदान करने का संकल्प लिया गया था, जिसे पूरा करने की दिशा में यह एक कदम है। इस संग्रह के द्वारा सूचना का अधिकार अधिनियम और नियम की बारीकियों को सरल और सुगम तरीके से समझाने का प्रयास किया गया है तथा साथ ही प्रदेश सरकार के जन सूचना अधिकारियों व अपीलीय अधिकारियों को इस अधिनियम के तहत प्राप्त अनुरोधों को निपटाने में सहायता मिलेगी। मुझे आशा है कि सार्वजनिक जानकारी तक बेहतर पहुंच से आम जनता की प्रशासन में भागीदारी और विश्वास में वृद्धि होगी।

इस पहल और ईमानदार प्रयास के लिए मैं प्रशासनिक सुधार विभाग को अपनी शुभकामनाएं देता हूँ।

(जयराम ठाकुर)
मुख्यमन्त्री
हिमाचल प्रदेश

शिमला
अप्रैल, 2018

MESSAGE

I am happy to learn that Administrative Reforms Organisation, Department of Personnel, Government of Himachal Pradesh has come up with ***"Compendium of Right to Information Act/Rules in Himachal Pradesh".***

This is a step towards our State's resolve to provide a transparent, responsive and accountable citizen centric government to the public. This compendium has simplified and exemplified the concepts, definition, terminology, provisions of sections and sub sections of RTI ACT which will enable the State Public Information Officers of Himachal Pradesh Government to understand the nuances of this act in an easy and simple manner besides indicating a step wise process to dispose the requests received under RTI Act. I hope that better access to public information will build citizen confidence & participation in governance.

I extend my good wishes to the Administrative Reforms Organisation, Himachal Pradesh for taking this initiative and making sincere efforts.

(Jai Ram Thakur)
Chief Minister,Himachal Pradesh.

Shimla
April, 2018

VINEET CHAWDHRY, IAS
विनीत चौधरी, भा.प्र.से.

Chief Secretary,
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मुख्य सचिव,
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दिनांक 06 अप्रैल,2018

सन्देश

मुझे इस बात की बेहद प्रसन्नता हुई कि हिमाचल प्रदेश सरकार के प्रशासनिक सुधार विभाग द्वारा सूचना का अधिकार अधिनियम,2005 एवं हि.प्र. का अधिकार अधिनियम, 2005 का सार–संग्रह लाया जा रहा है।

यह दस्तावेज आम जनता से लेकर निति निर्धारकों और सूचना का अधिकार अधिनियम,2005 के अधिसूचित जन–सूचना अधिकारी, सहायक जन–सूचना अधिकारी तथा अपीलीय अधिकारियों के लिए समय पर सूचना सम्बन्धी पहुंच और आपूर्ति की सुविधा प्रदान करने में सहायक एक, 'उद्यत पुस्तिका'(ready reckoner) है। यह सार–संग्रह राज्य सूचना आयोग के महत्वपूर्ण निर्णयों एवं निर्देशों के साथ–साथ प्रायः पूछे जाने वाले प्रश्नों का संकलन भी प्रस्तुत करता है।

इस पहल और ईमानदार प्रयास के लिए मैं प्रशासनिक सुधार विभाग को अपनी शुभकामनाएं देता हूँ।

(विनीत चौधरी)
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मुख्य सचिव,
हिमाचल प्रदेश सरकार,
शिमला-171 002

Dated 06th April,2018

MESSAGE

I am happy to learn that Administrative Reforms Organization, Department of Personnel of Himachal Pradesh Government has come up with "Compendium of Right to Information Act/ Rules in Himachal Pradesh."

This compendium has been attempted with a view to educate the general public and also enable the State Public Information Officers and appellate authorities of Himachal Pradesh to have a single point ready reckoner that facilitates timely information access and supply. Compendium also provides a collection of land mark decisions of the State Information Commission and a set of Frequently Asked Questions to enhance understanding of this statute by stake holders.

I extend my good wishes to the Administrative Reforms Organization, Himachal Pradesh for taking this initiative and making sincere efforts.

(Vineet Chawdhry)
Chief Secretary

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हिमाचल प्रदेश सरकार

प्रस्तावना

सूचना का अधिकार अधिनियम, 2005, नागरिकों के लिए लोक प्राधिकरण से सूचना तक पारदर्शी पहुंच स्थापित करने का लोकतांत्रिक शासन व्यवस्था का एक प्रामाणिक एवं महत्त्वपूर्ण विधान था। सकिय रूप से जानकारी प्रकट करना और समय सीमा के भीतर नागरिकों द्वारा मांगी गई सूचना प्रदान करने के फलस्वरूप प्रशासन में भरोसा बढा और सार्वजनिक प्राधिकरणों को अप्रचलित प्रकियाओं पर पुनर्चिन्तन कर उन्हे अधिक उत्तरदायी बनाने के लिए मजबूर किया गया।

यह सूचना का अधिकार अधिनियम सग्रंह सभी श्रेणियों के नागरिकों और सार्वजनिक प्राधिकरणों के लिए एकल बिन्दु तैयार अपेक्षित सन्दर्भ है। हिमाचल प्रदेश के सूचना चाहने वालों और राज्य सूचना अधिकारियों के लिए इस अधिनियम की प्रकिया का निष्पादन सरल व सुगम तरीके से करने का प्रयास किया गया है। लोकतांत्रिक प्रकृति और संभावना की आसान समझ की सुविधा के लिए प्रमुख विधानों, अधिसूचनाओं, परिभाषाओं, शब्दावली व प्रशासनिक दिशानिर्देशों सहित प्रायः पूछे जाने वाले प्रश्न भी इस सार–संग्रह में वर्णित किए गए हैं। इस संग्रह को विभिन्न अध्यायों में उपयोगकर्त्ताओं की सुविधा के लिए संक्षिप्त सुपाच्य अंशों में विभक्त किया गया है। हिमाचल प्रदेश सूचना आयोग के महत्त्वपूर्ण निर्णयों का एक सारांश भी इसमें सम्मिलित किया गया है।

लगभग 3300 जन सूचना अधिकारियों, सहायक जन सूचना अधिकारियों तथा अन्य अधिकारियों/कर्मचारियों के साथ–साथ सूचना चाहने वालों, शिक्षाविदों/शोधकर्ताओं और सामाजिक विकास एवं प्रशासन की पारदर्शिता और जवाबदेही के लिए काम करने वाले कार्यकर्ताओं के लिए उपयोगी इस संग्रह को लाने में प्रशासनिक सुधार संगठन की सहायता करने के लिए मैं हिमाचल लोक प्रशासन संस्थान, राज्य सूचना आयोग तथा आर्थिक एवं सांख्यिकी विभाग के प्रति अपनी कृतज्ञता व्यक्त करती हूँ। यद्यपि इस कार्य की प्रगति निरन्तर जारी है तथापि भविष्य में इस दस्तावेज को समृद्ध बनाने के लिए सभी टिप्पणियों, सुझावों और विचारों का स्वागत है।

(डॉ0 पूर्णिमा चौहान)
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शिमला
अप्रैल, 2018

PREFACE

RTI Act, 2005 was a landmark legislation in establishing a transparent access for citizen to information from public authorities as the of hallmark democratic governance. Proactive, information disclosure and providing information demanded by citizens in a time frame has fostered confidence in governance and compelled public authorities to revisit archaic procedures to make them more responsive.

This RTI compendium seeks to be a single point ready reference for all categories of citizens and public authorities. It has been attempted with a view to enable the information seekers and State Public Information Officers of Himachal Pradesh Government to understand the nuances of the Act in an easy and simple manner besides indicating a step wise process to dispose off the requests received under RTI Act. The key legislation notifications thereafter definitions, terminology, administrative instructions and frequently asked questions (FAQs) have been simplified and compiled with examples to facilitate easy understanding of the nature and scope of this Act. The Compendium has been divided into different chapters for the convenience of users to split the material into small digestible chunks. A synopsis of landmark cases decided by HP State Information Commission is included.

I would like to acknowledge the contribution made by Himachal Institute of Public Administration, HP State Information Commission and Economics & Statistics department in helping Administrative Reforms Organization to bring this compendium for use by nearly 3300 PIOs/APIOs, Appellate Authorities and other officers/officials in government and for citizens seeking proactive information disclosure academicians/researchers and activists working for the cause of social development, transparency and accountability. As this is a work in progress comments, suggestions and observations are welcome from all stakeholders to enrich this document further.

(Dr. PurnimaChauhan)
Secy. AR Himachal Pradesh

Shimla
April, 2018

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1. Main Provisions of RTI Act, 2005

The main provisions of RTI Act, 2005 include:

1.1 Preamble:

An Act 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.

The Right to Information Act, 2005 has been enacted to provide the information to citizens which belongs to the public authority to increase the responsibility and answerability in the working of every state or local government agency. The SIC constituted is necessary for the functioning, operations and maximum utilization of funds to control and check the corruption within the government and their agencies.

1.1.1 Key points emerging from the Preamble:

- Informed citizenry, results into transparent governmental functioning and demanding accountability of government is a must in a democracy.
- A practical regime of RTI needs to balance 'people's right to know' with the 'public interest' in 'confidentiality of sensitive information' and in 'efficient and resource-optimising functioning of Government

1.2 RTI to Information means that:

- Citizens have a right to access information held or under the control of Public Authorities.
- Citizen's awareness increases along with their ability to exercise their other rights.
- Citizen's are equipped to participate meaningfully in the development process

1.2.1 Key Facts of RTI Act, 2005

- The 'RTI Act, 2005' is a national legislation. It is a law passed by the Parliament of India, extends to the whole of India except the State of Jammu and Kashmir
- The Act has a Preamble, 6 Chapters and 2 Schedules
- The Act has 31 Sections. Most sections have several subsections
- It is the CITIZENS who, subject to the provisions of the 'RTI Act, 2005, have the right to information

1.2.2. Salient Features of the 'RTI Act, 2005'...

The salient features of the 'RTI Act, 2005', which relate to the objects that are reflected in the Preamble are:

- Maximum disclosure
- Duty to publish
- Suo motu and web-based disclosures
- Duty to furnish

Exemptions- Specific class and prejudice based, qualified and time limited.

- Covers private body and third party information.
- Penalty for non–compliance
- Independent and non-judicial appellate mechanism.
- Empowerment of citizens
- The provisions of the Act are over-riding in character

1.3 Definitions:

1.3.1 "Appropriate Government"

- ✓ Under the 'RTI Act', 2005 (unless the context otherwise specifies), an Appropriate Government would be either the Central Government or a State Government.
- ✓ However, the Act defines an Appropriate Government in relation to a Public Authority (PA).**S. 2*(a)(i) & (ii)***
- ✓ Thus, for a given Public Authority, the Appropriate Government would be as depicted below:

Public Authority	Appropriate Government
Established, constituted owned controlled or substantially financed by funds provided directly or indirectly by the *Central Government* or the *Union territory administration*	**Central Government**
Established, constituted owned controlled or substantially financed by funds provided directly or indirectly by the *State Government*	**State Government**

1.3.1.1 Responsibilities of Appropriate Government

- Appropriate Government is required to prescribe reasonable application fees and reasonable fees for providing access to information in printed or in any other electronic format. **Section 7*(5)* &6*(1)***
- A copy of the Report – that an Information Commission (IC) prepares at the end of each years to be forwarded to the Appropriate Government who, may, as soon as practicable after the end of each year, cause a copy of this report to be laid, may, be before the State Legislature.

Section *25(1) & (4)*

- Appropriate Government shall, within 18 months from the commencement of the 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 the Act. **Section. 26*(2)***

1.3.2 "Competent Authority" is required by the 'RTI Act, 2005' to make rules for implementing its provisions.

Section 2(e)

Competent Authority (CA) means:	
1. Lok Sabha /Legislative Assembly >	Speaker
2. Rajya Sabha/Legislative Council >	Chairman
3. Supreme Court >	Chief Justice of India
4. High Court >	Chief Justice of High Court
5. For Constitutional bodies >	President or Governor as the case may be
6. For Union Territories >	Administrator appointed under Article 239 of the Constitution

1.3.2.1 Responsibilities of Competent Authority

1. Competent Authority may, by notification in the Official Gazette has to make rules to carry out the provisions of this Act, which… may provide for all or any of the following matters.

Section 28 *(1)* &*(2)*

(i) The cost of the medium or print cost price of the materials to be disseminated under section 4(*4*);

(ii) The fee payable under section 6 (*1*);

(iii) The fee payable under section 7 (*1*); and

*(iv)*Any other matter which is required to be, or may be, prescribed

1.3.3 "Central Information Commission" constituted by the central government to use the authorities provided for functioning's assigned to it.

Section 12(1)

1.3.4 "Central Public Information Officer" and **"Central Assistant Public Information Officer"** designated in all administrative units or office to provide the requesting information. **Section 5.(1)(2)**

1.3.5 "Chief Information Commission" and **"Information Commissioner"** appointed by the President on the recommendation of a committee. **Section 12.(3)**

1.3.6 "State Information Commission" constituted by the state government to use the authorities provided for functioning's assigned to it.**Section 15(1)**

1.3.7 "State Public Information Officer" and **"State Assistant Public Information Officer"** designated in all administrative units or office to provide the requesting information.

Section5.(1)(2)

1.3.8 "State Chief Information Commissioner" and **"State Information Commissioner"** appointed by the governor on the recommendation of a committee. **Section 15.(3)**

1.3.9 "Prescribed" means prescribed by rules made under this Act by the appropriate
Government or the competent authority, **Section 2(g)**

1.3.10 "Public Authority" is any authority or body or institution or organisation whether government or non-government owned or controlled or operate or financed directly or indirectly by the government or parliament or state legislative.**Section 2(h)**

1.3.11 "Third Party" is the person or body or public authority other than applicant or PIO, orthird party defined in S. 2(n) means a person other than the citizen making a request for information and includes a public authoritythird party information is any information or record, or part thereof supplied by a third party and treated by it as confidential prescribed a term used at several places in the Act – as defined in of the Act means prescribed by rules made under this Act by the appropriate government or the competent authority as the case may be.**S. 11(1), S.2(g)**

2. Right to Information

2.1. Information:

"Information" is any material in any form include

- records,
- documents,
- memos,
- emails,
- opinion,
- advices,
- press releases,
- circular,
- orders,
- logbooks,
- contracts,
- reports,
- papers,
- samples,
- models,
- data material held in any electronic form and
- Information relating to any private body connected to public authority.

Section 2(f)

2.2. Record:

"Record" is any

- any document, manuscript and file,
- any microfilm, microfiche, and facsimile copy of a document
- any reproduction of images or images embodied in such microfilm (whether enlarged or not)
- Any other material produced by a computer or any other device.

2.3. What is the right?

"Right to Information Act, 2005" is gives the right to citizen to access the information i.e. inspections or taking certified copies or samples of material, work, documents or records and obtaining it in the form of diskettes, floppies, tapes, video-cassettes, prints or in any other electronic mode**.Section 2(j)**

Right to information defined in **[S. 2(j)]** means the right to access information held by or under the control of any Public Authority. It includes the right to:

(i) I**nspection** of work, documents or records

(ii) T**aking notes**, **extracts** or **certified copies** of documents or records

(iii) **Taking certified samples** of material

(iv) **Obtaining information –** stored in a computer or in any other device – in the form of

- **diskettes,**
- **floppies,**
- **tapes,**
- **video cassettes or**
- **in any form electronic mode or**
- **through print outs**.

Note: The above definition read together with the definitions of information and record enable a citizen to have a very extensive RTI held by or under the control of Public Authorities.

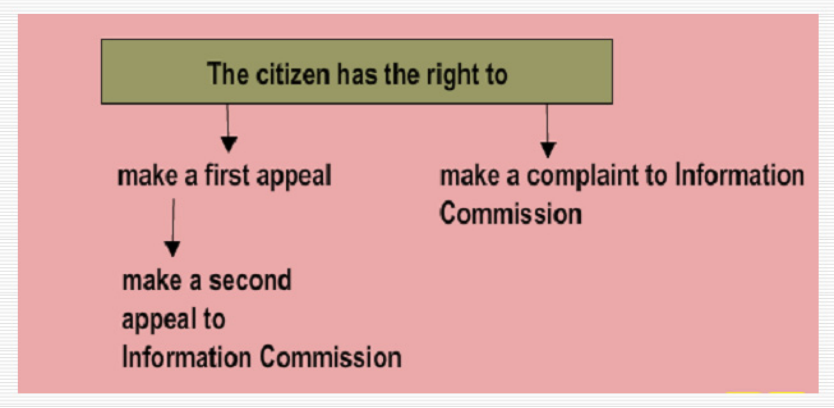
2.4. Who has the right?

All **"citizens of India"** have right to get information**. Section 3**

2.4.1. Rights conferred on Citizens to

- Make a request to PIO or APIO.
- Choose medium of request.
- Choose language of request.
- Seek exemptions for fee for BPL.
- Seek help for writing request.
- Not to give reason for request of information.
- Receive information, if request is transferred.
- Presumption of refusal and consequent right to complaint/appeal.
- Knowing costing details.
- Waiver of costs
- Knowing Reasons for rejection of request
- Know details to proceed with appeal
- Choose medium of response to be received, including sample
- Partial access to records with reasons on limits to access
- Complaints appeal against refusal / rejection of request or unreasonable fee
- Appeal / Second appeal
- Influence penalty / disciplinary action against PIO
- Force burden of proof on PIO
- Demand third party and private party information
- Demand on-site inspection
- Demand compensation

2.4.2. The Right of Citizen



3. Obligations of Public Authority

3.1. Public Authority

3.1.1. A public authority has been defined as any authority/ body /institution of self government established or constituted by:

- or under the Constitution (of India)
- any other law made by Parliament
- any other law made by State Legislature
- notification issued or order made by the appropriate government

Section- 2(h)(a)-(d).

3.1.2 It is pertinent that Public Authorities under Central Government are referred to as ***Central Public Authorities*** *and those under State Governments as referred to as* ***State Public Authorities****.*

3.1.3 A Public Authority is any –

- body owned, controlled or substantially financed
- non-Government organisation substantially financed, directly or indirectly by funds provided by the Appropriate Government.

Section- 2(h)(d)(i)&(ii)

3.2. Obligations of Public Authorities

3.2.1. The PIO has to keep in mind that the Public Authority has been entrusted with the following obligations which ease him out to deliver his responsibilities to -

- Maintain all records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act.
- 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.

Section-4 (1)(a)

- Proactively disclose information –[as required by S.4 (1)(b)]– under 17 heads as follows:

  i. Particulars of its organisation, its functions and duties.
  ii. Powers and duties of its officers and employees.
  iii. Procedure followed in decision making including channels of supervision and accountability.
  iv. Norms set by it for discharge of its functions
  v. Rules, Regulations, Instructions, Manuals and records under its control / used by employees while discharging functions.
  vi. Categories of documents held by the authority or which are under its control
  vii. Arrangement for consultation with or representation by the members of the public in relation to the formulation of policy or implementation thereof
  viii Boards, Councils, Committees and other bodies constituted as part of the public authority.

ix Directory of Officers and employees.
x Monthly remuneration received by officers and employees including system of compensation.
xi Budget allocated to each agency including all plans, proposed expenditure and reports on disbursements made etc.
xii Manner of execution of subsidy programmes
xiii. Particulars of recipients of concessions, permits or authorisation granted by the public authority
xiv. Information available or held by it, reduced in an electronic form;
xv. Particulars of facilities available to citizens for obtaining information
xvi.Any other information as may be prescribed and thereafter update these publications every year

Proactive disclosure is at the heart of the RTI implementation regime. The more efficient, effective a Public Authority is in complying with S. 4(1)(b), the less will be the need for the citizen to apply for information.

- Certain other provisions of the Act for reinforcing a PA's compliance with S. 4(1)(b)require it to:
  - Publish all relevant facts while formulating important policies or announcing the decisions which affect public **S.4(1)(c)**
  - Provide reasons for its administrative or quasi-judicial decisions to affected persons**S.4(1)(d)**
  - Provide the above information at regular intervals through various means of communication including the internet**S.4(2)**
- Widely disseminate every information and in a form and manner easily accessible to the public like
  - notice boards,
  - newspapers,
  - public announcements,
  - media broadcasts,
  - internet,
  - any other means including inspection of offices
- Make information available in the local language and in a cost effective manner, using the most effective method of communication in a local area along with making information accessible, to the extent possible,
    - in electronic format
    - free of cost or
    - at the cost of the medium or
    - prescribed print cost price

[Section- 4(4)]

- Designation of Public Information Officers (PIOs) and Assistant Public Information Officers (APIOs) in all administrative units /offices under it – as may be necessary to provide information to those requesting for it under the Act.**S. 5(1),S. 5(2)**

3.3. Central Point for Receiving RTI Applications- Guidelines to States

- Where a Public Authority has designated more than one PIO to receive application, all Public Authorities are required to create a central point within the organisation

to receive all RTI applications and appeals addressed to the First Appellate Authorities (FAAs).

- An officer should be made responsible to ensure that all the RTI applications/appeals received at the central point are sent to the concerned PIOs / FAAs on the same day.
- The Receipt and Issue Section / Central Registry Section of the Ministry / Department /Organisation / Agency etc may be converted as the central point to receive applications and be distributed to the concerned PIOs / FAAs.
- The R&I / CR Section may maintain a separate register for the purpose. The Officer-in-Charge / Branch Officer of the Section may ensure that the applications / appeals are distributed the same day.

[OM No.1/32/2007-IR Dated 14Th November, 2007 issued by DoPT, Annexure-I]

DoPT, GoIGuideline

4. Institutions: Roles & Responsibilities

To institutionalise the practical regime of transparency and to enable the citizens to exercise their Right to Information, three institutions have been established through the provisions of RTI Act, 2005 vizi) PIO/APIO, ii) FAA, iii) CIC or SIC.

4.1 Public Information Officer (PIO)

A PIO is an officer designated by the Public Authority in any of its administrative units to provide information to persons requesting for information under the Right to Information Act, 2005

The Act does not prescribe any number or levels for designating PIOs. It has been left to a Public Authority's judgment to determine an adequate number. Accordingly, Public Authorities may designate more than one PIO –sometimes may even designate PIOs for particular function(s) of the PA.

4.1.1 Functions of PIO

The PIO has been entrusted with the responsibility to -

- Accept and deal with requests from information seekers and render reasonable assistance to such persons.**S.5(3)**
- Provide information or reject a request (for valid reasons) as expeditiously as possible, subject to time limits as prescribed and, ordinarily, in the form in which it has been sought. **S. 7(1) & (9) & S. 8(1)(a)–(j)**
- Seek assistance of any other officer where necessary for the proper discharge of her/his duties. **S.5(4)**
- Render assistance to the requester making the request orally to reduce the same in writing, where the request cannot be made in writing **S.6(1)**
- Provide persons with sensory disabilities, appropriate assistance to enable access to information and inspection, if necessary **S.7(4)**
- Transfer applications, where the information is held by another PA or the subject matter is more closely connected with the functions of another PA **S. 6(3)**
- Inform applicant immediately about the transfer **S. 6(3)**
- Send an intimation requesting deposition of further fees, where applicable for providing information –provide necessary information for the applicant to appeal **S. 7(3)(a) &(b**)
- Send a communication to the requester about the reasons for rejection–provide necessary information for the applicant to appeal including particulars of the appellate authority **S. 8 (i), (ii) & (iii)**
- Provide access to part of the record which can be reasonably severed from the part containing exempted information – giving reasons for partial rejection **S. 10 (1)**
- Give a notice of the request to 3rd party and invite submission– where 3rd party information is requested. Give notice of decision to disclose third party information within 40 days after receipt of the request as also information about being entitled to prefer an appeal **S.s 7(7), 11 (1), (2), (3) & (4)**
- Duly apply the "Public Interest test" in rejecting a request partially or fully as per exemptions in **8(1)(a)-(j) [S. 8(2)**

- Carry the burden (through the appeal process) of proving that that he / she acted reasonably and diligently **S. 20(1)**
- A PIO must discuss information exempt under **S. 8(1), (d) &(e)**. Competent Authority has to satisfy itself about the public interest in disclosure of such information by the PIO.
- A PIO can disclose information exempt under **Section 8(1), (d) &(e)**, if competent authority is satisfied that there is public interest in its disclosure

4.1.2. Deemed PIO:

- Any officer whose help/assistance needed for the purposes of any hindrance of the provisions of this act then such other officer shall be treated as a **Deemed PIO**.

Section 5.(5)

4.1.3. Functions of Other Officers (Deemed PIO)

Any 'other officer' in a public authority whose assistance – necessary for proper discharge of duties' of a PIO – has been sought:

- Is expected to 'render all assistance' to the PIO **S. 5(5)**
- Should provide the information under his/her control 'as expeditiously as possible' **S. 7(1)**
- Carry the burden (through the appeal process) of proving that that he / she acted reasonably and diligently **S. 20(1)**

4.1.4. Reporting on RTI

- Under S. 25 of the RTI Act, 2005, an Information Commission (IC) has been entrusted with the responsibility of preparing a report on the implementation of the provisions of this Act during (a given) year and forward a copy thereof to the Central / State Government – as applicable
- Each department in relation to PAs within their jurisdiction are expected to collect and provide such information to the IC concerned.
- The report in respect of the year should provide, among others, information on certain implementation aspects.
- It implies that a PIO should maintain records pertaining matters, which the ICs report should contain'.
- This information should be submitted to the head of the department periodically. This information should pertain:
  1. Number of requests received by each PA
  2. Number of decisions where applications were not entitled to access the documents pursuant to the requests the provisions of the Act under which these decisions were made and the number of times such provisions were invoked
  3. Number of appeals referred to the IC for review, the nature of appeals and the outcome of appeals
  4. Details of disciplinary action taken against any officer in respect of administration of this Act
  5. Amount of charges collected by each PA under this Act

4.2 Assistant Public Information Officer (APIO)

An APIO is an officer designated by a State PA under S. 5(2) **APIO's** are designated at each sub-divisional or sub-district levels of every public authority for receiving and providing the requested persons information's and other role of **APIO's** is also forwarding the application to the **PIO** or appeals **SIC** or **FAA.**

If the application is given to an **APIO** then the response period is increased by 5 days means total days of response period becomes 35 days. **Section 5.(1)(2)**

4.2.1. Functions of APIO

- Receive applications for information or appeals at the sub-divisional or sub-district level **Ss. 5(2) &6(1)**
- Forward them forthwith to the PIO or appellate officer, as the case may be. Applications should be forwarded to the PIO at the earliest, not exceeding five days.

  S. 5(2)
- Render assistance akin to PIO to the citizens at the time of filling applications or appeals **Ss. 2(c)& (m), 5(1)& (2)& 6(1)(a)& (b)**
- In keeping with the PIO's reporting responsibilities, APIOs will also have to report on the said matters.

4.3 First Appellate Authority (FAA)

An officer senior in rank to PIOs in each PA to receive appeals against the decision of a PIO:

- Preferred by the requesters – within 30 days from the receipt of the decision or within 30 days from the expiry of period specified in S. 7(1)or S. 7(3)(a), if no such decision was communicated. [S. 19(1)]
- Preferred by third parties as per S. 11(4)– within 30 days from the date of the order as per S. 11(3). No discretion for accepting appeals after 30 days is available to the FAA in this case. [S. 19(2)]

4.3.1. Functions of FAA

- Exercise discretion to accept appeals after 30 days if he / she is satisfied that the appellant was prevented by a sufficient cause from filing the appeal in time
- Dispose of appeals within 30 days of their receipt
- Record reasons if an additional period of 15 days as permitted by the Act is availed of
- Provide an opportunity of being heard to, both, the appellant and the PIO
- Adhere to the principles of natural justice while deciding first appeals

4.3.2. Procedure for appeals in HP RTI Rules, 2006

1. Contents of appeal- The Memorandum of appeal to the Appellate Authority/Commission shall contain the following information, namely:-
   i. Name and Address of the Appellant

ii. Name and Address of the PIO against the decision of whom the appeal is preferred;
iii. Particulars of the order including number, if any, against which the appeal is preferred;
iv. Brief facts leading to the appeal
v. If the appeal is preferred against deemed refusal, the particulars of the application, including number and date and name and address of the PIO to whom the application was made;
vi. Prayer or relief sought;
vii. Grounds for the prayer or relief;
viii. Verification by the appellant
ix. Any other information which the Commission may deem necessary for deciding the appeal

2. The appellant shall submit two copies of the memorandum of appeal for official purpose.
3. Every appeal made to the Appellate Authority/ Commission shall be accompanied by the following documents, namely:-
   i. Self attested copies of the Orders or documents against which the appeal is being preferred
   ii. Challan in proof of the payment of the prescribed fee.
   iii. Copies of documents relied upon by the appellant and referred to in the appeal; and
   iv. An index of the documents referred to in the appeal.

4. When the Appellate Authority/ Commission may calls for the record, it shall in any case shall return the original record within 10 days after retaining an authenticated copy if required.

5. On the date of hearing or on any other day to which hearing may be adjourned, the parties shall put their appearance before the Appellate Authority/ Commission. If the appellant fails to appear on such date, the Appellate Authority/Commission may in its discretion either dismiss the appeal or decide the matter ex-parte on merits

6. The appellant shall not, except by leave of the Appellate Authority /Commission, urge or be heard in support of any ground of objection which has not been set forth in the memorandum, but the Appellate Authority /Commission, in deciding the appeal, need not confine itself to the grounds of objection set forth in the memorandum
   - Provided that the Appellate Authority/ Commission shall not rest its decision on any ground other than those specified in memorandum, unless the party likely to be affected thereby, has been given, an opportunity of being heard by the Appellate Authority/ Commission.

7. The Commission may frame regulations in respect of its day-to-day proceedings.

4.4 State Information Commission

The long title of the 'RTI Act, 2005' refers to the Information Commissions stating that it is an Act for setting out a practical regime of right to information. The constitution of a Central Information Commission and State Information Commission and matters connected therewith or incidental thereto. The long title conveys that the institution of IC is a vital aspect of the practical regime envisaged under the Act.

State Information Commission and State Information Commissioners, are defined in S. 2(k) & (l). S. 15(1) & (3) deal with the constitution of the State Information Commission and appointment of the State Information Commissioners. S. 15(1) provides that every State Government shall constitute a SIC by notification in the Official Gazette (indicating the name of the State) to exercise the powers conferred and the functions assigned under the 'RTI Act, 2005'. They shall consist of –

- The State Chief Information Commissioner; and
- Such number of State Information Commissioners, not exceeding ten, as may be deemed necessary. **S. 15(2)**

4.4.1. Functions & Powers of State Information Commission

a) Appeal

1. Any person who does not receive a decision within the time specified in 7(1) or S. 7(3)(a)or is aggrieved by a decision of the State PIO may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to the First Appellate Authority.
2. Likewise, a third party can also, within 30 days, make an appeal against the order of a PIO to disclose third party information.
3. A second appeal against the decision under S. 19(1) [i.e. the decision of an FAA shall lie, with the State IC, within 90 days from the date on which the decision should have been made or was actually received,
4. State IC may admit the appeal after the expiry of the period of 90 days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time

   S. 19(3)
5. Similarly, second appeals by a third party may also lie with the State IC, as the case may be, in which case, the IC shall give a reasonable opportunity of being heard to that third party. **S. 19(4)**
6. 'RTI Act, 2005' does not apply to certain Intelligence and security Organisations established by the Central Government specified in the Second Schedule of the Act. RTI Act does not apply to the information furnished by these organisations to the Central Government either…**S. 24(1)**
7. Similar exemption is available to intelligence and security organisations established by the State Government, as the Government may from time to-time notify. [S. 24(4)]. However, information pertaining to allegations of corruption and human rights violations shall not be excluded under S. 24(1) & (4). **24(1)& (4)**
8. Notwithstanding above when it comes to information pertaining to allegations of violation of human rights, it shall only be provided after approval of the Central / State IC concerned and within 45 days. **S. 24(1)& (4)**
9. As part of their Monitoring and Reporting responsibility, every IC shall, after the end of each year, prepare a report on the implementation of the provisions of this Act and forward a copy thereof to the appropriate Government. **S. 25(1)**

10. If it appears to the Central / State IC that the practice of a PA in relation exercise of its functions does not conform with the provisions or spirit of the 'RTI Act, 2005',it may give a recommendation specifying the steps which ought… to be taken for promoting such conformity. **S. 25(5)**

b) Complaint to Commission

Unlike an appeal, a 'complaint' (as specified in the 'RTI Act, 2005') can be made only to the Central / State IC – as the case may be

- It shall be the duty of the Central / State IC, as the case may be, to receive and inquire into a complaint from any person for reasons specified in S. 18 (1)(a)–(f)of the 'RTI Act, 2005'. **S. 18(1)**
- Where the Central / State IC, as the case may be, is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.
- IC shall, while inquiring into any matter under this u. S. [S.18(3)], have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure.
- A citizen can make a direct complaint to the IC under **S. 18**.
- An IC has the power and the function to receive and inquire into a complaint from any person made on such grounds as follows:
  a) Inability to submit a request to a PIO either because no such officer has been appointed under the Act or because the APIO has refused to accept the application for information or appeal for forwarding to the concerned officer or IC.
  b) Refusal to access information under the 'RTI Act, 2005'
  c) Not getting a response to a request for information or access to information within the time limit specified under this Act.
  d) Being required to pay an amount of fee which he / she considers unreasonable.
  e) Believing that he / she has been given incomplete, misleading or false information under this Act and
  f) Any other matter relating to requesting or obtaining access to records under the 'RTI Act, 2005'.
- Where the Central / State IC, as the case may be, is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.**S.18(2**)
- IC shall, while inquiring into any matter u. S. [S.18(3)], have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908.
- IC Inquiring into a Complaint can summon and enforce attendance of persons and compel them to give oral or written evidence on oath and produce documents or things
  - Require discovery and inspection of documents
  - Receive evidence on affidavit
  - Requisition any record or copies thereof from any court or office
  - Issue summons for examination of witnesses or documents and
  - Any other matter which may be prescribed
- During an inquiry, an IC may examine any record to which the 'RTI Act, 2005' applies which is under the control of the Public Authority notwithstanding anything contained in any other Act of Parliament or State Legislature and no such record may be

withheld from it on any grounds. **S. 18(3)**

- State IC can require the PA to compensate the complainant for any loss or other detriment suffered. **S. 19(8)(b)**
- State IC shall give a notice of its decision including any right of appeal to the complainant and the PA. **S. 19(9)**

4.4.2. Provisions for Penalty imposition

- The SIC shall impose a penalty of Rs. 250/- each day till application is received or information is furnished, however, the total amount of such penalty shall not exceed 25,000 rupees; .Where State IC (at the time of deciding any complaint / appeal)is of the opinion that a PIO has, without any reasonable cause:
    - Refused to receive an application for information
    - Not furnished information within the time specified
    - Malafidely denied the request for information
    - Knowingly given incorrect, incomplete or misleading information
    - Destroyed information
    - Obstructed in any manner in furnishing the information…

  S. 20(1)
- The State PIO shall be given a reasonable opportunity of being heard before any penalty is imposed on him, the action in good faith will not be penalised, the burden of proving that he/she acted reasonably and diligently shall be on the State PIO… **S. 20(1)**
- IC shall recommend for disciplinary action against the State PIO if he / she has, without any reasonable cause, persistently violated the provisions of the Act[as stated in [S. 20(1)].**S. 20(2)**
- State IC shall give a notice of its decision including any right of appeal to the complainant and the PA.**S. 19(9)**

4.5 History of Himachal Pradesh State Information Commission

4.5.1 Role and Responsibilities of the Himachal Pradesh State Information Commission

The Himachal Pradesh State Information Commission was constituted vide a notification issued on 4th February, 2006 by the Department of Administrative Reforms of the Government of Himachal Pradesh. The Commission started functioning with effect from 1st March, 2006 with its headquarters at Shimla, on the assumption of the office of State Chief Information Commissioner, Himachal Pradesh by Shri P.S. Rana as the first Chief Information Commissioner, Himachal Pradesh. The Secretariat administration of the State Government provided secretarial staff and other support to the Himachal Pradesh State Information Commission right from 1st March, 2006 and thereafter. The Commission functioned as a single member body upto 1st July, 2007 and thereafter, Sh. S.S.Parmar joined as a State Information Commissioner on 2nd July, 2007. After the retirement of Shri P.S. Rana on 28th February, 2011, Sh. Bhim Sen assumed the office of the Chief Information Commissioner on 25th March, 2011 and after the retirement of

Shri S.S. Parmar on 5th June, 2012, Sh. K.D. Batish assumed the office of the State Information Commissioner on 8th June, 2012. After the retirement of Sh. Bhim Sen and Sh. K.D.Batish, Sh. Narinder Chauhan and Sh. Sushil Kumar Srivastva were appointed as State Chief Information Commission and State Information Commission respectively on 28 June 2017. State Government has provided ground floor of Majitha House, Shimla-2 to house the office of State Information Commission during the year under report.

4.5.2 Implementation Of The RTI Act, 2005 During Past Eleven Years

(a) The RTI Act, 2005 came into force w.e.f. 12th October, 2005. The public authorities initiated steps to implement various provisions of the Act namely the designation of PIOs/ APIOs & Appellate Authorities and declarations under section 4 (i) (b) of the Act. The PIOs and APIOs started receiving applications even before the State Information Commission started functioning w.e.f. 01.03.2006. The details of RTI Applications received, first appeal filed and fee collected by the public authorities since October 2005 to 2015-16 are as under:-

Year	No. of Public Authorities	Total Applications Received	No. of Applications Rejected by PIOs	First Appeals Received by 1st Appellate Authorities	Amount of fee collected (in ₹)
2006-07	110	2,654	119	127	2,34,281
2007-08	118	10,105	283	267	6,00,495
2008-09	124	17,869	259	338	8,07,939
2009-10	134	43,835	442	706	10,89,504
2010-11	125	55,463	701	1220	14,32,417
2011-12	132	72,191	840	1381	19,56,046
2012-13	110	61,202	1396	1232	14,45,954
2013-14	110	63,722	1074	1716	14,98,202
2014-15	80	50675	2143	635	11,14,962
2015-16	62	46430	684	1558	10,02,958

(b) The above table shows that the number of applications filed by the information seekers to the PIOs of various public authorities during the past eleven years increased from first year to eleventh year from 2654 to 46,430 which is an increase of approximately 17.5 times. The no. of applications could be more than this figure 23

because some of the public authorities have not submitted the annual reports. It leads to the conclusion that awareness about the Act has been increasing year after year. The percentage of rejection of applications by PIOs has also been going down year after year. Thus the response of the PIOs has been showing a positive trend over the years.

(c) The. Year wise details of appeals received in the State Information Commission from 1st March, 2006 upto 31.3.2016 are as under:-

Total Appeals Received and Decided from 01.03.06 to 31.03.16					
Period	**Pendency at the beginning of the year**	**Received during the year**	**Total appeals**	**Decided during the year**	**Pending at the end of the year**
1.3.2006 to 31.3.2007	-----	32	32	24	8
1.4.2007 to 31.3.2008	8	155	163	125	38
1.4.2008 to 31.3.2009	38	180	218	195	23
1.4.2009 to 31.3.2010	23	270	293	276	17
1.4.2010 to 31.3.2011	17	300	317	277	40
1.4.2011 to 31.3.2012	40	451	491	379	112
1.4.2012 to 31.3.2013	112	427	539	429	110
1.4.2013 to 31.3.2014	110	670	780	522	258
1.4.2014 to 31.3.2015	258	615	873	638	235
1.4.2015 to 31.3.2016	235	635	870	534	336
Total		***3735***		***3399***	

(d) The year wise details of complaints received in the Commission from 1.3.2006 to 31.3.2016 are as under:-

Total Complaints Received and Decided from 01.03.06 to 31.03.16					
Period	**Pendency at the beginning of the year**	**Received during the year**	**Total complaints**	**Decided during the year**	**Pending at the end of the year**
1.3.2006 to 31.3.2007	-----	52	52	47	5
1.4.2007 to 31.3.2008	5	134	139	105	34
1.4.2008 to 31.3.2009	34	204	238	221	17
1.4.2009 to 31.3.2010	17	445	462	418	44
1.4.2010 to 31.3.2011	44	503	547	526	21
1.4.2011 to 31.3.2012	21	770	791	622	169
1.4.2012 to 31.3.2013	169	693	862	767	95
1.4.2013 to 31.3.2014	95	43	138	119	19
1.4.2014 to 31.3.2015	19	44	63	47	16
1.4.2015 to 31.3.2016	16	67	83	55	28
Total		***2955***		***2927***	

(e) The yearwise details of the appeals and complaints received in the Commission from 1st March, 2006 to 2015-16 are as under:-

Year-wise break up of appeals and complaints received & decided by the Commission					
Period	**Pending at the beginning of the year**	**Received during the year**	**Total**	**Decided during the year**	**Pending at the end of the year**
1.3.2006 to 31.3.2007	-	84	84	71	13
1.4.2007 to 31.3.2008	13	293	306	234	72
1.4.2008 to 31.3.2009	72	388	460	420	40
1.4.2009 to 31.3.2010	40	715	755	694	61

1.4.2010 to 31.3.2011	61	803	863	803	61
1.4.2011 to 31.3.2012	61	1221	1282	1001	281
1.4.2012 to 31.3.2013	281	1120	1401	1196	205
1.4.2013 to 31.3.2014	205	713	918	641	277
1.4.2014 to 31.3.2015	277	659	936	685	251
1.4.2015 to 31.3.2016	251	702	953	589	364
Total		***6698***		***6334***	

(f) It is clear from the above that during the year 2006-2007, 84 appeals and complaints were received from the appellants/ complainants against 2654 RTI applications received by the Public Authorities during this year which is approximately 3.2% of the total RTI applications. During the year 2007-2008, 293 appeals and complaints were received from the appellants/ complainants against 10,105 RTI applications received by the Public Authorities which is approximately 2.8% of the total RTI applications. During the year 2008-2009, 388 appeals and complaints were received from the appellants/ complainants against 17,869 RTI applications received by the Public Authorities which is approximately 2% of the total RTI applications. During the year 2009-10, 715 appeals and complaints were received as against 43,835 RTI applications which is approximately 1.6% of the total applications. During the year 2010-11, 803 appeals and complaints were received as against 55,463 RTI applications which is approximately 1.4% of the total applications. During the year 2011-12, 1221 appeals and complaints were received as against 72,191 RTI applications which is approximately 1.7% of the total applications. During the year 2012-13, 1120 appeals and complaints were received as against 61,202 RTI applications. During the year 2013-14, 713 appeals and complaints were received as against 63,722 RTI applications. During the year 2014-15 report 659 appeals and complaints were received as against 50,675 RTI applications. During the year under report 702 appeals and complaints were received as against 46,430 RTI applications. Some of public authorities have not furnished the annual reports. Thus the exact percentage of appeals and complaints received in the Commission can not be calculated. But the above calculated percentage shows that the performance of the PIOs has been improving year after year during the past eleven years.

(g) The details of cases decided by the State Chief Information Commissioner and the State Information Commissioner during the period from 1.4.2015 to 31.3.2016 are as follows:-

CASES DECIDED BY STATE CHIEF INFORMATION COMMISSIONER			
	APPEALS	COMPLAINTS	TOTAL
PENDING AS ON 1.4.15	141	10	151
FILED DURING THE YEAR	278	50	328
Total	419	60	479
DECIDED	226	39	265
PENDING AS ON 31.3.16	193	21	214
CASES DECIDED BY STATE INFORMATION COMMISSIONER			
	APPEALS	COMPLAINTS	TOTAL
PENDING AS ON 1.4.15	94	6	100
FILED DURING THE YEAR	357	17	374
Total	451	23	474
DECIDED	308	16	324
PENDING AS ON 31.3.16	143	7	150

(h) During the last eleven years, 6334 appeals and complaints have been decided by the Commission. However only 51 Civil Writ Petitions have been filed in the High Court of Himachal Pradesh against the decisions/ orders of the State Information Commission. The details of these writ petitions are as under:-

Sr. No.	Case Title/ Case No.	Status
1.	H.P. Public Service Commission V/S State Information Commission CWP-96/09	Pending in the High Court
2.	State of H.P. V/S Sh. Surinder Singh Mankotia CWP-3823/2009	Pending in the High Court
3.	State of H.P. V/S Dr. P.K. Aditya CWP-2418/2010	Pending in the High Court
4.	Justice M.R.Verma (Retd.) V/S State Information Commission CWP-2070/2010	Pending in the High Court
5.	Justice M.R.Verma (Retd.) V/S State	Decided

	Information Commission CWP-1964/2010	
6.	State of H.P. V/S Sh. Sanjay Gupta CWP-1050/2010	Decided
7.	Ms. Kalpna Grover V/S State of H.P. CWP-4632/2010	Decided
8.	Sh. Sanjay Mandyal V/S State of H.P. CWP-5418/2010	Decided
9.	Smt. Ram Payari V/S State of H.P. CWP-6404/2010	Decided
10.	Sh.Ram Ashra V/S State of HP CWP 7462/2010	Pending in the High Court
11.	State of HP V/S Sh. Archit Sant and others CWP-7767/2010	Pending in the High Court
12.	Sh. Dharam Pal V/S State of HP and others CWP-2446/2010	Decided
13.	The Secretary Lokayukta V/S Sh.Hari Krishan and others CWP 533/2011	Pending in the High Court
14.	Miss Ritwik Chauhan V/S State of HP CWP-1910/2011	Pending in the High Court
15.	CWP 8794/2011 Shri Ved Parkash Vs. State Information Commission & others	Decided
16.	CWP No. 11220 of 2011 M/s Kanchanjanga Power Co. Pvt. Ltd., V/s State Information Commission,H.P.	Decided
17.	CWP No. 1240/2010 Shri Swapan Kumar Thakur, Vs. SIC & another	Decided
18.	CWP No. 640/2012 Shri Sanjay Hindwan Vs State Inforamtion Commission, DFO, Solan and E.O. MC, Solan	Decided
19.	CWP No. 2435/2012 The Didwin Co-operative Society vs State of HP	Decided
20.	CWP No. 6072/2012 BDO Paonta Sahib vs. State of HP	Pending in the High Court
21.	CWP No. 9166/2012 Prakash Chand Negi Vs. State Information Commission	Decided
22.	CWP No.9210 /2012 Prakash Chand Negi Vs. State Information Commission	Decided
23.	CWP No. 8196/2012 Baghal Land Looser Transport Co-operative Society Ltd. Vs. State of HP	Pending in the High Court
24.	CWP No. 9109/2012 The Ambuja Darla Kashlog Mangu Transport Co-operative Society Ltd. Vs. State of HP	Pending in the High Court
25.	CWP No. 5975/2012 P.C.Manhas Vs. State of HP	Pending in the High Court
26.	CWP No. 63/2013 Voluntary Health Association Vs. State of HP	Pending in the High Court

27.	CWP No. 798/2013 Anjala Kumari Vs. State Information Commission	Decided
28.	CWP No. 4618/2013 Indresh Dhiman Vs. State of HP	Pending in the High Court
29.	CWP No.6914/2013 Rajesh Chandra Vs. State Of HP.	Pending in the High Court
30.	CWP No. 7167/2013 Tanu Priya Vs. State of HP.	Decided
31.	CWP No. 7834/2013 Shyam Lal Vs. State of HP.	Decided
32.	CWP No. 6537/2013 Phool Singh Vs. State of HP.	Decided
33.	CWP No. 8900/2013 Amar Singh Vs. State of HP.	Pending in the High Court
34.	CWP No. 9139/2013-D Advocate General Vs. Dev Ashish Bhattacharya	Pending in the High Court
35.	CWP No. 9108/2013 Madhu Negi Vs. State Information Commission and Others.	Decided
36.	CWP No. 294/2014 Ravi Kumar Vs. State of HP.	Decided
37.	CWP No. 2242/2014 Hira Singh Vs . State of HP & Othrs.	Decided
38.	CWP No. 5410/2014 Hitesh Chand Vs . State of HP & Othrs.	Decided
39.	CWP No. 5434/2014 Rajesh Thakur Vs State Information Commission	Pending in the High Court
40.	CWP No. 6572/2014 Yog Raj Vs. State of HP & Othrs	Decided
41.	CWP No. 8511/2014 Ajay Prashar Vs . State of HP & Othrs	Decided
42.	CWP No. 555/2015 Lawan Thakur Vs State of HP	Decided
43.	CWP No. 1367/2015 Shekhar S. Srivastava Vs State Information Commission	Pending in the High Court
44.	CWP No. --/2015 Sukhjit Singh Vs State Information Commission	Pending in the High Court

45.	CWP No. 684/2015 Roshan Lal & Others Vs State Information Commission	Decided
46.	CWP No. 3034/2015 Jagdish Kumar Vs State of HP	Decided
47.	CWP No. 3144/2015 Priyanka Gandhi Vs State of HP	Pending in the High Court
48.	CWP No. 3625/2015 Vikram Singh Vs State of HP	Pending in the High Court
49.	CWP No. 3767/2015 Ramesh Kumar Nadda Vs State Information Commission	Pending in the High Court
50.	CWP No. 4272/2015 PIO HP State Pollution Control Board Vs State Information Commission	Pending in the High Court
51.	CWP No. 385/2016 Sangeeta Devi Vs State of HP	Pending in the High Court

5. Disposal of Request of Information

An information seeker should have made an application in writing or through electronic means to the PIO / APIO of the PA concerned in English / Hindi. The application can be sent by post or through electronic means or the information seeker can deliver it personally in the office of the PA.

5.1 Application Procedure:

- The application should specify particulars of the information sought accompanying such fee as prescribed under HP RTI Rules 2006 **S. 6(1)**
- If a person is unable to make a request in writing, the PIO shall render all reasonable assistance to the person making the request orally to reduce the same in writing.
- Where a decision is taken to give access to a sensorial disabled person to any document, the PIO shall provide such assistance to the person as may be appropriate for the inspection of records.
- An applicant 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

  S. 6(2)
- A PIO can seek assistance of another officer from within the PA **S. 5(4)& (5)**
- If the subject matter of an application concerns any other PA, it should be transferred to that PA
- If only part of the application concerns another PA, that should be transferred, clearly specifying the part which relates to that PA, and the fee received.
- The applicant should be informed of the same transfer.
- Transfer of the application or part thereof should be made as soon as possible but not later than 5 days from the receipt of the application. **Ss. 6(3) & 7(1)**
- The PIO on receipt of a request shall, as expeditiously as possible, and **in any case within 30 days of the receipt of the request**, either provide the information or reject the request for any of the reasons specified in Sections 8 & 9 of Act. **S. 7(1)**
- Where an application for information or appeal is given to an APIO, a period of five days shall be added in computing the period of response.
- 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 **S. 7(1)**
- The officer, whose assistance is sought by the PIO shall be deemed to be a Public Information Officer who would render all assistance to him. It is advisable for the PIO to inform the officer whose assistance is sought, about the above provision, at the time of seeking his assistance.

  (Para 14, Guide for PIOs by AR Deptt)
- The application fee of Rs.10/-(Rupees ten) will be payable to the Public Information Officer of the public authority as prescribed fee. **(Para 20, Guide for PIOs by AR Deptt)**
- The application not accompanied by the prescribed fee of Rs.10/- or proof of the applicants belonging to below poverty line, as the case may be, shall not be a valid application under the Act and, therefore, **does not entitle the applicant to**

get information. **(Para 18, Guide for PIOs by AR Deptt)**

- In a public authority with more than one PIO, an application is received by the PIO other than the concerned PIO. In such a case, the PIO receiving the application should transfer it to the concerned PIO 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 one PIO to another in the same public authority.

(Para 24, Guide for PIOs by AR Deptt)

5.2 Deemed Refusal:

- If the PIO fails to give direction on the request for information within the period specified i.e. 30 days of the request, the PIO shall be deemed to have refused the request**.**

S. 7(2)

- PIO may decide to provide the information and in the format requested (e.g. printed or electronic format) on payment of any further fee representing the cost of providing the information… to be intimated to the applicant with other details.

S. 7(5)]

- The proceeding under RTI Act and Rules are quasi judicial proceedings and PIO/Appellate Authorities have to deal the cases as per the provisions of the act; the AR Department may not be approached for tendering advices in such matters.

No. Per (AR)E (5)1/2006 Dated 19-11-2008

- A separate application shall be made in respect of each subject and in respect of each year to which the information relates. **HP RTI Rules, 2006-Rule 3 (2)**
- During inspection the applicant shall not take photographs etc. of the record/document**.** **HP RTI Rules, 2006-Rule 4**
- The period intervening the despatch of the intimation for depositing the cost of information and actual payment of fee by the applicant shall be excluded for the purpose of calculating 30 days. **[S. 7(3)]**
- The fee prescribed shall be as per the rules prescribed by the respective competent authority i.e. HP Vidhan Sabha RTI Rules, HP High Court and HP Govt. RTI Rules, 2006.
- No such fee shall be charged from the persons who are of below poverty line.

S. 7(5)

- This right is available to rural BPL 2,82,370 families identified by the Rural Development Department, Himachal Pradesh. The benefit of supply of information free of cost as provided under Section 5 of RTI Act, 2005 and Rule 5 of Himachal Pradesh RTI Act, 2006 is strictly to be given on the basis of the certificate issued by Rural Development Department to the BPL families.

[HP AR Department letter no PER (AR) E (5)-4/2006 dated 10th Nov., 2008, Annexure-II]

5.3 Time Limits:

- Requester shall be provided the information free of charge where a PA fails to comply with the time limits specified. **S. 7(6)**
- Time lines for processing and providing RTI applications:

Time-limits for disposal of applications

Nature of application	Time limit
Normal	30 days
Concerns life & liberty	48 hours
Application submitted to an APIO	35 days
Third party information sought	40 days
Corruption or human rights violations in scheduled and intelligence agencies	45 days

5.4 Payment of Fees:

- According to the H P Right to Information Rules, 2006 framed by the Government of Himachal Pradesh, an applicant can make payment of fee by demand draft or Treasury Challan or Indian Postal Order payable to the PIO of the PA.
- The fee prescribed by the competent authority i.e. HP Govt as per HP Govt. RTI Rules, 2006 is as under:

Description or Information	Price/ Fee in Rs
Fee along with application	Rs. 10 per application
Priced publication information	On printed price
Other than the priced publications	Rs.2 per page of A-4 size or minimum Rs.20 per page or actual for larger size.
Information in electronic form e.g. Floppy, CD etc.	Rupees 50 per floppy and Rs.100 per CD
Fee for inspection of Record/document	Rs.20 per 30 minutes or fraction thereof.
Postal Charges for Supplying the information	As per requirement of the Indian Post and Telegraph Deptt.
Mode of Payment	Bank Draft/Treasury Challan/Postal Order
Head of Account for deposit of fee in Treasury	0070 – OAS, 60 – OS, 800 –OR, 11 – Receipt head under Right to Information Act, 2005
Postal Charges for supplying the	As per the requirement of Indian Post and

information	Telegraph Department.

- The information on legal size or note sheet size of page can be reduced at A4 size wherever feasible and provided to an applicant at the rate prescribed for A4 size page. HP AR Department letter no PER (AR) A(8)-1/2011 dated 23 April, 2013.

(Instructions of AR Deptt., HP ;Annexure-III)

- The mode of payment of requisite fee for obtaining information has been prescribed through Indian Postal Order (IPO) and in order to maintain the proper account of fee received through IPO, Administrative Reforms Department has devised two formatsas Register-I and Register. Every Public Authority is required to maintain registers on the basis of these formats showing encashment and deposits of IPO at each Public Information Officer level**:**

(Instructions of AR Deptt., HP; Annexure-IV)

REGISTER-I

IPO REGISTER SHOWING THE ENCASHMENT OF IPO

Sl. No.	Date	Particulars from whom received	File on which case dealt	IPO No. & Date	Amount	Date of encashment of IPO	Signature of PIO
1.	2.	3.	4.	5.	6.	7.	8.

REGISTER-II

Sl. No.	Date	Particulars (S.No as per Register-I)	IPO No. & Date	Amount	Date of encashment	Date of deposit of Govt. Treasury	Treasury Challan No.	Signature of PIO.
1.	2.	3.	4.	5.	6.	7.	8.	9.

5.5 Severability:

- Access may be provided to a part of the record which does not contain any exempted information and which can reasonably be severed from any part that contains exempt information

- The PIO shall give a notice to the applicant informing about partial disclosure of information along with reasons, fees, and details of appellate authority. The reasons for the decisions, including any findings on any material, question of fact, referring to the material on which those findings were based. The details name and designation of the authority taking decision to provide severed information.
- The details of the fees calculated and the amount of fee which the applicant is required to deposit, etc. **Sec. 10**

5.6 Form of Access:

1. Information has to be provided in the form in which it is sought.
2. This includes Inspection of documents, records, taking notes, extracts and certified samples of material.
3. Deemed refusal
4. If the PIO fails to give decision on the request for information within the period specified, the PIO shall be deemed to have refused the request.
5. Fees & costs
6. The act prescribes the following fees and costs to be charged
7. Fees accompanying applications for request of information
8. Further fee representing the cost of providing the information requested
9. Fee prescribed under rules for supply of information in printed or electronic format.
10. Public interest
11. The information which cannot be denied to the parliament or a state legislature shall not be denied to any person.

5.7 Third Party Information:

- If third party information is requested… A PIO is to
    - Send a written notice to third party, within 5 days inviting it to make an oral / a written submission, and keep the submission in view while decision-making
    - Consider the oral / written submission, if received within 10 days from the date of receipt of above notice **S. 7(7)**
    - Does not disclose information if it is exempted under the RTI Act i.e. because of being a trade or commercial secret protected by law, it cannot be disclosed
    - That apart, if larger public interest warrants disclosure, notify the decision to disclose in writing to the third party within 40 days of receiving the application, which the latter can appeal against PIO.
- An information shall ordinarily be provided in the form in which in it sought unless it would disproportionately divert the resources of the PA or would be detrimental to the safety or preservation of the record in question. **S. 7(9)**
- It has been further clarified by AR Department, Himachal Pradesh that -

  A.) Some people under the Right to Information Act, 2005 request the Public Information Officer (PIO) to cull out information from some document(s) and give such extracted information to them. In some cases, the applicants expect the PIO to give information in some particular Performa devised by them

on the plea that sub-section (9) of Section of Section 7 provides that an information shall ordinarily be provided in the form in which it is sought. It need be noted that the sub-section simply means that if the information is sought in the form of photocopy, it shall be provided in the form subject to the conditions given in the Act etc. It does not mean that the PIO shall re-shape the information.

B.) The Act, however, does not require the Public Information Officer to deduce some conclusion from the material and supply the conclusion so deduced to the applicant. The PIO is required to supply the 'material' in the form as held by the public authority and is not required to do research on behalf of the citizen to deduce anything from the material and then supply it to him.

(Instructions of AR Department, Annexure V)

- Where an RTI application is transferred to another PA, the applicant should be immediately informed about the transfer. **S. 6(3)**
- In case further fee is to charged, the 'intimation' to the requester, should provide:
  - the details of further fees representing the cost of providing information with the calculations and total amount in accordance with the application fee
  - a request to deposit the fees
  - information concerning her right with respect to review the decision as to the amount of fees charged
  - Particulars of the appellate authority, time limit, process
  - any other forms **S. 7(3)(a)& (b)**
- If information requested is exempted u. Ss. 8 or 9, the PIO has to reject the request and should communicate (to the applicant): **S. 7(1)& (8)**
  - The reasons for rejection
  - The period within which an appeal against such rejection may be preferred and
  - Details of the appellate authority and the time for filing an appeal limit

Such information [as in Ss.7(3)(a)& (b)& (1)&(8)] also has to be provided to the applicant where the PIO is providing partial information requested (the other part being exempted)

5.8 Supply of Information:

1. The PIO on receipt of a request shall, as expeditiously as possible, and in any case within 30 days of the receipt of the request
2. Either provide the information or Reject the request for the reasons specified in Sections 8 And 9.

5.9 Penalties:

Where the information commission is of the opinion that PIO has, without any reasonable cause:

- Refused to receive an application for information
- Has not furnished information within the time specified
- Malafidely denied the request for information
- Knowingly given incorrect, incomplete or misleading information
- Destroyed information

- Obstructed in any manner in furnishing the information

IC shall impose a penalty of Rs.250 per day till application is received or information is furnished, total amount of such penalty shall not exceed Rs.25000

- The PIO shall be given a reasonable opportunity of being heard before any penalty is imposed on him
- The burden is on the PIO to prove before the information commission in appeal that he acted reasonably and diligently
- The PIO is personally liable to pay penalty if the same is imposed by the information commission while deciding on complaints and appeals
- The PIO shall recommend for disciplinary action against the PIO if she persistently violates the provisions of the act

5.10 Good faith:

No suit, prosecution or other legal proceeding shall lie against any person for anything which is done in good faith or is intended to be done under the 'RTI Act, 2005' or any rule made there under.

5.11 Overriding Effect:

The provisions of the 'RTI Act, 2005' is shall have effect notwithstanding anything Inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 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. This implies that the provisions of the Act are overriding in character, so that the scheme is not subverted through the operation of other minor Acts. **Section 22**

5.12 Bar of courts:

No court shall entertain any suit, application or other proceeding in respect of any order made under the 'RTI Act, 2005' and no such order shall be called in question otherwise than by way of an appeal under the 'RTI Act, 2005'.

- The Jurisdiction of subordinate courts has thus been barred.

Section 23

5.13 Reporting on RTI:

- Under S.25 of the RTI Act, 2005,an Information Commission(IC) has been entrusted with the responsibility of preparing a report on the implementation of the provisions of this Act during(a given) year and forward a copy there of to the Central/ State Government –as applicable
- Each Ministry or Department in relation to PAs within their jurisdiction are expected to collect and provide such information to the IC concerned
- It implies that, a PIO should maintain records pertaining matters, which the ICs report should contain:

1. Number of requests received by each PA
2. Number of decisions where applications were not entitled to access the documents pursuant to the requests the provisions of the Act under which these decisions were made and the number of times such provisions were invoked
3. Number of appeals referred to the IC for review, the nature of appeals and the outcome of appeals

4. Details of disciplinary action taken against any officer in respect of administration of this Act
5. Amount of charges collected by each PA under this Act

5.14 Some Important Tips for PIOs

5.14.1. Some Tips:

The PIOs has to keep the following in mind:

- Information which cannot be denied to the parliament or the state legislature shall not be denied to any citizen;
- Notwithstanding the exemptions permissible under s. 8(1), access to information is to be allowed, if public interest in disclosure outweighs the harm to the protected interest;
- The right to information act, 2005 overrides the official secrets act, 1923;
- Any material relating to occurrence, event or matter, which has taken place, occurred or happened twenty years before the date of the application has to be given to the applicant; **Sec. 8 (1)**
    - Sovereignty and integrity of India, the security, strategic, scientific or economic interests of the state, relation with the foreign state
    - Cause a breach of privilege of Parliament or VidhanSabha
    - Cabinet papers incl. deliberations of council of Ministers, secretaries and other officers

5.14.2 Supplementary Roles of PIOs:

- Records management
- Be alert about decisions of information commission
- Maintain register of requests for information and decisions taken on the same
- Write speaking orders

5.14.3 PIOs Should Be Aware of:

1. Information available electronically.
2. Information proactively published by the public authority.
3. Full details of the organization.
4. The details of the Appellate Authorities
5. The contact details of the other PIOs and APIOs.
6. Performa of the receipt of the application.
7. The forms for receipt of fees and acknowledgement.
8. Proper seating arrangements for easy accessibility.
9. Register for receipt, acknowledgements - separately for inward and outward.
10. Checklist for monitoring the pendency, disposal of the applications.
11. Identify place for inspection of records/taking samples
12. Fix a day in the week for the preceding.
13. Ready with the contingency plan.

5.14.4 Special Skills:

1. Complete knowledge and experience of office procedure
2. Adequate knowledge of record management prevailing with the public authority
3. Needs to know the structure and delegation of powers within the organization

4. Well versed with organization chart, levels of disposal of cases, etc
5. good in negotiation with public, colleagues, third party and others
6. good at managing time.
7. work of PIO is additional assignment. Availability of inadequate time cannot be the basis for delay in disposal of requests

5.15 Disposal of Requests by PIOs:

5.15.1. Steps for Disposal

Steps for PIO to dispose the applications received under RTI Act, 2005 are as under:

1. Receives application along with the application fee.
2. Scrutinizes the application received and the fees prescribed.
3. The PIO should check whether the applicant has made the payment of application fee of Rs.10/- 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 a valid application** under the RTI Act and may be **ignored**.

   (Para 18, Guide for PIOs by AR Deptt)
4. If required, renders reasonable assistance to the applicant by reducing the oral request in writing.

5. Registers the application in the Register. There are two registers prescribed under HP RTI Rules, 2006 viz one for request of information and second for Inspection. The format prescribed in above rules is as under:

Information Register	
Part I	Part - II
Serial Number	Actual date when the information is ready
Name & Full postal address of the Applicant	Number of actual pages
Whether Below Poverty Line	Amount of additional fee
Date of receipt of application	Signature of applicant with date in token of receipt if the information is delivered in person or if the information is sent by post its particulars and date
Tentative date on which the record would be ready	Signature of PIO
Mode by which the information is sent	
Demand Draft or challan or Indian Postal Order No., Amount and date	
Signature of PIO/APIO	

case of request for inspection, the following format has been prescribed:

Inspection Register

Serial No	
Name & Full postal address of the Applicant	
Whether Below Poverty Line	
Subject matter of the information	
Particulars of the record to be inspected	
Time taken – From_____ to _____	
Amount of the fee charged	
Signature of the applicant	
Particulars of the Challan (IPO/ Bank Draft)	
Deposited in the treasury by PIO	
Signature of PIO	

6. In case of fee received through Indian Postal Order(IPO), the details to be entered in the IPO register prescribed
7. Issues acknowledgement/receipt to the applicant.

Rule 3 (1), HP RTI Rules, 2006

8. Transfers the application / part of it to another public authority, if required.(Same day in case of same public authority, if there are more than one PIO in one Public Authority.
9. If PIO transfers an application after 5 days, he would be responsible for the number of days delayed beyond 5 days.
10. The other PIO should not refuse to accept delayed application.
11. Informs the applicant about such transfers.
12. Makes necessary entries in the Register being maintained.
13. Considers the representations of a 'third party', if any.
14. In case of rejection, conveys reason for it, the period within which the appeal may be preferred and the details of the Appellate Authority to whom appeal can be preferred
15. Sends intimation to the applicant the further fee, representing the cost of providing the information, to be paid along with its calculations. Also intimates about the modalities of deposit of fee, the right of the applicant for review of the fees charged and appeal against the calculation or the form of access. In case information sought requires payment of additional fee, PIO shall communicate to the applicant the fact in Form 'B' prescribed for the purpose in HP RTI Rules, 2006.
16. Waives fees for citizens Below Poverty Line keeping in view of the instructions of Administrative Reforms Department
17. Wherever required, provides assistance to citizens for inspection of works, documents, records and taking samples of material.
18. Retains record on each application, disposal etc. so that materials as required may be furnished to appellate authorities in case first/second appeal is preferred.
19. When the information is ready the Public Information Officer will inform the applicant in Form 'C' prescribed in HP RTI Rules, 2006.

20. HP RTI Rules, 2006 prescribe that any information supplied under sub rule (4) shall be supplied in the language available in the office record.
21. Every page of information to be supplied under Act shall be
    a. Duly authenticated giving the name of the Applicant including
    b. Below poverty line status if that is the case, and shall
    c. Bear the dated signatures and seal of the concerned PIO

5.15.2Third Party Information:

1. Where the PIO intends to disclose any information, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the PIO shall,
    d. Give a written notice to such third party
    e. Within five days from the receipt of the request,
    f. And invite the third party to make a submission in writing or orally in ten days, and
    g. Such submission shall be kept in view while taking a decision.
2. Consider his/her oral/written submission, if received within ten days from the date of receipt of above notice. If Information is exempted under the RTI Act, refuse application. If satisfied that larger public Interest warrants disclosure- send the notice of decision in writing to the third party.
3. 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 should consider whether the information should be disclosed or not. The guiding principle in such cases should be 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.

    (Para 37, Guide for PIOs by AR Deptt.)
4. The Public Information Officer should 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 PIO 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.

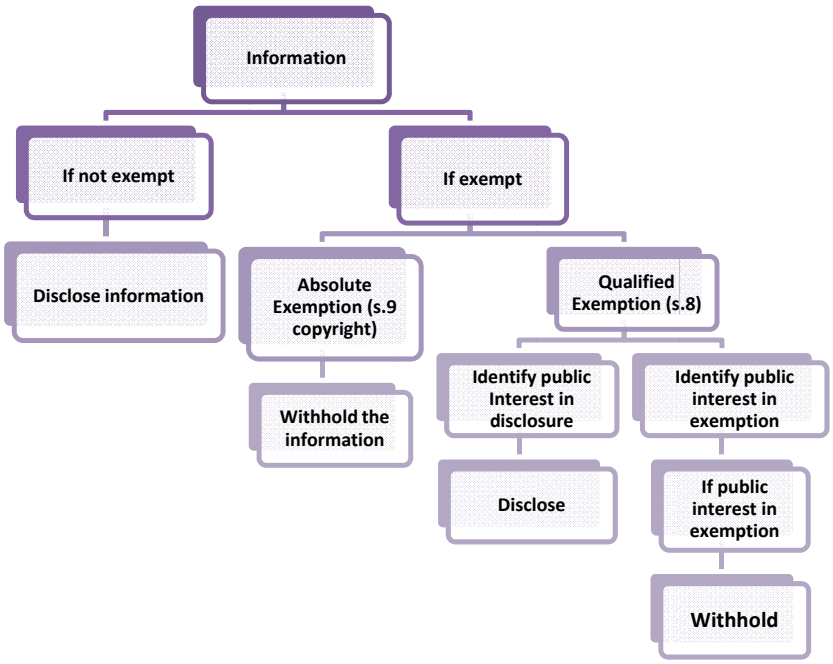
    (Para 39, Guide for PIOs by AR Deptt.)
5. The third party can prefer an appeal to the First Appellate Authority against the decision made by the Public Information Officer within thirty days from the date of the receipt of notice. If not satisfied with the decision of the First Appellate Authority, the third party can prefer the second appeal to the State Information Commission.

    (Para 40, Guide for PIOs by AR Deptt.)
6. If an appeal has been filed by the third party against the decision of the PIO to disclose the third party information, the information should not be disclosed till the appeal is decided.

(Para 41, Guide for PIOs by AR Deptt.)

5.15.3Applying Public Interest:

1. A public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests
2. Applying the public interest



5.15.4 Rejection of Requests:

Wherea request has been rejected, the PIO shall 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 appellate authority

Sec. 7(8)

The order of rejection of request to be written as a well reasoned order specifying the following-

- Reasons in detail for rejection of application
- Appeal details
- Particulars of appellate authority
- Burdenofproofundersec19(5)on PIO
- Provisionundersection20(1)opportunity of being heard before a penalty is imposed

6. Synopsis of Judgements of HP, SIC

The H.P. State Information Commission is the institution where an applicant can make a second appeal against the order of the First Appellate Authority or can lodge a complaint. The SIC, H.P. has been functioning to deliver the responsibilities assigned to it as per the provisions contained in the RTI Act, 2005. The different appeals

and complaints decided by the SIC, HP were requested from them for inclusion into this manual with a view to help the PIO's to understand the nuances in handling the matter. The Judgements supplied by SIC, HP includes complaints and appeals decided at different times by single or double bench. The synopses indicating the case, the Judgement and provisions involved have been attempted to facilitate and guide the PIO's in delivering their responsibility in a judicious manner. The Judgements have been classified in to following six broad categories for the convenience of understanding:

I. Transparency and Accountability
II. Exemption Clauses
III. Directions to Public Authority
IV. Non Governmental Associations
V. Third Party Information
VI. Procedural Aspect of HP RTI Rules

6.1 TRANSPARENCY & ACCOUNTABILITY

6.1.1. DISCLOSURE OF ANSWER SHEET THAT DOES NOT BREACH FIDUCIARY RELATIONSHIP

Appeal no.104/2007 **Date of Decision: 16-01-2008**

Case: In the case of Sh. Chander Mohan vs. PIO-cum-Under Secretary, HPSSSB Hamirpur, the PIO rejected the request of appellant regarding supply of following information/documents:

i) Category wise marks obtained in screening as well as interview of all qualified candidates alongwith addresses,
ii) Copy of Question Booklet of relevant series and Answer Key,
iii) Photocopy of Answer Sheet of Roll No. 34979 name Chander Mohan.

The above application was rejected by the PIO on the ground that the information required by the applicant cannot be supplied being secret in nature as per the provisions contained under the Right to Information Act, 2005. The First Appellate Authority while deciding the appeal held that disclosure of category wise marks of all qualified candidates might lead to disclosure of Waiting Panel which was required to be kept secret as per the Rules of Business and Procedures of HPSSSB, Hamirpur besides this supply of copies of the Question Paper and Answer Sheet might lead to breach of trust and confidentiality between the Examiner and the Paper Setter or the Evaluator. It might lead to disclosure of identity of Paper Setter and Examiner/Evaluator which has to be protected in view of a fiduciary relationship amongst them. Hence, the appeal was rejected. The appellant made the second appeal to SIC and stated that various Selection Boards/Commissions in India display waiting list along with marks of interviewed candidates. Further, the Question paper does not disclose the identity of Paper Setter or Evaluator. The candidates have to mark the Answer choices in the given OMR sheet which is evaluated later on the computer. Thus, the providing of Question Booklet does not breach the confidentiality and the fiduciary relationship between the Board and the Paper Setter or Evaluator. Therefore, the required information should be furnished to him.

Judgement: At the hearing, the PIO admitted that the Question Papers in this case contained Multiple Choice Questions (MCQs) and did not bear the signature or the identity of the Paper Setter or the Evaluator. He also admitted that the Answer Sheets in this case were evaluated by Board's computer and not by any Evaluator. These Answer Sheets did not carry the signature or the identity of the Paper Setter. It is, therefore, apparent that the furnishing of Question Papers or Keys and the Answer Sheets to the appellant would not disclose the identity of Paper Setter/the Examiner or the Evaluator as held by the Appellate Authority and contended by the PIO in his submissions. Thus, the disclosure would not breach the confidentiality or the fiduciary relationship between the HPSSSB and the Paper Setter/Examiner or the Evaluator and supports the contention of the appellant in this appeal. The contention of PIO that Answer Sheet is purely a personal information and its disclosure has no relation to public interest or activity and is covered under section 8 (i) (j) of the RTI Act, 2005 cannot be accepted. The disclosure of Answer Sheets with MCQs and Keys in no way compromises the fairness and impartiality of the selection process. On the contrary, the disclosure of these documents strengthens the fairness and impartiality of the selection process as the correctness or otherwise of computing the marks in the Answer Sheets can be judged by the candidates and other information seekers. Thus, the disclosure of these documents is expected to lead to transparency in the selection process of the Board. Further, withholding of category wise marks of qualified candidates is not covered under any of the exemptions given in Sections 8 & 9 of the RTI Act, 2005.

Keeping in view the facts stated above, the double bench of SIC held that the information requested by the appellant in his RTI application is not covered under any of the exemptions given in the RTI Act, 2005. The provisions of the Rules of Business and Procedures of Himachal Pradesh Subordinate Service Selection Board, Hamirpur cannot override the provisions of Section 22 of the RTI Act, 2005. Therefore, the order of the Appellate Authority is set aside and observed that PIO had summarily rejected the application without mentioning any of the exemptions given in the RTI Act, 2005. The PIO-cum-Under Secretary, HPSSSB, Hamirpur was directed to furnish the information to the appellant in his RTI application, free of cost. In future, the PIO was directed to give detailed reasons for rejecting RTI applications. In addition to this, SIC found adequate justification for compensating the appellant for incurring expenditure in filing the two appeals, therefore, the Public Authority i.e. HPSSSB, Hamirpur was directed to pay a compensation of Rs. 1000/- (Rs. One thousand only) to the appellant. Further, there is definitely a strong case for review of the provisions of the Rules of Business and Procedures of HPSSSB, Hamirpur to bring them in line with the provisions of the RTI Act, 2005.

Provisions Involved:

Preamble

AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;

Section 7 (6) : *Notwithstanding anything contained in sub-section (5), the person making request for the information shall be provided the information free of charge where a public authority fails to comply with the time limits specified in sub-section (1).*

Section19 (8) *In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—*

(a) Require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—
(iv) By making necessary changes to its practices in relation to the maintenance, management and destruction of records;

Section 19(8)(b) *:In its decision, the Central Information commission or the State Information Commission as the case may be ,has the power to require the public authority to compensate the complainant for any loss or other detriment suffered.*

Section 22: *The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 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.*

6.1.2. Disclosure of Evaluated Answer Scripts with Exemptions

Appeal No. 0049/2013-14 Date of Decision: 18.07.2013

Case: In the case of Ms. Chanchal Thakur vs. PIO-cum-Additional Registrar, HPPSC Shimla, The appellant filed an RTI application before the PIO, Himachal Pradesh Public Service Commission, Shimla wherein she requested that HPAS-2009 Hindi (Mains) Compulsory Exam Answer-Sheet's Xerox copy be provided to her. She also referred to a Supreme Court Judgement titled CBSE vs Aditya Bandopadhyay (2011) 8 Supreme Court Cases 497. The PIO informed the applicant that photo copies of evaluated answer-sheets are not provided in view of various decisions particularly a full Bench decision of State Information Commission, Himachal Pradesh in case titled Ajit Singh versus PIO-cum-Under Secretary, HPPSC, Shimla. Aggrieved by this communication, the appellant filed 1st appeal, which was dismissed by the FAA. The appellant filed the second appeal in State Information Commission.

Judgement: State Information Commission referred to the Judgement of Supreme Court in case of CBSE vs. Aditya Bandopdhyay & others, which read as under:

"Therefore, if the examinees are to be given access to evaluated answer books either by permitting inspection or by granting certified copies, such access will have to be given only to that part of the answer book which does not contain any information or signature of the examiners/co-ordinators/scrutinisers/head examiners, exempted from disclosure under Section 8(1)(g) of the RTI Act. Those portions of the answer books which contain information regarding the examiners/coordinators/scrutinisers/head examiners or which may disclose their identity with reference to signature or initials, shall have to be removed, covered,

or otherwise severed from the non-exempted part of the answer books, under Section 10 of the RTI Act."

In view of the above observations made by the Apex Court, SIC held that **an examinee can either inspect the evaluated answer-book or get a certified copy of the answer-sheet. An information seeker cannot avail of both the options simultaneously.** In a rare case, if the examinee finds during the inspection of answer-sheet that there is some overwriting/tampering/cutting of marks only in that case he/she can ask for certified copy of the evaluated answer-sheet. The appellant has mentioned that there appeared some tampering/cutting in her mark-sheet. Accordingly, SIC ordered that the appellant be supplied authenticated copy of the answer-sheet free of cost within 15 days under intimation to the Commission. The SIC allowed the appeal and held that pronouncement made by the Hon'ble Supreme Court is law of the land and all other Judgements made by various High Courts or Information Commissions.

Provisions Involved:

Section (7)(6)- Not withstanding anything contained in subsection (5) ,the person making request for the information shall be provided information free of charge where a public authority fails to comply with the time limits specified in sub section (1).

Section 8 (1) (d) - Exemption from disclosure of information: Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen - 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 satisfied that larger public interest warrants the disclosure of such information.

Section 8(1) (e) - Exemption from disclosure of information: Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen — information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information.

Section 8(1) (g) - Exemption from disclosure of information: Information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

Section 22 - Act to have overriding effect: The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 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.

6.1.3. EVALUATED ANSWER SCRIPTS -EXEMPTION FROM DISCLOSURE

Appeal no.66/2008-09 & 87/2008-09 Date of Decision 24.12.2018

Case: In the cases of (1) Sh. Ajit Singh vs. PIO–cum-Under Secretary, HPPSC, Shimla and (2) Sh. Bansi Lal vs. PIO-cum-Assistant Secretary, HP Board of School Education, Dharamshala; both the applicants sought copies of evaluated answer scripts from HPPSC and HP Board of School Education, respectively but were denied by the PIOs. In the first case, Sh. Ajit Singh was shown the Answer Sheet from a distance by the First Appellate Authority, the appellant, therefore, requested for taking remedial action. In the second case, the applicant had filed an appeal with the Appellate Authority-cum-Secretary of the Board which was rejected. The appellant pleaded that the request of the applicant has been wrongly rejected by the PIO/1st Appellate Authority of the respondent Board as this document is not an exempted document under section 8 of the RTI Act. Besides this, he added that the application submitted under RTI Act cannot be rejected by quoting local laws, rules and instructions as according to section 22 of the RTI Act, 2005 since this Act is having overriding effect on any other law including official Secret Act, 1923.

Judgement: Both the above appeals pertained to the supply of evaluated Answer Sheets to the applicants under the RTI Act, 2005, hence these were taken up together for consideration by the Full Bench of the State Information Commission. The PIO-cum-US, HPPSC submitted his supplementary reply to the appeal stating that the evaluated Answer Sheet cannot be supplied to the appellant under section 8 (1) (e) of the RTI Act, 2005. The Secretary, HP Board of School Education also submitted his reply stating that the Answer Sheet cannot be supplied to the appellant under Section 8 (1) (d) and 8 (1) (e) of the RTI Act, 2005 and submitted that the Board and the Examiners have a fiduciary relationship and therefore the supply of the evaluated Answer Sheet is exempted under section 8 (1) (e) of the RTI Act, 2005. He also stated that the evaluated Answer Sheets are also covered under the exemption given in section 8 (1) (d) of the Act. However his written reply does not mention any ground or reason as to how an evaluated Answer Sheet is covered under these exemptions. The PIO of HPPSC submitted that this issue has been reconsidered by HPPSC on earlier directions of the State Information Commission and it has been decided that the evaluated Answer Sheets cannot be disclosed to the information seekers as per provisions of Section 8 (1) (e) of the Act. However, he conceded that the evaluated Answer Sheets can be shown to the candidate. The Secretary of the Board of School Education also stated that the evaluated Answer Sheets are shown to the candidates in the presence of subject expert as per the existing instructions of the Board.

The issue pertaining to furnishing of evaluated Answer Sheets to the information seekers under the RTI Act, 2005 was considered by the Central Information Commission in various appeals/complaints. The Central Information Commission has held in these cases that the meaning of the fiduciary relationship may include the relationship between the authority conducting the examination and the examiners who are acting as its appointees for the purpose of evaluating Answer Sheets. It held that the obligations between the examiners and the authority conducting the examination are mutual. After examining certain Judgements of the Apex Court, the Central Information Commission has held as under:-

"In regard to public examinations conducted by institutions established by the Constitution like UPSC or institutions established by any enactment by the Parliament or Rules made there under like CBSE, Staff Selection Commission, Universities., etc. the function of which is mainly to conduct examinations and which have an established system as fool-proof as that can be, and which, by their own rules or regulations prohibit disclosure of evaluated answer sheets or where the disclosure of evaluated answer sheets would result in rendering the system unworkable in practice and on the basis of the rationale followed by the Supreme Court in the above two cases, we would like to put at rest the matter of disclosure of answer sheets. We therefore decide that in such cases, a citizen cannot seek disclosure of the evaluated answer sheets under the RTI Act, 2005."

The State Information Commission Punjab had also considered this issue and held in this case that an individual interest cannot be permitted to override the larger public interest and the complainant was not entitled to the copies of the evaluated Answer Sheets whether these pertain to the complainant himself or other candidates. Keeping the above discussion in view as also the decision of the State Information Commission Punjab, it is decided that the evaluated Answer Sheets are exempted from disclosure under Section 8 (1) (e) of the RTI Act, 2005 and thus cannot be furnished to the two appellants. The evaluated Answer Sheet has already been shown to the appellant Shri Ajit Singh in the first appeal. The PIO-cum-Assistant Secretary, HP Board of School Education, Dharamsala was directed to facilitate the inspection of the requisite Answer Sheet by Shri Bansi Lal appellant on the appointed date under intimation to the State Information Commission.

Provisions Involved:

Section 7(9) - An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.

Section 8 (1) (d) - Exemption from disclosure of information: Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen - 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 satisfied that larger public interest warrants the disclosure of such information.

Section 8(1) (e) - Exemption from disclosure of information: Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen — information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information.

6.1.4. VALID GROUNDS OR REASONS FOR COVERAGE UNDER EXEMPTION CLAUSES

Appeal no. 0115/2008-09 **Date of Decision 24.12.2008**

Case: In the case Sh. Jiwanand Sharma V.P.O.- Terehal, Tehsil- Baijnath, Distt. Kangra HP vs. PIO cum Under Secretary HPPSC Shimla, the appellant Shri Jiwanand Sharma had earlier filed an appeal which was considered and decided by the State Chief Information Commissioner, Himachal Pradesh. The PIO-cum-Under Secretary, HPPSC was directed to supply-

1. The Names & addresses, of the Experts, members who attended the interviews.
2. The Xerox copy of Interview Sheets used in these Interviews signed by the all the experts, members attending the Interview since as per the orders of the Hon'ble High Court it can't be weeded out and have to be kept in the safe custody."

The appellant filed this appeal with the prayer to provide him the information in respect of the above points as per provisions of the RTI Act, 2005 as early as possible.

Judgement: PIO-cum-Under Secretary, HPPSC Shimla submitted his reply stating that the matter had been reconsidered by the HPPSC and it has been decided that the names of Experts/Departmental Representatives who usually attend the Interview Board as per procedure laid down by the HPPSC cannot be disclosed to the applicants under Section 8 (1) (e) and Section 8 (1) (g) of the RTI Act, 2005. As regards furnishing of photocopies of the Interview Sheet, the same cannot be allowed to be disclosed to the information seeker under Section 8 (1) (e) of the Act but it can be allowed to be inspected by the candidate requesting for the same information. The Commission observed that the written reply does not contain any ground or reason as to how these issues are covered under the two exemptions quoted there in. The RTI Act, 2005 allows any citizen of the country to have access to information unless the same is exempted from disclosure under the exemptions given in the Act itself. The HPPSC is responsible for selecting candidates for various positions in the State Government and other institutions under the State Government. Once the selection of candidates is finalized and names of successful candidates are recommended to the Department/Institution concerned, the veil of secrecy about the performance of various candidates must end. Admittedly, the marks obtained by successful candidates in any selection process including marks obtained in the interview are generally communicated to the candidates. Thus, the contents of the Interview Sheet may be by inference are made known to the candidates by HPPSC. Thus the information contained in an Interview Sheet does not give any inkling or indication about the advice tendered by an Expert or Departmental Representative. It is, therefore, difficult to accept the contention of HPPSC that provisions of Section 8 (1) (e) of the RTI Act, 2005 are attracted in this case. The Commission further held that it is absolutely necessary for the Interview Board to conduct itself in a fair and transparent manner and it is in public interest that this fairness and transparency is displayed by furnishing the Interview Sheets. In fact such a disclosure will strengthen the faith of the general public in the selection process of HPPSC and other recruiting agencies. Keeping these facts in view, Information Commission decided that disclosure of

Interview Sheet to the information seekers is not covered under section 8(1) (e) of the RTI Act, 2005.The apprehension of HPPSC that the disclosure of names would endanger the life or safety of these Experts and Departmental Representatives is to say the least, far-fetched. It is difficult to accept the contention of the HPPSC that disclosure of names of Experts/ departmental Representatives in the Interview Boards are covered under the exemption given in Section 8 (1) (g) of the RTI Act, 2005. The disclosure of contents of the Interview Sheets is not covered under Section 8 (1) (e), the disclosure of names of experts /Departmental Representatives who participate as Members of these Boards are also not covered under the exemption provided in Section 8 (1) (e). In fact they participate in the selection process as Members of the Interview Board which assesses the merit of candidates after arriving at a consensus amongst all Members of the Board and the feedback given by these experts is seldom reflected in the Interview Sheet.

Keeping in view the facts stated above, Commission held that the disclosure of names of experts/ Department Representatives and furnishing of photocopies of the Interview Sheets to the applicants under the RTI Act, 2005, is not covered under any of the exemptions contained in Section 8 of the Act. Thus the PIO-cum-Under Secretary, HPPSC was directed to furnish the requisite information free of cost to Shri Jiwanand Sharma sought by him in his RTI application within a week of the receipt of order under intimation to the State Information Commission.

Provisions involved:

Preamble

An Act 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****,*

AND WHEREAS democracy requires ***an informed citizenry and transparency of information*** *which are* ***vital to its functioning and also to contain corruption*** *and* ***to hold Governments and their instrumentalities accountable to the governed;***

Section 7(6)-Not withstanding anything contained in subsection (5) ,the person making request for the information shall be provided information free of charge where a public authority fails to comply with the time limits specified in sub section (1).

Section 8(1) (e) -Exemption from disclosure of information: Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen — information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information.

Section 8(1) (g) - Exemption from disclosure of information: Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes.

6.4.5. Penalty and Compensation on Private School as Public Authority

Appeals Nos. 0107-0109 & 0111, 0196-0199/2012-13 Date of Decision: 26.12.2012

Case: In the case of Ms. Sanjaya Sharma and others versus the PIO-cum-Principal, Arya Girls Senior Sec School, Lower Bazar, Shimla. The appellants had filed the appeals in SIC, HP since the information with regard to payment of grant in aid received by the management and its disbursal to teachers was not supplied to them.

Judgement : The SIC, HP had allowed the appeals filed by the appellants, issued a notice to the PIO to show-cause against imposition of penalty under section 20 of the RTI Act as she has failed to supply the information besides this, ordered that i) the requested information be supplied to the appellants within 10 days free of cost and ii)a sum of Rs. 500/- be given as compensation in each appeal.

The PIO-cum-Principal, Arya Girls Senior Secondary School, Shimla filed a review petition on which was treated as a response. It was held in the order that the power to review has not been given to the Commission under the RTI Act. The PIO supplied the information which was ordered to be supplied the information available in the record of the School has been supplied, some proceedings are pending and some record is with the Directorate of Higher Education, HP and the same shall be supplied on its receipt from the Directorate.

In the reply to the show-cause notice, Management of the School placed on record, a Xerox copy of the Judgement of the Hon'ble H.P. High Court, wherein it was ordered that grant-in-aid will be paid to the Manager of the Managing Committee by the Government and thereafter it will disburse and pay the salary and other allowances to the petitioners at par with the members of the staff of Government Schools within one month thereof. The Manager of the School alleged that the RTI applications have been filed with mala fide intention to harass the Management. In plea of the PIO in reply to the show-cause notice that section 8(1)(h) of the RTI Act can be invoked by investigating agencies of the Government was rejected by the Commission. Another plea presented was that the School does not fall under 95% grant-in-aid category since the said scheme has been withdrawn by the Government of Himachal Pradesh, therefore, the information was not supplied to the appellants by the PIO. This plea found to be genuine by SIC, HP.

The Commission held that in view of the facts and circumstances of this case, it cannot be said that the PIO intentionally refused to supply the information without any cause and found that the stand taken by the PIO is bona fide. Therefore, the show-cause notice issued was withdrawn. It was further held that the case was not a fit case to impose penalty on the PIO since the entire information stands supplied to the appellants and the compensation amount which has not been paid to the appellants, be paid within 15 days from the receipt of this order.

Provisions involved:

Section 2(h): *(h) "Public Authority" means any authority or body or institution of self-government established or constituted—*

(a) By or under the Constitution;
(b) By any other law made by Parliament;
(c) By any other law made by State Legislature;
(d) By notification issued or order made by the appropriate Government, and includes any—
(i) Body owned, controlled or substantially financed;
(ii) Non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;

***Section 7(2**): If the Central Public Information Officer or State Public Information Officer, as the case may be, fails to give decision on the request for information within the period specified under sub-section (1), the Central Public Information Officer or State Public Information Officer, as the case may be, shall be deemed to have refused the request.*

***Section 8(1**): Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—*

***(h**) Information which would impede the process of investigation or apprehension or prosecution of offenders;*

***Section 19(8):** In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—*

Require the public authority to compensate the complainant for any loss or other detriment suffered;

***(9)** The Central Information Commission or State Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority.*

***Section20(1):** Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under **sub-section (1) of section 7** 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, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees.*

6.1.6. RTI TO CONTAIN CORRUPTION AND TO MAKE INSTRUMENTALITIES ACCOUNTABLE

Complaint No. 0093/2012-13 **Date of Decision: 06.09.2012**

Case: In the case of Sh. Manohar Lal versus PIO-cum-XEN,IPH Division, Dalhousie, the complainant in his RTI application sought to know which authority had sanctioned the unauthorized water connections from main water supply line and If the unauthorized connections have been installed, what action is proposed to be taken against the guilty officials. The PIO informed the applicant that no such connections have been sanctioned and 10 such unauthorized water connections have been found on the site besides that no action had been taken till then. The appellant, dissatisfied with the reply of the PIO, approached the FAA and on being unheard even after 37 days of 1st appeal, filed complaint with State Information Commission.

In the meanwhile, the 1st appeal was decided and action was promised as per site conditions. During the hearing of Complaint, the XEN-cum-PIO informed that the unauthorized connections have been removed. The complainant expressed satisfaction with the action taken but prayed for compensation as he had to struggle for 9 months for his rights under RTI Act, 2005.

Judgement- The court held that the complainant had to suffer both mentally and physically in his efforts to access the information which was his right under the RTI Act,2005. Hence the court while disposing off the complaint, ordered the public authority to pay Rs 2000 as compensation to the complainant. The SIC observed that case is a shining example of proper use of the RTI Act and shows that even complicated problems can be solved through intelligent use of the provisions of the RTI Act.

Provisions Involved-

Section18. (1) *Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission, as the case may be, to receive and inquire into a complaint from any person,—*

(f) *In respect of any other matter relating to requesting or obtaining access to records under this Act.*

Sections 19(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 Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days 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 Central Public Information Officer or State Public Information Officer as the case may be, in each public authority:*

(8) *In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—*

(b) *Require the public authority to compensate the complainant for any loss or other detriment suffered;*

6.1.7. Access to ACRs under RTI Act 2005

Appeal No. 141/2007-08 **Date of Decision: 4-8-2008**

Case: In the case of Sh. Vivek Jyoti versus PIO-cum-Additional Secretary (SA) to HP Government, the appellant had sought copy of his ACR for the year 2005-2006 and 2006-2007. His application was rejected by the PIO in view of the exemptions contained in sections 8 (1) (e) and 8 (1) (j) of the RTI Act, 2005. The Appellate Authority also upheld the aforesaid decision of the PIO. Consequently, the appeal was filed with the State Information Commission.

The applicant in his 2nd appeal to the State Information Commission stated the section sections 8 (1) (e) is not applicable as the public authority does not hold the information contained in an ACR as a trustee for the employee concerned and section 8 (1) (j) is also not applicable in this case as the ACR entries are inextricably linked to public interest. The appellant thus prayed for the desired information free of cost and penalty to be imposed on the respondents (PIO and 1st AA). The appellant also supported his appeal by referring to the Hon'ble Supreme Court Judgement in Civil Appeal No. 7631 of 2002 titled Dev Dutt versus Union of India and others, in which the Hon'ble Supreme Court held that "Fairness and transparency in public administration requires that all entries (whether poor, fair, average, good or very good) in the Annual Confidential Report of a public servant, whether in civil, judicial, police or any other State service (except the military), must be communicated to him within a reasonable period so that he can make a representation for its up gradation. ACRs must be communicated to the public servant within a reasonable period because the principle of non-arbitrariness in state action as envisaged by Article 14 of the Constitution requires such communication. Article 14 overrides all rules or government orders.

Judgement: The appellant stated that as per extant instructions ACRs are required to be written objectively, fairly and dispassionately by the Reporting/Reviewing authorities keeping in view the overall performance of employees concerned and were meant for the benefit and advantage of these employees. Various State Information Commissions have held that ACRs were not exempted under Section 8 of the RTI Act, 2008 as wrongly held by the PIO and the Appellant Authority in this present case. The PIO accepted the fact that in view of the decision of the Hon'ble Supreme Court, the prayer of the appellant for furnishing of copy of ACRs in question was now permissible.

However, the then PIO as well as the Appellate Authority had passed detailed and speaking orders under the RTI Act, 2005 taking a contrary view and had validly rejected the request of the appellant within the permissible period. They had acted well within their right as a quasi judicial authority as per provisions of the Act. Consequently the question of imposing any penalty upon them under the RTI Act, 2005 did not arise.

The State Information Commission directed the PIO-cum-Additional Secretary (SA) to the Government of Himachal Pradesh to provide a copy of the ACRs of Shri Vivek Jyoti appellant for the year 2005-2006 and 2006-2007 to him as per provisions of HPRTI rules, 2006.

Provisions Involved

Preamble: *An Act 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,*

AND WHEREAS democracy requires ***an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable*** *to the governed;*

Section8(1) *Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—*

(e) *Information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;*

(j) *Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:*

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

Section 20 (1): *Provided that the Central Public Information Officer or the State Public Information*

Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

HP RTI Rules, 2006

Rule 3(2): *A separate application shall be made in respect of each subject and in respect of each year to which the information relates.*

6.1.8. PENALTY FOR DELAYED INFORMATION & COMPENSATION TO COMPLAINANT

Complaint No. 0148/2012-13 **Date of Decision: 28.7.2012**

Case: In the case of Yash Pal Singh vs. Sub-Inspector (Panchayat), Development Block, Bijhari, Tehsil Hamirpur, H.P., the complainant had applied for certain information regarding the budget received for the construction of a Community building in his Panchayat. The complainant was not provided information based on the official record within the maximum time limit and the information sought was provided as per the interim orders of the State Information Commission (SIC). The First Appellate Authority (FAA) was also issued Show Cause Notice by SIC under Section 20 of the Act which was later withdrawn in view of the explanation given and record presented.

Judgement: The SIC in its interim order had held that since there was a delay in the supply of information sought, the complainant should be provided information within a week free of cost as per stipulation under Section 7 (6) of the RTI Act. The information was provided to the complainant. The SIC held the PIO responsible for 26 days delay in supply of information and imposed penalty of Rs. 6500/- @ Rs 250 each day under Section 20(1) of the Act and ordered that the same be deposited in the Govt. Treasury. The PIO was also ordered to pay compensation of Rs. 1,500/- to the appellant in terms of Section 19(8)(b) of the Act on account of expenditure incurred by him for visiting the office of SIC thrice in connection with the hearing of appeal.

Provisions involved:-

Section 7 (1) - *Subject to the proviso to* ***sub-section (2) of section 5*** *or the proviso to sub-section (3) of section 6, the Central Public Information Officer or State Public Information Officer, as the case may be, 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:***

Section 7(6)- *Notwithstanding anything contained* ***in sub-section (5),*** *the person making request for the information shall be provided the information free of charge where a public authority fails to comply with the time limits specified i****n sub-section (1).***

Section 19 (8)(b*)-In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to require the public authority to compensate the complainant for any loss or other detriment suffered.*

Section 20 (1)-*Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under* ***sub-section (1) of section 7*** *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, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:*

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

6.1.9. DISCLOSURE OF INFORMATION RELATED TO PROCESS OF INVESTIGATION OR APPREHENSION OR PROSECUTION OF OFFENDERS

Appeal No. 0260/2013-14 Date of Decision:12.12.2013

Case: In case of Sh. Piar Singh Thakur, Rtd. A.E. versus The PIO-cum-Asst. Director, Regional Forensic Science Laboratory (Dept. of Home), Mandi, H.P, the applicant had applied authentic copy of procedures of sampling and chemical analysis of cement concrete/mortars of samples collected and copy of calculation sheets prepared in the Lab. For analyzing & determining cement contents in these samples in tests conducted & report submitted to the Superintendent of Police, State Vigilance & Anticorruption Bureau, North Range, Dharamshala in connection with work done by Tourism in Old Shiv Temple at Broh, Distt. Kangra, HP. The PIO informed the applicant that the copy of chemical analysis and calculations sheets prepared in the lab cannot be supplied as per Section 8(1)(h) of RTI Act 2005, however, report in the case has been sent to the concerned Police Station. The appellant not satisfied with the information, filed 1st appeal before the First Appellate Authority contending that the investigation has been completed, report has been submitted, therefore, at this stage the information should not be denied under Section 8(1)(h) of the RTI Act. The 1st Appellate Authority dismissed the appeal stating that the reports prepared by the forensic experts are meant for the Investigating Agency and Courts/Enquiry Officers, the FSL report has been sent to the Investigation Agency and enquiry is going on, the second part of the information i.e. copy of calculations sheets prepared in the laboratory for analyzing and determining cement content in samples, cannot be supplied as replied by the PIO. The appellant, aggrieved by the order of the First Appellate Authority, filed 2nd appeal in the State Information Commission.

Judgement: The SIC held that the provisions of section 8(I)(h) of the RTI act should not be utilized in a mechanical way to deny information to the citizen. The PIO should be satisfied that the requested information would actually impede the process of investigation or apprehension of prosecution of offenders. There is total non-application of mind in the present case. If the investigation has been completed, the provisions of section 8(1)(h) are not applicable. The Commission allowed this second appeal and directed the PIO to supply the requested information free of cost within 7 days from the date of decision.

Provision involved:

Section 2 (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—*
(ii) Taking notes, extracts or certified copies of documents or records;

Section 7(6) *Notwithstanding anything contained in* ***sub-section (5),*** *the person making request for the information shall be provided the information free of charge where a public authority fails to comply with the time limits specified in subsection*

Section 8(1): *Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—*
(h) Information which would impede the process of investigation or apprehension or prosecution of offenders;

Section 19(3): *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 Central Information Commission or the State Information Commission**:***

***Section 19(8):** In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—*
(a) Require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—
(i) By providing access to information, if so requested, in a particular form;

6.2 Exemptions

6.2.1. NO OBLIGATION TO GIVE PERSONAL INFORMATION UNDER RTI ACT.

Appeal No. 0341/2013-14 Date of Decision:26.12.2013

Case: In the case of Sh. Inderjit Verma v/s PIO-cum-District Treasury Officer, Shimla, the applicant had applied for the applicant asked a copy of the letter enhancing the pension amount and PPO No. of a third person. The PIO rejected the application and informed the applicant that the third party has not given his consent for giving his pension details to the third party. The applicant filed 1st appeal before the First Appellate Authority. The FAA decided the appeal and rejected it giving three reasons. The applicant, not satisfied with the order, filed 2nd appeal before the Commission.

Judgement: The PIO placed on record a Judgement of HP State Information Commission in Appeal No. 0271/2012-13 dated 21.02.2013, wherein it was held that the information about a pensioner is a personal information, the disclosure of which has no relationship to any public activity or interest and it would cause unwarranted invasion of the privacy of the individual. (Section 8(1)(j) of the RTI Act). The SIC held that the cherished fundamental right to privacy cannot be violated to satisfy idle or prurient curiosity especially of the self-appointed moral brigade. Privacy is invaded when without consent there is disclosure of information about a person's private life, which is true, but causes the person embarrassment and distress.

Taking into consideration the objection rose by the third party and in view of the absence of any public interest, the SIC decided that information could not be provided and the appeal was dismissed.

Provisions Involved:

***SECTION-8(1)(j)-** Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:*

***SECTION-11(1)** :Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or*

part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

6.2.2. Non-existence of the information is not denial of information
Appeal No. 0181/2013-14 Date of Decision: 29.10.2013

Case: In the case of Sh. Om Prakash versus PIO-cum-AC to DC Solan, the appellant had sought information of all the appointments and joining of candidates in DC Office, Solan in a particular period. He alleged that there is delay of three months in supplying the information to the appellant. The applicant filed a complaint before the State Information Commission and he was advised to file an appeal before the First Appellate Authority. He filed first appeal alleging deemed denial of the information sought under the RTI Act, 2005. The PIO-cum-AC to DC, Solan informed the applicant that no candidate has been appointed by the Government or joined in this office during the above said period. The PIO informed the applicant that the sought information is non-existent and thus cannot be supplied. The applicant went through the first appeal and got the same response. The appellant alleged that information received by him is not the information which he had demanded in his RTI application. He filed second appeal and prayed for imposing penalty on the PIO and also emended compensation under the RTI Act.

Judgement- The 2nd AA rejected the appeal on the ground that non –existence of information is not deemed denial of information and hence no penalty can be imposed on the concerned public authority. The court also observed that before filing an RTI application the applicant should be sure that the information is in existence.

Provisions involved-

Section 2.(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*
Section 19 (8) (d)
(8) *In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—*
(d) Reject the application.

6.2.3. SCOPE OF RTI ACT FOR INFORMATION IN PUBLIC DOMAIN

Appeal No. 0058/2013-14 Date of Decision 17.07.2013

Case: In the case of Sushil Kumar versus the PIO–cum–Distt. Revenue Officer, the information was sought about Bandobasti Path connecting two villages. The information

was sought under different 4 heads and pertained to different subjects.PIO informed that the information was not available in the format as demanded by the applicant. Not satisfied with this reply, the appellant filed 1st appeal before the Deputy Commissioner, Solan. The appellant did not appear before the Deputy Commissioner and has instead filed 2nd appeal before the Commission.

Judgement: The SIC dismissed the 2nd appeal being not maintainable and without merit, on the ground that citizens can't demand information which is already in the public domain and there exist an alternative mechanism created by various acts for resolving disputes of such nature.

In the Judgement SIC discussed the scope of RTI act and held that RTI act envisages a democratic republic, informed citizenry and accountability of the Government to the governed, transparency in the functioning of public authorities and for containing corruption. Any information not fulfilling above requirements can't be demanded under the Act. Moreover it is not desirable to keep public authorities under constant pressure and threat of penalties for information which is not envisaged under the Act.

Right to Information Act envisages a democratic republic, and informed citizenry, accountability of the Government to the governed and transparency in the functioning of public authorities and for containing corruption. Any information which does not fulfill the above said requirements cannot be demanded under the RTI Act.

Provisions Involved:

Preamble of the Act*: AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed.*

An Act 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.

Section 4

(1) Every public authority shall—

(b): Publish within one hundred and twenty days from the enactment of this Act,—

(i) The particulars of its organisation, functions and duties;

(ii) The powers and duties of its officers and employees;

(iii) The procedure followed in the decision making process, including channels of supervision and accountability;

(iv) The norms set by it for the discharge of its functions;

(v) The rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;

(vi) A statement of the categories of documents that are held by it or under its control;

(vii) The particulars of any arrangement that exists for consultation with, or representation by ,the members of the public in relation to the formulation of its policy or implementation thereof;

(viii) A statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;
(ix) A directory of its officers and employees;
(x) The monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
(xi) The budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
(xii) The manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;
(xiii) Particulars of recipients of concessions, permits or authorisations granted by it;
(xiv) Details in respect of the information, available to or held by it, reduced in an electronic form;
(xv) The particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
(xvi) The names, designations and other particulars of the Public Information Officers;
(xvii) Such other information as may be prescribed and thereafter update these publications every year;
Section 19 (8) (d)
(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—
(d) Reject the application.

6.2.4. Right under Act available to citizens
Appeal No.0390/2012-13 Date of Decision 09-05-2013

Case: The appellant filed an RTI application on 27.07.2012 seeking information about the driving license of Sh. Sukh Dev, S/o Sh. Dalip Singh from Sh G.S. Negi, the PIO-cum-Registration & Licensing Authority (R),Shimla, H.P. The information sought is mentioned under three heads and a Xerox copy of the driving license of Sh. Sukh Dev was also annexed with the application. When the applicant did not get any response from the PIO, he filed first appeal before the First Appellate Authority O/o Deputy Commissioner, Shimla. The FAA allowed the appeal in the absence of the appellant and directed the PIO to provide the information immediately and the appeal was disposed of. The appellant filed second appeal, wherein he alleged that he has not received any information and suitable penalty be imposed under the RTI Act.

Judgement: The Commission heard the appeal and held that right to seek information under RTI Act exclusively belongs to citizens and not to Corporate Entities. The address of the applicant as mentioned in the application is as under:

Narinder Kumar, C/O Bajaj Alliance GIC Ltd. SCO-14,4th Floor, Sector-5,Near Hotel Sheraj, Panchkula.

The appellant has mentioned the name ofthe insurance company in his RTI application but has consciously deleted the name of the company in his first appeal and second appeal. It is also clear that the appellant was having the full information with him in the form of driving license of Sh. Sukh Dev and he just wanted to verify the contents of the driving license and sought some additional information. Right of information is a facet of the freedom of "speech and expression". The Right to Information Act specifically mentions in Section 3 that all citizens shall have the right to information. It is clear that right to seek information under the RTI Act exclusively belongs to citizens and not to Corporate Entities.

The Central Information Commission in a case, "Dr. D.D. Devdas Vs Indian Bureau of Mines F.No/AT/A/2006/00443" has also made similar observations. In the present case the application was not moved by a citizen of India but a representative of a corporate entity for the benefit of the said corporate entity. The application was not maintainable under RTI Act and was liable to be rejected at the initial stage. It has been wrongly entertained and the information has been wrongly supplied. In the facts and circumstances of the case there is no question of imposing penalty on the Public Authority as it has entertained an application which was liable to be rejected at the initial stage.

Provisions Involved
Section 3
Subject to the provisions of this Act, all citizens shall have the right to information.
Section 19 (8) (d)
(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—
(d) Reject the application.

6.2.5. RIGHT TO INFORMATION TO A CITIZEN WHO IS A GOVERNMENT SERVANT OF THE PUBLIC AUTHORITY

Appeal No. 0008/2013-14 Date of Decision:16.07.2013

Case: In the case of **Sh. Ravinder Nath vs The PIO-cum-Research officer,** the applicant, an employee in the Department of Language, Art and Culture Academy, Shimla, HP, had requested for information in respect of recruitment of Clerks in the same Department. He was provided partial information (536 pages) within the time limit but remaining information could not be provided due to non availability of original papers as the same were given to the Police in a criminal case. He filed an appeal with the First Appellate Authority. The First Appellate Authority informed that remaining pages numbering 449 have been given to the Police in a criminal case and only Photostat copies are available which cannot be authenticated. The appellant, not satisfied with the order given by the FAA, filed 2nd appeal before the Commission.

Judgement: The SIC, HP observed that the RTI Act is meant for ordinary citizens who have no access to the information under the control of Public Authority and who want to expose corruption in various instrumentalities of the state with larger public interest in mind. In the present case, the applicant is an employee in the department and he has every access to the information under the control of Public Authority. Moreover, nobody

has challenged the recruitment of clerks made in the Department in any court, there-by, meaning that the information sought does not directly affect him. Later on, on the basis of some complaints, an enquiry was held and on the basis of that enquiry, an FIR was registered and now the case is pending in a criminal court. The Commission pondered upon the entitlement of a native employee of the department to voluminous information containing eleven hundred pages and the purpose to be served by giving him the information.

Constitution of India has given to the citizen a right to speech and expression. In the case of an ordinary citizen, the scope of this right is very vide. The Constitution says that reasonable restrictions can be imposed by the Govt. on this right. In the case of Govt. servant, Govt. of India as well as the State Governments have imposed various restrictions on this right of employees in the form of conduct rules. In view of the conduct rules, the Govt. servants cannot take part in political activities, cannot join certain associations, cannot criticize Govt. policies, cannot communicate directly or indirectly any official document or information to any Govt. servant or other person, etc. etc. In view of these restrictions, there is very narrow scope for his right of speech and expression. The right to impart and receive information is a species of the right of freedom of speech and expression granted by Article 19(1)(a) of the Constitution.

A Govt. servant cannot request for information which does not directly affect him. Right to Information should be exceptionally used by a Govt. servant. This right is meant for ordinary citizens who have no access to the information under the control of Public Authority and who want to expose corruption in various instrumentalities of the State with the larger public interest in mind. The SIC dismissed the second appeal quoting that the application under RTI Act has been filed with a mala fide intention and no public purpose is involved in it. It is held that the applicant was not entitled to any information under the RTI Act for the reasons given above and the RTI Act cannot be allowed to be misused in this manner.

Provisions Involved

Section 3: Subject to the provisions of this Act, all citizens shall have the right to information.
Section 7(9):
An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.
Section 8:(1) Notwithstanding anything contained in this Act, there shall be no obligation to
give any citizen,—
(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 satisfied that larger public interest warrants the disclosure of such information;
(j) Information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate

authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:
Section 19 (8): In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—
(d) Reject the application

6.2.6. SUPREMACY OF PUBLIC INTEREST OVER THE PERSONAL INTERESTS

Appeal No. 0618/2013-14 **Date of Decision: 11.09.2014**

Case: In the case of Sh. Prithvi Raj v/s PIO-cum-Asstt. Settlement Officer, Kangra Division at Dharamshala, the applicant had sought information on seven points from the PIO about land in a village. The PIO-cum-ASO Kangra supplied the information on all the points to the applicant. He was not satisfied with it and filed 1st appeal under section 19(1) of the RTI Act before the First Appellate Authority-cum-Deputy Commissioner, Hamirpur. The FAA deciding the appeal mentioned that information had been supplied to the appellant on point No. 1 to 6 but information on point No. 7was not supplied and directed to supply the same. The appellant filed another RTI application before the APIO-cum-Sub- Tehsildar, Hamirpur in which he sought clarification about the information supplied to him. The matter came for appeal before the SIC.

Judgement: The SIC, in this case has categorically laid down that only "certain" information can be obtained under RTI Act. RTI Act is an offshoot of Freedom of Speech given to the citizens of India. Freedom of speech and expression implies that information can be sought from the public authorities on issues relating to public interest. Disputes and information relating to land can't be agitated under the RTI act. Civil courts and revenue courts exist for deciding revenue matters and land disputes. Personal problems having no social or national perspective and devoid of any public interest should not be raise under RTI Act.RTI Act is an effective tool in the hands of informed citizens so that the citizens participate in the democratic process and expose corruption in the system. In view of the aforesaid observations, The Commission found no merit in the appeal and dismissed it.

Provisions Involved:

Preamble: *An Act 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,*

AND WHEREAS democracy requires ***an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable*** *to the governed;*

Section 8(1)(j):Information which relates to personal information the disclosure of which has no relationship with to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless

the SPIO or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information.
Section 8(2): Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.
Section 19(8): In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—

(d) Reject the application.

6.2.7. RIGHT TO INSPECTION TO A CONVICTED APPLICANT

Appeal No.0218/2013-14 **Date of Decision 04.12.2013**

Case: In the case before SIC titled Vikasdeep Kanwar v/s PIO-cum–Deputy Registrar, Cooperative Societies H. P., a second 2nd appeal was filed before the Commission by appellant on 3-8-2013. An inspection of file of enquiry held was sought from PIO. Opportunity was provided to the applicant to inspect the record but the applicant did not appear. The authorized representative informed that appellant stood suspended and has been convicted u/s 302 of IPC & sentenced to life imprisonment. Thus appellant failed to inspect record and appear before SIC.

Judgement: The Commission heard the appeal and held that as the appellant is undergoing life imprisonment in a murder case, some of his fundamental rights stand suspended. As his right to speech and expression is suspended during imprisonment, therefore, his right to information also stands suspended during this period.

In this case, the 2nd appeal was dismissed on this additional ground of suspension of right to information of appellant during imprisonment.

Provisions involved:

Section 2(h)(j)

(j) "Right to Information" means the right information accessible under this Act which is held by or under the control of any public authority and include the right to.—
i. Inspection of work, documents, record;

Section 3:

Subject to the provisions of this Act, all citizens shall have the right to information.

Section 19 (8) (d)

(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—
(d) Reject the application.

6.2.8. MISUSE OF RTI BY THE OFFICIALS OF PUBLIC AUTHORITY

Appeal No.283/2012-13 **Date of Decision 26-02-2013**

Case: In the case of Prof. Shekhar Sharma vs PIO-cum-Deputy Registrar HPU, Shimla, the applicant had sought information under 31 heads in the form of questionnaire, which were supplied by the PIO but the applicant was not satisfied.

Judgement: The SIC held that information sought in the form of questionnaire which requires interpretation of various rules and regulations cannot be described as information under RTI Act. Hence such type of applications need not to be entertained.

Regarding the issue of misuse of RTI by the officials of Public Authority themselves, the commission observed, "It is also noticed that appellant himself is a senior functionary of the University and all the rules and regulations of the University are accessible to him. Interpretation of rules can be discussed at administrative level. This cannot form the basis for information under RTI Act. Under the RTI Act, a citizen and public Authority are two distinct entities. Information is under the control of public authority. In order to promote transparency and accountability in the working of every public authority, a citizen has been provided access to the information under control of public authority. If this distinction between a citizen and public authority comes to an end and officials of Public Authority demand information under the RTI Act, it will lead to total lawlessness and nothing will remain secret and the provisions of Section 8 will become redundant".

Provisions Involved:

Section-2(f): "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;

Section-2(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-

0) Inspection of work, documents, records;

(ii) Taking notes, extracts or certified copies of documents or records;

(iii) Taking certified samples of material;

Section 3:

Subject to the provisions of this Act, all citizens shall have the right to information.

Section 19 (8) (d)

(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—

(d) reject the application.

6.2.8. Rejection of Vague & Non-Specific applications
Appeal No.-0171/2013-14 Date of Decision:06-11-2013

Case- In the case of Sh. Jitender Bhardwaj versus- Sh. Rameshwar Sharma ,PIO–cum-Additional Director SC,OBC and Minority welfare.(Appeal No.0171/2013-2014,dated 06.11.2013),the applicant sought information under 11 different heads concerning different departments. The PIO informed the applicant that his application was not according to rule 3(2) of Himachal Pradesh Right to Information Rules, 2006 and he was asked to file separate application in respect of each subject and each year. Despite repeated reminders the applicant did remain adamant on his position and filed first appeal before the Appellate Authority. The 1st AA ordered that the appellant should inspect the entire record and get relevant copies free of cost. In compliance to the order, the present PIO supplied the information to the applicant through registered post. The applicant was still not satisfied and approached the 2nd AA for the relief and sought penalty on the PIO for not providing the demanded information and also sought some compensation.

Judgement- The SIC observed that the RTI application filed by the applicant is totally against the provisions of RTI Act. It is very difficult to find out the information which is being sought by the applicant on going through the application. The applicant in his application had made reference to various departments and the information sought is not clear and vague. The court held that if the application is silent or not clear on the specifications of the information sought then it should be returned to the applicant at the earliest point of time. There is no question of imposing penalty or paying compensation to the applicant.

The court maintained that the PIOs should reject such vague applications and not waste time on entertaining such applications. Thus the appeal was dismissed.

Provisions involved-

Section 19 (8) (a) (iv)

(a) Require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—

(iv) By making necessary changes to its practices in relation to the maintenance, management and destruction of records;

Section 19 (8) (d)

(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—

(d) Reject the application.

HP RTI Rules 2006

Rule 3(2): Except in the case of an applicant who is determined by the state as being below poverty line, the application shall be accepted only when it is accompanied by a (demand draft payable to the concerned department/public authority or) challan (or Indian Postal Order) in support of payment of the requisite application fee as specified in rule 5. A separate application shall be made in respect of each subject and each year to which the information relates.

6.2.10. Frivolous litigation
Appeal no-0324/2013-14 Date of Decision 19-12-2013

Case: The appellant S. Alexraj from Chennai filed on RTI application to PIO-cum-Senior Manager, HP Tourism Development Corporation, Transport wing and sought information under fourteen heads where numbers documents had been demanded. These documents were supplied to the applicant but he was not satisfied with it and filed 1st appeal with FAA. On getting no response from FAA, he filed 2nd appeal before the SIC, HP.

Judgement: Looking into the root of the problem, SIC discovered that the father of the appellant has booked a seat in HPTDC bus going up to Rohtang pass, but the bus was stopped at Marhi by Police/BRO due to landslide. Annoyed with this, the father of the appellant made a complaint to the department. A communication with detailed explanation and offer for complete refund and complimentary travel in HPTDC bus in subsequent visit to HP was extended to him with regrets for inconvenience caused.

SIC observed that the appellant has been making repeated RTI application and valuable time and resources of the Public Authority have been wasted in supplying totally unnecessary and unproductive information. The entire exercise is related to one small occurrence which has been cited above and it is a clear cut case of misuse of the provisions of the RTI Act. The information sought is also beyond the scope of RTI Act.

The SIC has inherent powers to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. It has been held that idle multiplicity of proceedings is abuse of the process of court. The appeal has been dismissed to prevent abuse of the process of the court with the direction that HPTDC will not entertain any application under the RTI Act pertaining to this matter on behalf of the appellant in future.

Provisions Involved

Section 7(9): (9) An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.

Section 18 (3): The Central Information Commission or State Information Commission, as the case may be, 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:—

(b) Requiring the discovery and inspection of documents;

(e) Issuing summons for examination of witnesses or documents; and

Section 19 (8) (d)

(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—

(d) Reject the application.

Section 19 (8) (a) (iv)

(a) Require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—

(iv) By making necessary changes to its practices in relation to the maintenance, management and destruction of records;

6.2.11. Information related to Transparency & Accountability
Appeal No. 0189/2012-13 Date of Decision 22-11-2012

Case: In the case of Om Prakash Goel Vs PIO cum-Officiating Principal Dr. K.V. Singh & others Govt.PG College Nahan, Distt. Sirmour, HP, the applicant had applied for certain information regarding Smt. Suman Goel, lecturer(Sanskrit),PTA period basis, Govt. PG College, Nahan during the year 2011. Not satisfied with the information provided by PIO, the appellant filed first appeal before first appellate authority alleging that incomplete, tampered, false and misleading information was supplied to him by PIO. FAA heard, decided the appeal and directed the PIO to supply the information on all points. Not satisfied with the information and decision of first appellate authority, he preferred 2nd appeal before SIC on 28-08-2012.

Judgement: The SIC heard the appeal and held that in view of the fact and circumstances of this case and observations of Apex Court, in a case titled [CBSE Vs ADITYA BANDOPADHYAY (2011)8 SCC 497], this appeal is being dismissed as it is clear cut case of abuse of the provisions of the RTI Act. The applicant has paralysed the entire administration of the college by filing more than 28 applications under RTI Act, wherein frivolous, unnecessary and repetitive information has been sought to settle score with the management of the college.

SIC also observed in the above case that the second appeal is a glaring example of the misuse and abuse of the provisions of RTI Act 2005 by those information seekers who make indiscriminate and impractical demands under the act. The indiscriminate efforts to secure information just for the sake of it, and without there

being any useful purpose to serve, would only put enormous pressure on the limited human resources, that are available. Diversion of such resources, for this task would obviously, be at the cost of ordinary functioning.

Provisions Involved:

Preamble

An Act 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,

AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;

Section 7(9):

An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.

Section 18 (3) (a)

(3) The Central Information Commission or State Information Commission, as the case may be, 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:—

(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;

Section 19(8);

(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—

(d) Reject the application.

6.2.12. Information Accessible under RTI Act
Appeal No. 0220/2013-14 Date of Decision 04-12-2013

Case: In the case before SIC titled Kushal Kumar Jethi v/s PIO-cum–Tehsildar, Smt. Kavita Thakur, Solan, H. P. The appellant filed an application, addressed to the Chief Secretary, Govt. of Himachal Pradesh at Shimla. In the application under the RTI Act, the applicant asked for the copy of lease deed between Princely State of Bhagat State and Durga Club, Solan before independence. This application was sent to various Departments of the Govt. At last, the PIO-cum-Teshildar, Solan received the application under Section 6(3) of the RTI Act. The PIO asked the applicant to mention lease deed number and date of registration. The applicant informed the PIO that the entire record regarding Durga Club, Solan is available in his office and also sent IPO Rs. 10/- along with letter. The PIO informed the applicant that there is no entry in the

name of Durga Club as lessee incorporated in the revenue record of Village Ser, Tehsil & Dist. Solan available in the patwar circle Solan since 1969 onwards. It was also informed that revenue record prior 1969 is available in the office of Deputy Commissioner, Solan. Not satisfied with it, the applicant filed first appeal before the First Appellate Authority-cum-Deputy Commissioner, Solan. The FAA directed the PIO-cum-Teshildar, Solan to locate the record in question in the revenue record and provide the same to the applicant. The PIO inquired the matter from the Revenue Record Room, D.C. Office, Solan and from the XEN, HP PWD,Solan. The PIO also wrote a letter to the President, Durga Club, Solan and the XEN, HP PWD (B&R), Solan Division, Solan. The Incharge of Revenue Record Room, Solan informed the PIO that there is no information available with regard to registration of Durga Club in the revenue record. The same was supplied to the applicant by the PIO. Second appeal was filed before the Commission by appellant after not being satisfied with the information/action taken by PIO cum-Tehsildar, Solan.

Judgement: The Commission heard the appeal ex-party qua appellant and dismissed it on the following grounds:

1. It is not each and every information that can be demanded under the RTI Act. Is only certain information which fulfils the requirements of the RTI Act that can be demanded. The information sought in the present case, is beyond the scope of the RTI Act. Any information which is in public domain and can be obtained by paying certain fee cannot be demanded under the RTI Act. The RTI Act envisages a special procedure and special information in a time bound period.

2. Only that information is made accessible under the RTI Act which is under the control of Public Authority .Before an applicant moves an application under the RTI Act, he should be certain about the existence of information and its availability with the Public Authority. A Public Authority is not expected to collect information from different sources and then provide it to the applicant.

In this case, the 2nd appeal was dismissed on the fact that the Public Authority has made every effort to provide the information & effort was made to collect information from different sources which was not its duty to do so. The SIC in the peculiar facts of this case held that no penalty can be imposed on the Public Authority and no compensation can be awarded to the appellant.

Provisions Involved.

Section 2(j)

(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 include the right to.—

i. Inspection of work, documents, record;
ii. "Record" includes—
a) Any document, manuscript and file;
b) Any microfilm, microfiche and facsimile copy of a document;
c) 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 19 (8) (d)

(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—

(d) Reject the application.

6.3 Directions To Public Authority

6.3.1. PENALTY ON PIO & DIRECTIONS TO PA FOR RECORD MANAGEMENT

Appeal No. 26/2011-12 **Date of Decision: 5/8/2011**

Case: In this case, Sh. Om Prakash Vs PIO-cum-Architect Planner MC, Shimla, the appellant filed second appeal before State Information Commission, Himachal Pradesh. Brief history of the case is that appellant filed RTI application with the PIO seeking certain information. But the PIO did not respond at all to the applicant for six months approximately when he was finally intimated that the requisite information/record is not available in the office. The appellant filed first appeal on with the First Appellate Authority against the deemed refusal of the information. The First Appellate Authority had four hearings spread over three months and finally the appeal was dismissed and surprisingly the order to this effect was conveyed to the appellant after one and half month. The appellant alleged that on this date of hearing he was orally directed to file a fresh legible application as the RTI application pending for disposal was not legible. But the PIO claimed in writing as well as during oral arguments that the appeal was dismissed on this date with the direction to the appellant to file application afresh, if he so wishes, to the PIO. Even after filing of fresh application the PIO refused information stating that the relevant file was missing, hence the appellant filed the second appeal before State Information Commission, Himachal Pradesh.

Judgement: To verify the facts from the file in view of this varying stand taken by the appellant and the PIO, the original file was perused by State Information Commission. The action taken by the then PIO-cum-AP in disposing the request by refusing the information on the ground that relevant file is missing did not corroborate the stand taken by the appellant that he was only directed to file a legible copy of RTI application afresh. It was not disclosed to him at that time that the relevant file is missing. It is observed that PIO-cum-AP while presenting his case before the 1st appellate authority never took up the plea of the file being misplaced or missing from the record. The present PIO in the first instance was directed at the hearing to get the relevant file traced and requisite information supplied as per provisions of RTI Act/Rules. In case of this file remaining untraced as claimed during the hearing, he was directed to ensure that responsibility is fixed and action taken against the responsible officer/officials be also conveyed to RTI applicant/appellants. Secondly, the previous PIO was directed to explain his position as to the non-response to the original RTI application wherein delay was more than specified period and the maximum penalty was worked out as per provisions of RTI Act to the extent of Rs 25,000/- and as to why the same penalty be not imposed against him or his team responsible for delay. Both, present as well as previous PIOs were directed to comply with these directions before next date of hearing. As regards disposal of first appeal, it was observed that the same had not been disposed off as per provisions of RTI Act, 2005. As per the Act the appeal should have been disposed off within 45 days but the First Appellate Authority finally disposed off the appeal with a delay of almost two months. PIO as well

as First Appellate Authority has miserably failed to deal this case as per the spirit of RTI Act. The First Appellate Authority also erred in holding third party as respondent since PIO concerned should have been the respondent in the case. PIO was not following up the application at his level and entire dealing was done at clerical level against the provisions of RTI Act. Further, claim of the then PIO that the information was personal information of a third party and could not be supplied as per section 8 (1)(e) read with 8 (1) (j) being fiduciary relationship also found to the contrary of his letter where he had taken entirely different stand that information cannot be supplied since the file concerned is not available in the office. Moreover, merely citing sections of the Act to refuse information cannot be considered sufficient but it had to be a speaking order as to how that matter falls under the quoted sections of the Act.

In view of facts of the case, Commission come to the conclusion that the lapses in dealing with the RTI application occurred during the period of the earlier PIO, therefore the Commission imposed maximum penalty of Rs. 25,000/- on the then PIO as per section 20(1) of the RTI Act. to be deposited in two equal instalments.

The Commission observed that neither the record in Municipal Corporation, Shimla is maintained under the provisions of section 4 of the RTI Act, 2005 nor the RTI matters are also not being dealt with as per provisions of RTI Act, 2005 besides this, PIOs most of the time fail to keep track of these matters. Therefore, directed the Public Authority of the Corporation is to make earnest efforts to update its record in accordance with the provisions of RTI Act, to search the file concerned again within four weeks' time and file FIR in case the same is not traced within given time and send compliance to the Commission.

Provisions Involved:

Section (4)(1)(a) :

Obligations of public authority–(1)*Every public authority shall –*

(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 computerized are, within a reasonable time and subject to availability of resources, computerized*** *and connected through a network all over the country on different systems so that access to such records is facilitated ;*

b) Publish within one hundred and twenty days from the enactment of this Act,—

(vi) ***A statement of the categories of documents that are held by it or under its control;***

Section 7(1) : *Central Public Information Officer or State Public Information Officer, as the case may be, 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.*

Section 18

(3) The Central Information Commission or State Information Commission, as the case may be, 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:—

*(a) S**ummoning and enforcing the attendance of persons and compel them** to give oral or written evidence on oath and **to produce the documents** or things;*

*(b) **Requiring the discovery and inspection of documents**;*

Section 19

***(**8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—*

(a) Require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—

*(iii) **By publishing certain information or categories of information;***

(iv) By making necessary changes to its practices in relation to the maintenance, management and destruction of records;

***Section 20(1)**: Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, **without any reasonable cause**, refused to receive an application for information or **has not furnished information within the time specified under sub-section (1) of section 7** 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, so however, **the total amount of such penalty shall not exceed twenty-five thousand rupees**.*

6.3.2. TRANSFER OF APPLICATION

Appeal No. 0034/2013-14 Date of Decision 23.09.2013

Case: In the case of Dev Ashish Bhattacharyavs. Deputy Secretary (Revenue) to the Govt. Of Himachal Pradesh, Shimla, the appellant had filed an RTI application seeking certain information pertaining to the revenue Department, from the PIO in the o/o Chief Secretary, H.P. It was sent to PIO-cum-Deputy Secretary (Revenue) for taking necessary action. Out of the information sought on four points relating to Kumud Bhushan Education Society, the said PIO supplied information in respect of only point No. 1 and 3. In respect of point No. 2, wherein copies of the entire file noting pertaining to the case along with information regarding names against each initial on the entire file notes had been sought, it was informed that the case file pertains to the year 2006 to 2010 and the transfer/ postings of the officials / officers are subject matter of the concerned establishment, departments and, therefore, the names against each of the file notes cannot be provided. As regards Point No. 4 whereby certified copies of the registration of land had been sought, it was intimated that the related sale deed might have been

registered in the office of the concerned Sub-Registrar(Tehsildar) and hence copies of the sale deed cannot be supplied.

The 1st Appeal filed by the appellant was rejected. Feeling aggrieved with this order, 2nd Appeal was filed before the Commission.

Judgement: The SIC held that since the information sought pertained to different PIOs, the PIO-cum- Deputy Secretary (Revenue) should have transferred the application to the concerned PIOs within the stipulated period of five days prescribed in Section 6(3) of the RTI Act alongwith supplying the information pertaining to his office to the appellant. Further, the application has to be transferred only to the concerned PIO and not to his higher officer.

The other contention of the appellant regarding furnishing the names and designation of the officials and officers who recorded their notings on the file was also held to be valid on the ground that every public authority and its instrumentalities have to discharge their functions in a transparent manner so as to ensure accountability of each of its functionaries and to provide corruption free governance. Every public authority was expected and duty bound to streamline its record keeping system in tune with the spirit of transparency, accountability and informed citizenry as per the mandate given in Section 4 of the RTI Act. The revenue Department was accordingly directed under Section 19(8)(a) of the RTI Act to issue appropriate directions to ensure in future that every official and officer records his/her name and designation while recording notings on the file.

The PIO-cum- Deputy Secretary (Revenue) was also directed to pay a compensation of Rs. 3500/- to the appellant as estimated expenditure incurred by him to pursue his RTI application to attend hearing before the Commission.

Provisions involved:

Section 4(1) (b)(v) (vi)

(1) Every public authority shall—

b) Publish within one hundred and twenty days from the enactment of this Act,—

(v) The rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;

(vi) A statement of the categories of documents that are held by it or under its control;

Section 6(3) - *"Where an application is made to a public authority requesting for an information,—*

(a) Which is held by another public authority; or

(ii) The subject matter of which is more closely connected with the functions of another public authority, 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:

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 receipt of the application.

Section 19(8)(a) &(b)-*In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—*

(a) Require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—

(i) By providing access to information, if so requested, in a particular form;

(ii) By appointing a Central Public Information Officer or State Public Information Officer, as the case may be;

(iii) By publishing certain information or categories of information;

(iv) By making necessary changes to its practices in relation to the maintenance, management and destruction of records;

(i) By enhancing the provision of training on the right to information for its officials;

(ii) By providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;

(b) To require the public authority to compensate the complainant for any loss or other detriment suffered.

6.3.3. PENALTY ON ERRING EMPLOYEES & MEANING OF EXPRESSION "INFORMATION"

Appeal No. 0091/2012-13 Date of Decision: 16/02/2013

Case: In the case of Sh. Sher Singh , R/O Vill. Kathal, Teh. Chachyot, Distt. Mandi (HP) vs PIO-cum-Executive Engineer, HPPWD Division Gohar, Distt. Mandi (HP), the appellant had applied to PIO-cum-Executive Engineer, PWD for certain information regarding encroachment but he was not provided information within the time limit prescribed under RTI Act .

Judgement: The State Chief Information Commissioner, Himachal Pradesh held that the PIO has failed to provide the information to the appellant within the maximum time limit of 30 days as prescribed under Section 7(1) of the RTI Act and delayed the information by a period exceeding 100 days. The Assistant Engineer & Junior Engineer also kept on pursuing the matter with Revenue officials without putting up the information to the office of PIO as it existed in their office record on the date of receipt of application. Thus the casual approach of these three officers led to the delayed disposal of RTI application. The period of delay having exceeded 100 days involving maximum penalty of Rs 25,000/- as per section 20 of RTI Act, 2005 was imposed upon the three officers in equal share to be deposited in the Govt. treasury who were responsible for the delay.

Comments : Instead of providing information regarding encroachment which was on record as on the date of receipt of RTI application the PIO rather wrote to the Tehsildar regarding ascertaining the encroachment which the commission did not hold tenable within the meaning of the expression "information" as defined under section (2)(f) of the RTI Act.

Provisions Involved:

Section 2(f) :*"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;*

Section 7(1): *Central Public Information Officer or State Public Information Officer, as the case may be, 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.*

Section 20(1)*: Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 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, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees.*

6.3.4. Penalty on FAA & Directions to PA
Appeal No: 0003/2013-2014 Date of Decision: 18-07-2013

Case: In the case of Panchayat Inspector, o/o BDO, Mehla, Chamba (HP) vs Sh. Bhagat Ram Thakur V.P.O. Bhariyan Kothi, Teh. & Distt. Chamba (HP). The main contention of applicant in the second appeal is that the PIO in violation of the RTI Act / Rules provided incomplete information with a delay of 15 days and his 1st appeal was disposed of with a delay of 10 months by the 1st Appellate Authority. He has sought to penalize these officials for this delay and to compensate him for the harassment caused to him.

Judgement: The SIC held that the RTI application of the appellant not being disposed of in time specified u/s 7(1), the then PIO wrongly asked for additional fee; whereas the information should have been supplied free of cost as per section 7(6). The PIO was held responsible for the delay and imposed a penalty of Rs 3000/-.Further it was held that the First Appellate Authority is mandated to dispose of the appeal in the time schedule fixed u/s 19 of this act; who did not decide the appeal in time and continued the hearings for a period of more than 6 months on frivolous grounds. Exercising the powers conferred vide provision of section 19(8)(c) of the Act, the Commission imposed a penalty of rupees 25000/- on First Appellate Authority as described in Section 20 of this Act. SIC further decided that Rs.5000/- as compensation be given from the govt. exchequer to the appellant as he was put to harassment and incurred expenditure on attending repeated hearings. The Director Rural Development and Panchayati Raj was also directed as per the provisions of section 19 (8) (a)(v) to take steps to impart training to 1st AAs-cum-BDOs of department in a time bound manner. It was also brought to notice of RD

Department that system of maintaining files as per the procedure laid down in office manual is not being followed in their offices and as a result thereof the action/decisions taken by the officials working in the these offices are not transparent and self–speaking. Steps to streamline the maintenance of files be therefore taken in a time bound manner

Provision involved:

Section 6 (3) i ,ii *–Where an application is made to a public authority requesting for an information,-*

(i) Which is held by another public authority ;or

(ii) The subject matter of which is more closely connected with the function of another public authority,

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:
Provide 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 receipt of the application.

Section 7-(1) *Subject to the proviso to sub-section (2) of section 5 or the proviso to subsection (3) of section 6 , the Central Public Information Officer or State Public Information Officer , as the case may be 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 section 8 and 9:*

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.

(2) If the Central Public Information Officer or the State Public Information Officer , as the case may be fails to give decision on the request for information within the period specified under sub section 1, the central information officer or the state public information officer, as the case may be shall deemed to have refused the request.

Section 19 – (1) *Any person who, does not receive a decision within the time specified in subsection 1 or clause a of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or the State Public Information Officer, as the case may be, may within thirty days 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 Central Public Information Officer or the State Public Information Officer, as the case may be , in each public authority:*

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.

(3)-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 Central Information Commission or the State Information Commission:

Provided that the Central Information Commission or the State Information Commission, as the case may be, 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.

(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.

(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—

(a) Require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—

(iv) By making necessary ***changes to its practices in relation to the maintenance, management and destruction of records****;*

(v) By enhancing the provision of training on the right to information for its officials;

(c) Impose any of the penalties provided under this Act;

Section 20 (1)*-Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty five thousand rupees:*

6.3.5. Penalty on Deemed PIO & Directions for Proper Upkeep of Permanent Record
Complaint No: 0513/2012-13 Date of Decision: 13-06-2013

Case: In the case of Onkar Chandel vs Divisional Manager, Forest Working Div. HP State Forest Corporation, Dharamshala, Distt. Kangra (H.P), the complainant had filed application for certain information from the office record. He was not provided the information within maximum time limit, on the ground that the relevant record was untraceable. Subsequently the complainant filed a complaint u/s 18(b) of the RTI Act of 2005 for inquiry to the SIC.

Judgement: The SIC held that loss of relevant file is attributable to the negligence of office. The matter was inquired as per the provision of section 18 (3). The resultant delay is attributed to the deemed PIO to whom the RTI application was marked. In reply

to show cause notice he has argued that information sought by the complainant had already been given to him by PIO-cum-DFSFC as verified by him on telephone and therefore he did not process the application. This contention of the deemed PIO was not held tenable in view of the findings of the Commission in its interim order wherein it is held that complainant admitted to have received part of information related to the office of DM Hamirpur but part of information related to DM Dharamshala he has received the intimation as to non-availability of record only through letter. The second contention of the deemed PIO that complainant has sought third party information which he is not supposed to. But from the perusal of the relevant file on which RTI application was dealt with it was observed that no notice to the third party was given by the PIO as per provisions of section 11 of the RTI Act, 2005 and no record was searched out to come to the conclusion as to whether information sought be disclosed or not. Thus he cannot take this plea to justify the delay in disposal of the application. He has also relied upon the certain decisions of Hon'ble Supreme Court which are not relevant to the facts of the disposal of present RTI application. Therefore, delay in providing information for than 100 days is liable for penalty u/s 20 (1). The dealing hand was responsible for the untraceable record and was imposed the maximum penalty of 25000/ with a direction to the DM forest Corporation, Dharamshala to ensure the proper upkeep of permanent record to ensure access of information to citizen.

Provision Involved:

Section 5

(5) ***Any officer, whose assistance has been sought*** *under sub-section (4), shall render all assistance to the Central Public Information Officer or State Public Information Officer, as the case may be, 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 Central Public Information Officer or* ***State Public Information Officer,*** *as the case may be.*

Section 18

(1) *Subject to provision of this Act, it shall be the duty of the CIC or SIC as the case may be to receive and inquire into a complaint from any person,-*

(b) Who has ***been refused access to any information r****equested under this Act;*

Section 19

(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—

(a) Require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—

(iv) By making necessary ***changes to its practices in relation to the maintenance, management and destruction of records****;*

Section 20 (1)*-Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information*

Officer, as the case may be, has, ***without any reasonable cause,*** *refused to receive an application for information* ***or has not furnished information within the time specified under sub-section (1) of section 7*** *or malafidely denied the request for information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, is received or information is furnished, so however,* ***the total amount of such penalty shall not exceed twenty five thousand rupees:***

6.3.6. Penalty on PIO & Directions to Public Authority
Appeal No: 0064/2012-13 Date of Decision: 22-07-2013

Case: In the case of Shri Om Prakash Kaprate vs. Architect Planner Municipal Corporation Shimla, the appellant had applied for information regarding action taken by Commissioner Municipal Corporation, Shimla of illegal sanction of building plan of JJ House, Shanti Vihar, Sanjauli, Shimla-6. He was not provided the information within maximum time limit and hence resorted to appeals.

Judgement: The SIC held that the RTI Application of the appellant kept on tossing from one official to another. The sequence of the disposal of the RTI application showed that no action on the general complaint as also on the RTI application was taken by the PIO till the process of hearing of 1st appeal was initiated by the 1st Appellate Authority who also disposed of the appeal by passing a non-speaking order without appreciating the contentions of the appellant as to the delayed disposal of RTI application. The 1st Appellate Authority was cautioned to take note of the above observations before hearing the appeals under RTI Act, in future so as to ensure that every order is self speaking and well reasoned. It remained pending at the level of JE, MC. The then PIO, Shri Rajiv Sharma even after reminder from the appellant took a casual approach for disposing off the RTI application and hence both of these officials were responsible for the delay and were imposed a penalty of Rs. 25000/- in equal share. The Municipal Commissioner however was impressed upon to take note of the observations made in the order that RTI application was tossed from one official to another for a period of six months. This tossing about the application is partly related to lack of proper record – management system of sanctioned/rejected building plans and largely to the fact that general complaints of citizen are not dealt with promptly through the process of noting and drafting procedure mandated by the guidelines issued by the State Govt. by way of office Manual. It was further mentioned that the contention of the appellant that directions be given to the Commissioner to order demolition of the alleged illegal construction was rejected as the same was found beyond the scope of RTI Act 2005.

Provision involved;

Section 18.

(1) Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission, as the case may be, to receive and inquire into a complaint from any person,—

(b) Who has been ***refused access to any information*** *requested under this Act;*

*(c) Who has **not been given a response to a request for information or access to information** within the time limit specified under this Act;*

***Section 19 – (1)** Any person who, does not receive a decision within the time specified in subsection 1 or clause a of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or the State Public Information Officer, as the case may be, may within thirty days 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 Central Public Information Officer or the State Public Information Officer, as the case may be , in each public authority:*

(3)-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 Central Information Commission or the State Information Commission:

*(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**.*

(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—

(a) Require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—

*(iv) By making necessary **changes to its practices in relation to the maintenance, management and destruction of records**;*

Section 20 (1)**-Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, **without any reasonable cause,** refused to receive an application for information **or has not furnished information within the time specified under sub-section (1) of section 7** or malafidely denied the request for information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, is received or information is furnished, so however, **the total amount of such penalty shall not exceed twenty five thousand rupees:

*Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given **a reasonable opportunity of being heard before any penalty is imposed on him**:*

6.3.7. PENALTY ON PIO FOR DELAY & COMPENSATION TO THE APPLICANT

Appeal No: 0014/2013-2014 **Date of Decision: 16-09-2013**

Case: In the case of Sh. Baldev Chaudhary vs. Panchayat Secretary, Gram Panchayat Kawari, Nagrota Bagwan, Distt. Kangra, the applicant had applied for some information. He

was not provided any information within the maximum time limit. The then First Appellate Authority-cum-BDO, Nagrota made oral arguments that he disposed of the appeal promptly within six days and due to lack of training in such matters he passed a brief order directing the PIO to provide the requisite information within three days.

Judgement: The SIC held that there was a delay in replying to the information sought, in spite of disposal of appeal by the First Appellate Authority to the appellant. The BDOs had been recently designated as 1st Appellate Authority and the nature of their job not being of quasi-judicial nature, his contentions were accepted and show cause notice under Section 20 of the Act given to him was withdrawn. It was found that RTI application on receipt was transferred to the Panchayat Secretary-cum-PIO through registered letter on 3.9.2012. In the normal course of working of the postal authorities the same should be received in the Panchayat by 5.9.2013 as the distance of the Panchayat is only about 5 kms. The reply of the then Panchayat Secretary Sh. Jaswant Singh that he didn't receive the application was not valid especially because the letter transferring the application was a registered letter and the fact that application was ultimately found in the drawer of the almirah of the Gram Panchayat as admitted by his successor Sh. Ravi Kumar. The delay was on the behalf of Shri Jaswant Singh the then PIO-cum-Panchayat secretary and Shri Ravi Kumar, the present PIO-cum-Panchayat Secretary . Thus both the officials were held responsible for this delay and the period of delay being more than 100 days involving maximum penalty of Rs.25000/- has been imposed upon both of them in their personal capacity to be deposited in the Govt. treasury It was also held that the appellant be compensated for mental harassment and expenditure incurred by him to pursue the RTI application to the tune of Rs. 2000/- by BDO Nagrota u/s 19 (8) (b) of RTI Act 2005

Provisions involved:

Section 18

(3) The Central Information Commission or State Information Commission, as the case may be, 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:—

(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;

(b) Requiring the discovery and inspection of documents;

Section 19(8)(b)*- In its decision, the State Information Commission as the case may be, has the power to require the public authority* ***to compensate the complainant for any loss or other detriment suffered.***

Section20(1)- *Where the state information commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the state information officer, as the case may be, has, without any reasonable cause, refused to receive an application for information ,or* ***has not furnished information within the time specified under sub section (1) of section 7****, 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 the application is received or the information is furnished so however the total amount of such a penalty shall not exceed twenty five thousand rupees.

Provided further that ***the burden of proving that he acted reasonably and diligently*** *shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be*

6.3.8. PENALTY ON DEEMED PIO FOR DELAY IN PROVIDING INFORMATION

Complaint No. No: 0405/2012-2013 **Date of Decision: 22-05-2013**

Case: In the case of Ms. Manju Devi vs Town & Country planner division Dharamshala, Distt. Kangra (H.P), the complainant had filed application for certain information from the office record. The information was not provided to her the within maximum time limit, on the ground that the relevant record was untraceable. The complaint filed a complaint u/s 7 of the RTI Act of 2005 praying supply of information, respondent to be dealt according to section 20 of Act, litigation cost Rs 5000/- and further orders in favour of complainant. Subsequently, the complaint was registered for enquiry u/s 18(b) of the Act by the SIC.

Judgement: The matter was inquired as per the provision of section 18 (3) and the dealing hand, the deemed PIO, was responsible for the untraceable record. The spirit of the RTI Act, 2005 as contained in its preamble makes it very clear that transparency and accountability is to be ensured to provide corruption free governance by the public authorities and its functionaries. RTI applicant seeking information from a record of permanent nature as a matter of his right guaranteed under section 3 of the RTI Act, cannot be simply informed like in the present case that relevant record is not traceable. The SIC held that loss of relevant file is attributable to the negligence of dealing assistant, the deemed PIO, has knowingly withheld this information by taking excuse that the relevant file is not traceable, therefore, delay in providing information for more than 100 days is liable for penalty u/s 20 (1) & (2).He was imposed the maximum penalty of 25000/ with a direction to the Distt. Town & Country Planner to ensure handing over / taking over of charge as per official order and disciplinary proceedings against the official be concluded expeditiously.

Provision Involved:

Preamble

An Act 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,*

Section 5

(5) ***Any officer, whose assistance has been sought under sub-section (4), shall render all assistance*** *to the Central Public Information Officer or* ***State Public Information Officer****, as the case may be, 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*** *Central Public Information Officer or* ***State Public Information Officer****, as the case may be.*

Section 7-(1) *Subject to the proviso to sub-section (2) of section 5 or the proviso to subsection (3) of section 6, the Central Public Information Officer or State Public Information Officer , as the case may be 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 section 8 and 9:*

Section 18 (1) *-Subject to provision of this Act, it shall be the duty of the CIC or SIC as the case may be to receive and inquire into a complaint from any person,-*

(b) who has been refused access to any information requested under this Act*;*

Section 20 (1)*-Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or* ***malafidely denied the request for information*** *or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty five thousand rupees:*

(2)-Where the CIC or the SIC, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has , without any reasonable cause and persistently, failed to receive an application for information or has not furnished within the time specified under sub-section (1) of section 7 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 recommend for disciplinary action*** *against the Central Public Information officer or the State Public Information officer, the case may be, under the service rules applicable to him.*

6.3.9. PENALTY FOR DELAY IN SUPPLY OF INFORMATION

Appeal No: 0194/2012-2013 **Date of Decision: 22-05-2013**

Case: In the case of SDO(C) Barsar, Distt. Hamirpur, HP vs KishoriLal Sharma the appellant, the applicant had filed a general complaint to SDO (C) Barsar, seeking action in respect of misappropriation of Govt. funds in a particular Panchayat in his sub-division. He was not provided the information even after filing the RTI application for the same information within the maximum time limit, as the Public Authority transferred the RTI application to BDO, Bijhari without sending any endorsement to the applicant. The applicant filed first appeal before SDO (C) Barsar, which was NOT decided by the SDO (C) and accordingly, the appellant filed second appeal before the SIC.

Judgement: The SCIC held that the SDO (C) wrongly transferred the general complaint and the RTI application without endorsing a copy thereof to the appellant contrary to the provision of sec. 20 (1) of the RTI ACT , 2005.Also , held that , Panchayat Inspector –cum –PIO did not file the reply within specified time as per section 7(1) of RTI Act 2005. SCIC also held that the BDO- cum- FAA, Bijhari wrongly transferred the first appeal back to SDO(C) without deciding the same contrary to the provision of section 19 (1) of the Act. Hence all the above three officials were held responsible for delay of more than 100 days and were imposed a penalty of 25000 /- as per section 20 of the RTI Act, 2005.The appellant was also sanctioned compensation for pursuing RTI application and appeals to the tune of Rs. 9800/- of his own expenditure from Govt. exchequer.

Provision involved:

Section 6(3): *Where an application is made to a public authority requesting for an information,-*

(i) Which is held by another public authority ;or

(ii) The subject matter of which is more closely connected with the function of another public authority,

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****:*

Provide 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 receipt of the application.

Section 7-(1) *Subject to the proviso to sub-section (2) of section 5 or the proviso to subsection (3) of section 6 , the Central Public Information Officer or State Public Information Officer , as the case may be 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 section 8 and 9:*

(2) If the Central Public Information Officer or the State Public Information Officer , as the case may be fails to give decision on the request for information within the period specified under sub section 1, the central information officer or the state public information officer, as the case may be shall deemed to have refused the request.

Section 18(3): *The Central Information Commission or State Information Commission, as the case may be, 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:—*

(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;

Section 19 – (1) *Any person who, does not receive a decision within the time specified in subsection 1 or clause a of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or the State Public Information Officer, as the case may be, may within thirty days 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 Central Public*

Information Officer or the State Public Information Officer, as the case may be , in each public authority:

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.

Section 19 (8)

(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—

(b) Require the public authority to compensate the complainant for any loss or other detriment suffered;

***Section 20 (1)**-Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty five thousand rupees:*

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

6.4 Non Governmental Oraganisations

6.4.1. REGISTRATION AS A COOPERATIVE SOCIETY DOESN'T MAKE IT A PUBLIC AUTHORITY

Appeal No.31/2006-07 **Date of Decision: 27.10.2007**

Case: In the case of **Bilaspur Distt. Truck Operators Transport Cooperative Society, Barmana Vs Vishal Bansal and Asstt. Registrar, Cooperative Societies, Bilaspur; the PIO-Cum- Asstt. Registrar, Cooperative Societies ,Bilaspur** didn't furnish information within the stipulated period under RTI Act in respect of Truck Operators Transport Cooperative Society to Mr. Vishal Bansal who afterwards filed an appeal before the Appellate Authority-cum–Additional Registrar, Cooperative Society praying imposition of penalty on the President, Bilsapur Distt. Truck Operators Transport Cooperative Society, Barmana and it was decided that the Society was liable for violating section 5 of the RTI Act by not designating any of its officers as PIO and failed to supply the required information within specified time without reasonable cause and was held liable to face appropriate penalty which can be only imposed by the SIC.

It was argued by the appellant that the order of the first appellate authority is not sustainable in law as it has gravely erred in law and facts by holding the appellant as Public Authority under the RTI Act 2005.

Judgement: While discussing the points taken into consideration by the first appellate authority for declaring the aforesaid society as "Public Authority" it was held by the State Information Commission that mere registration of a society under section 4 of the H.P Cooperative societies Act, 1968 doesn't amount to establishment or constitution of the society by the afore said act within the meaning of Section 2(h)(c) of the RTI Act. Following the Judgement of the Honorable Supreme Court in the case of S.S Rana Vs Registrar, Cooperative Societies (HLJ 2006(SC) 1247) the State Information Commission held that general regulations by State/ State Authorities under an Act like Cooperative Societies Act would not render a society subject to the control of the state as envisaged within the meaning of section 2h(d)(i)of RTI Act because the state or its authority do only ensure proper functioning of the society as per rules and regulations and have nothing to do with the day to day functioning of the society. It was also mentioned that this interpretation was also supported by the Memorandum Number 4-50/2005-COOP(Estt.) dated 9 May 2006 by the Registrar Cooperative Societies which among other things stated that only those societies registered under H.P Cooperative Societies Act 1968 which are receiving substantial finances from Central or State Govt. are public authorities within the meaning of Sec 2 (h) of the RTI Act 2005 and as such it was not applicable to the present case as the appellant society had not received and is not receiving any financial assistance and thus also can't be covered under the words substantially finance in the section 2(h)(d)(i) of the RTI Act. However it was also held that as per the definition of "information" in section 2(f) of the RTI Act if a Cooperative Society is not a public authority within the meaning of section 2(h) of the RTI Act it has to furnish information to the PIO for further supplying it to the applicants if such information can be accessed by a public authority under any other law for the time being in force. e.g. as under H.P Cooperative Societies Act 1968.

SCIC observed that the findings of the Appellate Authority-cum-Additional Registrar, Cooperative Societies (Monitoring), Himachal Pradesh in its order are not in accordance with the provisions of the RTI Act, 2005 and cannot be sustained on merit. The aforesaid order of Appellate Authority was set aside and the appeal of the appellant society was allowed.

***Provisions involved**:*

Section 2 (h)

"Public Authority" means any authority or body or institution of self- government established or constituted—

(a) By or under the Constitution;

(b) By any other law made by Parliament;

(c) By any other law made by State Legislature;

(d) By notification issued or order made by the appropriate Government, and includes any—

(i) Body owned, controlled or substantially financed;

(ii) Non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;

Section 2 (f)

"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;

Section 5 (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 a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, to receive the applications for information or appeals under this Act for forwarding the same forthwith to the Central Public Information Officer or the State Public Information Officer or senior officer specified under sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be:*

6.4.2. TRUST IS NOT A 'PUBLIC AUTHORITY' UNDER RTI ACT.

Appeal No.SIC-1(A)0007/2013-14 Date of Decision 25.06.2013

Case: In the case of Sh. Hira Singh Rayta vs. PIO-cum-Tehsildar, Theog Tehsil, Distt. Shimla, HP, the appellant had applied to the Chairman, Shri Maheshwari Devi Ji Religious and Charitable Trust, Shari (Mool-Matiana) seeking certain information in respect of the Trust. The Management of the Trust denied the information on the ground that the trust is not a Public Authority under the RTI Act. The appellant filed first appeal before Appellate Authority-cum-SDO (Civil) which was dismissed and the appellant filed second appeal before the Commission.

Judgement: The Division bench of the State Information Commission (SIC) held that the Trust in question was established by the devotees of a particular deity to manage a corpus of Rs. 50 lakh to be created out of the income of the Temple and its assets over a period of time. The trust deed was registered by the Sub Registrar-cum-Tehsildar, Theog. Thus it was not established in the manner detailed in sub section 2 (h) of the RTI Act and was not a 'Public Authority' as it had neither been constituted in terms of Section 2(h) of the Act nor was it substantially funded or controlled by the Government. The mere fact that it is getting exemption from Income Tax does not lead one to conclude that this amounts to being substantially financed or indirectly funded by the Government, as held by the full Bench of the Central Information Commission in its decision in the case titled Shri Shanmuga Patro appellant vs. Rajiv Gandhi Foundation, F. No. CIC/WB/C/2009/000424 dated 15th October, 2010.

The contention of the appellant that the PIO as sub-Registrar had the power to call for information under section 84 (2) of the Indian Registration Act was not held to be valid for the simple reason that this power of the sub Registrar is in relation to the process of Registration and once that process is over by way of registration of the

document presented for registration, there is no power of the sub-registrar post-registration of a document to call for any information with regard to the same and the appellant has the remedy as one of the beneficiary of the trust as claimed by him in memo of appeal before the competent court of law. The appeal was dismissed.

Provisions involved:

Section 2(h) - *"Public Authority" means any authority or body or institution of self-government established or constituted,-*

(b) By or under the Constitution;
(c) By any other law made by the Parliament;
(d) By any other law made by the State Legislature;
(e) By notification issued or order made by the appropriate Government, and includes any-
(iii) Body owned, controlled or substantially financed;
(iv) Non-Government Organization substantially financed, directly or indirectly by funds provided by the appropriate Government;

Section 18

(2) Where the Central Information Commission or State Information Commission, as the case may be, is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.

(4) Notwithstanding anything inconsistent contained in any other Act of Parliament or State Legislature, as the case may be, the Central Information Commission or the State Information Commission, as the case may be, 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.

Section 19

(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—
(d) Reject the application.

6.4.3. A NON GOVERNMENT ORGANIZATION - A PUBLIC AUTHORITY UNDER RTI ACT

Complaints No. 0191 & 0393/2012-13 Date of Decision 03-01-2013

Case: In the case of Sh. Sanjeev Chauhan vs. PIO-cum-Deputy Director, Higher Education, Shimla, H.P., a Bench of the State Information Commission had been constituted to decide whether DAV Public School, Hamirpur, H.P. which is managed by DAV College Managing Committee is a Public Authority under the RTI Act.

The contention of the complainant was that the DAV School, Hamirpur was a public authority under RTI Act as it had been provided land measuring 23 Kanal and 17 marla by the Government of Himachal Pradesh on lease for 99 years at a token rent of Re. 1/- per year and it had also been provided an amount of Rs. 8,35,500/- for

the construction of school building under Vikas Mein Jan Sahyog Scheme of Govt.However, neither the said school nor the DAV College Managing Committee were getting any grant from the state or the Central Government.

Judgement: The SIC observed that a Non-Government Organization(NGO) can be amenable to RTI Act provided it is proved that it is being substantially financed, directly or indirectly by funds provided by the "**Appropriate Government**".

Relying on the full bench decision of the Central Information Commission in the matter of Rajiv Gandhi Foundation decided on 15.10.2010 and the decision dated 05.12.2012 of the SIC in the case of Himachal Pradesh Voluntary Health Association (HPVHA), the SIC held that DAV Public School, Hamirpur, H.P. is not a public authority under the RTI Act as it is not being substantially financed by the State Government nor it falls in the category of Govt. aided school.

Comments –A full Bench of Central Information Commission in a case relating to Rajiv Gandhi Foundation (RGF) held that RGF is not a public authority as direct grant of the Govt. did not exceed 4% of the total receipts of RGF. It cannot be said that RGF is substantially financed by the Govt.

Provisions involved:

Section 2(h) - *"Public Authority" means any authority or body or institution of self-government established or constituted,-*

(d) By notification issued or order made by the appropriate Government, and includes any-

(v) Body owned, controlled or substantially financed;
(vi) Non-Government Organization substantially financed, directly or indirectly by funds provided by the appropriate Government;

Section 18

(2) Where the Central Information Commission or State Information Commission, as the case may be, is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.

(4) Notwithstanding anything inconsistent contained in any other Act of Parliament or State Legislature, as the case may be, the Central Information Commission or the State Information Commission, as the case may be, 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.

Section 19 (8) (d)
(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—
(d)Reject the application.

6.4.4. A NON GOVERNMENT ORGANIZATION IS PUBLIC AUTHORITY

Complaint No. 0182/2012-13 **Date of Decision 05-12-2012**

Case: In the case of Deepak Sharma vs. Executive Director, H.P. Voluntary Health Association (HPVHA), Shimla, H.P.. This complaint has been filed by Sh. Deepak Sharma against Himachal Pradesh Voluntary Health Association (HPVHA) for non-supply of information which he had sought on 05.05.2012 under the RTI Act. The information sought is pertaining to different subjects and different years and has been listed under 10 heads. According to the reply filed by the Executive Director, his organization is not covered under the RTI Act as it is a non profit body and guideline was sought from the Commission so that all non Government organizations working in the State could be guided about the application of the RTI to various voluntary organizations of Himachal Pradesh.

A full Bench of the State Information Commission had been constituted to adjudicate about the applicability of RTI Act to a Non-Government Organization and the issue of its being substantially financed, directly or indirectly, by funds provided by the appropriate Government alongwith deciding the meaning of the term, 'substantially financed'.

Judgement: The SIC observed that a Non Government Organization(NGO) can be amenable to RTI Act provided it is proved that it is being substantially financed, directly or indirectly by funds provided by the appropriate Government. Relying on the decision of the Central Information Commission in a Complaint No. CIC/WB/C/2006/00257 dated 28.05.2007 filed by Mr. Pradeep Gupta against Servants of the People's Society and full bench decision of the Central Information Commission in the matter of Rajiv Gandhi Foundation decided on 15.10.2010, wherein the meaning of the term 'substantially financed' as given under CAG's Act 1971 had been relied upon, the SIC held that Himachal Pradesh Voluntary Health Association (HPVHA) is a public authority in terms of Section 2(h) of the RTI Act as it is being substantially financed by Government.

It was further held that if an NGO receives any grant from the Government, which cannot be termed as substantially financed, in that case "**Appropriate Government"** will be the public authority and a citizen can seek information from that public authority. Further, if an NGO is not substantially financed by the Government and also raises funds by collections from public authority and a citizen can seek information from that public authority. Further, if an NGO is not substantially financed by the Government and also raises funds by collections from public contribution and it performs functions of a public nature that are ordinarily performed by the Government or its agency, it is desirable that the NGO voluntarily place maximum information regarding its activities on its website.

Comments: The term 'substantially financed' has not been defined under RTI Act. When a term is not defined in an Act, the normal rule is to find out the definition of the term in a relatable statute or legislation and apply the same. The word 'substantially financed' finds mention in another Act of Parliament i.e. The Comptroller & Auditor-General's Act, 1971. The term is used in Section 14(1) of this Act in the following context:

[Audit of receipts and expenditure of bodies or authorities substantially financed from Union or State Revenues]

"Where anybody or authority is substantially financed by grants or loans, the Comptroller and Auditor-General shall, subject to the provisions of any law for the time being in force, applicable to the body or authority, as the case may be, audit all receipts and

expenditure of that body or authority and to report on the receipts and expenditure audited by him. Explanation: Where the grant or loan to a body or authority from the Consolidated Fund of India or of any state or of any Union territory having a Legislative Assembly in a financial year is not less than rupees twenty five Lakhs and the amount of such grant or loan is not less than seventy five percent of the total expenditure of that body or authority, such body or authority shall be deemed, for the purposes of this sub-section, to be substantially financed by such grants or loans as the case may be.

Section 14(2) of CAG's Act states that an NGO is eligible for audit by CAG when the grant or loan to such body or authority is not less than rupees one crore in a financial year

Provisions involved:

Section 2(h) - *"Public Authority" means any authority or body or institution of self-government established or constituted,-*

(d)By notification issued or order made by the appropriate Government, and includes any-

(vii) Body owned, controlled or substantially financed;
(viii) Non-Government Organization substantially financed, directly or indirectly by funds provided by the appropriate Government;

Section 18

(2) Where the Central Information Commission or State Information Commission, as the case may be, is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.

Section 19 (8) (a) (iv)

(a) Require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—
(iv) By making necessary changes to its practices in relation to the maintenance, management and destruction of records;

6.4.5. WHETHER AN NGO-COOPERATIVE SOCIETY COVERED UNDER RTI ACT, 2005

Appeal No. 0068&0211/2013-14 Date of Decision 6.10.2013

Case: H.P. Football Association receives assistance/grant from HP Sports Council to the tune of Rs. 25000/- to Rs.75000/- per annum and it is registered as Co-operative Society in Himachal Pradesh. The appellant submitted that the RTI Act is applicable to the Association. The Secretary of Association made submission that the RTI Act is not applicable to the Association and has also cited a Supreme Court Judgement dated 07.10.2013 which says that Societies registered under Co-operative Societies Act are not Public Authorities and not legally obliged to furnish any information to a citizen under the RTI Act. Whereas the provisions of Act imply that The RTI Act says that if a non government organization is substantially financed directly or indirectly by funds provided by the appropriate government, it will be a Public Authority.

Judgement: A full Bench of Central Information Commission has defined the word substantially financed' in the case of Rajiv Gandhi Foundation. It has been held therein:

"Hence, an NGO is a public authority under the RTI Act if:
"Grant or Loan from the Consolidated Fund of India or of any State or of any Union territory having a Legislative Assembly in financial year

- Is not less than rupees one crore OR
- Is not less than rupees twenty-five lakhs and the amount of such grant or loan is not less than seventy-five percent of the total expenditure of that body or authority."

A full Bench of HP State Information Commission has defined the word 'substantially financed' in the case of Sh. Deepak Sharma Vs the PIO-cum-Executive Director, HPVHA, Complaint No. 0182/2012-13 dated 05.12.2012.

In view of the definition of the word "substantially financed" it is held that the provisions of the RTI Act are not applicable to Himachal Pradesh Football Association which is registered as a co-operative Society.

It was advised to the Association to maintain transparency in its day to day activities and maximum information about the proper utilization of this grant should be placed on its official website so that citizens can access to information since it gets regular grants from the HP Sports Council.

Provisions Involved:

Section 2 (h)

"Public Authority" means any authority or body or institution of self-government established or constituted—
(a) By or under the Constitution;
(b) By any other law made by Parliament;
(c) By any other law made by State Legislature;
(d) By notification issued or order made by the appropriate Government, and includes any—
(i) Body owned, controlled or substantially financed;
(ii)Non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;

Section 19 (8) (d)

(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—
(d) Reject the application.

Section 19 (8) (a) (iii)

(a) Require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—
(iii) By publishing certain information or categories of information;

6.5 THIRD PARTY INFORMATION

6.5.1. THIRD PARTY AND PERSONAL INFORMATION INCLUDING COMMERCIAL CONFIDENTIAL TRADE SECRET OR INTELLECTUAL PROPERTY RIGHTS

Appeal No. 0063/2012-13 Date of Decision 11.12.2012

Case: In the case of Arvind Goel v/s PIO-cum-Asstt. Excise & Taxation Commissioner Sirmour, & M/s Indian Technomac Company Ltd Paonta Sahib, the appellant had applied for information about the details of sales undertaken within the State & outside the state of HP and also the details of consignments sent outside HP. The PIO did not supply the aforesaid information to the applicant stating the reasons that it was third party information, who had objected to supply the information to the applicant as the information sought was part of the trade secret of the company and could not be disclosed. The First Appellate Authority (FAA) i.e Additional Excise &Taxation Commissioner (SZ) rejected the appeal and upheld the decision of the PIO-cum AETC, Sirmour. The decision of the FAA was challenged before the State Information Commission.

Judgement: SIC held that in this particular case, a larger public interest warrants the disclosure information requested by the applicant as it may unearth a case of tax evasion by the company. Section 8(2) of the act also stipulates that a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests. Hence the appeal was allowed and the order of FAA was set aside and the PIO was directed to supply the information to the applicant free of cost within 10 days.

Provisions Involved:

Section 7(6) *Notwithstanding anything contained in sub-section (5), the person making request for the information shall be provided the information free of charge where a public authority fails to comply with the time limits specified in sub-section (1).*

Section 8(1)d: *Information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information.*

Section 8(1) (j) : *Information which relates to personal information the disclosure of which has no relationship with to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the SPIO or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information.*

Section 11(1): *Where a Central/State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this act, which relates to or has been supplied by a third party and has been treated as confidential by the third party, Central/State Public Information Officer as the case may be, shall within five days from the receipt of the request, give a written notice to third party of the request and of the fact that the CPIO/SPIO, as the case may be, intends to disclose the information or part thereof and invite third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:*

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure out ways in importance any possible harm or injury to the interest of such third party.

6.5.2. THIRD PARTY PERSONAL INFORMATION VIS-À-VIS PUBLIC INTEREST

Appeal no. 0335/2013-14 **Date of Decision 26.12.2013**

Case: In the case of Major Paras Rehni vs PIO, IGMC Shimla, the appellant has sought details of surgery carried out by IGMC Hospital, Shimla for gall bladder removal of Ms. Abha Dhatwalia, his wife. The demanded information pertained to the surgery when MsAbha was not the wife of the appellant. The PIO sought the consent of Ms. Abha being the third party who did not permit the disclosure of information being personal. In view of this objection, the PIO refused to give the information to the applicant. The applicant filed 1st appeal before the First Appellate Authority which was not decided. After two and half months, the applicant filed 2nd appeal as his fist appeal was not decided by the FAA.

Judgement: When the case was listed for hearing, the appellant was not present nor he sought adjournment. However, the PIO was present and filed a detailed reply of the case. The appellant had made detailed submissions in his appeal, therefore, the appeal was decided on the basis of available record. The SIC dismissed the appeal relating to the disclosure of the information on the following three grounds:

1. The information is not specific and lacked better particulars.
2. Being third party information and the third party has conveyed its strong objection against giving information to the applicant. Third party information can be given only if larger public interest is involved in it. In the present case, there is only personal interest of the applicant and no public interest is involved in it.
3. The appeal has been dismissed on the ground that there is no obligation to give any citizen information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual as per the provision of Section 8(1)(j).

In view the above said facts and circumstances of this case, the Commission found no merit in the appeal and dismissed it.

Provisions involved:

Section 6.(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 Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed,*

Specifying the particulars of the information sought by him or her:

Section 8(1) *– Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-*

*(j) Information which relates to **personal information, the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual** unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information.*

Section 11 (1)

*Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, **which relates to** or has been supplied by **a third party** and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, **give a written notice to such third party of the request** and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, **and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed**, and **such submission of the third party shall be kept in view while taking a decision about disclosure of information**:*

Section 19

***(**8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—*

(d) Reject the application.

6.5.3. Disclosure of Third Party & Exempted Information for Transparency in Examination System
Appeal no. 13/ 2007-08 Date of Decision 26.09.2007

Case: In case of Dr. Anupam Nanda, Manager (Marketing), HP State Forest Corporation, Shimla vs. PIO-cum-The Controller of Exam, HP University, Shimla before State Information Commission, HP; The PIO refused to supply a part of information concerning the copy of OMR sheet of one Dr. Sushil Pundir for MD/MS course holding that the said information is a 3rd party document apart from being confidential. The first appellate authority also upheld the decision of the PIO.

Judgement: The SIC held that OMR sheets are not evaluated by any examiner hence the ground of fiduciary relationship between the authority conducting the exam and the examiner is not applicable in this case. The disclosure of the OMR sheet to the appellant would definitely help in making the examination system transparent and accountable. It would be in larger public interest to ignore the objection of the third party and furnish a copy of the OMR sheet of the third party to the appellant. The commission also held that it would be in larger public interest to ignore the objection of 3rd party and directed the PIO to supply the information to the appellant free of cost as per the provision of Section (7)(6) of RTI Act. The Commission further held that the document was denied to the appellant by the PIO as well as the Appellate Authority by passing speaking orders.

Hence, there is no case for initiating any penalty proceeding against the PIO or any other official of the University in the instance case under the RTI Act, 2005.

Provisions Involved:

Section 7 (6)- *Not withstanding anything contained in subsection (5) ,the person making request for the information shall be provided information free of charge where a public authority fails to comply with the time limits specified in sub section (1).*

Section 8 (1) (d) - Exemption from disclosure of information: *Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen - 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 satisfied that larger public interest warrants the disclosure of such information.*

Section 8(1) (e) - Exemption from disclosure of information: *Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen — information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information.*

Section 8(1) (g) - Exemption from disclosure of information: *Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes.*

Section 11*(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party*

6.6 PROCEDURAL ASPECTS OF H.P. RTI RULES

6.6.1. DEMAND OF SUO-MOTTO DISCLOSURE &PUBLISHING OF INFORMATION

Appeal No. 0315/2013-14 Date of Decision 18.12.2013

Case: In the case of Sh. Pawan Aggarwal versus PIO-cum-Section Officer, State Information Commission, Shimla, the applicant had sought multiple information concerning judicial aspects of the commission in a single application, and, that too, such information which has already been put in the public domain through internet.

Judgement: The SIC held that the application was against the provisions of rule 3(2) of Himachal Pradesh Right to Information Rules, 2006 which says that a separate application shall be made in respect of each subject and in respect of each year to which the information relates. Further the Commission observed that the judicial proceedings of

the SIC is beyond the purview of RTI Act. The RTI Act has not been enacted to bring such transparent proceedings under its purview. The RTI Act applies only where the information is under the control of a Public Authority. If the information is already in public domain, the provisions of the RTI Act will not apply.

Observations made by the Hon'ble Supreme Court in CBSE vs Aditya Bandopadhyay case:"Indiscriminate and impractical demands or directions under the RTI Act for disclosure of all and sundry information (unrelated to transparency and accountability in the functioning of public authorities and eradication of corruption) would be counterproductive as it will adversely affect the efficiency of the administration and result in the executive getting bogged down with the non-productive work of collecting and furnishing information. The Act should not be allowed to be misused or abused, to become a tool to obstruct the national development and integration, or to destroy the peace, tranquility and harmony among its citizens. Nor should it be converted into a tool of oppression or intimidation of honest officials striving to do their duty. The nation does not want a scenario where 75% of the staff of public authorities spends 75% of their time in collecting and furnishing information to applicants instead of discharging their regular duties. The threat of penalties under the RTI Act and the pressure of the authorities under the RTI Act should not lead to employees of a public authorities prioritising "information furnishing", at the cost of their normal and regular duties."

Provisions Involved:

Section 25(1) *The Central Information Commission or State Information Commission, as the case may be, shall, as soon as practicable after the end of each year, prepare a report on the implementation of the provisions of this Act during that year and forward a copy thereof to the appropriate Government.*

Section-4(2): *It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suomotu to the public at regular intervals through various means of communications, including intenet, so that the public have minimum resort to the use of this Act to obtain information.*

Rule 3(2) of Himachal Pradesh Right to Information Rules, 2006: *Except in the case of an applicant who is determined by the State Government as being below poverty line, the application shall be accepted only if it is accompanied by a challan in support of payment of the requisite application fees as specified in rule 5. A separate application shall be made in respect of each subject and in respect of each year to which the information relates.*

Section 19 (8) (d)
(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—
(d) Reject the application.

6.6.2. Dismissal of Appeal for Misuse of RTI Act
Appeal No. 0422/2012-13 Date of Decision: 04.06.2013

Case- In the case of Sh. Sunil Kumar Shukla versus PIO-cum-Asst. Registrar, HP University, the applicant sought some information from the HPU authorities. Being dissatisfied with the information provided, he approached the First Appellate Authority who invited the appellant for personal hearing but the appellant refused to appear in the personal hearing offered FAA and insisted on nothing less than a written reply to his appeal. The appellant filed a complaint before the SIC, HP which was disposed of with the direction to the complainant to file the first appeal before the First Appellate Authority. Subsequently he approached the 2nd AA for relief though he had not annexed the copy of the RTI application with his appeal.

Judgement- During the personal hearing, it was noticed that the appellant wanted migration of his son who was doing BBA course at that time from Una to Shimla and the migration was not permitted. Since then he has been moving various applications under the RTI Act but has failed to get any relief. It was further disclosed that now his son has completed MBA. The concerned authorities have repeatedly supplied him the information but he was not satisfied with it. The Commission found that the process of the court under the RTI Act has been repeatedly misused. It has not only put pressure on the public authorities, but even the appellant appears to have lost his mental peace. It will be in the interest of justice that this prolonged litigation comes to an end. Keeping in view the back ground of this litigation, the Commission disposed of this second appeal simply on the ground that the appellant has not annexed the copy of the RTI application and in the absence of the RTI application the appeal cannot be decided on merit, hence it is dismissed on the admission stage.

Provisions involved:

Preamble

*An Act 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,*

Section 19

***(**8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—*

(d) Reject the application.

HP RTI Rules, 2006

***Rule 6-Procedure in appeals before the Appellate Authorities**.(1) Contents of appeal.- The Memorandum of appeal to the Appellate Authority/Commission shall contain the following information, namely:-*

(v) If the appeal is preferred against deemed refusal, the particulars of the application, including number and date and name and address of the Public Information Officer to whom the application was made;

6.6.3. SEPARATE APPLICATION &FEE FOR EACH SUBJECT AND YEAR-

Appeal No.-0293/2012-13 Date of Decision: 28-02-13

Case: In the case of Bishan Singh Thakur vs PIO-cum JD, Department of IT, HP, Shimla, the applicant, who was himself a public official, in the same Deptt. has demanded information on various subjects and different years pertaining to his own seat. This information was already in the knowledge of applicant and accessible to him by virtue of his official capacity. Except for one subject, all the information was supplied to him. The applicant filed an appeal before First Appellate Authority who allowed the applicant to access the record and additional information free of cost.

Despite this, the information was supplied to him with which he was not satisfied, he filed second appeal before SIC, HP.

Judgement: The SIC held that the Public Authority could have refused to supply the information to the applicant because requested information was already in his knowledge and accessible to him.SIC further observed that voluminous information containing 67 pages was supplied to the applicant. The pleadings of both the parties run into about 60 pages. One can imagine that valuable time and limited resources of the Department have been wasted in this avoidable futile exercise undertaken by the appellant. The Department could have refused to supply the information but to avoid confrontation and for buying peace, the information was supplied to the appellant. The application should have been dismissed at the initial stage as it was against the spirit of rule 3(2) of HP Right to Information Rules 2006.

The Commission held that the RTI Act provides practical regime to citizens to access information under the control of public authority. But, a citizen and a public authority are two distinct entities. If this distinction between a citizen and the public authority disappears and officials of the public authority demand information under the RTI Act, it will lead to total lawlessness and nothing will remain secret. The provisions of section 8 (restriction on right to information and section 11 (third party information) will become redundant."

The officials of Public Authority, themselves being the custodian of information, are not expected to demand information under RTI Act. No doubt RTI is fundamental right, reasonable restrictions can be imposed in public interest. Fundamental rights represent the claims of the individual and restrictions thereon are claims of society.

Provisions Involved:

Section 3:

Subject to the provisions of this Act, all citizens shall have the right to information.

Section 19 (8) (d)

(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—
(d) Reject the application.

Section 19 (8) (a) (iv)

(a) Require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—

(iv) By making necessary changes to its practices in relation to the maintenance, management and destruction of records;

Section 19 (8): *In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—*

(d) *Reject the application.*

Himachal Pradesh Right to Information Rules, 2006:

Rule 3(2) *A separate application shall be made in respect of each subject and in respect of each year to which the information relates.*

7. Schedule I : Department wise designated authorities of RTI

Sr. No.	Name of Dept	No of PIOs	No of APIOs	No of Ist AA	Total
1	Governor's Secretariat	1	-	1	2
2	RC Officer New Delhi	1	1	1	3
3	HP Vidhansabha	1	-	-	1
4	HP Judiciary	1	42	1	44
5	State Information Commission	1	1	1	3
6	HP Legal Services Authority	1	1	1	3
7	Advocate General, HP High Court	1	1	1	3
8	HP Public Service Commission	1	1	1	3
9	HP Administrative Tribunal	1	1	1	3
10	Lokayukta	1	-	-	1
11	HP Humane Rights Commission	2	-	1	3
12	HP Electricity Regulatory Commission	1	1	1	3
13	State Consumer Dispute redressal Commission	1	1	1	3
14	State Commission for Women	1	-	1	2
15	State Election Commission	1	1	-	2
16	Kangra Division at Dharamshala	2	-	1	3
17	Shimla Division at Shimla-2	1	1	1	3
18	Mandi Division at Mandi	1	1	1	3
19	Agriculture	13	13	1	27
20	Animal Husbandary	13	-	-	13
21	Ayurveda	13	1	1	15
22	Co-operation	1	16	1	18
23	Home Guards & Civil Defence	13	13	1	27
24	Economics & Statistics	13	13	1	27
25	Directorate of Secondary Education	62	62	13	137
26	Directorate of Elementary Education	25	-	1	26
27	Election (including all 12 districts)	13	71	13	97
28	Electrical Inspectorate	1	5	1	7
29	Directorate of Estates	2	1	1	4
30	Excise & Taxation	1	21	1	23
31	Fire Services	22	23	-	45
32	Fisheries	1	9	1	11
33	Food, Civil Supplies & Consumer Affairs	18	10	1	29
34	Forest	87	245	31	363
35	Health & Family Welfare	17	66	1	84
36	Directorate of Dental Health Services	1	-	1	2
37	Horticulture	13	13	13	39
38	Hospitality & Protocol	2	2	2	6
39	Dental College Shimla\	1	-	1	2
40	Dr. R.P.Govt Medical College Tanda	1	1	-	2
41	Industries	33	3	-	36
42	Information Technology	1	-	1	2
43	HP Institute of Public Administration	1	1	1	3
44	Irrigation & Public Health	250	-	6	256
45	Local Audit	2	2	1	5
46	Mountaineering & Allied Sports	1	1	1	3
47	Labour & Employment	28	2	1	31
48	Consolidation of Holdings (Land Record)	4	4	3	11

49	Language Art & Culture	1	1	1	3
50	Planning	11	1	-	12
51	Police	23	24	6	53
52	Vigilance	3	10	2	15
53	Printing & Stationary	1	1	1	3
54	Prosecution	13	42	1	56
55	Information & Public Relation	4	2	1	7
56	Public Works Department	27	80	7	114
57	Prison Department	12	12	1	25
58	Rural Development	4	4	-	8
59	Panchayati Raj	15	15	15	45
60	Small Saving	1	1	1	3
61	Rajya Sainik Welfare	2	1	1	4
62	Settlement Department	6	40	3	49
64	Social Justice & Empowerment	170	2	1	173
65	Technical Education	1	6	2	9
66	District Gazetteer	1	1	1	3
67	Tribal Development	7	7	7	21
68	Tourism & Civil Aviation	6	-	1	7
69	Town & Country Planning	11	12	1	24
70	Transport	1	10	-	11
71	Treasuries, Accounts & Lotteries	1	14	1	16
72	Youth Services & Sports	17	-	-	17
73	Urban Development	52	52	51	155
74	D.C.Office Shimla	8	21	1	30
75	D.C.Office Hamirpur	4	10	1	15
76	D.C.Office Mandi	7	18	1	26
77	D.C.Office Bilaspur	3	7	1	11
78	D.C.Office Kangra	9	24	1	34
79	D.C.Office Sirmour	4	10	1	15
80	D.C.Office Solan	5	12	1	18
81	D.C.Office Una	3	8	1	12
82	D.C.Office Kullu	4	9	1	14
83	D.C.Office Lahaul Spiti	4	-	1	5
84	D.C.Office Kinnaur	4	10	1	15
85	D.C.Office Chamba	1	1	1	3
86	Agro Industrial Packaging India Ltd	1	1	1	3
87	HP Agro Industries Corporation	7	7	1	15
88	Ex-Servicemen Welfare Association Corpn	1	2	1	4
89	HP Financial Corporation	1	1	1	3
90	Forest Corporation	18	79	8	105
91	General Industries Corporation	1	7	1	9
92	Horticultural Produce Marketing & Processing Corporation	16	-	1	17
93	Scheduled Castes & Scheduled Tribes Development Corporation Solan	1	1	1	3
94	Environment Protection & Pollution Control Board	4	15	1	20
95	State Coop. M&C Fed. Ltd. (Himfed)	1	12	1	14
96	State Coop. Dev. Fedn. (Himcofed)	1	1	1	3
97	HP State Electricity Board	41	96	18	155
98	State Small Industries & Expert Corpn. Ltd	1	3	1	5
99	HP Tourism Development Corpn. Ltd.	5	8	1	14

100	HP Road Transport Corporation	1	24	1	26
101	HIMUDA	8	8	1	17
102	HP Khadi & Village Industries Board	1	1	1	3
103	HP Civil Supply Corporation Ltd.	1	10	-	11
104	HP State Coop Milk Producers Fedn. Ltd.	1	5	1	7
105	State Council for Science, Technology & Environment	1	1	1	3
106	HIMURJA	2	2	1	5
107	Satluj Jal Vidyut Nigam Ltd	5	2	-	7
108	State Electronics Development Corpn.	1	3	1	5
109	State Handicraft & Handloom Corpn Ltd.	11	11	1	23
110	HP Woolfed Ltd.	1	2	-	3
111	HP Backward Classes Fin & Dev. Corpn Kangra	1	1	1	3
112	State Agriculture Marketing Board	1	10	1	12
113	State Seed & Organic Produce Certification Agency	3	8	2	13
114	HP Minorities Finance & Dev. Corpn.	1	1	1	3
115	HP Road & Other Infrastructure	1	1	1	3
116	HP Health System Corporation	1	11	1	3
117	Infrastructure Development Board	1	1	1	3
118	HP Subordinate Service Selection Board	1	-	1	2
119	HP Board of School Education	1	1	1	3
120	Dr. Y.S.Parmar University of Horticulture & Forestry Nauni Solan	8	33	1	42
121	HP University	12	1	-	13
122	HP Krishi Vishhvavidyalya	12	42	1	55
123	HP State Co-operative bank	1	6	1	8
124	Kangra Central Co-operative bank Ltd.	1	1	1	3
125	State Social Welfare Board	1	2	1	4
126	HP Secretariat Shimla	104	-	32	136
	Total	1400	1529	324	3253

8. Schedule II

No.1/32/2007-IR
Government of India
Ministry of Personnel, Public Grievances & Pensions
(Department of Personnel & Training)

....

North Blcok, New Delhi,
Dated: the 14th November, 2007

OFFICE MEMORANDUM

Subject: Creation of a Central Point for receiving applications and designation of appellate authorities under the Right to Information Act, 2005.

***

The undersigned is directed to say that the sub-section (1) of Section 5 of the Right to Information Act, 2005 mandates all public authorities to designate as many Public Information Officers as necessary to provide information under the Act. The Second Administrative Reforms Commission in its First Report (June 2006) has observed that where a public authority designates more than one Public Information Officer (PIO), an applicant is likely to face difficulty in approaching the appropriate Public Information Officer, and the applicants would also face problem in identifying the officer senior in rank to the PIO to whom an appeal under sub-section (1) of Section 19 of the Act can be made. (For convenience such an officer is termed as the First Appellate Authority). The Commission has, inter-alia, recommended that all Ministries/ Departments/Agencies/Offices, with more than one PIO, should designate a Nodal Officer with the authority to receive requests for information on behalf of all PIOs. The Commission has also recommended that all the public authorities should designate the First Appellate Authorities.

2. It is, therefore, requested that all public authorities with more than one PIO should create a central point within the organisation where all the RTI applications and the appeals addressed to the First Appellate Authorities may be received. An officer should be made responsible to ensure that all the RTI applications/appeals received at the central point are sent to the concerned Public Information Officers/Appellate Authorities, on the same day. For instance, the RTI applications/appeals may be received in the Receipt and Issue Section/ Central Registry Section of the Ministry/Department /Organsiation/Agency and distributed to the concerned PIOs/Appellate Authorities. The R&I/CR Section may maintain a separate register for the purpose. The Officer-in-Charge/Branch Officer of the Section may ensure that the applications/appeals received are distributed the same day.

3. Sub-section (8) of Section 7 of the RTI Act provides that where a request for information is rejected, the Public Information Officer shall, inter-alia, communicate to the person making the request the particulars of the Appellate Authority. Thus, the applicant is informed about the particulars of the Appellate Authority when a request for information is rejected. There may be cases where the Public Information Officer does not reject the application, but the applicant does not receive a decision within the time as specified in the Act or he is aggrieved by the decision of the Public Information Officer. In such cases the applicant may like to exercise his right to appeal. But in absence of the particulars of the appellate authority, the applicant may face difficulty in making an appeal. It has, therefore, been decided that all the public authorities shall designate the First Appellate Authorities and publish their particulars alongwith the particulars of the PIOs.

4. All the Ministries/Departments etc. are requested to issue instructions to all concerned to take action accordingly.

(K.G. Verma)
Director

1. All the Ministries / Departments of the Government of India
2. Union Public Service Commission/ Lok Sabha Sectt./ Rajya Sabha Secretariat/ Cabinet Secretariat/ Central Vigilance Commission/ President's Secretariat/ Vice-President's Secretariat/ Prime Minister's Office/ Planning Commission/Election Commission.
3. Central Information Commission/State Information Commissions.
4. Staff Selection Commission, CGO Complex, New Delhi
5. Office of the Comptroller & Auditor General of India, 10, Bahadur Shah Zafar Marg, New Delhi.
6. All officers/Desks/Sections, Department of Personnel & Training and Department of Pension & Pensioners Welfare.

Copy to: Chief Secretaries of all the States/UTs.

9. Schedule III

No. PER (AR) E (5)-4/2006
Government of Himachal Pradesh

Administrative Reforms Organization

From

The Principal Secretary (AR) to the Government of Himachal Pradesh

To

1. All the Administrative Secretaries to the Government of Himachal Pradesh
2. All the Head of the Departments in Himachal Pradesh
3. All the Deputy Commissioners/Div. Commissioners in Himachal Pradesh
4. All the Managing Directors of Boards/ Corporations in Himachal Pradesh
5. All the Vice Chancellors of Universities in Himachal Pradesh

Dated: Shimla-171002, the 10th Nov., 2008

Subject: Guidelines for providing information under the Right to Information Act, 2005 to the BPL families as determined by the State Government

Sir,

I am directed to refer to the subject cited above and to say that as per provisions contained under Section 5 of the Right to Information Act, 2005 and Rule 5 of the H.P. Right to Information Rules, 2006, the BPL families have been exempted from payment of fee for supply of information. At present the number of BPL families identified by the Rural Development Department in Himachal Pradesh is 2,82,370. However, the Ministry of Consumer Affairs, Food and Public Distribution, Govt. of India, in 2005, intimated that the BPL households for H.P. are 5.14 lacs. But the H.P. State Government has decided that the additional families over the above 2.82 lacs, will be entitled only for the subsidized foodgrains at the BPL rates and not other benefits.

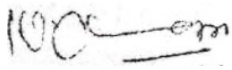
It has come to the notice of the Government that those BPL families who are

entitled only for the subsidized foodgrains and not other benefits, are also seeking information free of cost under the Right to Information Act, 2005. To make it more clear it is brought to your kind notice that the benefit of BPL is given on the basis of certificate issued by the Rural Development Department and not on the basis of ration card, which is issued only for the purpose of subsidized foodgrains at BPL rates.

It is, therefore requested that the benefit of supply of information free of cost as provided under Section 5 of the Right to Information Act, 2005 and Rule 5 of the H.P. Right to Information Rules, 2006 may kindly be given strictly on the basis of certificate issued by the Rural Development Department to the BPL families.

These instructions may kindly be brought to the notice of the Appellate Authorities, PIO and APIOs for strict compliance on top priority basis.

Yours faithfully,



Deputy Secretary (AR) to the

Government of
Himachal Pradesh

10. Schedule IV

RTI Matter

No. PER (AR)A(8) -1/2011-
Government of Himachal Pradesh
Administrative Reforms Department

From

Principal Secretary (AR), to the
Government of Himachal Pradesh

To

1) All the Admin. Secretaries to the
   Government of Himachal Pradesh
2) All the Divisional Commissioners in H.P.
3) All the Heads of Department in H.P.
4) All the Deputy Commissioners in H.P.
5) All the Managing Directors, of Boards/Corporations
6) All the Vice Chancellors of Universities in H.P.

Dated, Shimla-2, the 23rd April, 2013.

Subject:- Regarding charging of fees for legal size/note sheet papers under RTI Rules- 2006.

Sir,

I am directed to say that representations from the various applicants seeking information under RTI Act-2005, are being received in the Administrative Reform Department mentioning charging of fees by the PIO's for the information as per the RTI Rules-2006, by charging rates as applicable in case of larger size paper as per Rule-5(1)(3), which could be easily supplied by reducing the size of the material while Photostatting/copying in A-4 size papers.

This matter has been examined by the Department and to overcome this situation and giving relief to the applicants, it has been decided that Note Sheet papers be supplied to the applicants by reducing it to in A-4 size wherever it is feasible, by charging fee of Rs. 2 per page of A-4 size as mentioned under the rules ibid.

These instructions may be conveyed to all the PIO's under your control for implementation please.

Yours faithfully,

Under Secretary (AR), to the

Government of Himachal Pradesh

11. Schedule V

No. Per (AR)F(7)-2/98-I
Government of Himachal Pradesh
Administrative Reforms Organization

From

The Principal Secretary (AR) to the
Government of Himachal Pradesh

To

1. All the Administrative Secretaries
   to the Government of Himachal Pradesh

2. All t he Heads of Departments
   in Himachal Pradesh
3. All the Deputy Commissioners
   in Himachal Pradesh
4. All the Divisional Commissioners
   in Himachal Pradesh
5. All the Managing Directors
   Boards/Corporations in H.P.
6. All the Vice-Chancellors of Universities
   in Himachal Pradesh

Dated Shimla-2, the 21 April, 2007

Subject: -To maintain IPO register by the Public Information Officers showing the encashment and deposits of IPO's.

Sir,

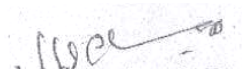
I am directed to refer to the subject cited above and to say that after coming into force of Right to Information Act, 2005, this Department has framed H.P. Right to Information Rules, 2006 which were notified on 21-01-2006. In these rules the method of charging fee for providing information under RTI Act has been prescribed through Challan. Corresponding amendments were also made in these rules which were notified on 24-05-2006 and 08-01-2007. As per provisions of these amended rules the mode of payment of requisite fee for obtaining information has been prescribed through Demand Draft and I.P.O. The provision of payment of requite fee through IPO has been made keeping in view the hardships being caused to the applicants by other modes i.e. Challan and Demand draft as these methods were costlier and inconvenient. Now it has been noticed that most of the applicants are making the payment of requisite fee through IPO for seeking information. But so far no procedure has been prescribed for maintaining the accounts and encashing IPO and their deposits in the Govt. Treasury. Hence in order to maintain the proper account of fee received through IPO, this Department has devised two formats, which are enclosed as Register-I and Register-II and every Public Authority is required to maintain registers on the basis of these formats showing encashment and deposits of IPO at each Public Information Officer level.

2. It is, therefore, requested that to maintain the account of fee received through IPO, the two registers showing the encashment of IPO and deposits, may be maintained by every Public Authority at each Public Information Officer level.

3. All Public Information Officers working under your control may be informed accordingly.

Yours faithfully,

Encls; As above



Under Secretary (AR) to the
Government of Himachal Pradesh

12. Schedule VI: Format of Register-I showing the encashment of IPOs

Sl. No.	Date	Particulars from whom received	File on which case dealt	IPO No. & Date	Amount	Date of encashment of IPO	Signature of PIO
1.	2.	3.	4.	5.	6.	7.	8.

Register -II

Sl. No.	Date	Particulars (S.No as per Register-I)	IPO No. & Date	Amount	Date of encashment	Date of deposit of Govt. Treasury	Treasury Challan No.	Signature of PIO.
1.	2.	3.	4.	5.	6.	7.	8.	9.

13.

रजिस्ट्री सं० डी० एल०—(एन)04/0007/2003—05 REGISTERED NO. DL—(N)04/0007/2003—05

भारत का राजपत्र
The Gazette of India

असाधारण
EXTRAORDINARY

भाग II — खण्ड 1
PART II — Section 1

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं० 25] नई दिल्ली, मंगलवार, जून 21, 2005/ज्येष्ठ 31, 1927
No. 25] NEW DELHI, TUESDAY, JUNE 21, 2005/JYAISTHA 31, 1927

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 21st *June,* 2005/*Jyaistha* 31, 1927 (*Saka*)

The following Act of Parliament received the assent of the President on the 15th June,
2005, and is hereby published for general information:—

THE RIGHT TO INFORMATION ACT, 2005 No. 22 of 2005

[15*th June*, 2005.]

An Act 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.

WHEREAS the Constitution of India has established democratic Republic;

AND WHEREAS democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed;

AND WHEREAS revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information;

AND WHEREAS it is necessary to harmonise these conflicting interests while preserving the paramountcy of the democratic ideal;

NOW, THEREFORE, it is expedient to provide for furnishing certain information to citizens who desire to have it.

BE it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

CHAPTER I

Preliminary

Short title, extent and commencement

1. (*1*) This Act may be called the Right to Information Act, 2005.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) The provisions of sub-section (*1*) of section 4, sub-sections (*1*) and (*2*) of section 5, sections 12, 13, 15,16, 24, 27 and 28 shall come into force at once, and the remaining provisions of this Act shall come into force on the one hundred and twentieth day of its enactment.

Definitions.

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

(*a*) "appropriate Government" means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly—

(i) by the Central Government or the Union territory administration, the Central Government;

(ii) by the State Government, the State Government;

(b) "Central Information Commission" means the Central Information Commission constituted under sub-section (*1*) of section 12;

(c) "Central Public Information Officer" means the Central Public Information Officer designated under sub-section (*1*) and includes a Central Assistant Public Information Officer designated as such under sub-section (*2*) of section 5;

(d) "Chief Information Commissioner" and "Information Commissioner" mean the Chief Information Commissioner and Information Commissioner appointed under sub-section (*3*) of section 12;

(e) "competent authority" means—

(i) the Speaker in the case of the House of the People or the Legislative Assembly of a State or a Union territory having such Assembly and the Chairman in the case of the Council of States or Legislative Council of a State;
(ii) the Chief Justice of India in the case of the Supreme Court;
(iii) the Chief Justice of the High Court in the case of a High Court;
(iv) the President or the Governor, as the case may be, in the case of other authorities established or constituted by or under the Constitution;
(v) the administrator appointed under article 239 of the Constitution;

(f) "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;

(g) "prescribed" means prescribed by rules made under this Act by the appropriate Government or the competent authority, as the case may be;

(h) "public authority" means any authority or body or institution of self- government established or constituted—

(a) by or under the Constitution;
(b) by any other law made by Parliament;
(c) by any other law made by State Legislature;
(d) by notification issued or order made by the appropriate Government, and includes any—

(i) body owned, controlled or substantially financed;
(ii) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;

(*i*) "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;

(*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—

(i) inspection of work, documents, records;

(ii) taking notes, extracts or certified copies of documents or records;

(iii) taking certified samples of material;

(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;

(k) "State Information Commission" means the State Information Commission constituted under sub-section (*1*) of section 15;

(l) "State Chief Information Commissioner" and "State Information Commissioner" mean the State Chief Information Commissioner and the State Information Commissioner appointed under sub-section (*3*) of section 15;

(m) "State Public Information Officer" means the State Public Information Officer designated under sub-section (*1*) and includes a State Assistant Public Information Officer designated as such under sub-section (*2*) of section 5;

(n) "third party" means a person other than the citizen making a request for information and includes a public authority.

CHAPTER II

Right to information and obligations of public authorities

3. Subject to the provisions of this Act, all citizens shall have the right to information. Right to information

4. (*1*) Every public authority shall—

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 computerized are, within a reasonable time and subject to availability of resources, computerized and connected through a network all over the country on different systems so that access to such records is facilitated;

b) publish within one hundred and twenty days from the enactment of this

Act,— the par ticulars of its organisation, functions and duties;

(i) the powers and duties of its officers and

(ii) employees; the procedure followed in the

(iii) decision making process, including channels of supervision and

(iv) accountability; the norms set by it for the

(v) discharge of its functions; the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for

(vi) discharging its functions; a statement of the categories of documents that

(vii) are held by it or under its control; the particulars of any arrangement that exists for consultation with, or representation by, the

(viii) members of the public in relation to the formulation of its policy or implementation thereof; 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 advice, and as to whether

(ix) meetings of those boards, councils, committees

(x) and other bodies are open to the public, or the minutes of such meetings are accessible for public;

(xi) a directory of its officers and employees; the monthly remuneration received by each of its

(xii) officers and employees, including the system of compensation as provided in its regulations; the budget allocated to each of its agency,

(xiii) indicating the particulars of all plans, proposed expenditures and reports on disbursements

(xiv) made; the manner of execution of subsidy programmes, including the amounts allocated

(xv) and the details of beneficiaries of such programmes; particulars of recipients of concessions, permits or

(xvi) authorisations granted by it; details in respect of the information, available to or

(xvii) held by it, reduced in an electronic form; the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use; the names, designations and other particulars of the Public Information Officers; such other information as may be prescribed; and thereafter update these publications every year;

c) publish all relevant facts while formulating important policies or announcing the decisions which affect public;

d) provide reasons for its administrative or quasi-judicial decisions to affected persons.

(2) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (*b*) of sub-

section (*1*) to provide as much information *suomotu* to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.

(3) For the purposes of sub-section (*1*), every information shall be disseminated widely and in such form and manner which is easily accessible to the public.

(4) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed.

Explanation.—For the purposes of sub-sections (*3*) and (*4*), "disseminated" means making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority.

Designation of Public Information Officers.

5. (*1*) Every public authority shall, within one hundred days of the enactment of this Act, designate as many officers as the Central Public Information Officers or State Public Information Officers, 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.

(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 a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, to receive the applications for information or appeals under this Act for forwarding the same forthwith to the Central Public Information Officer or the State Public Information Officer or senior officer specified under sub-section (*1*) of section 19 or the Central Information Commission or the State Information Commission, as the case may be:

Provided that where an application for information or appeal is given to a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, a period of five days shall be added in computing the period for response specified under sub-section (*1*) of section 7.

(3) Every Central Public Information Officer or State Public Information Officer, as the case may be, shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information.

(4) The Central Public Information Officer or State Public Information Officer, as the case may be, may seek the assistance of any other officer as he or she considers it necessary for the proper discharge of his or her duties.

(5) Any officer, whose assistance has been sought under sub-section (*4*), shall render all assistance to the Central Public Information Officer or State Public Information Officer, as the case may be, 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 Central Public Information Officer or State Public Information Officer, as the case may be.

Request for obtaining information.

6. (*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 Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to—

(a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;
(b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be,

specifying the particulars of the information sought by him or her:

Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

(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.

(3) Where an application is made to a public authority requesting for an information,—

(i) which is held by another public authority; or
(ii) the subject matter of which is more closely connected with the functions of another public authority,

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:

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 receipt of the application.

Disposal of request.

7. (*1*) Subject to the proviso to sub-section (*2*) of section 5 or the proviso to subsection (*3*) of section 6, the Central Public Information Officer or State Public Information Officer, as the case may be, on receipt of a request undersection 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:

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.

(2) If the Central Public Information Officer or State Public Information Officer, as the case may be, fails to give decision on the request for information within the period specified under sub-section (*1*), the Central Public Information Officer or State Public Information Officer, as the case may be, shall be deemed to have refused the request.

(3) Where a decision is taken to provide the information on payment of any further fee representing the cost of providing the information, the Central Public Information Officer or State Public Information Officer, as the case may be, shall send an intimation to the person making the request, giving—

(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 subsection (*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;

(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 of the appellate authority, time limit, process and any other forms.

(4) Where access to the record or a part thereof is required to be provided under this Act and the person to whom access is to be provided is sensorily disabled, the Central Public Information Officer or State Public Information Officer, as the case may be, shall provide assistance to enable access to the information, including providing such assistance as may be appropriate for the inspection.

(5) Where access to information is to be provided in the printed or in any electronic format, the applicant shall, subject to the provisions of sub-section (*6*), pay such fee as may be prescribed:

Provided that the fee prescribed under sub-section (*1*) of section 6 and sub-sections (*1*) and (*5*) of section 7 shall be reasonable and no such fee shall be charged from the persons who are of below poverty line as may be determined by the appropriate Government.

(6) Notwithstanding anything contained in sub-section (*5*), the person making request for the information shall be provided the information free of charge where a public authority fails to comply with the time limits specified in sub-section (*1*).

(7) Before taking any decision under sub-section (*1*), the Central Public Information Officer or State Public Information Officer, as the case may be, shall take into consideration the representation made by a third party under section 11.

(8) Where a request has been rejected under sub-section (*1*), the Central Public Information Officer or State Public Information Officer, as the case may be, shall 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 appellate authority.

(9) An information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.

Exemption from disclosure of information.

8. (*1*) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,—

(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;

(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;

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;

(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 satisfied that larger public interest warrants the disclosure of such information;

(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

(f) information received in confidence from foreign Government;

(g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;

(h) information which 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:

Provided that the decisions of 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:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

(j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

19 of 1923. (*2*) Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions permissible in accordance with sub-section (*1*), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(*3*) Subject to the provisions of clauses (*a*), (*c*) and (*i*) of sub-section (*1*), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under secton 6 shall be provided to any person making a request under that section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Central Government shall be final, subject to the usual appeals provided for in this Act.

Grounds for rejection to access in certain cases.

9. Without prejudice to the provisions of section 8, a Central Public Information Officer or a State Public Information Officer, as the case may be, 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.

Severability

10. (*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.

(*2*) Where access is granted to a part of the record under sub-section (*1*), the Central Public Information Officer or State Public Information Officer, as the case may be, shall give a notice to the applicant, informing—

(a) that only part of the record requested, after severance of the record containing information which is exempt from disclosure, is being provided;

(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;

(c) the name and designation of the person giving the decision;

(d) the details of the fees calculated by him or her and the amount of fee which the applicant is required to deposit; and

(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 senior officer specified under sub-section (*1*) of section 19 or the Central Information Commission or the State Information Commission, as the case may be, time limit, process and any other form of access.

Third party information.

11. (*1*) Where a Central Public Information Officer or a State Public Information Officer, as the case may be, intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information:

Provided 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.

(2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be,

under sub-section (*1*) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (*2*), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(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 19 against the decision.

CHAPTER III

The Central Information Commission

Constitution of Central Information Commission.

12. (*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.

(*2*) The Central Information Commission shall consist of—

(a) the Chief Information Commissioner; and

(b) such number of Central Information Commissioners, not exceeding ten, as may be deemed necessary.

(*3*) The Chief Information Commissioner and Information Commissioners shall be appointed by the President on the recommendation of a committee consisting of—

(i) the Prime Minister, who shall be the Chairperson of the committee;

(ii) the Leader of Opposition in the Lok Sabha; and

(iii) a Union Cabinet Minister to be nominated by the Prime Minister.

Explanation.—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 deemed to be the Leader of Opposition.

(4) The general superintendence, direction and management of the affairs of the Central Information Commission shall vest in the Chief Information Commissioner who shall be assisted by the 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.

(5) 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.

(6) The Chief Information Commissioner or an 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.

(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.

Term of office and conditions of service.

13. (*1*) The Chief 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:

Provided that no Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.

(2) Every 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 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 sub-section (*3*) of section 12:

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.

(3) 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.

(4) 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 under section 14.

(5) The salaries and allowances payable to and other terms and conditions of service of—

(a) the Chief Information Commissioner shall be the same as that of the Chief Election Commissioner;

(b) an Information Commissioner shall be the same as that of an Election Commissioner:

Provided that if the Chief Information Commissioner or an 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 Chief Information Commissioner or an 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 Chief Information Commissioner or an Information Commissioner if, 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 Chief Information Commissioner or an Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits:

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

(*6*) 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.

14. (*1*) Subject to the provisions of sub-section (*3*), the Chief Information Commissioner or any 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 Chief Information Commissioner or any Information Commissioner, as the case may be, ought on such ground be removed. Removal of Chief Information Commissioner or Information Commissioner.

(2) The President may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the Chief Information Commissioner or 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.

(3) Notwithstanding anything contained in sub-section (*1*), the President may by order remove from office the Chief Information Commissioner or any Information Commissioner if the Chief Information Commissioner or a 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 President, 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 President, 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 the Chief Information Commissioner or a Information Commissioner.

(*4*) If the Chief Information Commissioner or a 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 IV

The State Information Commission

15. (*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. Constitution of State Information Commission.

(*2*) The State Information Commission shall consist of—

(a) the State Chief Information Commissioner, and
(b) such number of State Information Commissioners, not exceeding ten, as may be deemed necessary.

(*3*) 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

Explanation.—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 Opposition.

(4) The general superintendence, direction and management of the affairs of the State Information Commission shall vest in the State Chief Information Commissioner who shall be assisted by the State Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the State Information Commission autonomously without being subjected to directions by any other authority under this Act.

(5) The State Chief Information Commissioner and the State 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.

(6) The State Chief Information Commissioner or a State 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.

(7) The headquarters of the State Information Commission shall be at such place in the State as the State Government may, by notification in the Official Gazette, specify and the State Information Commission may, with the previous approval of the State Government, establish offices at other places in the State.

Term of office and conditions of service.

16. (*1*) The State Chief 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:

Provided that no State Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.

(2) Every State 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 as such State Information Commissioner:

Provided that every State Information Commissioner shall, on vacating his office under this sub-section, 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.

(3) 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.

(4) 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.

(5) The salaries and allowances payable to and other terms and conditions of service of—

(a) the State Chief Information Commissioner shall be the same as that of an Election Commissioner;
(b) the State Information Commissioner shall be the same as that of the Chief Secretary to the State Government:

Provided that if the State Chief Information Commissioner or a State 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 Chief Information Commissioner or a State 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 where the State Chief Information Commissioner or a State Information Commissioner if, 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 State Chief Information Commissioner or the State Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits:

Provided also 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.

(*6*) 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.

Removal of State Chief Information Commissioner or State Information Commissioner

17. (*1*) Subject to the provisions of sub-section (*3*), the State Chief Information Commissioner or a State 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 Chief Information Commissioner or a State Information Commissioner, as the case may be, ought on such ground be removed.

(2) The Governor may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the State Chief Information Commissioner or a State 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.

(3) Notwithstanding anything contained in sub-section (*1*), the Governor may by order remove from office the State Chief Information Commissioner or a State Information Commissioner if a State Chief Information Commissioner or a State 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 the State Chief Information Commissioner or a State Information Commissioner.

(*4*) If the State Chief Information Commissioner or a State Information Commissioner in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of the State or participates in any way in the profit thereof or in any benefit or emoluments 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.

Powers and functions of Information Commissions.

CHAPTER V

Powers and functions of the Information Commissions, appeal and penalties

18. (*1*) Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission, as the case may be, to receive and inquire into a complaint from any person,—

(a) who has been unable to submit a request to a Central Public Information Officer or State Public Information Officer, as the case may be, either by reason that no such officer has been appointed under this Act, or because the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, has refused to accept his or her application for information or appeal under this Act for forwarding the same to the Central Public Information Officer or State Public Information Officer or senior officer specified in subsection (*1*) of section 19 or the Central Information Commission or the State Information Commission, as the case may be;

(b) who has been refused access to any information requested under this Act;

(c) who has not been given a response to a request for information or access to information within the time limit specified under this Act;

(d) who has been required to pay an amount of fee which he or she considers unreasonable;

(e) who believes that he or she has been given incomplete, misleading or false information under this Act; and

(f) in respect of any other matter relating to requesting or obtaining access to records under this Act.

(2) Where the Central Information Commission or State Information Commission, as the case may be, is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.

(3) The Central Information Commission or State Information Commission, as the 5 of 1908 case may be, 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:—

(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;

(b) requiring the discovery and inspection of documents;

(c) receiving evidence on affidavit;

(d) requisitioning any public record or copies thereof from any court or office; *(e)* issuing summons for examination of witnesses or documents; and *(f)* any other matter which may be prescribed.

(*4*) Notwithstanding anything inconsistent contained in any other Act of Parliament or State Legislature, as the case may be, the Central Information Commission or the State Information Commission, as the case may be, 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.

Appeal **19**. (*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 Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days 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 Central Public Information Officer or State Public Information Officer as the case may be, in each public authority:

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.

(2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, 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.

(3) 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 Central Information Commission or the State Information Commission:

Provided that the Central Information Commission or the State Information Commission, as the case may be, 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.

(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.

(5) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request.

(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.

(7) The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding.

(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to—

(*a*) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including—

(i) by providing access to information, if so requested, in a particular form;
(ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;
(iii) by publishing certain information or categories of information;
(iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records;
(v) by enhancing the provision of training on the right to information for its officials;
(vi) by providing it with an annual report in compliance with clause (*b*) of subsection (*1*) of section 4;

(b) require the public authority to compensate the complainant for any loss or other detriment suffered;

(c) impose any of the penalties provided under this Act; *(d)* reject the application.

(9) The Central Information Commission or State Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority.

(10) The Central Information Commission or State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed.

Penalties

20.(*1*) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (*1*) of section 7 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, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

(*2*) Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under subsection (*1*) of section 7 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 recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him.

CHAPTER VI

Miscellaneous

Protection of action taken in good faith.

21. 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.

Act to have overriding effect

22. 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.

Bar of jurisdiction of courts

23. 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 in question otherwise than by way of an appeal under this Act.

Act not to apply to certain organisations

24. (*1*) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government:

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in section 7, such information shall be provided within forty-five days from the date of the receipt of request.

(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.

(3) Every notification issued under sub-section (*2*) shall be laid before each House of Parliament.

(4) Nothing contained in this Act shall apply to such intelligence and security organisation being organisations established by the State Government, as that Government may, from time to time, by notification in the Official Gazette, specify:

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the State Information Commission and, notwithstanding anything contained in section 7, such information shall be provided within forty-five days from the date of the receipt of request.

(5) Every notification issued under sub-section (*4*) shall be laid before the State Legislature.

25. (*1*) The Central Information Commission or State Information Commission, as the case may be, shall, as soon as practicable after the end of each year, prepare a report on the implementation of the provisions of this Act during that year and forward a copy thereof to the appropriate Government.

Monitoring and Reporting

(2) Each Ministry or Department shall, in relation to the public authorities within their jurisdiction, collect and provide such information to the Central Information Commission or State Information 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.

(3) Each report shall state in respect of the year to which the report relates,—

(a) the number of requests made to each public authority;

(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;

(c) the number of appeals referred to the Central Information Commission or State Information Commission, as the case may be, for review, the nature of the appeals and the outcome of the appeals;

(d) particulars of any disciplinary action taken against any officer in respect of the administration of this Act;

(e) the amount of charges collected by each public authority under this Act;

(f) any facts which indicate an effort by the public authorities to administer and implement the spirit and intention of this Act;

(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.

(4) The Central Government or the State Government, as the case may be, may, as soon as practicable after the end of each year, cause a copy of the report of the Central Information Commission or the State Information Commission, as the case may be, referred to in sub-section (*1*) to be laid before each House of Parliament 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.

(5) If it appears to the Central Information Commission or State Information Commission, as the case may be, 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.

Appropriate Government to prepare programmes

26. (*1*) The appropriate Government may, to the extent of availability of financial and other resources,—

(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;

(b) encourage public authorities to participate in the development and organisation of programmes

referred to in clause (*a*) and to undertake such programmes themselves;

(c) promote timely and effective dissemination of accurate information by public authorities about their activities; and

(d) train Central Public Information Officers or State Public Information Officers, as the case may be, of public authorities and produce relevant training materials for use by the public authorities themselves.

(2) The appropriate 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.

(3) The appropriate 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—

(a) the objects of this Act;
(b) the postal and street address, the phone and fax number and, if available, electronic mail address of the Central Public Information Officer or State Public Information Officer, as the case may be, of every public authority appointed under sub-section (*1*) of section 5;
(c) the manner and the form in which request for access to an information shall be made to a Central Public Information Officer or State Public Information Officer, as the case may be;
(d) the assistance available from and the duties of the Central Public Information Officer or State Public Information Officer, as the case may be, of a public authority under this Act;
(e) the assistance available from the Central Information Commission or State Information Commission, as the case may be;
(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;
(g) the provisions providing for the voluntary disclosure of categories of records in accordance with section 4;
(h) the notices regarding fees to be paid in relation to requests for access to an information; and
(i) any additional regulations or circulars made or issued in relation to obtaining access to an information in accordance with this Act.

(*4*) The appropriate Government must, if necessary, update and publish the guidelines at regular intervals.

27. (*1*) The appropriate Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act. Power to make rules by appropriate Government

(*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:—

(a) the cost of the medium or print cost price of the materials to be disseminated under sub-section (*4*) of section 4;
(b) the fee payable under sub-section (*1*) of section 6;
(c) the fee payable under sub-sections (*1*) and (*5*) of section 7;
(d) the salaries and allowances payable to and the terms and conditions of service of the officers and other employees under sub-section (*6*) of section 13 and sub-section (*6*) of section 16;
(e) the procedure to be adopted by the Central Information Commission or State Information Commission, as the case may be, in deciding the appeals under sub-section (*10*) of section 19; and
(f) any other matter which is required to be, or may be, prescribed.

28. (*1*) The competent authority may, by notification in the Official Gazette, make rules to carry out the provisions of this Act. Power to make rules by competent authority.

(*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:—

(i) the cost of the medium or print cost price of the materials to be disseminated under sub-section (*4*) of section 4;
(ii) the fee payable under sub-section (*1*) of section 6;
(iii) the fee payable under sub-section (*1*) of section 7; and
(iv) any other matter which is required to be, or may be, prescribed

29. (*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. Laying of rules.

(*2*) Every rule made under this Act by a State Government shall be laid, as soon as may be after it is notified, before the State Legislature.

30. (*1*) If any difficulty arises in giving effect to the provisions of Power to

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: remove difficulties.

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.

(*2*) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

Repeal

31. The Freedom of Information Act, 2002 is hereby repealed. 5 of 2003

THE FIRST SCHEDULE

[*See* sections 13 (*3*) and 16(*3*)]

Form of oath or affirmation to be made by the Chief Information Commissioner/the Information Commissioner/the State Chief Information Commissioner/the State Information Commissioner

"I, ..., having been appointed Chief Information Commissioner
/Information Commissioner / State Chief Information Commissioner / State
Information Commissioner swear in the name of God
solemnly affirm

that I will bear true faith and 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 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.".

THE SECOND SCHEDULE

(*See* section 24)

Intelligence and security organisation established by the Central Government

1. Intelligence Bureau.
2. Research and Analysis Wing of the Cabinet Secretariat.
3. Directorate of Revenue Intelligence.
4. Central Economic Intelligence Bureau.
5. Directorate of Enforcement.
6. Narcotics Control Bureau.
7. Aviation Research Centre.
8. Special Prontier Force.
9. Border Security Force.
10. Central Reserve Police Force.
11. Indo-Tibetan Border Police.
12. Central Industrial Security Force.
13. National Security Guards.
14. Assam Rifles.
15. Special Service Bureau
16. Special Branch (CID), Andaman and Nicobar.
17. The Crime Branch-C.I.D.-CB, Dadra and Nagar Haveli.
18. Special Branch, Lakshadweep Police.

T. K. VISWANATHAN,
Secy. to the Govt. of India.

Printed by THE Manager, Government of India Press, Minto Road, New Delhi
and Published by the Controller of Publications, Delhi, 2005.
MGIPMRND—1359GI(S3)—22-06-2005.

14. {Notification No. Per (AR) F (7)-2/98-Vol.I dated _21-1-2006__as required under clause (3) of article 348 of the Constitution of India}.
(Amended upto sixth Amendment dated 31st July, 2012)

GOVERNMENT OF HIMACHAL PRADESH
ADMINISTRATIVE REFORMS DEPARTMENT

NOTIFICATION

No. PER (AR) F (7)-2/98-Vol.IDated: Shimla- 2 the21st January, 2006

In exercise of the powers conferred by clauses to sub-section (2) of section 27 of "The Right to Information Act, 2005" (Central Act No. 22 of 2005), the Governor of Himachal Pradesh is pleased to make thefollowingrules for carrying out the purposes of the Act, ibid, namely;

1. Short title and commencement: (*1*) These rules may be called the "Himachal Pradesh Right to Information Rules,2006."
(*2*) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions (*1*) In these rules unless the context otherwise requires.-

(a) 'Act' means the Right to Information Act, 2005 (Central Act No. 22 of 2005);

(b) 'Form' means a form appended to these rules;

(c) 'section' means section of the Act;

(d) "Appendix' means appendix appended to the rules.

(*2*) Words and expressions used but not defined in these rules, shall have the same meaning as assigned to them in the Act respectively.

3. Application for seeking information:-(*1*) Any person seeking information under the Act shall make an applicationin Form 'A' to the Public Information Officer/Assistant Public Information Officer accompanied by fee prescribed in rule 5 and the Public Information Officer/ Assistant Public Information Officer shall duly acknowledge the receipt thereof and shall enter the particulars in Part I of the Application Register maintained for the purpose in Appendix I.
Provided that the information shall not be refused on the grounds that the application is not in the prescribed form if necessary particulars have been mentioned by the applicant by a request in writing.""

(*2*) Except in the case of an applicant who is determined by the State Government as being below poverty line, the application shall be accepted only if it is accompanied by a Demand Draft payable to the concerned Department/Public Authority or challan or Indian Postal Order in support of payment of the requisite application fees as specified in rule 5. A separate application shall be made in respect of each subject and in respect of each year towhich the information relates.

(*3*) When the information sought for is ready and requires payment of additional fee, if any, the Public Information Officer shall communicate to the applicant the fact in Form 'B'

specifying the additional fee to be paid, on his address given in the application. The particulars of information being supplied shall beentered in Part II of the Application Register.

(*4*) When the information is ready the Public Information Officerwill inform the applicant in Form 'C'.

(5) Any information supplied under sub rule (4) shall be in the language available in the office record.

4. Inspection of record (*1*) Any person who seeks to inspect the record before making an application under Section 4shall make application in form D for the purpose indicating the record to be inspected."Provided that the information shall not be refused on the grounds that the application is not in the prescribed form if necessary particulars have been mentioned by the applicant by a request in writing.""

(*2*) An Inspection Register shall be maintained with the Public Information Officer in form given in Appendix-II and details of the application and inspection shall be recorded therein.

(*3*) During inspection the applicant shall not take photographs etc. of the record/document.

(*4*) Except if inspection of the record is disallowed under section 8 and 9 of the Act, Public InformationOfficer shall allow the inspection on payment of the requisite fee prescribed in rule 5.

5. Charging of fee:- (*1*) Except in the case of persons who are below poverty line as determined by the StateGovernment, the Public Information Officer shall charge the fee for supply of information at the following rates, namely:-

	Description of information	**Price/Fees in Rupees**
1	Fee alongwith application	Rs.10 per application
2	Where the information is available in the form of a priced publication.	On printed price.
3	For other than priced publication.	Rs.2 per page of A-4 size or smaller and actual cost subject to minimum of Rs. 20 per page in case of larger size
4	Where information is available in electronic formand is to be supplied in electronics form e.g.Floppy, CD etc.	Rupees 50 per floppy and Rs.100per CD
5	Fee for inspection of Record/document	Rs.20 per 30 minutes or fraction thereof
6	Postal Charges for Supplying the information	As per requirement of the Indian Post and Telegraph Deptt.

(*2*) Every page of information to be supplied shall be duly authenticated giving the name of the Applicant (including below poverty line status if that is the case), and shall bear the dated signatures and seal of the concerned Public Information Officer supplying the information.

(*3*) Fees/ Charges shall be deposited in a Government Treasury under the head of account **"0070 – OAS, 60 – OS, 800–OR, 11 – Receipt head under Right to Information Act, 2005".** Accruals into this head of account may be placed ina separate fund by way of grant-in-aid for furthering the purposes of the Act, including purchase of equipment and consumables, providing training to staff etc.

6. Procedure in appeals before the Appellate Authorities._ (*1*) Contents of appeal.- The Memorandum of appeal tothe Appellate Authority/Commission shall contain the following information, namely:-

(i) name and address of the appellant;

(ii) name and address of the Public Information Officer against the decision of whom the appeal is preferred;

(iii) Particulars of the order including number, if any, against which the appeal is preferred;

(iv) brief facts leading to the appeal

(v) if the appeal is preferred against deemed refusal, the particulars of the application, including number anddate and name and address of the Public Information Officer to whom the application was made;

(vi) prayer or relief sought;

(vii) grounds for the prayer or relief;

(viii) verification by the appellant; and

(ix) any other information which the Commission may deem necessary for deciding the appeal.

(*2*) The appellant shall submit two copies of the memorandum of appeal for official purpose.

(*3*) Every appeal made to the Appellate Authority/Commission shall be accompanied by the following documents, namely:-

(i) self attested copies of the Orders or documents against which the appeal is being preferred;

(ii) copies of documents relied upon by the appellant and referred to in the appeal; and

(iii) an index of the documents referred to in the appeal.

(4) When the Appellate Authority/ Commission may calls for the record, it shall in any case shall return the originalrecord within 10 days after retaining an authenticated copy if required.

(*5*) On the date of hearing or on any other day to which hearing may be adjourned, the parties shall put their appearance before the Appellate Authority/ Commission. If the appellant fails to appear on such date, the Appellate Authority/Commission shall decide the matter on merits

(*6*) The appellant shall not, except by leave of the Appellate Authority /Commission, urge or be heard in support of any ground of objection which has not been set forth in the memorandum, but the Appellate Authority /Commission, in deciding the appeal, need not confine itself to the grounds of objection set forth in the memorandum:

Provided that the Appellate Authority/ Commission shall not rest its decision on any ground other than those specified in memorandum, unless the party likely to be affected thereby, has been given, an opportunity of being heardby the Appellate Authority/ Commission.

(*7*) The Commission may frame regulations in respect of its day-to-day proceedings.

Form 'A'

[See rule-3 (1)]

APPLICATION FOR INFORMATION UNDER THE RIGHT TO INFORMATION ACT 2005

To

The Public Information Officer/Assistant Public Information Officer
(Name of the Department from which the information is sought)

(a) Subject matter of the information

(b) Period to which the information relates. Month & year

_____

(c) Description of the information required

d) File No. if available

(e) Whether the applicant claims exemptionas below poverty line family, if yes, attach proof

_____

(f)Particulars of Demand Draft or Challan Noor Indian Postal Orderamount and date

Applicant

Name_____
Address_____
Telephone No._____

.....

ACKNOWLEDGEMENT

Received your application dated..... alongwith Demand draft/challan/Indian Postal Order No..... amounting to Rs._____vide Diary No..... dated.....

(Signature)
Public Information Officer/
Assistant Public Information Officer
Name of the Department/Public Authority

Form 'B'

[See rule 3(3)]

From

Designation of the
Public Information Officer
[Department_____]

To

(Name of the applicant)
Address of the applicant.

Reference: Application No_____Dated_____

Subject:

Sir,

Please refer to your application dated_____ referred to above. The information required by you consists of –--- pages and printed publication cost Rs ----------. The additional fee for supplying this information to you isRs._____. In case you desire the information to be sent to you by post, an additional amount of Rs._____ will need to be deposited.

2. You are required to pay the aforesaid amount of the additional fee by way of Demand Draft payable to the Department/Public Authority or deposit it through challan or Indian Postal Order and send a copy thereof to the undersigned.

3. If you are not satisfied with the amount of additional fee levied, you have a right to prefer appeal to_____ within a period of 30 days.

Public Information Officer

Tel No.

Form 'C'

[See rule 3(3) & 6(i)]

From

Designation of thePublic Information Officer/
Assistant Public Information Officer
[Department_____]

To

(Name of the applicant)
Address of the applicant.

Reference: Application No._____dated_____

Subject:

Sir,

Please refer to your application dated_____ referred to above.

2. The information required by you is ready. You are directed to collect the information from the office of theundersigned on any working day of the week during 12.00 to 3.30 p.m.

Public Information Officer/
Assistant Public
Information Officer

Telephone No:

Form 'D'

[See rule-4 (1)]
APPLICATION FOR INSPECTION
UNDER THE RIGHT TO INFORMATION ACT 2005

To

The Public Information Officer/Assistant Public
Information Officer
(Name of the Department from which the inspection is sought)

(a) Subject matter of the information

(b) Period to which the information relates. Month & year

_____

(c) Description of the information required

(d) File No. if available

(e) Whether the applicant claims exemption
as below poverty line family, if yes, attach proof

_____

(f)Particulars of Demand Draft or Challanor Indian Postal Order No., amount and date

ApplicantName_____

Address_____

Telephone No._____

Appendix-I

REGISTER OF APPLICATIONS FOR INFORMATION
UNDER THE RIGHT TO INFORMATION ACT 2005

PART-I

Sl No.	Name & full postal address of the applicant	Whether below poverty line (BPL)	Date of receipt of application	Tentative date on which the record would be ready	Mode by which the information is sent	Demand Draft or challanor Indian Postal Order No., Amount and date	Signature of PIO/APIO
1	2	3	4	5	6	7	8

PART-II

Actual date when the information is ready	Number of actual pages	Amount of additional fee	Signature of applicant with date in token of receipt if the information is delivered in person or if the information is sent by post its particulars and date	Signature of PIO/APIO
9	10	11	12	13

Appendix-II

INSPECTION REGISTER
UNDER THE RIGHT TO INFORMATION ACT 2005

Sl.No	Name & full postal address of the applicant	Whether below poverty line (BPL)	Subject matter of information	Particulars of record to be inspected	Time taken From____ to_____	Amount of Fee charged	Signature of applicant	Particulars of Demand Draft or challanor Indian Postal Order deposited in the treasury by PIO/APIO	Signature of PIO/APIO
1	2	3	4	5	6	7	8	9	10

No. Per (AR) A(3)-1/2008
Government of Himachal Pradesh
Administration Reforms Organization

From

The Principal Secretary (AR) to the
Government of Himachal Pradesh

To

All the Administrative Secretaries to the
Government of Himachal Pradesh
Shimla-171002

Dated: Shimla-171002, the 31st July, 2008

Subject: Guidelines for the Officers designated as Public Information Officer under the Right to Information Act, 2005

Sir/Madam,

I am directed to refer to the subject cited above and to say that the Public Information Officer (PIO) of a public authority plays an important role in effective implementation of the provisions of the Right to Information Act, 2005. At the same time, he is liable for penalty in case of default in performance of duties assigned to him by the act. It is, therefore, crucial for a PIO to study the Act carefully and understand its provisions correctly. This Department has prepared a 'Guide', which clarifies some of the important aspects of the Act relating to the functions of the PIOs. The Guide so prepared is enclosed, as Annexure.

2. The Act provides that a PIO may seek the assistance of any other officer for proper discharge of his/her duties. Such other officer should be deemed to be a PIO and would be liable for contraventions of the provisions of the Act the same way as the PIO himself. Since the PIO may seek the assistance of any officer, it is desirable for all the officers to acquire necessary knowledge about the provisions of the Act, which a PIO should have. The guide would help them in this task.

3. You are requested to bring the contents of the Guide to the notice of all concerned working under your control.

Yours faithfully

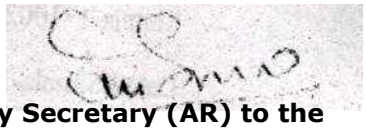
(V.C. Pharka)
Principal Secretary (AR) to the
Government of Himachal Pradesh

Endst. No. Per (AR)F(1)-4/2008 Dated Shimla-171002, the 31st July, 2008

Copy for information and necessary action is forwarded to:

1. All Heads of Departments in Himachal Pradesh.
2. All Divisional Commissioners in Himachal Pradesh.
3. All Deputy Commissioners in Himachal Pradesh.
4. All Managing Directors of Corporations in Himachal Pradesh.

5. All Chief Executive Officers of Boards in Himachal Pradesh.
6. All Vice Chancellors of Universities in Himachal Pradesh.



Deputy Secretary (AR) to the
Government of Himachal Pradesh

15. A Guidelines for the Public Information Officers

The Right to Information Act, 2005 empowers citizens to get information from any 'public authority'. The Public Information Officer (PIO) of a public authority plays a pivotal role in making the right of citizen 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 PIO to study the Act carefully and understand its provisions correctly. Following aspects should particularly be kept in view while dealing with the applications under the Act.

What is Information

2. Information is any material in any form. It includes records, documents, memos, emails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form. It also includes information relating to any private body which can be accessed by the public authority under any law for the time being in force.

Right to Information under the Act

3. A citizen has a right to seek such information from a public authority which is held by the public authority or which is held under its control. This right includes inspection of work, documents and records; taking notes, extracts or certified copies of documents or records; and taking certified samples of material held by the public authority or held under the control of the public authority.

4. The Act gives the citizens a right to information at par with the Members of Parliament and the Members of State Legislatures. According to the Act, the information which cannot be denied to the Parliament or a State Legislature, shall not be denied to any person.

5. A citizen has a right to obtain an information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through print-outs provided such information is already stored in a computer or in any other device from which the information may be transferred to diskettes etc.

6. The information to the applicant should ordinarily be provided in the form in which it is sought. However, if the supply of information sought in a particular form would disproportionately divert the resources of the public authority or may cause harm to the safety or preservation of the records supply of information in that form may be denied.

7. The Act gives the right to information only to the citizens of India. It does not make provision for giving information to Corporations, Associations, Companies etc. which are legal entitles/person, but not citizens. However, if an application is made by an employee or office-bearer of any Corporation, Association, Company, NGO etc. indicating his name and such employee/office bearer is a citizen of India, information may be supplied to him/her. In such cases, it would be presumed that a citizen has sought information at the address of the Corporation etc.

8. Only such information is required to be supplied under the Act which already exists and is held by the public authority or held under the control of the public authority. The PIO is not supposed to create information, or to interpret information; or to solve the problems raised by the applicants; or to furnish replies to hypothetical questions.

Information Exempted from Disclosure

9. Sub-section (1) of section 8 and section 9 of the Act enumerate the types of information which is exempt from disclosure. Sub-section (2) of section 8, however, provides that information exempted under sub-section (1) or exempted under the Official Secrets Act, 1923 can be disclosed if public interest in disclosure overweighs the harm to the protected interest. Further, sub-section (3) of section 8 provides that information exempt from disclosure under sub-section (1), except as provided in clauses (a), (c) and (i) thereof, would cease to be exempted after 20 years from the date of occurrence of the related event etc.

10. It may be noted that section 8(3) of the Act does not require the public authorities to retain records for indefinite period. The records should be retained as per the record retention schedule applicable to the concerned public authority. Information generated in a file may survive in the form of an OM or a letter or in any other form even after destruction of the file/record. The Act requires furnishing of information so available after the lapse of 20 years even if such information was exempt from disclosure under sub-section (1) of Section 8. It means that the information which, in normal course, is exempt form disclosure under sub-section (1) of Section of the Act, would cease to be exempted if 20 years have lapsed after occurrence of the incident to which the information relates. However, the following types of information would continue to be exempt and there would be no obligation, even after lapse of 20 years, to give any citizen-

(i) Information disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interest of the State, relation with foreign state or lead to incitement of an offence;
(ii) Information the disclosure of which would cause a breach of privilege of Parliament or State Legislature; or
(iii) Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other Officers subject to the conditions given in proviso to clause (i) of sub-section (1) of Section 8 of the Act.

Right to Information Vis-à-vis other Acts

11. The RTI Act has over-riding effect vis-à-vis other laws inasmuch as the provisions of the RTI Act would 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 the RTI Act.

Rendering Assistance to Applicants

12. 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.

13. Where access to a record is required to be provided to a sensorily disabled person, the Public Information Officer should 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

14. The Public Information Officer may seek the assistance of any other officer as he or she considers necessary for the proper discharge of his or her duties. The officer, whose assistance is so sought by the PIO, 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 PIO to inform the officer whose assistance is sought, about the above provision, at the time of seeking his assistance.

Suo Motu Disclosure

15. 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, should be easily accessible with the PIO in electronic format. The PIO should, therefore make concerned efforts to ensure that the requirements of the Section 4 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.

Fee for Seeking Information

16. An applicant, along with his application, is required to send a demand draft or a challan or an India Postal Order of Rs.10/-(Rupees ten), payable to the Public Information Officer of the public authority as fee prescribed for seeking information.

17. Additional fee has been prescribed by the HP Right to Information Rules, 2006 for supply of information as given below:

i. The information which is available in the form of priced publication will be supplied on printed price.
ii. For other than priced publication, Rs.2/- per page of A4 size or smaller and actual cost subject to minimum of Rs.20/- per page in case of larger size.
iii. Information which is available in electronic form and is to be supplied in electronic form i.e. floppy, CD etc, Rs 50 per floppy and Rs.100 per CD.
iv. for inspection of record/document Rs.20 per 30 minutes or fraction thereof.

18. If the applicant belongs to below poverty line (BPL) category, he is not required to pay any fee. However, he should submit a proof in support of his claim to belong to the below poverty line. The application not accompanied by the prescribed fee of Rs.10/- or proof of the applicants belonging to below poverty line, as the case may be, shall not be a valid application under the Act and, therefore, does not entitle the applicant to get information.

Contents and Format of Application

19. An applicant making request for information is not required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him. Also any persons seeking information under the act shall make an application in Form 'A' as prescribed in the H.P. Right to Information Rules, 2006 but the information shall not be refused on the grounds that the application is not in the prescribed form if the necessary particulars have been mentioned by the applicant by a request made in writing. But therefore, the applicant should not be asked to give justification for seeking information or to give details of his job etc. or to submit application in the prescribed form.

Invalid Applications

20. Soon after receiving the application, the PIO should check whether the applicant has made the payment of application fee of Rs.10/- 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 a valid application under the RTI Act and may be ignored.

Transfer of Application

21. If the application is accompanied by the prescribed fee or the Below Poverty Line Certificate, the PIO 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. 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.

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

23. The PIO 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.

24. A public authority may designate as many PIOs for it, as it may deem necessary. It is possible that in a public authority with more than one PIO, an application is received by the PIO other than the concerned PIO. In such a case, the PIO receiving the application should transfer it to the concerned PIO 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 one PIO to another in the same public authority.

Supply of Information

25. The answering PIO 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.

26. 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.

27. If additional fee is required to be paid by the applicant as provided in the H.P. Right to Information Rules, 2006, 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

28. 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 PIO 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

29. The PIO should supply the information within thirty days of the receipt of the request. Where the information sought for concerns the life of liberty of a person, the same should be provided within forty-eight hours of the receipt of the request.

30. Every public authority is required to designate an officer at each sub-divisional level or other sub-district level as a Assistant Public Information Officer (APIO) to receive the applications or appeals under the Act for forwarding the same to the Public Information Officer or the first Appellate Authority or the State Information Commission. If request for information is received through the APIO, the information may be provided within 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.

31. In case of an application transferred from one public authority to another public authority, as referred to in para 21, 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.

32. 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 State 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.

33. 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 it application/request is received after transfer from another public authority a) In normal course b) In case the information concerns the life or liberty of a person.	a) Within 30 days of the receipt of the application by concerned public authority b) Within 48 hours of receipt the application by concerned public authority.

5.	Supply of information by organizations specified in the Second Schedule: a. If information relates to allegations of violation of human rights. b. In case information relates to allegations of corruption.	a. 45 days from the receipt application. b. Within 30 days of the receipt 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 37 to 41 of these guidelines .
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 fee by the applicant shall be excluded for calculating period of reply.

34. If the PIO fails to give decision on the request for information within the prescribed period, the Public Information Officer 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.

Third Party Information

35. Third party in relation to the Act means a person other than the citizen who has made request for information. Any public authority other than the public authority to whom the request has been made shall also be included in the definition of third party.

36. It may be noted that 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. Section 8(1) requires that such information should not be disclosed unless the competent authority is satisfied that larger public interest warrants the disclosure of such information.

37. 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 should consider whether the information should be disclosed or not. The guiding principle in such cases should be 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, procedure as given below should be followed before disclosing such information. It may be noted that this procedure need be followed only when the third party has treated the information as confidential.

38. If the PIO intends to disclose the information, he should 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 should request the third party to make a submission in writing or orally, regarding whether the information should be disclosed. The third party should 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.

39. The Public Information Officer should 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 PIO 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.

40. 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 the second appeal to the State Information Commission.

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

Appeal and Complaints

42. If an applicant is not supplied information within the prescribed time limit, or is not satisfied with the information furnished to him, he may prefer an appeal to the first appellate authority who is an officer senior in rank to the PIO. Such an appeal can be made within a period of 30 days from the date on which time limit for supply of information expires or the decision of the PIO is received. The appellate authority of the public authority is expected to dispose of the appeal within a period of thirty days or in exceptional cases within 45 days of the receipt of the appeal. If the first appellate authority fails to pass an order on the appeal within the prescribed period and if the appellant is not satisfied with the order or the first appellate authority, he may prefer a second appeal with the State Information Commission within ninety days from the date on which the decision should have been made by the first appellate authority or was actually received by the appellant.

43. If any person is unable to submit a request to a Public Information Officer either by reason that such an officer has not been appointed by the concerned public authority or the Assistant State Public Information Officer, as the case may be, has refused to accept his or her application or appeal for forwarding the same to the Public Information Officer or refuse access to any information requested by himunder the RTI Act; or he has not been given a response to a request for information within the time limit specified in the Act; or he has been required to pay an amount of fee which he considers unreasonable; or he believes that he has been given incomplete, misleading or false information, he can make a complaint to the State Information Commission.

Imposition of Penalty

44. As pointed out above, an applicant under the Act has a right to appeal to the State Information Commission and also to make complaint to the Commission. Where the State 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 knowing 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 proving 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

45. Where the State 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 malafidey 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 for disciplinary action against the Public Information Officer.

Protection for Work Done in Good Faith

46. 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 PIO should, however, note that it would be his responsibility to prove that his action was in good faith.

Annual Report of the SIC

47. The State Commission prepares a report on the implementation of the provisions of the RTI Act every year, which is laid before the Legislative Assembly. 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 Department is required to collect such information from all the public authorities under its jurisdiction and send the same to the Commission. The PIOs should maintain the requisite information in this regard so that it may be supplied to their administrative Department soon after the end of the year, which in turn may supply to the Commission.

16. Frequently Asked Question (FAQ)

Q. Can a citizen request for information as an office bearer of an association?

- Guidelines for the public authorities under the Right toInformation Act, 2005, published by Department ofPersonnel & Training, Ministry of Personnel, PublicGrievances and Pensions, Government of India(O.M.No.1/4/2008-IR dated: 25th April, 2008)states as follows:
  - "The Act gives the right to information only to thecitizens of India……It does not make provision for giving information to Corporations, Associations, Companies etc. which are legal entities/persons, but not citizens…

However, if an application is made by an employee or office bearer of any Corporation, Association, Company, NGO etc. indicating his name and such employee/office bearer is a citizen of India, information may be supplied to him/her. In such cases, it would be presumed that a citizen has sought information at the address of the Corporation etc."

Q. If a PIO has touring duties and cannot be physically present in the office, will it amount to refusal to accept information request?

A. In such circumstances the Public Authority concerned may designate another official from within the Public Authority to act as PIO. This will ensure that the citizen's applications are always received and prompt action is taken on the same. Where multiple PIOs are designated in a Public Authority, no PIO can refuse to accept an application on the ground that it does not belong to his / her jurisdiction. He / she must collect the information from the concerned PIO and pass it on to the applicant.

Q. If the applicant does not pay the additional fees for accessing information within 30 days, will the PIO be penalised?

A. No, the PIO will not be penalised. The 30 day clock stops ticking from the date of dispatch of the intimation for further fees by the PIO and restarts from the date the applicant pays the additional fees. If the applicant chooses to seek a review of the additional fee from the appellate authority, the period taken by such authority to make a decision will also NOT be included in the 30 day limit.

Q. If the applicant does not respond to the intimation letter of the PIO for payment of further fees, is the PIO duty-bound to provide information to the applicant?

A. No, the PIO is not duty bound to provide information to the applicant in such cases. The Act clearly states that the PIO will provide access to information only upon payment of further fee – as determined.

Q. How can the PIO reconcile his duties under the RTI Act with the secrecy required to be taken under the Official Secrets Act,1923 taken at the time of joining service?

A. The RTI Act overrides the provisions of the Official Secrets Act, 1923 to the extent the latter are inconsistent with the former. The 'oath of secrecy' taken by Government employees therefore applies only to those provisions of the Act which have been provided as exemptions under the Act eg. matters pertaining to national security, sovereignty and integrity of the country.

Q. Is the APIO an assistant to the PIO?

A. No, he is not an (assistant as commonly understood). An APIO must be designated at the sub-district or sub divisional levels. An APIOs responsibility is to forward applications and the appeals received by her / him to the right officer / authority.

Q. If the information requested by the citizen is in the possession of the APIO, can he provide the same to the applicant?

A. No, the APIO's obligation is only forwarding the request to the PIO concerned, as fast as possible, but within 5 days.

Q. An applicant claims that he had not received the intimation letter from a PIO and files an appeal with the FAA / IC. Is the PIO liable?

A. It is advisable that a PIO always maintain a copy of the intimation letter to defend her / himself in such cases. It is always better to send the intimation letters Under Certificate of Posting so that there is ample proof of dispatch of all such communication. As long as the PIO can prove that he had acted in good faith, he / she will not attract any penalty.

Q. Can the citizen approach the Courts for redressal under the Act?

A. The 'RTI Act, 2005' bars the courts from entertaining suits, applications or other proceedings against any order made under it. However, the respective writ jurisdictions of the Supreme Court and the High Court under Articles 32 and 226 of the Constitution remain.

Q. A PIO had furnished information as per the available records and subsequently it turns out that such information is false, misleading or wrong. Will the PIO be penalised even when he was not responsible for the creation of the record?

A. Where a PIO has taken an 'action in good faith', he / she is protected under the Act. The PIO must prove that neither has he / she acted in a malafide manner nor has he / she provided wrong information intentionally. He / She had only passed on the information collected from another officer or compiled and recorded by another officer.

Q. If information asked for is too big, can it be denied? How much information can be asked in one application?

A. A request cannot be denied / rejected on the ground that information asked for is too big. A PA may invite the applicant to inspect the records and specify the information he wants. Information must be provided in the form in which it is requested for unless it disproportionately diverts the resources of the public authority. The Act does not put any restrictions on the amount of information that can be asked for through one application.

Q. What if there is a danger of the applicant misusing the information received under the RTI Act and blackmailing the officers with the information?

A. The Act also specifies the categories of information which need not be kept in public domain, therefore, there is no danger of information being misused by the applicant. In

fact, disclosure of information as per the provisions of the Act will prevent honest and sincere officers from being black mailed.

Q. What if there is a danger of the applicant misusing the documents he received under the Act?

A. It has been prescribed under HP RTI Rules, 2009 that PIO has to authenticate documents released under the Act. A PIO has to mark every page with a rubber stamp impression containing the phrase, "Documents released under RTI Act containing XX pages". Electronic files may be given in (un-editable) PDF/TIFF format. This will obviate the need for certifying the documents separately.

Q. If the information is already disclosed, can PIO / APIO refuse to accept a citizen's application?

A. No. That some information has already been disclosed proactively or to a citizen, cannot be a reason for rejecting an application. The PIO concerned must provide the information. (The APIO concerned must forward the application to the PIO concerned). For such information to be provided in a given format, prescribed additional fees may be charged and information should be provided upon payment of the prescribed fees.

Q. Can an application for accessing a 'current' or 'live' file be rejected on the ground that the final decision has not been taken?

A. Rejection of an application should be strictly on the grounds mentioned under S. 8 & 9 of the Act. Therefore, a request cannot be rejected on the ground that the case is pending for final consideration. If the information asked for falls under any of the exempted categories under S. 8 & 9, the same may be rejected while providing reasons for the same. Information regarding future course of action need not be disclosed.

Q. Will a PIO be penalised if the superior officer orders him not to release information to the requester?

A. The PIO is an independent authority under the Act. There is no need for her / him to take the approval of her / his superior for releasing the requested information. The PIO alone is responsible for any decision taken by him, whether with the approval of his superior or not. If the IC, concerned, finds that the PIO has rejected the request on malafide grounds, it is the PIO who will be penalised and not the superior officer.

Q. Can a PIO transfer an RTI application within the PA?

A. A PIO can seek assistance of another officer from within the PA… who shall render all assistance and shall be a "deemed PIO" as per S. 5 (4) & (5). However, the 'RTI Act, 2005' does not provide for transfer of RTI applications within the same PA.

Q. What should a PIO do if an RTI application is not accompanied by the prescribed application fee?

A. The PIO concerned should, first, find out whether the citizen making the request is a person below poverty line, in which case no application is required to be paid. If not, the

PIO may write to the citizen asking her / him to deposit the application fee to get information.

It is suggested that the PIO need not reject the application. However there is no obligation on her / him to provide information unless the requisite (application and / of further) fee is deposited. Such an application can be IGNORED by PIO. [AR Department, HP; Guidelines for PIOs]

Q. What is Public Interest?

A. The Act does not define 'public interest'. We may rely on the interpretation given by the Central IC and the Supreme Court in this regard:

Disclosure of information that leads towards greater transparency and accountability in the working of the PA is 'Public Interest' [Central IC in one of its decisions]……Public interest covers public health, public security, morals, economic welfare of the community and the objects mentioned in the Directive Principles of State Policy [Supreme Court in State of Gujarat v Mirzapur Moti Kureshi Kasab Jamat & ors; AIR 2006- Supreme Court 212].

17. Abbreviations

AA	**Appellate Authority**
AC	Assistant Commissioner
ACR	Annual Confidential Report
AE	Assistant Engineer
AETC	Assistant Excise & Taxation Commissioner
AP	Architect Planner
APIO	Assistant Public Information Officer
AR Deptt.	Administrative Reforms Department
ASO	Assistant Settlement Officer
Asstt.	Assistant
BDO	Block Development Officer
BPL	Below Poverty Line
CBSE	Central Board of Secondary Education
CD	Compact Disk
CIC	Central Information commission
CR Section	Central Registry Section
DC	Deputy Commissioner
Deptt.	Department
Distt.	District
DMSFC	Divisional Manager, State Forest Corporation
DoPT	Department of Personnel & Training
FAA	First Appellate Authority
FAQs	Fast Asking Questions
GIC	General Industries Corporation
GoHP	Government of Himachal Pradesh
GoI	Government of India
HP	Himachal Pradesh
HPVHA	Himachal Pradesh Voluntary Health Organization
HPPSC	Himachal Pradesh Public Service Commission
HPSSSB	Himachal Pradesh Subordinate Services Selection Board
HPTDC	Himachal Pradesh Tourism Development Corporation
HPU	Himachal Pradesh University
IC	Information Commissioner
IGMC	Indra Gandhi Medical College
IPH	Irrigation & Public Health
IPO	Indian Postal Order
IT	Information Technology

JD	Joint Director
Lab.	Laboratory
Ltd.	Limited
MBA	Master of Business Administration
MC	Municipal Corporation
MCQ	Multiple Choice Questions
MD	Managing Director
MS	Master of Surgery
O/o	Office of
OBC	Other Backward Classes
OMR	Optical Mark Recognition
ors	Others
PA	Public Authority
PDF	Portable Document Format
PIO	Public Information Officer
PTA	Parent Teacher Association
PWD	Public Work Department
R&I	Receipt & Issue Section
RD	Rural Development
Rtd.	Retied
RTI	Right to Information
(R)	Rural
S	Section
SA	Secretariat Administration
SC	Scheduled Caste
SCIC	State Chief Information Commissioner
SDO(C)	Sub Divisional Officer (Civil)
Sec.	Section
SIC	State Information Commission
SZ	South Zone
Teh	Tehsil
TIFF	Tagged Image File Format
UPSC	Union Public Service Commission
VPO	Village Post Office
XEN	Executive Engineer

18. Web Resources on RTI

- www.himachal.gov.in/ar
- www.admis.hp.nic.in/sic
- www.cic.gov.in
- www.rtigateway.org.in
- www.rtifoundationofindia.com
- www.r2inet.org
- www.rti.gov.in
- www.righttoinformation.gov.in
- www.freedominfo.org
- www.humanrightsinitiative.org
- www.parivartan.com
- www.righttoinformation.org
- www.prajanet.org
- www.geocities.com/mahadhikar
- http://www.delhigovt.nic.in/right.asp

19. References

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2. The Gazette of Himachal Pradesh, Government Of Himachal Pradesh, Administrative Reforms Department, Notification No. Per (AR) F (7)-2/98-Vol.I dated 21st January 2006, (Amended upto sixth Amendment dated 31st July, 2012)
3. A Guide for the Public Information Officers, Administration Reforms Organization, Government of Himachal Pradesh, No. Per (AR) A(3)-1/2008, 31st July, 2008
4. Central Point for Receiving RTI Applications, Office Memorandum No.1/32/2007-IR Dated 14thNovember, 2007, Department of Personnel & Training, Ministry of Personnel, Public Grievances & Pensions, Government of India, New Delhi issued by DoPT.
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10. e learning module for Public Information Officers, National Implementing Agency (NIA),Capacity Building for Access to Information, A GoI-UNDP Initiative, Centre for Good Governance, Hyderabad.
11. A manual for Public Authorities, Information Officers & Appellate Authorities, National Implementing Agency (NIA),Capacity Building for Access to Information, A GoI-UNDP Initiative, Centre for Good Governance, Hyderabad.
12. Handbook on Right to Information Act, 2005, Yashwant Rao Chavan Academy of Development Administration, (YASHADA), Pune.
13. Resources on the web address: www.himachal.gov.in/ar
14. Resources on the web address: www.rti.gov.in
15. Appeals and Complaints Judgements of State Information Commission, HP as referred in Chapter- 6