

The Right to Information Act, 2005

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The Right to Information Act, 2005¹

[Act 22 of 2005]

[15th 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:—

Statement of Objects and Reasons.—In order to ensure greater and more effective access to information, the Government resolved that the Freedom of Information Act, 2002 enacted by the Parliament needs to be made more progressive, participatory and meaningful. The National Advisory Council deliberated on the issue and suggested certain important changes to be incorporated in the existing Act to ensure smoother and greater access to information. The Government examined the suggestions made by the National Advisory Council and others and decided to make a number of changes in the law.

The important changes proposed to be incorporated, inter alia, include establishment of an appellate machinery with investigating powers to review decisions of the Public Information Officers; penal provisions for failure to provide information as per law; provisions to ensure maximum disclosure and minimum exemptions, consistent with the constitutional provisions, and effective mechanism for access to information and disclosure by authorities, etc. In view of significant changes proposed in the existing Act, the Government also decided to repeal the Freedom of Information Act, 2002. The proposed legislation will provide an effective framework for effectuating the right of information recognized under Article 19 of the Constitution of India.

1. Received the assent of the President on June 15, 2005 and published in the Gazette of India, Extra., Part II, Section 1, dated 21st June, 2005, pp. 1-22, No. 25.

The Bill seeks to achieve the above objects.

CASE LAW ► Purpose, scheme and scope of Act.—Purpose of this Act is to provide free access to information with object of making governance more transparent and accountable. Right to information not an uncontrolled right but subject to dual check viz. inbuilt restrictions within statute itself, and secondly constitutional limitations enshrined in Article 21 of Constitution i.e. it has to be balanced with right to privacy. Further held, where public authority takes recourse to provisions of exemption or infringement of Article 21 of the Constitution and withholds information sought, it has to apply its mind and form objective opinion justifying the exemption, *Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi*, (2012) 13 SCC 61.

Right to information has to be read in harmony with exemption and exclusion provisions, *CBSE v. Aditya Bandopadhyay*, (2011) 8 SCC 497.

CHAPTER I PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Right to Information Act, 2005.

(2) It extends to the whole of India ²[* * *].

(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.

2. Definitions.—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

2. The words “except the State of Jammu and Kashmir” omitted by Act 34 of 2019, Ss. 95 & 96 and Sch. V (w.e.f. 31-10-2019).

- 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.

CASE LAW ► "Public authority".—There may be situations where a body or organisation though not a part of the "State" or instrumentality of the State under Article 12 of Constitution, may still satisfy the definition of "public authority" within the meaning of Section 2(h) of the RTI Act, *Thalappalam Service Coop. Bank Ltd. v. State of Kerala*, (2013) 16 SCC 82.

Words "means" and "includes" used in Section 2(h) indicate that ambit of "public authority" in Section 2(h) is exhaustive and does not warrant any other interpretation, *Thalappalam Service Coop. Bank Ltd. v. State of Kerala*, (2013) 16 SCC 82.

State Public Service Commission established under Article 315 of the Constitution is a "public authority", *Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi*, (2012) 13 SCC 61.

An applicant under RTI Act can seek information from bodies established under the Constitution, any statute, rules or notifications as provided by Section 2(h)(a) to Section 2(h)(d), RTI Act. Information can also be sought from non-statutory bodies/NGOs if they are owned, controlled or substantially financed by appropriate Government as proved by Section 2(h)(d)(i) and Section 2(h)(d)(ii) though they need not qualify the test of "State" or "instrumentality of State" under Article 12 of Constitution. The onus to prove that the authority is "public authority" under Section 2(h) lies on the applicant under RTI Act or the appropriate Government, *Thalappalam Service Coop. Bank Ltd. v. State of Kerala*, (2013) 16 SCC 82.

A registered Urban Cooperative Bank, is not a "public authority" within meaning of Section 2(h) of Right to Information Act. There, Shareholder of Bank cannot therefore seek information about Bank under the Right to Information Act, *Dr. Panjabrao Deshmukh Urban Coop. Bank Ltd. v. State Information Commr.*, (2009) 3 Mah LJ 364.

Committee of management managing the institution is a public authority under Act of 2005, *Surendra Singh v. State of U.P.*, (2009) 74 AIC 362 (All).

Railway Welfare Organisation ("IRWO"), If a public authority, *Indian Railway Welfare Organisation v. D.M. Gautam*, (2010) 169 DLT 508 (Del).

The definition of "public authority" under Section 2(1) (h) RTI Act does not talk of "deep and pervasive" control. It is enough if it is shown that the authority is "controlled" by the, *Central Government Indian Railway Welfare Organisation v. D.M. Gautam*, (2010) 169 DLT 508 (Del).

A Non-Governmental institution receiving 95% aid from Govt. is covered by expression 'public authority' as defined u/s 2(h) of 2005 Act. Provisions of 2(h) include any body owned, controlled or

substantially financed or non-government organization substantially financed directly or indirectly by the funds provided by appropriate Government, *Principal, M.D. Sanatan Dharam Girls College, Ambala City v. State Information Commissioner, Haryana*, ILR (2008) 1 P&H 826.

Supreme Court is a public authority. CJI and other Judges constitute public authority as they are not distinct and separate public authorities. Likewise High Courts would also fall within ambit of public authority under Section 2(h), *Supreme Court of India v. Subhash Chandra Agarwal*, (2020) 5 SCC 481.

► **Meaning and ambit of “public authority”.**—An NGO/society/institution not owned or controlled by Government, not having been created by an Act or notification, would still fall under ambit of “public authority” if it is substantially financed directly or indirectly by Government, *D.A.V. College Trust and Management Society v. Director of Public Instructions*, (2019) 9 SCC 185.

► **“Information” and “right to information”.**—“Nature, scope and meanings of “information” and “right to information”, explained, *Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi*, (2012) 13 SCC 61.

► **Public examination.**—Permissibility and scope of right of examinee to inspect his evaluated answer books, discussed, *CBSE v. Aditya Bandopadhyay*, (2011) 8 SCC 497.

► **Non-Government Organisations, when covered.**—Meaning and manner of determination of “body owned, controlled or substantially financed” or “non-government organisations substantially financed” directly or indirectly by funds provided by appropriate Government, explained, *Thalappalam Service Coop. Bank Ltd. v. State of Kerala*, (2013) 16 SCC 82.

► **Information relating to assets declared by Judges of Supreme Court and High Courts.**—Chief Justice of India is a “public authority” under the Right to Information Act, 2005 and the Act covers the office of the CJI. Information relating to assets declared by Judges of Supreme Court is subject to the provisions of RTI Act, *Supreme Court of India v. Subhash Chandra Agarwal*, (2020) 5 SCC 481.

CHAPTER II

RIGHT TO INFORMATION AND OBLIGATIONS OF PUBLIC AUTHORITIES

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

CASE LAW ► Right to information, nature and scope.—Right of information is a facet of the right of “Speech and expression” as contained in Article 19(1)(a) of the Constitution. Right of information, thus, indisputably is a fundamental right, *People’s Union for Civil Liberties v. Union of India*, (2004) 2 SCC 476.

The right to impart and receive information is a species of the right of freedom of speech and expression guaranteed by Article 19(1)(a) of the Constitution, *Secy., Ministry of Information & Broadcasting, Govt. of India v. Cricket Assn. of Bengal*, (1995) 2 SCC 161.

Examining bodies and examination processes of examining bodies, are covered under this Act. There is need for disclosure of maximum information by public authorities and change in old mindset of unwarranted secrecy. However, competent authorities under RTI Act to maintain a proper balance between achieving transparency and reducing corruption and ensuring that demand for information does not reach unmanageable proportions affecting public interests as efficiency of public authorities and Government,

preservation of confidentiality of sensitive information and optimum use of limited fiscal resources, *ICAI v. Shaunak H. Satya*, (2011) 8 SCC 781 : (2011) 4 SCC (Civ) 504.

► **Purposes.**—Transparency, accountability, removal of corruption, citizen-Government participation, are some of the ideals of RTI Act. Social legislations on right to education and NREGA also get support from RTI Act to achieve their objectives under RTI Act. Balancing openness with preserving confidentiality and privacy where warranted is required. RTI Act seeks to strike balance between competing interests, *Namit Sharma v. Union of India*, (2013) 1 SCC 745 : (2013) 1 SCC (L&S) 244 : (2013) 1 SCC (Cri) 737 : (2013) 1 SCC (Civ) 786.

Right to information is essential to make individuals a part of governing process, *Hindustan Times v. High Court of Allahabad*, (2011) 13 SCC 155.

Additional workload is no reason to deny right to information, *ICAI v. Shaunak H. Satya*, (2011) 8 SCC 781 : (2011) 4 SCC (Civ) 504.

Regulations framed under Medical Council of India Act is subordinate legislation. The Right to Information Act, is an enactment by Parliament and the provisions contained in the enactment must, therefore, prevail over an exercise in subordinate legislation, if there be a conflict between the two, *Surupsingh Naik v. State of Maharashtra*, (2007) 4 Mah LJ 573.

► **Freedom of speech and right to information.**—The freedom of speech and expression includes right to acquire information and to disseminate it. Freedom of speech and expression is necessary, for self-expression which is an important means of free conscience and self-fulfilment, *Secy., Ministry of Information & Broadcasting, Govt. of India v. Cricket Assn. of Bengal*, (1995) 2 SCC 161.

The freedom of speech and expression is basic to and indivisible from a democratic polity, *People's Union for Civil Liberties (PUCL) v. Union of India*, (2003) 4 SCC 399.

► **Exemption.**—All citizens shall have the right to information. While entertaining an application for information made under the Act, the locus standi or the intention of the applicant cannot be questioned and is required to furnish all the information sought by him except what has been exempted under Section 8 therein, *Indian Institute of Science v. Central Information Commission*, (2011) 1 Mah LJ 63 (Bom).

► **RTI Act vis-à-vis Official Secrets, 1923.**—Official Secrets, 1923 not totally repealed, but only to the extent of inconsistency with RTI Act, 2005. Only cloak of secrecy under 1923 Act has been removed by RTI Act so as to bring about openness in State functioning, *Namit Sharma v. Union of India*, (2013) 1 SCC 745 : (2013) 1 SCC (L&S) 244 : (2013) 1 SCC (Cri) 737 : (2013) 1 SCC (Civ) 786.

► **Right to information and its limits.**—Scheme of under RTI Act, 2005, explained, *RBI v. Jayantilal N. Mistry*, (2016) 3 SCC 525 : (2016) 2 SCC (Civ) 382.

► **Supply of copy to accused.**—Person(s) accused in FIR of commission of offence(s) are entitled to have copy of FIR at a stage prior to that prescribed under Section 207 CrPC. FIRs registered in police stations, excepting those pertaining to offences of sensitive nature, held, are required to be uploaded on official website of all States. Detailed directions issued in the matter, *Youth Bar Assn. of India v. Union of India*, (2016) 9 SCC 473 : (2016) 3 SCC (Cri) 691.

► **Exemption from giving information.**—While balancing right to information, public interest including efficient working of Government, optimum use of fiscal resources and preservation of

confidentiality of sensitive information has to be balanced and can be guiding factor to deal with given situation dehors Sections 8, 9 and 11, *UPSC v. Angesh Kumar*, (2018) 4 SCC 530.

► **Transparency in appointment of Information Commissioners.**— State Governments directed to follow system followed by Central Government, that is, placing all necessary information regarding said appointments on website. *Anjali Bhardwaj v. Union of India*, (2019) 18 SCC 246.

4. Obligations of public authorities.—(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 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;
- (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;
- (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 suo motu 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.

CASE LAW ► Categories under this section.—Information to which RTI Act applies falls into two categories: (i) information which promotes transparency and accountability in working of every public authority, disclosure of which helps in containing or discouraging corruption, enumerated in Sections 4(1) (b) & (c) of RTI Act, and (ii) other information held by public authorities not falling under Sections 4(1) (b) & (c). Public authorities owe a duty to disseminate information falling under first category widely suo motu to the public. Authorities in dealing with information not falling under Sections 4(1) (b) & (c), must not read exemptions in Section 8 in a restrictive manner but in a practical manner so that other public interests are preserved and RTI Act attains a fine balance between its goal of attaining transparency of information and safeguarding other public interests, *ICAI v. Shaunak H. Satya*, (2011) 8 SCC 781 : (2011) 4 SCC (Civ) 504.

► **Responsibility to furnish information.**—Public Information Officer (PIO) who stands transferred not responsible after his transfer, *Manohar v. State of Maharashtra*, (2012) 13 SCC 14.

► **Dissemination of information by Government.**—Government should be more careful in information that is disseminated to world at large when communication and communication technology are so important these days, *Marie-Emmanuelle Verhoeven v. Union of India*, (2016) 6 SCC 456 : (2016) 2 SCC (Cri) 574.

5. Designation of Public Information Officers.—(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 of 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.

CASE LAW ► First appellate authority.—First appellate authority should preferably have degree in law and should have adequate knowledge and experience in law, *Namit Sharma v. Union of India*, (2013) 1 SCC 745 : (2013) 1 SCC (L&S) 244 : (2013) 1 SCC (Cri) 737 : (2013) 1 SCC (Civ) 786.

6. Request for obtaining information.—(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.

CASE LAW ► Information to which an applicant has a right.—An applicant under RTI Act is entitled to get copies of opinions, advices, circulars, orders, etc. but applicant is not entitled to seek information as to why such opinions, advices, circulars, etc. were framed, particularly in matters pertaining to judicial decisions. Administrative Officer of a court is not expected to have any information other than what is mentioned by a Judge in his judicial order, *Khanapuram Gandaiah v. Administrative Officer*, (2010) 2 SCC 1 : (2010) 1 SCC (L&S) 551 : (2010) 1 SCC (Cri) 1201 : (2010) 1 SCC (Civ) 267.

► **Illiterate persons, visually impaired persons, persons below poverty line.**—On analysing proviso to Section 6(1), held, it is the duty of the officer concerned to listen to the persons making the request orally and to reduce their request in writing and process the same. Further, for visually impaired persons, who are unable to write or have difficulty in writing, assistance also has to be rendered under Section 6(1), *Aseer Jamal v. Union of India*, (2018) 10 SCC 437.

7. Disposal of request.—(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:

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 sub-section (1), requesting him to deposit that fees, and the period intervening between the despatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of thirty days referred to in that sub-section;
- (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.

8. Exemption from disclosure of information.—(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.

(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 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 Section 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.

CASE LAW ► Nature and scope.—Section 8 should not be construed strictly, literally and narrowly. Exemption under Section 8 is not a fetter on right to information under Section 3, *CBSE v. Aditya Bandopadhyay*, (2011) 8 SCC 497.

Sections 8(2) and 24 effectuate justice delivery system by providing accessibility of relevant evidence in respect of corruption and human rights violations, thus enabling effective judicial review. Effective judicial review is a basic feature of the Constitution, *Yashwant Sinha v. CBI*, (2019) 6 SCC 1.

In every case, where information sought is “personal information” within meaning of Section 8(1)(j), procedure under Section 11 must be complied with. Compliance with this procedure is required where information is supplied to public authority by third party as well as when information held by public authority relates to third party, *Supreme Court of India v. Subhash Chandra Agarwal*, (2020) 5 SCC 481.

While Section 8(1)(d) is concerned with breach of confidence of commercial information only, Section 11 extends to all types of confidentiality including commercial confidentiality. The test of balancing public interest is applicable to confidential information other than commercial information, *Supreme Court of India v. Subhash Chandra Agarwal*, (2020) 5 SCC 481.

► Scope of judicial review.—If officer concerned does not allow access to information in respect of matters pertaining to Section 8(1)(a), person concerned can approach higher authorities and finally court under Section 123 of Evidence Act. Court can inspect document to arrive at its conclusion provided matter does not fall under Article 74(2) of the Constitution. However, when document is already in public domain, question of applicability of Section 8(2) does not arise, *Yashwant Sinha v. CBI*, (2019) 6 SCC 1.

► **Interpretation/Construction.**—Scope of words “information available to a person in his fiduciary relationship”, explained, *ICAI v. Shaunak H. Satya*, (2011) 8 SCC 781 : (2011) 4 SCC (Civ) 504.

► **Information exempted from disclosure.**—Six categories in Sections 8(1) (a), (b), (c), (f), (g) & (h) carry absolute exemption. Information in Sections 8(1) (d), (e) & (j) get only conditional exemption, subject to overriding power of competent authority to direct disclosure of such information in larger public interest. Information referred to in Section 8(1) (i) relates to an exemption for a specific period, with an obligation to make information public after such period. Information relating to intellectual property and information available to persons in their fiduciary relationship, referred to in Sections 8(1) (d) & (e) do not enjoy absolute exemption. If competent authority under the Act is satisfied that larger public interest warrants disclosure of such information, such information will have to be disclosed, for which competent authority will have to record reasons, *ICAI v. Shaunak H. Satya*, (2011) 8 SCC 781 : (2011) 4 SCC (Civ) 504.

No obligation is cast upon public authority to furnish information, disclosure of which would endanger life and physical safety of any person. Expression “life” should be construed liberally while “physical safety” is a restricted term, *Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi*, (2012) 13 SCC 61.

All information which has come to the notice of or on record of a person holding fiduciary relationship with another and but for such capacity, such information would not have been provided to that authority, would normally need to be protected and would not be open to disclosure keeping the higher standards of integrity and confidentiality of such relationship in mind, *Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi*, (2012) 13 SCC 61.

The information as to the names or particulars of the examiners/co-ordinators/scrutinisers/head examiners are exempted from disclosure under Section 8(1) (g) of the RTI Act, *CBSE v. Aditya Bandopadhyay*, (2011) 8 SCC 497.

► **Personal information disclosure.**—Personal information disclosure of which has no relation to any public activity or interest, or which would cause unwarranted invasion of privacy of individual can be withheld unless authority concerned is satisfied that larger public interest justifies disclosure of this information. Further held, expression “public interest” must be strictly construed, *Bihar Public Service Commission v. Saiyed Hussain Abbas Rizwi*, (2012) 13 SCC 61.

► **Disclosure of information.**—Disclosure by public authority of information notwithstanding exemption under Section 8(1) when public interest outweighs harm in the cases where the same is permitted i.e. under clauses (d), (e) & (j) of Section 8(1) of the RTI Act, discretionary in nature, *Supreme Court of India v. Subhash Chandra Agarwal*, (2020) 5 SCC 481.

► **Disclosure of information affecting/prejudicing a third party.**—Information Commission does not decide the rights of a third party but only whether the information which is held by or under the control of a public authority in relation to or supplied by that third party could be furnished to a citizen under the provisions of the RTI Act, *Union of India v. Namit Sharma*, (2013) 10 SCC 359.

► **Intellectual property.**—Question papers, instructions regarding evaluation and solutions to questions (or model answers) furnished to examiners and moderators, are “literary works” which are products of human intellect and therefore subject to copyright. Hence, they are intellectual properties of ICAI. Information can be sought under RTI Act at different stages or different points of time. Depending upon nature of exemption what is exempted from disclosure at one point of time may cease to be exempted at a later point of time. Thus, information relating to intellectual property, question papers, solutions/

model answers and instructions, in regard to any particular examination conducted by appellant cannot be disclosed before examination is held, as it would harm competitive position of innumerable third parties taking examination, *ICAI v. Shaunak H. Satya*, (2011) 8 SCC 781 : (2011) 4 SCC (Civ) 504.

► **Annual confidential report (ACR).**—Information on ACRs is personal, *R.K. Jain v. Union of India*, (2013) 14 SCC 794.

► **Fiduciary relationships.**—Examining body, held, is not a fiduciary in relation either to examinee or examiner, *CBSE v. Aditya Bandopadhyay*, (2011) 8 SCC 497.

RBI is a statutory body and a regulatory authority to oversee the functioning of the banks and the country's banking sector. Further, RBI is supposed to uphold public interest and not the interest of individual banks and is not in any fiduciary relationship with any bank, *RBI v. Jayantilal N. Mistry*, (2016) 3 SCC 525 : (2016) 2 SCC (Civ) 382.

The relationship between CJI and other Judges of Supreme Court ordinarily not of fiduciary and beneficiary, though it is not absolute rule. Fiduciary principle is applicable to public institutions where Judges hold citizen's interests in public trusts, *Supreme Court of India v. Subhash Chandra Agarwal*, (2020) 5 SCC 481.

► **Exemption for information available to a person in his fiduciary relationship.**—There is a fiduciary relationship between examiner and PSC. Disclosure of identity of examiners is in the least interest of the general public. It would rather give rise to dire consequences and would lead to public unrest and confusion, *Kerala PSC v. State Information Commission*, (2016) 3 SCC 417 : (2016) 1 SCC (L&S) 463.

► **Personal information.**—Disclosure of personal information, having no relationship with any public activity or public interest would cause unwarranted invasion of privacy of individual, *Canara Bank v. C.S. Shyam*, (2018) 11 SCC 426.

► **Departure from legal position.**—Section 8(2) ushers in radical departure from erstwhile legal position. Exemption from disclosure of information in respect of matters set out in Section 8(1)(a) can also be waived if by balancing process, public interest in disclosure comparatively outweighs harm to protected interest, *Yashwant Sinha v. CBI*, (2019) 6 SCC 1.

► **Disclosure of development plans.**—Documents like layouts, sub-division plans and development plans submitted by developer to, and, being in possession of municipal corporation are required to be put in public domain and involve a public element of making builders accountable, *Ferani Hotels (P) Ltd. v. State Information Commr., Greater Mumbai*, (2019) 14 SCC 504.

► **Information held by courts and tribunals.**—Information held on judicial side of court, inter alia, relating to pending and decided cases, relevant documents and certified copies, held, cannot be obtained under RTI Act from courts, *Commr. v. High Court of Gujarat*, (2020) 4 SCC 702.

► **Exceptions or exemptions from disclosure of information.**—Clauses in Section 8(1) can be divided into two categories: clauses (a), (b), (c), (f), (g), (h) & (i), and clauses (d), (e) & (j). Clauses (d), (e) & (j) of Section 8(1) of the RTI Act incorporate qualified prohibitions and are conditional and not absolute exemptions. Clauses (a), (b), (c), (f), (g), (h) & (i) do not have any such stipulation. Prohibitory stipulations in these clauses do not permit disclosure of information on satisfaction of the larger public interest rule. Clauses (a), (b), (c), (f), (g), (h) & (i), therefore, incorporate absolute exclusions or exemptions from disclosure of information, *Supreme Court of India v. Subhash Chandra Agarwal*, (2020) 5 SCC 481.

9. Grounds for rejection to access in certain cases.—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.

CASE LAW ► Exemption from disclosure.—Information as to instructions and solutions to questions issued by ICAI to examiners and moderators is not covered under non-disclosure of information involving infringement of copyright of person other than "State", *ICAI v. Shaunak H. Satya*, (2011) 8 SCC 781 : (2011) 4 SCC (Civ) 504.

Disclosure of information with reference to answer books does not involve infringement of any copyright and therefore, Section 9 will not apply, *CBSE v. Aditya Bandopadhyay*, (2011) 8 SCC 497.

10. Severability.—(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.

CASE LAW ► Information available with RBI in respect of banking and financial system.—RBI cannot be put in a fix, by making it accountable to supply information of every action taken by it, *RBI v. Jayantilal N. Mistry*, (2016) 3 SCC 525 : (2016) 2 SCC (Civ) 382.

11. Third-party information.—(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.

CASE LAW ► Nature and scope of Section 11(1).—Section 11(1) is procedural as well as substantive provision. Apart from information of the kind covered by Sections 8(1)(d) and 9, in all other cases where information relates to or is supplied by third party and treated as confidential by third party, disclosure may be allowed in terms of proviso to Section 11(1) where public interest in disclosure outweighs in importance any possible harm or injury to interest by third party. Confidentiality is protected because public interest requires it. Three exceptions to protection of confidentiality in public interest, stated. These exceptions get statutory recognition in proviso. The scope of “information” under Section 11 is broader than Section 8(1), *Supreme Court of India v. Subhash Chandra Agarwal*, (2020) 5 SCC 481.

► **Object.**—The legislative intent behind Section 11 is clear and reflected in the proviso which spells out the parameters when third-party information can be furnished or denied to the information seeker. The said proviso as well as Section 8(1) (j) require balancing of two conflicting rights, namely, right to information and the right to confidentiality or privacy. In such cases which of the two conflicting rights has to be given primacy depends upon larger public interest. This is the test which has to be applied, *Arvind Kejriwal v. Central Public Information Officer*, (2011) 4 UPLJ 59 (Del) (DB).

► **Third-party information.**—Public authority like Registrar of Cooperative Societies can ask for information from a non-statutory body [not also being a “public authority” under Section 2(h)(d)(i) or

Section 2(h)(d)(ii)] and divulge such information to an applicant under RTI Act, if the following circumstances are met: firstly, if the information asked for is not barred by Sections 8(1)(a) to 8(1)(j), RTI Act and secondly, if the Registrar is satisfied that the larger public interest justifies the disclosure of such information, that too, for reasons to be recorded in writing, *Thalappalam Service Coop. Bank Ltd. v. State of Kerala*, (2013) 16 SCC 82.

CHAPTER III

THE CENTRAL INFORMATION COMMISSION

12. Constitution of Central Information Commission.—(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.

CASE LAW ► Constitutionality of — Read down.—Sections 12(5) cannot per se be declared unconstitutional when there are ways to save it through purposive construction, *Namit Sharma v. Union of India*, (2013) 1 SCC 745 : (2013) 1 SCC (L&S) 244 : (2013) 1 SCC (Cri) 737 : (2013) 1 SCC (Civ) 786.

► **Functions of Central/State Information Commissions.**—Functions of Central/State Information Commissions, are not judicial but administrative, *Union of India v. Namit Sharma*, (2013) 10 SCC 359.

► **Appointment as Chief Information Commissioner/Information Commissioners (CIC/ICs).**—Requirement of graduate/basic degree “read into” Sections 12(5) and 15(5) by judicial interpretation in *Namit Sharma v. Union of India*, (2013) 1 SCC 745 : (2013) 1 SCC (Civ) 786 : (2013) 1 SCC (Cri) 737 : (2013) 1 SCC (L&S) 244 invalid. Hence, Direction Sections 12(5) and 15(5) do not prescribe any basic qualification which such persons must have in the respective fields in which they work, *Union of India v. Namit Sharma*, (2013) 10 SCC 359.

► **Qualifications and disqualifications for becoming (ICs/CICs).**—Non-prescription of any basic qualification, does not offend the doctrine of equality. Sections 12(5) and 15(5) do not discriminate against any person in appointment as CIC/IC so long as they are persons of eminence in public life with wide knowledge and experience in particular fields specified. Also, to ensure compliance with equality clause in Article 14 of the Constitution CIC/ICs should be from different fields and not just from one field, *Union of India v. Namit Sharma*, (2013) 10 SCC 359.

Once a person is appointed as a CIC/IC he cannot continue to be a MP/MLA or hold any other office of profit or remain connected with any political party or carry on any business or pursue any profession, *Union of India v. Namit Sharma*, (2013) 10 SCC 359.

13. Term of office and conditions of service.—(1) The Chief Information Commissioner shall hold office ³[for such term as may be prescribed by the Central Government] and shall not be eligible for reappointment:

Provided that no Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.

(2) Every Information Commissioner shall hold office ⁴[for such term as may be prescribed by the Central Government] or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such Information Commissioner:

Provided that every Information Commissioner shall, on vacating his office under this sub-section be eligible for appointment as the Chief Information Commissioner in the manner specified in 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. *Subs.* for “for a term of five years from the date on which he enters upon his office” by Act 24 of 2019, S. 2(a) (w.e.f. 24-10-2019).

4. *Subs.* for “for a term of five years from the date on which he enters upon his office” by Act 24 of 2019, S. 2(b) (w.e.f. 24-10-2019).



(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[(5) The salaries and allowances payable to and other terms and conditions of service of the Chief Information Commissioner and the Information Commissioners shall be such as may be prescribed by the Central Government:

Provided that the salaries, allowances and other conditions of service of the Chief Information Commissioner or the Information Commissioners shall not be varied to their disadvantage after their appointment:

Provided further that the Chief Information Commissioner and the Information Commissioners appointed before the commencement of the Right to Information (Amendment) Act, 2019 shall continue to be governed by the provisions of this Act and the rules made thereunder as if the Right to Information (Amendment) Act, 2019 had not come into force.]

(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.

5. *Subs.* by Act 24 of 2019, S. 2(c) (w.e.f. 24-10-2019). Prior to substitution it read as:

“(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.”

14. Removal of Chief Information Commissioner or Information Commissioner.—(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.

(2) The President may suspend from office, and if deems 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. Constitution of State Information Commission.—(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.

(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.

CASE LAW ► Functions of Central/State Information Commissions.—Functions of Central/State Information Commissions, are not judicial but administrative. Functions of Central/State Information Commissions are limited to ensuring that a person who has sought information from a public authority exercising their right to information is not denied such information except in accordance with provisions of the RTI Act, *Union of India v. Namit Sharma*, (2013) 10 SCC 359.

16. Term of office and conditions of service.—(1) The State Chief Information Commissioner shall hold office ⁶[for such term as may be prescribed by the Central Government] and shall not be eligible for reappointment:

6. *Subs.* for “for a term of five years from the date on which he enters upon his office” by Act 24 of 2019, S. 3(a) (w.e.f. 24-10-2019).

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 ⁷[for such term as may be prescribed by the Central Government] or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such State Information Commissioner:

Provided that every State Information Commissioner shall, on vacating his office under this 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.

⁸[(5) The salaries and allowances payable to and other terms and conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall be such as may be prescribed by the Central Government:

7. *Subs.* for “for a term of five years from the date on which he enters upon his office” by Act 24 of 2019, S. 3(b) (w.e.f. 24-10-2019).

8. *Subs.* by Act 24 of 2019, S. 3(c) (w.e.f. 24-10-2019). Prior to substitution it read as:

“(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 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:

Provided further that the State Chief Information Commissioner and the State Information Commissioners appointed before the commencement of the Right to Information (Amendment) Act, 2019 shall continue to be governed by the provisions of this Act and the rules made thereunder as if the Right to Information (Amendment) Act, 2019 had not come into force.]

(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.

17. Removal of State Chief Information Commissioner or State Information Commissioner.—(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 the 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.

CHAPTER V

POWERS AND FUNCTIONS OF THE INFORMATION COMMISSIONS, APPEAL AND PENALTIES

18. Powers and functions of Information Commissions.—(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 sub-section (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 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 (5 of 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.

CASE LAW ► Nature of Information Commissions.—RTI Act confers powers on Information Commissions to enforce the right to know, Government's power to shield information relating to sensitive State affairs, and individual's right to privacy. This requires judicious application of constitutional principles and striking a balance between competing interests. There is thus a lis between rival parties in respect of information sought. Information Commissions have penal powers also. Their functioning therefore has to conform to judicial norms, *Namit Sharma v. Union of India*, (2013) 1 SCC 745 : (2013) 1 SCC (L&S) 244 : (2013) 1 SCC (Cri) 737 : (2013) 1 SCC (Civ) 786.

► **Appointment of judicial persons/members.**—Parliament has not provided in Sections 12(5) and 15(5) of the RTI Act for appointment of persons with judicial experience and acumen. Hence, Directions 108.6, 108.8 and 108.9 in *Namit Sharma*, (2013) 1 SCC 745, for appointment of persons with judicial experience, training and acumen and Judges as Information Commissioner and CIC amounts to encroachment upon field of legislature, and are thus recalled, *Union of India v. Namit Sharma*, (2013) 10 SCC 359.

► **Discharge of functions by authorities.**—Application of mind is revealed by reasons only. Judicial review becomes convenient where impugned order contains reasons. It assists superior courts to decide whether exercise of writ jurisdiction is warranted, *Namit Sharma v. Union of India*, (2013) 1 SCC 745 : (2013) 1 SCC (L&S) 244 : (2013) 1 SCC (Cri) 737 : (2013) 1 SCC (Civ) 786.

► **Central and State Information Commissions decisions and doctrine of precedent.**—Commissions being quasi-judicial tribunals are bound by judicial discipline. Precedents of Supreme Court and High Courts are binding on them. Likewise, precedents of Larger Benches of Commission also binding on Division Benches. This approach will impart consistency to decisions of Information Commissions, *Namit Sharma v. Union of India*, (2013) 1 SCC 745 : (2013) 1 SCC (L&S) 244 : (2013) 1 SCC (Cri) 737 : (2013) 1 SCC (Civ) 786.

19. Appeal.—(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, 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 sub-section (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.

CASE LAW ► Duration for which information may be preserved.—Power of Information Commission under Section 19(8), cannot be used to extend duration for which information is required to be preserved under rules and regulations concerned, *CBSE v. Aditya Bandopadhyay*, (2011) 8 SCC 497.

Right to access information does not extend beyond period during which examining body is expected to retain answer books as per rules, *CBSE v. Aditya Bandopadhyay*, (2011) 8 SCC 497.

► **Finality of decisions of Information Commission.**—Though Section 19 is exhaustive and a complete code in itself, decisions of Information Commissions in second appeal under Section 19, held, are subject to writ and supervisory jurisdictions of High Courts and Supreme Court, *Namit Sharma v. Union of India*, (2013) 1 SCC 745 : (2013) 1 SCC (L&S) 244 : (2013) 1 SCC (Cri) 737 : (2013) 1 SCC (Civ) 786.

20. Penalties.—(1) Where the Central Information Commission or 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 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 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, as the case may be, under the service rules applicable to him.

CASE LAW ► Exercise of power.—Power conferred by Section 20(2) to be exercised strictly within parameters of Section 20(2), namely, (i) denial of information without reasonable cause, (ii) PIO's action tainted with mala fides, or (iii) destruction or obstruction of available information. Besides, delay or default by PIO has to be persistent and without reasonable cause —Negligence as a ground for disciplinary action not mentioned in Section 20(2), *Manohar v. State of Maharashtra*, (2012) 13 SCC 14.

► **Penalties.**—Severe punishment like imposition of fine of up to Rs 250 per day can be imposed under Section 20(1), and disciplinary action can be directed against erring Public Information Officers under Section 20(2), *Namit Sharma v. Union of India*, (2013) 1 SCC 745 : (2013) 1 SCC (L&S) 244 : (2013) 1 SCC (Cri) 737 : (2013) 1 SCC (Civ) 786.

The order of penalty for failure is akin to action under criminal law. It is necessary to ensure that the failure to supply the information is either intentional or deliberate, *A.A. Parulekar v. Goa State Information Commission*, (2010) 1 Mah LJ 931.

► **Delay.**—It is not every delay that should be visited with penalty. If the delay is explained then it is to be seen that whether such explanation is acceptable or not, *State of Punjab v. State Information Commr.*, (2010) 4 RCR (Civil) 774 (P&H).

► **Disciplinary action against PIO.**—Power of Information Commission to recommend action circumscribed by several factors, including reasonable cause for not being able to furnish information. Information Commission therefore not required to recommend disciplinary action in every case. However, disciplinary action ought to be recommended where ingredients of Section 20(2) are satisfied, *Manohar v. State of Maharashtra*, (2012) 13 SCC 14.

CHAPTER VI MISCELLANEOUS

21. Protection of action taken in good faith.—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.

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.

CASE LAW ▶ Overriding effect.—Superior statute like RTI Act with overriding provisions like Section 22 will prevail over bye-laws of CBSE. Evaluation of answer books being information under RTI Act, inspection of answer book is permissible even if CBSE bye-laws do not provide for such inspection. However, re-evaluation is not permissible as it is neither available under RTI Act nor bye-laws of CBSE, *CBSE v. Aditya Bandopadhyay*, (2011) 8 SCC 497.

▶ **Nature of overriding effect.**—Section 22 does not imply that a disclosure permissible under the Copyright Act, 1957 is taken away under the provisions of RTI Act, but rather, if a disclosure is proscribed under any other Act, the provisions of the RTI Act would have an overriding effect. Thus, Section 22 does not imply that a disclosure permissible under Copyright Act, 1957 is taken away under the provisions of RTI Act, *Ferani Hotels (P) Ltd. v. State Information Commr., Greater Mumbai*, (2019) 14 SCC 504.

▶ **Operation.**—Section 22 does not affect Rules and orders made by courts in relation to accessing of information held by court as there is no inconsistency between scheme of RTI Act and the High Court Rules in this regard, *Commr. v. High Court of Gujarat*, (2020) 4 SCC 702.

23. Bar of jurisdiction of courts.—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.

24. Act not to apply to certain organisations.—(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 (*sic* if) 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.

CASE LAW ► Applicability.—Examining bodies are neither “intelligence” nor “security” organizations and therefore, not covered under Section 24 exemption, *CBSE v. Aditya Bandopadhyay*, (2011) 8 SCC 497.

► **Scope of proviso.**—Information pertaining to allegations of corruption and human rights violations, held, excluded from privilege of secrecy and would be accessible by virtue of proviso, *Yashwant Sinha v. CBI*, (2019) 6 SCC 1.

25. Monitoring and reporting.—(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.

(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.

CASE LAW ▶ Right to demand information.—There is no right of public to demand information from State PCB prior to issuance of NOC, *Akhil Bharat Goseva Sangh (3) v. State of A.P.*, (2006) 4 SCC 162.

26. Appropriate Government to prepare programmes.—(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. Power to make rules by appropriate Government.—(1) The appropriate Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(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;
- ⁹[(ca) the term of office of the Chief Information Commissioner and Information Commissioners under sub-sections (1) and (2) of Section 13 and the State Chief Information Commissioner and State Information Commissioners under sub-sections (1) and (2) of Section 16;
- (cb) the salaries, allowances and other terms and conditions of service of the Chief Information Commissioner and the Information Commissioners under sub-section (5) of Section 13 and the State Chief Information Commissioner and the State Information Commissioners under sub-section (5) of Section 16;]
- (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;

9. *Ins.* by Act 24 of 2019, S. 4 (w.e.f. 24-10-2019).

- (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. Power to make rules by competent authority.—(1) The competent authority may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(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.

CASE LAW ▶ Objections and clarifications on Rules made under.—Charge for application and per page should not be more than Rs 50 and Rs 5, respectively. However, exceptional situations may be dealt with differently. This will not debar future revision, if situation demands. No motive needs to be disclosed for seeking information. Requirement of permission of Chief Justice or Judge concerned in relation to information sought from High Court is not required for every disclosure of information but that which is exempted under scheme of Act. Transfer of information to another public servant should normally be complied with except where appropriate authority not known, *Common Cause v. High Court of Allahabad*, (2018) 14 SCC 39.

29. Laying of rules.—(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.

(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. Power to remove difficulties.—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removal of the difficulty:

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.

31. Repeal.—The Freedom of Information Act, 2002 (5 of 2003) is hereby repealed.

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.”

SECOND SCHEDULE

(See Section 24)

Intelligence and Security Organisation established by the Central Government

1. Intelligence Bureau.
- ¹⁰[2. Research and Analysis Wing including its technical wing namely, the Aviation Research Centre of the Cabinet Secretariat.]
3. Directorate of Revenue Intelligence.
4. Central Economic Intelligence Bureau.
5. Directorate of Enforcement.
6. Narcotics Control Bureau.
7. ¹¹[* * *]
- ¹²[8. Special ¹³[Frontier] Force of the Cabinet Secretariat.]
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. ¹⁴[Sashtra Seema Bal.]

10. Subs. for “2. Research and Analysis Wing of the Cabinet Secretariat” by G.S.R. 319(E), dt. 4-5-2021.

11. Sl. No. 7 “7. Aviation Research Centre of the Cabinet Secretariat” omitted by G.S.R. 319(E), dt. 4-5-2021.

12. Subs. for “8. Special Frontier Force” by G.S.R. 530(E), dt. 21-7-2014.

13. Subs. for “Frontier” by G.S.R. 319(E), dt. 4-5-2021.

14. Subs. for “Special Service Bureau” by G.S.R. 347, dt. 28-9-2005.

- ¹⁵[16. Directorate General of Income Tax (Investigation).]
¹⁶[17. National Technical Research Organisation.]
¹⁷[18. Financial Intelligence Unit, India.]
¹⁸[19. Special Protection Group.
20. Defence Research and Development Organisation.
21. Border Road Development Board.
¹⁹[22. National Security Council Secretariat.]]
²⁰[23. Central Bureau of Investigation.
24. National Investigation Agency.
25. National Intelligence Grid.]
²¹[26. Strategic Forces Command.]
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15. *Subs.* by G.S.R. 235(E), dt. 27-3-2008.
16. *Subs.* by G.S.R. 235(E), dt. 27-3-2008.
17. *Subs.* by G.S.R. 235(E), dt. 27-3-2008.
18. *Ins.* by G.S.R. 347, dt. 28-9-2005.
19. *Ins.* by G.S.R. 726(E), dt. 8-10-2008. Prior original Sl. No. 22 was *omitted* by G.S.R. 235(E), dt. 27-3-2008.
20. *Added* by G.S.R. 442(E), dt. 9-6-2011.
21. *Ins.* by G.S.R. 673(E), dt. 8-7-2016.