



ROLE OF PUBLIC INFORMATION OFFICERS IN IMPLEMENTATION OF RIGHT TO INFORMATION ACT

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Abstract-- The progress of a nation depends on the free flow of information between the government and the citizenry. Access to information is the touchstone of a strong and vibrant representative democracy. Right to information is a potent weapon in the hands of the general public by use of which they can keep a constant check on the authorities which govern them. The passing of Right to Information Act, 2005 has marked a notable milestone in the evolution of this right. The present paper describes the role of PIO's in effective implementation of the Act and also attempts to analyze the judicial approach in this regard.

Key words: Public Information Officer, Right to information

PRELUDE

An informed civil society is a condition precedent of democracy. No democracy can be meaningful where civil society cannot audit the performance of elected representatives, the bureaucrats and other functionaries who act on behalf of the State. In order to be able to audit the performance of the government, the people have to be well informed of its policies, actions and failures. Citizens have a right to know every public act, everything that is done in public way by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing.¹ Right to information, thus, is a means to empower people. It is a pre requisite of an accountable, transparent and participatory governance.

RIGHT TO INFORMATION REGIME – GENESIS & EVOLUTION

The Right to information did not appear in the original text of the Indian Constitution. It was recognized by the Supreme Court as a concomitant of Right to freedom of speech and expression under Article 19(1)(a) in its decision in *Benenett Coleman v. Union of India*² and from then onwards it has been recognized as a fundamental right. Since the new right needed to be spelt out in detail; talks for a legislation for the same began as early as in 1989. However, the establishments were not eager to bring such a law. Consequently, several popular movements grew in support of the right, which finally led to passage of RTI Act in 2005.

The main object of the Act as enshrined in its Preamble is to set out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, and the constitution of Central and State Information Commission for the purposes of the Act.

Under the Act, every public authority is liable to provide information when requested for by any person and for the purpose of providing information, it is required to designate Central Public Information Officers (CPIO) and State Public information Officers (SPIO).³ Such CPIO's and SPIO's shall then deal with requests seeking information and also render reasonable assistance to the persons seeking such information.⁴ For discharging the duties under the Act, they may also seek assistance of any other

¹ Justice Mathew in *State of UP v. Raj Narain*, AIR 1975 SC 865.

² AIR 1973 SC 106.

³ Sec. 5(1) of RTI Act, 2005.

⁴ Sec. 5(3) of the Act.

officer, as he may consider necessary. In realizing the objects of the Act, the role of Public Information Officers (PIO's) is of considerable importance, since they have to ensure that relevant information is maintained, processed and made accessible to the public within proper time.

PUBLIC INFORMATION OFFICERS (PIOs) – ROLES & RESPONSIBILITIES

The Act prescribes the obligations and role of PIO as follows:

1. Attending to requests for information: Any citizen who desires to obtain information, has to make a request in writing or through electronic means in English or Hindi or the regional language along with the requisite fees to the CPIO or SPIO concerned, specifying the particulars of the information sought. Where such request cannot be made in writing, the CPIO or SPIO shall render all reasonable assistance in reducing the request in writing.⁵ Where information is to be given to a requester who is sensorily disabled, the CPIO or SPIO, shall provide assistance to enable such person to access the information 'including providing such assistance as may be appropriate for the purpose'.⁶ The Act envisages pro-active CPIO or SPIO so that the persons are not denied access to information due to their inability to frame proper questions or due to physical infirmity. The 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.⁷
2. Time limit for providing information: As per Section 7 (1) of the Act the information requested by an applicant to a PIO shall be furnished as expeditiously as possible. The time limits prescribed under the Act for disposal of requests for information are as follows:
 - i. On receipt of a request for information, the PIO has either to provide information on payment of such fees as prescribed or reject the request with reasons for the same within 30 days.
 - ii. If the information sought concerns the life or liberty of a person, the same has to be provided immediately, in any case, within 48 hours.⁸
 - iii. If the application for information is submitted to the Assistant Public Information Officer, period of 5 more days shall be added to the time limit of 30 days.⁹
 - iv. Information pertaining to corruption or human right violations from scheduled security and intelligence agencies must be provided within 45 days.¹⁰
3. Fee to be charged: As per the mandate of the Act, the fees charged shall be reasonable and no fee shall be charged from persons who are below poverty line. Further, the person making request for information shall be provided the information free of charge where a public authority fails to comply with the stipulated time limits for disposal of request applications.¹¹ The Department of Personnel & Training, Government of India has, under the Right to Information (Regulation of Fees and Cost) Rules, 2005, prescribed an application fee of Rs. 10/- for a request for obtaining information under Section 6(1). This could be in cash against proper receipt or by demand draft or by banker's cheque or Indian Postal Order payable to the Accounts Officer of the public authority.

⁵ Se. 6(1).

⁶ Sec. 7(4).

⁷ Sec. 7(9).

⁸ Sec. 7(1) proviso.

⁹ Se. 5(2) proviso.

¹⁰ Sec. 24 (1) second proviso.

¹¹ Sec. 7(6).

4. Rejection of request for information: A PIO may also reject the request for information. If no information is provided within prescribe time period, the request is deemed to be refused.¹² Where such a request for information is rejected by the PIO, he shall communicate the decision to the person making the request along with:
- the reasons for rejection.
 - the period within which an appeal against such rejection may be preferred (within 30 days of the date of the rejection).¹³
- For instance, a PIO may reject a request for information if such a disclosure would involve an infringement of copyright subsisting in a person other than the State.¹⁴
5. Disclosure of information: As per the Act, disclosure of information is the rule and secrecy or exemption only an exception. There is no obligation on the part of a PIO to give any citizen the information regarding the following matters¹⁵:
- a) Information the disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with the foreign State or lead to incitement of an offence. The PIO's should be extra cautious to withhold a good deal of information under this clause as it could negate the right to information substantially.
 - b) information 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 State Legislature;
 - d) information including commercial confidence, trade secrets or intellectual property where disclosure would harm the competitive position of a third party, unless larger public interest warrants the disclosure of such information;
 - e) information available to a person in his fiduciary relationship, unless larger public interest warrants the disclosure of such information;
 - f) Information received in confidence from a foreign Government;
 - g) Information, the disclosure of which would endanger the life or physical safety of any person or identity 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. However, 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.
 - j) Personal information, which would cause unwarranted invasion of the privacy of the individual unless larger public interest justifies the disclosure of such information. Moreover, the PIOs while adhering to the requests of the citizens for such information should constantly keep this in mind that the information which cannot be denied to the Parliament or the State Legislature shall not be denied to any citizen.¹⁶
- Except the information which is exempted from disclosure under (a), (b) and (j), any information

¹² Sec. 7(2).

¹³ Sec. 7(8).

¹⁴ Sec. 9.

¹⁵ Sec. 8(1).

¹⁶ Proviso to Sec. 8(1)(j).

relating to any occurrence, event or matter which has taken place, occurred or happened 20 years before the date on which request is made shall be provided to the requester.¹⁷

The Right to Information Act, 2005 clearly overrides the Official Secrets Act, 1923,¹⁸ since a PIO may allow access to information if public interest in disclosure outweighs the harm to the protected interests.¹⁹ But he should arrive at a proper decision regarding this only after balancing the competing interests in disclosure against the public interest in secrecy.

6. Information concerning third party: Section 11 of the Act requires that if the information sought by the citizen pertains to a record or part thereof relates to, or has been supplied by a third party and if it is not treated as confidential by that third party, the PIO is at liberty to provide the same to the applicant.

If, however such information is treated as 'confidential' by that third party, the PIO shall give a written notice to the third party, within 5 days of receipt of such request, and convey his intention to disclose the information or record, requiring the third party to make a submission, within 10 days from the date of receipt of such notice, regarding whether the information should be disclosed or not; and such submission shall be kept in view while taking a decision regarding the disclosure of such information. The PIO shall within 40 days since the receipt of request for information, after having given an opportunity to third party to make representation, take a decision on disclosure and give a written notice as to the same to the third party. The third party is entitled to prefer an appeal against the decision of the PIO. Except in the case of "trade or commercial secrets protected by law", disclosures involving third party information may be allowed, if the public interest in disclosure outweighs the importance of any possible harm or injury to the interests of such third party. If the third party is a private individual, the PIO has to be very cautious and properly weigh the consequences as privacy of an individual is important and protected under Section 8 (1) (j).

7. Access to only a part of records: Where a request for access to information is rejected on the ground that it is in relation to information which is exempt from disclosure, access may be provided to that part of the record which does not contain any information which is exempt from disclosure under the Act and which can reasonably be severed from any part that contains exempt information.²⁰ Here the doctrine of severability²¹ applies. Where access is granted to a part of the record, a notice shall give a notice to the requester, stating that—
 - (a) 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

¹⁷ Sec. 8(3).

¹⁸ Sec. 22.

¹⁹ Sec. 8(2).

²⁰ Sec. 10.

²¹ According to doctrine of severability, when some particular provision of a statute offends or is against a constitutional limitation, but that provision is severable from the rest of the statute, only that offending provision will be declared void by the Court and not the entire statute. On the same analogy, when any information is exempted from disclosure, access may be provided to that part of the record which does not contain any exempted information under the Act and which can reasonably be severed from any such part.

(e) his or her rights with respect to review of the decision regarding non-disclosure of part of the information.²²

8. Non- response from PIO's and its consequences: In every case where a PIO without reasonable cause-

- i. Refuses access to information requested by a person or
- ii. Fails to furnish response to the request for information or
- iii. Requires a person to pay an unreasonable fee for the information or
- iv. Gives an incomplete, misleading or false information;

the Central/ State Information Commission is mandatorily required under the Act to initiate an inquiry against the erring PIO.²³

Moreover, where a person prefers an appeal against a PIO and Central/State Information Commission arrives at a opinion that the PIO has refused to receive an application or has not furnished information within specified time period or has acted malafide in denying a request or has knowingly given incorrect information or has destroyed the information which was the subject matter of the request or has obstructed in any manner the furnishing of the requested information; it shall impose a penalty of Rs. 250/- per day on the PIO till application is received or information is furnished subject to the total amount of such penalty not exceeding Rs.25000/-.²⁴

In such a case the burden is on the PIO to prove before the Information Commission that he had acted reasonably and diligently.²⁵ Moreover, if the PIO persistently violates the provisions of the Act, without any reasonable cause, the Information Commission shall recommend a disciplinary action against the PIO under the service rules applicable to him.²⁶

CONCLUDING OBSERVATIONS

From the perusal of the above discussed role and functions of PIO it is clear that Public Information Officer (PIO) plays a pivotal role in the implementation of the Right to Information Act, 2005. However, the compliance with various provisions of the Act requires a certain level of preparedness on part of the PIO. It is required of him to have complete knowledge of and experience in office procedures. He should have adequate knowledge of record management systems in the public authority, including retrieval of information from the internet. He should know the structure, functions and delegation of powers within the organization. He should be well-versed with the organization chart, the levels of disposal of cases, appeals etc. In short, he should be fully conversant with all the provisions of the Act.

Along with this, he should be good in negotiations with the public and third parties involved so that it becomes easy for him to have smooth interactions with all these stakeholders and he could effectively attend to his duties imposed by the Act. The PIO should always issue well-reasoned orders whenever information is demanded. It would ensure the public that their grievance has been well heard and proceeded by the authorities properly and efficiently. Moreover, he should always see that neither there is any delay in the disposal of requests for information nor there is supply of incomplete information. For the effective implementation of the Act, it is also required that PIOs need to be properly trained in management of their work and other methods of good governance from time to time.²⁷

²² Sec. 10(2).

²³ Sec. 18(1).

²⁴ Sec. 20(1).

²⁵ Proviso to Sec. 20(1).

²⁶ Sec. 20(2).

²⁷ See RTI Manual for Public authorities and PIO's, June 2006, Published by the Centre for Good Governance (CGG), Hyderabad, Andhra Pradesh (India) under the Capacity Building for Access to Information Project, a GOI- UNDP initiative, available at <https://www.tropmet.res.in>, last accessed on



With regard to the role of PIO's and their obligation to provide information, Delhi High Court in Rakesh Kumar Gupta v. Central Information Commission,²⁸ has laid down various guidelines viz.:

1. PIO's cannot withhold information without reasonable cause and that such officers cannot function merely as "post offices" while dealing with information so requested.
2. A PIO cannot be held responsible if he genuinely rejects the information sought on valid grounds permissible under the Act. Mere difference of opinion on the part of the CIC cannot lead to an imposition of penalty under Section 20 of the Act.
3. Government departments should not be permitted to evade disclosure of information. Diligence has to be exercised by them, by conducting thorough search and inquiry, before coming to a conclusion that information is not available or traceable.
4. Every effort should be made to locate information, and the fear of disciplinary action would work as a deterrent against suppression of information for vested interests.
5. A PIO has to apply his mind, analyse the material and then direct disclosure or give reasons for non-disclosure. He cannot rely upon his subordinate officers.
6. Duty of compliance lies upon PIO. The power has to be exercised with objectivity and seriousness, he cannot be casual in his approach.

In R.K. Jain v. Union of India,²⁹ Court held that PIO, being the custodian of information sought for, is primarily responsible under the scheme of the RTI Act to supply such information and in cases of default, the penal action can be invoked against the PIO only.

The role of PIO's was elaborately dealt with by Delhi High Court in the Registrar of Companies v. Dharmendra Kumar Garg.³⁰ The Court observed that:

"Merely because the CIC eventually finds that the view taken by the PIO was not correct, it cannot automatically lead to issuance of a show- cause notice under Section 20 of the RTI Act and the imposition of penalty. The Legislature has cautiously provided that only in cases of malafides or unreasonable conduct... a penalty on the PIO can be imposed. If the CIC starts imposing penalty on the PIOs in every other case, without any justification, it would instill a sense of constant apprehension in those functioning as PIOs in the public authorities, and would put undue pressure on them. They would not be able to fulfill their statutory duties under the RTI Act with an independent mind and with objectivity. Such consequences would not auger well for the future development and growth of the regime that the Act seeks to bring in, and may lead to skewed and imbalanced decisions by the PIOs, Appellate Authorities and the CIC. It may even lead to unreasonable and absurd orders and bring the institutions created by the Act in disrepute."³¹

The judiciary thus, in its various decisions has substantially explained the duties and obligations of a PIO while dealing with the requests for information under RTI Act. An analysis of the functions of PIO as envisaged in the provisions of the RTI Act shows that immense responsibilities have been placed on them. The Public Information Officer acts as a liaison between the government and the citizens. Since complete openness in all matters of governance is not feasible, therefore, a balanced approach to transparency in government functioning should be used by him. It is required of him to follow the principle of 'maximum disclosure and minimum secrecy' while dealing with the requests for public information. A major change in transparency and accountability in governance can be achieved by strict implementation of the provisions of the Act in letter and spirit.

²⁸ WP (C) 900/2021 decided on 22 January 2021.

²⁹ (2013)14 SCC794.

³⁰ WP (C) 11271/2009 decided on 1 June 2012.

³¹ Ibid, at para 61.