

THE RIGHT TO INFORMATION ACT 2005

and

EXEMPTIONS FROM DISCLOSURE OF INFORMATION



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Privacy

Right to information is a human right under Article 19 of Universal Declaration of Human Rights, which states: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

The Right to Information Act 2005 ("the Act") empowers our citizens with the right to know. But one's human right should not disregard other's human rights.

Article 12 Universal Declaration of Human Rights states:

"No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks."

And Article 14 of International Covenant on Civil and Political Rights states:

"All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children."

To balance these human rights, the Act provides certain exemptions to disclosure of information. Protection of National interests and trade secrecy are the other important factors to be taken care of.

interest in exemptions.]

The most difficult and the most controversial aspect of the Act is the application of these exemptions .

[It may be useful for the public authorities (“P.A.”) to attempt to identifying in advance the information protected by the exemptions to enable prompt and immediate responses.]

Section 8 and section 9 of the Act contain these exemptions.

Section 7 (9) is not an exemption. (see decisions¹ of the Central Information Commission (“C.I.C.”)).

Exemptions can be divided into two types:

Absolute exemptions : exemptions which are not subject to public interest test.

Section 9 is the only absolute exemption.²

Qualified exemptions : exemptions which are subject to public interest test.

Here, the P.A. must consider whether there is greater public interest in disclosing the information or withholding the information (popularly called- *balancing the public interest*).

All the exemptions under section 8(1) are qualified exemptions.

Qualified exemptions can be further divided into—

(i).Class exemptions:

Exempt all information falling within a particular category.(Exemptions in which it is assumed that disclosure of information of a certain kind, laid out in the section, is harmful. For whole classes of information some sort of harm is presupposed and there is no requirement on the P.A. to show what that harm might be.)

Section 8 (1) **b,e,f ,i** contain these exemptions.

Here the P.A.need not demonstrate any harm but simply show that the information is exempted under these sub-sections .

(a) National security (b) contempt of court (c) Parliamentary privilege

(d) trade secrecy (e) fiduciary relationship (f) Foreign government

(g) safety of informer (h) investigation (i) cabinet papers (j) privacy

1. CIC decision in *Sarbajit roy v D.D.A.*, Decision No.10/1/2005-CIC, Dt.25.02.2006: CIC held, "s 7(9) of the Act does not authorize a public authority to deny information. It simply allows the authority to provide the information in a form easy to access." . . ."But this provision does not exempt disclosure of information, only adjustment of the form in which it is provided."

CIC decision in *J.K. Agarwal v Syndicate Bank*, Decision No.26/IC(A)/06, Dt.07.04.2006: CIC held that s 7(9) can be used for scoping the request. [scoping: adjusting the scope of the request for quick response.]

s 7(9). An information shall be 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.

2.s 9. disclosure which would involve an infringement of copyright subsisting in a person other than the State may be rejected.

(ii) Prejudice-based exemptions:

These exemptions contain the phrases—“would”, “would prejudicially”.

The word ‘prejudice’ is not defined in the Act. In legal terminology, prejudice is commonly understood to mean ‘harm’.

While the likelihood of prejudice may not be very high, it should not be negligible.

In other words prejudice need not be substantial, but it be more than trivial.

The degree of prejudice is not specified, so any level of prejudice might be argued. However the less significant the prejudice is shown to be, the higher the chance of the public interest falling in favour of disclosure. Whether prejudice exists is a matter of fact to be decided on a case by case basis, considered only to the extent to which a disclosure harms the purpose of the exemption.

Section 8 (1) **a,c,d,g,h,j** contain these exemptions.

Time limited exemptions:

Section 8(3) imposes time limit on exemptions. Section 8(1) **b,d,e,f,g,h,j** are time limited exemptions, which are no longer valid exemptions after 20 years from the date of the record.

[It is implied that section 8 (1) **a,c,j** are not time limited exemptions]

- (a) National security (b) contempt of court (c) Parliamentary privilege
(d) trade secrecy (e) fiduciary relationship (f) Foreign government
(g) safety of informer (h) investigation (i) cabinet papers (j) privacy

Exemptions under section 8 are discretionary, not mandatory. The P.A. may make discretionary disclosures of exempt information, as a matter of their administrative discretion, where they are not otherwise prohibited from doing so.

THE EXEMPTIONS [for easy reference] :

SECTION 8 (1) (a) National security

(b) contempt of court

(c) Parliamentary privilege

(d) trade secrecy

(e) *fiduciary* relationship

(f) Foreign government

(g) safety of informer in law enforcement

(h) investigation

(i) cabinet papers

(j) privacy

SECTION 9 : copyright

Bibliography:

Information commissioner's office (U.K.), *FOIA Awareness Guidance no.3*

www.cic.gov.in (**CIC** website)

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