

RTI TIMES

Volume III Issue I

March - April 2009

Contents

- ✓ The Second Schedule (of the 'RTI Act, 2005')– As Amended2
- ✓ “The Genie of RTI Activities...”3
- ✓ Answers to the RTI Quiz in Volume II, Issue VI.....4
- ✓ CBAI Focus State: Bihar.....6
- ✓ Right to Information Quiz & Good Practice: *Innovations of the Orissa Information Commission*.....7
- ✓ Editorial & Design Team and Featured Resources.....8

Book Post

From the Editor's Desk

Dear Reader,

Under Sections 25 (3)(g) and 25(5) of the 'RTI Act, 2005', the Central / State Information Commissions (C/SICs), as the case may be, are required to make recommendations for improvement / modernisation / reform with respect to a Public Authority's compliance with the Act as also for amending the Act or any other legislation or common law to operationalise RTI.

These recommendations may even specify the ICs' opinion about the steps that a PA, whose practice does not conform to the Act's provisions, ought to take for promoting the necessary conformity.

There are 28 ICs (Central IC and 27 SICs) functioning in the country today. It is but obvious that through the many complaints and second appeals they dispose as also through the debates and exposes regarding the lacunae in the implementation regime that are brought their notice by Civil Society Organisations including the media, the ICs would have formed many perceptions / opinions / ideas about the road ahead for strengthening RTI implementation. These issues / perceptions / opinions / ideas / recommendations do, in most cases, find a mention in the ICs' decisions as also in their Annual Reports.

Undoubtedly, there are many complexities, distinct problems and, consequently, varying perceptions about addressing them. It was with the objective of consolidating the diverse inputs of this significant group of stakeholders that is the Information Commissions, the Central Information Commission had, in December 2007, constituted a Sub-Committee of State Chief Information Commissioners – comprising 9 SCICs and 1 Central Information Commissioner – to coordinate suggestions from State Commissions and to review the suggested amendments to the Act.

CGG had been associated with the research that was done for the first Sub-Committee and had offered assistance in preparation of its report. The Central Information Commissioner vide its notification No. 10/12/200/Admn/CIC dt. 12.01.2009 based on CGG's previous inputs, the 2nd Sub-Committee has associated CGG with four of its ToR, which deal with assessing the status of recommendations in the IC's Annual Reports; grading PAs on their full compliance of the Act and providing significant inputs for establishing a Federation of ICs. We welcome the inputs of our readers regarding any or all the above topics.

The Second Schedule (of the 'RTI Act, 2005') – As Amended

-- Srinivas Madhav, Consultant (RTI), madhav@cgg.gov.in

First amendment to the Second Schedule of the Right to Information Act

The Second Schedule of the Right to Information (RTI) Act was first amended *vide* Notification General Statutory Rules(G.S.R.)347 dated 28 September 2005 issued by Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training), published in the Gazette of India on 8 October 2005.

First amendment to the Second Schedule of the RTI Act substituted Sashastra Seema Bal (corresponding serial number in the Second Schedule -15) for Special Services Bureau (Sashastra Seema Bal was earlier called Special Services Bureau when it was formed in 1963 after the Sino-Indian war) and added the following four organizations (with corresponding serial numbers in the Second Schedule prior to the second amendment):

19. Special Protection Group.
20. Defence Research and Development Organisation.
21. Border Road Development Board.
22. Financial Intelligence Unit, India.

Second amendment to the Second Schedule of the RTI Act

The Second Schedule of the RTI Act was further amended *vide* No.G.S.R.235(E) dated 27 March 2008 issued by the Ministry Of Personnel, Public Grievances And Pensions (Department Of Personnel and Training) ,published in the Gazette of India on 28 March 2008. A copy of the Ministry of Personnel, Public Grievance and Pensions (Department of Personnel and Training) Notification G.S.R. 235 (E) dated the 28th March, 2008, publishing amendments to the Second Schedule to the Right to Information Act, 2005, under sub-section (3) of Section 24 (B) of the Right to Information Act, 2005 was tabled in the Rajya Sabha on 30th April, 2008.[1]

Second amendment to the Second Schedule omitted following three organizations (with corresponding serial numbers in the Second Schedule prior to the second amendment):

16. Special Branch (CID), Andaman and Nicobar.
17. The Crime Branch-C.I.D.- CB, Dadra and Nagar Haveli.
18. Special Branch, Lakshadweep Police.

It added following two organizations (with corresponding serial numbers in the Second Schedule after the second amendment):

16. Directorate General of Income-tax (Investigation)
17. National Technical Research Organisation

Third amendment to the Second Schedule of the RTI Act

The Second Schedule of the RTI Act was further amended *vide* No.G.S.R.726(E) dated 8 October 2008 issued by the Ministry Of Personnel, Public Grievances And Pensions (Department Of Personnel and Training), published in the Gazette of India on 8 October 2008.

[1] Brief Record of the Proceedings of the Meeting of the Rajya Sabha held on the 30th April, 2008, RAJYA SABHA Parliamentary Bulletin PART - I (Two hundred and thirteenth Session)

Third amendment to the Second Schedule added following organization (with corresponding serial numbers in the Second Schedule after the third amendment):

22. National Security Council Secretariat

Sub-section (1) of section 24 of the RTI Act reads as follows:

Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government:

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in Section 7, such information shall be provided within forty-five days from the date of the receipt of request.

The RTI Act partially excludes the following from the ambit of the Act:

- Organisations specified in the Second Schedule
- Information furnished by such organisations to the Central Government

However, the following information is not excluded:

- Information pertaining to the allegations of corruption
- Information pertaining to the allegations of human rights violations

Approval of the Central Information Commission is required for disclosure of information in respect of allegations of human rights violations and maximum time limit is 45 days for such disclosures. It seems the excluded organisations need not obtain such approval from the Central Information Commission to disclose the information pertaining to the allegations of corruption.

Department of Personnel and Training (DOPT) issued a circular on 14 November 2007 advising all the organisations specified in the Second Schedule to designate Central Public Information Officers (CPIO) and First Appellate Authorities within the organisations and publish the details immediately.

The Second Schedule of the Right to Information Act, as amended, is as follows:

THE SECOND SCHEDULE

(See section 24)

Intelligence and security organisation established by the Central Government

1. Intelligence Bureau.
2. Research and Analysis Wing of the Cabinet Secretariat.
3. Directorate of Revenue Intelligence.
4. Central Economic Intelligence Bureau.
5. Directorate of Enforcement.
6. Narcotics Control Bureau.

contd. on pg. 4...

contd. from pg. 3...

7. Aviation Research Centre.
8. Special Frontier Force.
9. Border Security Force.
10. Central Reserve Police Force.
11. Indo-Tibetan Border Police.
12. Central Industrial Security Force.
13. National Security Guards.
14. Assam Rifles.
15. Sashastra Seema Bal.
16. Directorate General of Income-tax (Investigation).
17. National Technical Research Organisation.
18. Financial Intelligence Unit, India.
19. Special Protection Group.
20. Defence Research and Development Organisation.
21. Border Road Development Board.
22. National Security Council Secretariat.

Answers to Quiz in Volume II, Issue VI

1. No. The Rules made by the Central Government for the implementation of the 'RTI Act, 2005' do NOT override the rules made by the the State Governments to the extent of repugnancy.
2. As per S. 4(1)(b)(xvi), every Public Authority is required to publish the names, designations and other particulars of the Public Information Officers and under S. (1)(b)(xv) the particulars of facilities available to the citizens for obtaining information... Moreover, all such information shall have to be disseminated widely and in such form and manner, which is easily accessible to the public S. 4(3), even as it is also made available on the Internet S. 4(1). If these provisions are complied with by a PA in toto, a citizen should not have any difficulty in locating a PA. Incidentally, a citizen can complain to the Information Commission about any non-compliance in this regard.

One view is that a citizen can address your RTI application to the "PIO C/o Head of Department" and send it to the concerned Department with the requisite application fee. The Head of Department will have to forward your application to the concerned PIO. RTI Act, 2005 is supposed to favour the citizens – the most.
3. If an applicant cannot find the exact PIO (of a PA) in her / his office, it is suggested that the application may be submitted to the APIO. It could also be submitted to another PIO of the same PA, possibly, designated to look after some other areas. Incidentally, RTI applications can also be submitted by post or by e-Mail. The viewpoint about submitting it to the HoD holds in this case as well.
4. No. A PIO CANNOT refuse to accept an RTI application. He may not act upon it until the application fee is not paid in case of persons NOT belonging to the BPL category. After duly considering an application, however, the PIO may reject it, (under various applicable clauses of the 'RTI Act, 2005'), if it asks for exempted information, or (for the same reason) provide only partial, (non-exempted) information.

contd. on pg. 6...

Right to Information

(The Genie of RTI Activities...)

-- Manoj Mitta [Times of India – online edition – April 13 2009]

Regardless of its electoral appeal, one enduring benefit that accrued to the media and the rest of civil society during the UPA reign is the sheer volume of official information that is now available at the click of a keyboard. This is of course thanks to the breakthrough made by RTI in forcing the officialdom to come to terms with the principle of transparency.

The bar of disclosures has been raised. A whole lot of information which was hitherto out of bounds has become accessible either through RTI queries or because of RTI's mandate to public authorities to make proactive disclosures on their websites.

To be sure, there is scope - and need - to raise the bar even higher. In this election season, we can however celebrate the little victories across the last three years over the officialdom's efforts, overt or covert, to subvert RTI.

In fact, the relentless and ever growing demands for transparency, fuelled by the enactment of one of the most progressive RTI laws in the world in 2005, seems to have made a dent in the notoriously secretive and colonial-vintage mindset of our power wielders.

This is evident from a distinct change in their attitude to what can be put in the public domain. The very information that officials had refused to disclose in the early days of RTI is now being made public by them, in some cases even proactively.

One dramatic example of this change in mindset relates to the admittedly sensitive issue of appointment of judges to the Supreme Court and high courts. When RTI activist Subhash Chandra Agrawal first asked for a copy of the "memorandum of procedure" for appointment of judges, the babus in the justice department replied in October 2007 that the document was "for official use only" and that files related to judicial appointments "cannot be shown to general public".

But the same department early this year put the same memorandum of procedure on its website on its own volition. And on another query from Agrawal, the justice department disclosed this year file notings made in 2006 by the then President, A P J Abdul Kalam, expressing his reservations to the appointment of Vijender Jain as chief justice of the Punjab and Haryana high court despite the "divided opinion" among senior judges on his suitability.

Agrawal symbolises the breed of vigilant citizens who, by bombarding the system with RTI queries, have helped break down the walls of resistance to transparency. The genie of RTI activities cannot be pushed back into the lamp, no matter which coalition is voted to power in this election.

Equally, the evolution of governance in terms of the extent to which official information is now being shared with the citizenry is not easy to roll back.

...**Answers to Quiz... contd. from pg. 4...**

5. No. Transfer of the APIO / PIO concerned cannot be an excuse for any PA for its inability to accept an RTI application at a given point in time. It is absolutely necessary for a PA to immediately designate another PIO / APIO when an incumbent is transferred and update the contact information accordingly, as applicable, failing which a citizen can lodge a complaint with the Information Commission concerned.
6. No. There is no such provision in the RTI Act, 2005 and to the best of knowledge in any of the Fee and Cost rules enacted by any of the Appropriate (State) Government(s) for charging further fees for providing the information before the 30-day deadline. It must be noted that the 30-day time limit stipulated by the 'RTI Act, 2005' is the upper limit within which information asked for, should normally, be provided to the citizen. It is perfectly, within the spirit of the citizen-friendly Act that, wherever possible, information should be provided – to the applicant – at the earliest.
7. NO. There is nothing in the 'RTI Act, 2005' to suggest that citizens can be penalised for “vexatious” / “frivolous” RTI applications. It can be argued that there is no such thing as a vexatious / frivolous application. It is not for the PAs (or their officials) what information is important to the citizen and how.

CBAI Focus State: Bihar

- The CBAI project started to be implemented in *Bihar* in phase-II of the project. '*Bihar Institute of Public Administration and Rural Development*', which is also the '*State Administrative Training Institute*', was entrusted with the responsibility of the '*State Implementing Agency*' (SIA). *Patna* and *Purnea* were the two districts selected under this project and the two '*District Collectorates*' accepted the roles of '*District Implementation Agencies*' (DIAs) for their respective districts.
- As per the reports submitted by BIPARD on the '*Online PMS*', it could commence its activities only in the fourth quarter of the first year of its project implementation period i.e. in January-March 2007. The work carried out in this quarter, however, was very intense, with training of all categories of stakeholders and distribution of pamphlets / brochures / posters / banners being the focus activities. 657 persons were trained at the SIA level and 2,50,000 copies of awareness material were distributed. 1 stakeholder workshop was conducted ATI during this period.
- Focus on same set of activities continued with 757 persons trained and 905 copies of RTI Act and RTI User Guide were distributed. Another activity taken up during this quarter was the preparation of a Directory of PIOs / APIOs carrying information about 12,113 such officials. Some cases pertaining to instances of effective implementation of the Act were documented.
- In the next quarter a workshop was organised and the Directory was upgraded to include contact details of 80,567 officials (PIOs / APIOs). 810 persons were trained during this quarter, of which 119 were representatives of media organisations. Emphasis on training continued. About 587 resource persons were trained in the next quarter. Audits of proactive disclosures and service delivery of 215 Public Authorities and of information requests in 11 Departments were carried out.
- Unlike the SIA, Patna DIA started its activities in the 1st quarter itself and covered almost all the project components rightaway. There was a lull for the next two quarters. Only training and audit of proactive disclosure 14 PAs could be carried out in the next quarter. It is yet to report its subsequent activities.
- Due to non availability of progress reports from the Purnea DIA, not much is known about its project-related work, except that no activities could be carried out in the first two quarters.



Right to Information Quiz

1. How can an applicant be certain that he / she has been given accurate / correct information?
2. What is the recourse available to the applicant if he / she finds out that he / she has been given incorrect information?
3. In how many days can an applicant – appellant expect to get the information from the PA in question after the Information Commission has decided in her / his favour?
4. What is the recourse for the applicant – appellant if a PA fails to comply with the decision of the Information Commission on her / is appeal / complaint?
5. Is it not necessary that the rules enacted by Appropriate Governments under the 'RTI Act, 2005' should be uniform?
6. Can the 'RTI Act, 2005' not be amended to make it more stringent?
7. What are the obligations of a 'Public Authority' (PA) to keep an RTI applicant informed – other than providing him with the necessary 'information' that he can legitimately ask for under the 'RTI Act, 2005' by making submitting an application?

Please visit 'R2I NET' for a detailed account of our activities and related updates at
www.rti.org.in

Some Good Practice Innovations of Orissa Information Commission

During disposal of applications and Second appeals the Orissa State Information Commission (SIC) perceived two types of disputes: one involving public interest and the other individual interest of citizens.

In view of this, the SIC decided to accord priority to disposal of public interest cases by putting an identifying mark on the case record as "PIC". That is how cases involving interest of the Public at large were expeditiously attended to on a fast track basis, though on an *interse* first-come-first-heard basis, subject to the provisions of S. 7 (1) of the 'RTI Act, 2005' about information related to the life and liberty of a person. SIC accords priority for disposal of PICs and decides upon these cases on a fast track basis.

The SIC took a decision that cases involving imposition of penalty on erring PIOs/referred PIOs will be heard in the Division Bench (and not by the single bench) so that the considered opinion of the entire Commission could reflect in the decision.

The erring PIOs who without any reasonable cause have violated the provisions of Section 7(1) of the Act by not providing information within the stipulated maximum period of 30 days have been taken to task by the SIC and have been penalised in accordance with the provisions of S. 20(1) of the Act.

Editorial & Design Team

Dr. Rajiv Sharma, IAS
DG & ED, CGG

Mr. Vardhaman Vaidya
NIA Advocacy / Dissemination / Training, CBAI

Mr. Siraj-ur-Rehman
OSD, CGG

Yet there has never been any deviation from the principle of natural justice i.e. providing adequate opportunity to the erring PIO / referred PIO to establish that he / she had acted reasonably and with due diligence.

Moreover, the recovery of the cash penalty imposed on such PIOs is also monitored at intervals by the Secretary, SIC by holding regular meetings with the officials of the concerned PAs.

SIC has instituted "RTI Running Shield" in Ravenshaw University, Cuttack to promote Annual Inter- University Debate Competition in English on any topical subject matter for the purpose of popularising the cause of Right to Information.

Using satellite INSAT-3B facilities in which GRAMSAT works under extended 'C' Band, the SIC held 2 interactive sessions with the help of 'Orissa Remote Sensing Application Centre' (ORSAC) in December-06 & February-07.

These sessions were chaired by Shri D. N. Padhi, Chief Information Commissioner, SIC and attended by other Commissioners. Th helped clarify the doubts of the functionaries of the PAs on the provisions of 'RTI Act, 2005' and State Rules framed thereunder.

We Invite You to Share:

- Your ideas / comments on the 'RTI Act, 2005' or the 'CBAI Project';
- Your experiences in using / implementing the 'RTI Act, 2005';
- Other inputs in the form of relevant photographs / video footages.

You may send your inputs to:

Right to Information Cell (RTI) Cell,
Centre for Good Governance (CGG),
Road No 25, Jubilee Hills,
Hyderabad – 500 033.

E-mail: nia@cgg.gov.in

Featured Resources on the Web

- www.cic.gov.in
- <http://rti.gov.in/>
- <http://orissasoochanacommission.nic.in>
- www.rti.org.in
- www.bipard.org/rti.htm

Note:

We receive several requests for the dispatch of the latest as well as previous of our publications (including our Newsletter – 'RTI TIMES').

We request our readers to, kindly, note that the soft copies of all our publications are available on and freely downloadable from our 'Web Portal' on RTI.

The URL for the said portal is www.rti.org.in



Disclaimer

While all efforts have been made to ensure that the information presented in this Newsletter is accurate, yet, no warranty is assumed for either its completeness or its fitness for a particular purpose.

All opinions and views expressed in this Newsletter are personal and do not, necessarily, represent any policy or position of any organisation.