

THE RIGHT TO INFORMATION
and
PUBLIC INTEREST

A Primer

Srinivas Madhav
dharmik9@sify.com



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(Cover painting : Raja Ravi Varma's painting depicting Raja Satya Harischandra)

THE RIGHT TO INFORMATION *and* PUBLIC INTEREST

A Primer

Introduction

The Right to Information Act 2005 does not define 'public interest'. No other Freedom of Information Law in the world does it. Non-disclosure of information under Qualified exemptions¹ requires application of the public interest test. Something in the public interest is simply something which serves the interests of public. *However, it may not be that simple in practice.* This is an attempt to make an elementary study of international experience.

'**Public**' (Latin *publicus*) means :

1. having to do with the affairs or official affairs of all people, as opposed to just a private group'. (*adjective*)²
2. the people in general, regardless of membership of any particular group. (*noun*)

'**Interest**' (alteration of earlier *interesse*, from Anglo-French, from Medieval Latin, from Latin, to be between, make a difference, concern, from *inter*-between, among + *esse* to be) means a right, title, claim or share in property.³

"**Public interest**" means :

1. The well-being of the general public; the commonweal.
 2. The attention of the people with respect to events.⁴
- ...The general welfare and rights of the public that are to be recognized, protected and advanced.⁵

Public interest⁶ is a term used to denote political movements and organizations that are *in the public interest*—supporting general public and civic causes, in opposition of private and corporate ones (particularistic goals). The public interest can also mean more generally what is considered beneficial to the public.

1. Exemptions which are subject to public interest test. (all the exemptions under s8(1)). See article: *Exemptions to Disclosure of Information.*

2. *en. wiktionary.org*

3. *dictionary reference.com*

4. *dictionary reference.com*

5. *dictionary reference.com*

6. *www.reference.com*

It is often very difficult -

-To specify exactly what is meant by the "public interest," especially since "special interests" themselves so often speak in favor of their goals using the language of the public interest.

-To foretell that a pet cause promoted by a given organization or movement would be beneficial to the public or would bring perverse effects instead.

The term is also used in journalism, usually to describe disclosures that would assist members of the public make more informed political or personal decisions. (Source: *Wikipedia, the free encyclopedia*)

." The public interest is central to policy debates, politics, democracy and the nature of government itself. While nearly everyone claims that aiding the common well-being or general welfare is positive, there is little, if any, consensus on what exactly constitutes the public interest.

There are different views on how many members of the public must benefit from an action before it can be declared to be in the public interest: at one extreme, an action has to benefit every single member of society in order to be truly in the public interest; at the other extreme, any action can be in the public interest as long as it benefits some of the population and harms none.

. The public interest is a crucial, if ill-defined, concept in much [political philosophy](#).

It should be noted that it is also possible that in some cases advancing the public interest will hurt certain private interests. This risks the "tyranny of the majority" in any democracy, since minorities' interests may be overridden. On the other hand, we are all a minority in some capacity - thus, protection of minority rights arguably becomes part of the public interest.

In law, public interest is a defence against certain lawsuits (for instance some libel suits in the United Kingdom) and an exemption from certain laws or regulations (for instance [freedom of information](#) laws in the UK).¹

1. en.wikipedia.org

Stroud's Judicial Dictionary, Vol.4(4th edition) defines public interest as:¹

“A matter of public or general interest ‘does not mean that which is interesting as gratifying curiosity or a love of information or amusement ; but that in which a class of the community have a pecuniary interest, or some interest by which their legal rights or liabilities are affected’ ...”

Black's Law Dictionary (6th Edition) defines public interest as :

“Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, state or national Government ”.

An American journalist Walter Lippman ² wrote, "Public interest is generally taken to mean a commonly accepted good. Public interest may be presumed to be what men would choose if they saw clearly, thought rationally, acted **disinterestedly** and benevolently".

The classic example of disinterested public service was Lucius Quinctius Cincinnatus, a Roman patrician. In 458 B.C., when Rome was threatened with military defeat, Cincinnatus, a farmer, was appointed dictator by the senate to deal with the emergency. Legend has it that he literally abandoned his plow mid -field to take command. Within 16 days he defeated the enemy, resigned from the dictatorship, and returned to his plow. Ever since, politicians have been insincerely asserting how much they yearn to give up power and return to the farm, as Cincinnatus did.³

George Washington is one of the few genuine Cincinnatus figures in world history. American victory over British Army was due largely to Washington's Leadership. He was unanimously elected president, and reelected in 1792, but refused to consider a third term as president, retired to Mount Vernon, suffered acute laryngitis after a ride in snow and rain around his estate, died.⁴

1. *D.N.Thaware v State of Maharashtra and others* [2005]SCC 590.

2. *The Public Philosophy* (1955)

3. JayM. Shafritz and E.W. Russel, *Introducing Public Administration* (3rd edn)

4. *The World Almanac*.

Re-nowned legal scholar ,S.P. Sathe - in *Judicial activism in India*¹ differentiated between public interest and private interest: "infact even private adjudication subserves Public Interest because it is in the public interest that people should honour contracts, should be liable for civil wrongs, and should honour rights in property or status. But whereas public interest is served indirectly in private litigation , the main focus being on private interest of the litigants, it is served more directly by public law adjudication because the focus is on the unconstitutionality arising from either lack of power or inconsistency with a constitutionally guaranteed right"

1. (2nd edn,2003)



Indian View :

The Indian Right to Information Act is yet to take-off. However the Central Information Commission of India has given many Decisions on Public Interest, which are annexed at the end.

The Supreme Court of India

The Supreme Court of India issued many guidelines(1998) describing the public interest , to be followed for entertaining letters or petitions received in the court as public interest litigation and suggested that the following issues are regarded to be something in public interest :

1. Bonded labour matters
2. Neglected children
3. Non-payment of minimum wages to workers and exploitation of casual workers and complaints of violation of labour laws (except in individual cases)
4. Petitions from jails complaining of harassment for premature release and seeking release after having completed 14 years in jail, death in jail, transfer, release on personal bond, speedy trial as a fundamental right
5. Petitions against police for refusing to register a case, harassment by police and death in police custody

6. Petitions against atrocities on women, in particular harassment of bride, bride-burning, kidnapping etc.
7. Petitions complaining of harassment or torture of villagers by co-villagers or by police from persons belonging to Scheduled Castes and Scheduled Tribes and economically backward classes
8. Petitions pertaining to environmental pollution, disturbance of ecological balance, drugs, food, adulteration, maintenance of heritage and culture, antiques, forest and wildlife and other matters of public importance
9. Petitions from riot-victims
10. Family pension

And the following issues are not considered to be in public interest :

1. Landlord-tenant matters
2. Service matters and those pertaining to pension and gratuity
3. Complaints against Central/State Government Departments and local bodies except those relating to item Nos.(1) to (10) above
4. Admission to medical and other educational institutions.

The Supreme Court of India in *Janata Dal v .V.H.S. Chowdhary*¹ observed that the purpose of the public interest is -

"[T]o wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not for personal gain or private profit of political motive or any oblique consideration."

In *S.P.Gupta v President of India*², Justice Bhagawati said:

[R]edressing public injury, enforcing public duty, protecting social, collective, 'diffused' rights and interests are vindicating public interest...enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected.

1. [1992] 4 SCC 305.

2. AIR 1982 SC 149.

In *State of Gujarat v Mirzapur Moti Kureshi Kasab Jamat & others*, AIR 2006 Supreme Court 212, the Supreme Court held “the interest of general public (public interest) is of a wide import covering public order, public health, public security, morals, economic welfare of the community, and the objects mentioned in Part IV of the Constitution (i.e. Directive Principles of State Policy)”.

The following Articles contain the Directive principles of State Policy:

38. State to secure a social order for the promotion of welfare of the people.—

(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

39. Certain principles of policy to be followed by the State.—The State shall, in particular, direct its policy towards securing—

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

39A. Equal justice and free legal aid.—The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

40. Organisation of village panchayats.—The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

41. Right to work, to education and to public assistance in certain cases.—The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

42. Provision for just and humane conditions of work and maternity relief.—The State shall make provision for securing just and humane conditions of work and for maternity relief.

43. Living wage, etc., for workers.—The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

43A. Participation of workers in management of industries.—The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry.

44. Uniform civil code for the citizens.—The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

45. Provision for free and compulsory education for children.—The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years.

46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.—The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.—The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

48. Organisation of agriculture and animal husbandry.—The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.

48A. Protection and improvement of environment and safeguarding of forests and wild life.—The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

49. Protection of monuments and places and objects of national importance.—It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by or under law made by Parliament to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

50. Separation of judiciary from executive.—The State shall take steps to separate the judiciary from the executive in the public services of the State.

51. Promotion of international peace and security.—The State shall endeavour to—

(a) promote international peace and security;

(b) maintain just and honorable relations between nations;

(c) foster respect for international law and treaty obligations in the dealings of organized peoples with one another; and

(d) encourage settlement of international disputes by arbitration.



American View :

The Council for Public Interest Law set up by the Ford Foundation in USA in its Report of Public Interest Law, USA, 1976: described the constituents of public interest groups who..."provide... services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others".

Armin Rosencranz and Shyam Divan made¹ similar description of public interest in USA : "by the mid - 1970s... public interest embraced such diverse issues as consumer protection, environmental protection, land use, occupational health and safety, health care, media access and employment benefits."

1. *Environmental Law and Policy in India* (2nd edn,2001)

2. www.usdoj.gov/04foia.

3. 656,F.2d856,866 (D.C.cir.1981).

Important observations made by the American courts :

- The only relevant public interest under the Act remains "The Citizens right to be informed about what their government is up to."
- Public oversight of Government operations is the essence of public interest under the Act.
- If the request implicates no public interest at all, public authority need not linger over the balance. Something outweighs nothing every time.

Several courts have implicitly recognized that there can be public interest in the non disclosure of information- particularly the public interest in avoiding the impairment of ongoing and future law enforcement investigations.²

Most explicitly, the D.C. Circuit court of appeals in *Fund for constitutional Government v National. Service archives & records*³ has recognized that " the public interest properly factors into both sides of the balance.

A requester's identity is irrelevant in the processing of a request, but a requester's reason for making a request, as an evidentiary showing on an asserted public interest is required, can affect decision making.

A request made for purely commercial purposes does not further a public interest. Identity of the requester can have no bearing on the merits of his or her request. Information that would inform the public of violations of the public trust has a strong public interest and is accorded great weight in the balancing process. Demonstrated wrong doing of a serious and intentional nature by a high level government official is of sufficient public interest to outweigh almost any privacy interest of that official. By contrast less serious misconduct by low-level employees is not considered of sufficient public interest to outweigh the privacy interest of that employee.

Mere allegations of wrong doing cannot outweigh an individual's privacy interest. Because if mere allegations were all that necessary to override a personal privacy interest, then that privacy would become worthless. More than mere allegations is required. Meaningful evidentiary showing must produce evidence that would warrant a belief by a reasonable person that the alleged impropriety might have occurred.. Mere speculation about hypothetical public benefits cannot outweigh a demonstrable significant invasion of privacy.

Derivative theory of public interest:

Public interest that stems not from the documents themselves but rather from a derivative use to which the document could be put could ever be weighed in the balancing process against privacy interest. However this theory is being

questioned by a recent Supreme Court of U.S Opinion in *O.I.C. v Favish*¹ the necessary nexus between the information requested and the public interest to be served" and protected the "Survivor privacy" by holding that the family of deceased individual has own right and interest in personal privacy protection with respect to decedent's death scene photographs due to their exceptional sensitivity. Government need not prove to a certainty that release will lead to an unwarranted invasion of personal privacy.

Public interest standard is not satisfied when requesters seek law enforcement information pertaining to living persons.

FBI uses several steps to determine whether a person mentioned in a record is alive or dead, one of which is employing is '100 year rule' which presumes that an individual is dead if his or her birth date appears in the responsive documents and he or she would be over 100 years old.



English View :²

There is a presumption running through the Act that openness is, in itself, to be regarded as something which is in the public interest. Setting out the considerations for a public authority when adopting or reviewing its publication schemes, the Act requires that

"... a public authority shall have regard to the public interest --

- a. in allowing public access to information held by the authority, and
- b. in the publication of reasons for decision held by the authority."

It may be helpful to think about why openness should be regarded as being for the public good. In the Introduction to the Freedom of Information Act 2000, the Commissioner lists the following public interest factors that would encourage the disclosure of information:

1. furthering the understanding of and participation in the public debate of issues of the day. This factor would come into play if disclosure would allow a more informed debate

1. No.02-954:Office of Independent Counsel v. Allan J.Favish

2. U.K.Information Commissioner's FOI Act Awareness Guidance No.3 on public interest.

- of issues under consideration by the Government or a local authority.
2. promoting accountability and transparency by public authorities for decisions taken by them. Placing an obligation on authorities and officials to provide reasoned explanations for decisions made will improve the quality of decisions and administration.
 3. promoting accountability and transparency in the spending of public money. The public interest is likely to be served, for instance in the context of private sector delivery of public services, if the disclosure of information ensures greater competition and better value for money that is public. Disclosure of information as to gifts and expenses may also assure the public of the personal probity of elected leaders and officials.
 4. allowing individuals and companies to understand decisions made by public authorities affecting their lives and, in some cases, assisting individuals in challenging those decisions.
 5. bringing to light information affecting public health and public safety. The prompt disclosure of information by scientific and other experts may contribute not only to the prevention of accidents or outbreaks of disease but may also increase public confidence in official scientific advice.
 6. contribution towards scientific advancements,
 7. ensuring the better operation of financial and currency markets

8. assisting in the access to justice and fundamental rights

The U.K. Information Commissioner in *Boston Borough Council* (Reference No. FS 50064581) discussed public interest :

"... consider the public interest in disclosing the information against the public interest in maintaining the duty of confidence"...."The central tenet for the public interest in disclosing information, in this case, surrounds the creation of transparency and accountability of public bodies in their decisions and actions. This includes the spending of public money and the public interest in the disclosure of information which would highlight or inform issues of public debate..."



Scottish view:

The Scottish Information Commissioner has issued excellent Briefing on the public interest test as part of *Freedom of Information (Scotland) Act 2002 Briefings Series* (<http://www.itspublicknowledge.info/index.htm>) :

What is held to be in the public interest will change over time and it will also depend on the particular circumstances of each case. Whether to include a set definition of the term within the legislation was considered extensively during the Scottish Parliament debates on the Freedom of Information (Scotland) Bill. It was decided that any attempt to define the public interest could limit its effectiveness and its potential application in future cases.

As Scottish Executive officials stated at the time: "Our understanding is that the public interest is defined nowhere in legislation. It is not defined in the UK Bill, and we are not aware that it is defined in any other legislation that refers to requirements to consider the public interest in making a decision or disclosure. That is partly because no single factor can define the public interest. Consideration of the public interest is made case by case."

Applying the public interest test:

Factors which may inform a decision about the public interest include:-

- the general public interest that information is accessible i.e. whether disclosure would enhance scrutiny of decision-making processes and thereby improve accountability and participation.

This goes to the heart of freedom of information legislation. Without an adequate knowledge of the basis upon which decisions are made, the public will not have an opportunity to call

public authorities to account; nor can they hope to participate in the decision-making process and contribute to the formation of policy and legislation if that process is hidden from view. As was stated in a Canadian court case, "The overarching purpose of access to information legislation ... is to facilitate democracy. It does so in two related ways. It helps to ensure first, that citizens have the information required to participate meaningfully in the democratic process, and secondly, that politicians and bureaucrats remain accountable to the citizenry."

- whether disclosure would contribute to the administration of justice and enforcement of the law including the prevention or detection of crime or the apprehension or prosecution of offenders.

The public interest must be paramount in situations where a person considering whether to withhold or disclose information has reasonable grounds for believing that a failure to make the information available would be likely to prejudice the prevention or detection of crime. In such an instance it is not enough simply to believe that that an individual to whom the information applies may have been involved in fraudulent activity, there must be a substantial chance rather than a mere risk that harm would occur if the information was not disclosed.

- whether disclosure would affect the economic interests of the whole or part of the United Kingdom.

This may include instances where the release of information would impede the financial operations of the Scottish Parliament or where the UK government's ability to run the economy would be affected. Where it is claimed that the economic interests of the whole or part of the UK would be affected an authority would have to establish a clear and direct link between the disclosure of the specific information and the probable harm that is likely to result from that disclosure. The information could consist of documents that contain sensitive financial details of exchange rates, interest rates or taxes.

- whether disclosure would contribute to ensuring effective oversight of expenditure of public funds and that the public obtain value for money.

Public authorities should consider the public interest in ensuring maximum openness in relation to the use of public funds. The Irish Information Commissioner has stated, "Such openness is a significant aid to ensuring effective oversight of public expenditure, to ensuring the public obtains value for money, to preventing fraud and corruption and to preventing the waste or misuse of public funds".

- whether disclosure keeps the public adequately informed of any danger to public health or safety, or to the environment.

As always with the consideration of the public interest test, much will depend of the circumstances of the case in question, and this can be seen with two relatively similar Canadian cases. Where a journalist requested records from Transport Canada in relation to violations of the Aeronautics Act and Regulations by commercial pilots, the Commissioner was not convinced that the public interest served by disclosure would be outweighed by the invasion of privacy that would result. He accepted the argument that Transport Canada's regulatory role adequately serves the public interest in airline safety without the need for the public to intrude into the privacy of pilots. On the other hand, when a journalist requested information from the Transportation Safety Board concerning air traffic control tapes and transcripts relating to a plane crash, the Commissioner decided that the Board had not considered the public interest properly and that public interest in air safety outweighed any privacy considerations.

- whether disclosure would impact adversely on safeguarding national security or international relations.

Examples of potential harm to international relations include the risk that disclosure would impede negotiations, undermine frankness and candour in diplomatic communications, and impair confidential communications and candour between governments or international bodies. Where information relates to ongoing activities, some of that information may remain sensitive for many months or years after a particular decision is made. However, it should be recognised that the sensitivity of such information generally reduces over time. It should also be noted that the test is one of adverse impact.

- whether disclosure would contribute to ensuring that any public authority with regulatory responsibilities is adequately discharging its functions.

Where disclosure would allow the public to assess the performance and scrutinise the activities of a public authority and there is a risk of danger to public health or safety, such as in the regulation of nuclear power plants, public concerns are unlikely to be allayed by an authority simply advising the public that reviews of operations are conducted against the highest possible standards. The authority should instead provide enough information for the public to assess the adequacy of such a safety program itself in meeting its objectives. Similarly, the existence of other accountability mechanisms should not be used as an argument for the non-disclosure of information under the Act in relation to the legal responsibilities of a public authority. In Queensland, Australia, an applicant requested information to allow inspection of successful applications for financial assistance under a government scheme. The Queensland Information Commissioner stated:

“I consider that there is a public interest in permitting any interested member of the community to have access to information which will allow scrutiny of the payments made under the Scheme, and whether the announced public policy purposes of the Scheme are being met in practice.”

- whether disclosure would ensure fairness in relation to applications or complaints, reveal malpractice or enable the correction of misleading claims.

For example, information should be disclosed where it would assist a complainant to understand the steps taken by a public authority in dealing with his or her application or complaint. It is also in the public interest for information to be disclosed which would enhance the accountability of a public authority with respect to the investigation of complaints.

- whether disclosure would contribute to a debate on a matter of public interest.

Where the release of information will allow the public to make an informed decision on a subject it will be easier for a public authority to conclude that the public interest in disclosure outweighs the potential harm. In one case involving a public works project the public interest in having access to a small amount of additional analytical material was not held to be strong enough to outweigh the harm that disclosure might have caused to the frankness of discussion. However, it has been recognised that where the information requested relates to a high profile issue that has featured heavily in the media and which involves the accountability for public funds, there will be a strong public interest in releasing that information.

- whether disclosure would prejudice the protection of an individual's right to privacy.

In a New Zealand case it was decided that where Police held a photograph of an individual committing a crime it should not be disclosed to an applicant who requested it. The reasoning behind this decision was that not only would the disclosure prejudice the individual's privacy but also that matters which may be interesting to the public are not necessarily matters which it may be in the public interest to disclose. In a Canadian case where a government employee "blew the whistle" on alleged contracting irregularities and misuse of government funds it was held that there was a public interest in exposing cases where there was misappropriation of public money and that this clearly outweighed any invasion of privacy. The Canadian Commissioner noted the comments in a case from the Federal Court:

"It is always in the public interest to dispel rumours of corruption or just plain mismanagement of the taxpayers' money and property. Naturally if there has been negligence, somnolence or wrongdoing in the conduct of a government institution's operations it is by virtual definition, in the public interest to disclose it and not to cover it up in wraps of secrecy."

Many factors are likely to have to be considered on a case by case basis, depending on the request for information.

The public interest test must be applied not as a whole but to the specific use of each qualified exemption. Where authorities seek to rely on such an exemption they must provide their reasons to the applicant for claiming that the public interest does not outweigh the application of the exemption. A detailed record of decision-making processes should be kept at every step when considering exemptions, so that if the applicant requests a review or subsequently appeals to the Commissioner for a decision, there is a clear record of the arguments considered regarding the public interest test.

Public authorities must be able to provide evidence of all of the factors that have been taken into consideration when the public interest test is applied to any qualified exemption that they cite. It will not be enough simply to list all the factors which are thought to be contrary to the public interest. Instead, the authority should provide all of the public interest factors, both for and against disclosure, which were taken into account in applying the test. They must be able to show that a specific detriment will occur because of the disclosure.

A detailed and objective analysis of the factors considered under the public interest test is not only important in assisting applicants to assess whether an application for review is justified, but also to allay unwarranted criticism of the view that the public body has taken, even where the original decision is subsequently overturned on review. In a recent decision under the now defunct Code of Practice on Access to Scottish Executive Information, the Scottish Information Commissioner underlined the importance of the requirement for public authorities to provide detailed reasoning when claiming exemptions:

"Authorities must be mindful of the need to justify their decisions to withhold information such that the applicant can consider whether the authority has acted reasonably and can understand the basis on which their request has been refused [...] I believe it is in the interests of the authority to do so as a full explanation is more likely to satisfy applicants and may then lead to fewer requests for review and appeals."



Australian View :

The Australian Law Reform Commission (“ALRC”) in its report *-Open government :a review of the federal Freedom of Information Act 1982*(ALRC 77) recommended the public interest test was in need of clarification, stating that although a statutory definition was not appropriate, guidelines issued by the information Commissioner would be helpful. The ALRC suggested that the guidelines could contain factors to be taken into account that could be viewed as relevant and irrelevant to the consideration of the public interest.

Suggested relevant factors included:

- the general public interest in government information being accessible
- whether the document would disclose the reasons for a decision
- whether disclosure would contribute to debate on a matter of public interest
- whether disclosure would enhance scrutiny of government decision making processes and thereby improve accountability and participation.

Suggested irrelevant factors included:

- the seniority of the person who is involved in preparing the document or who is the subject of the document
- that disclosure would confuse the public or that there is a possibility that the public might not readily understand any tentative quality of the information
- that disclosure would cause a loss of confidence in the government
- that disclosure may cause the applicant to misinterpret or misunderstand the information contained in the document because of an omission from the document or for any other reason.

The Commission also recommended that the FOI Act should be amended to provide that, for the purpose of determining whether release of the document would be contrary to the public interest, it is irrelevant that the disclosure may cause embarrassment to the government.

Information Commissioner of Northern Territory issued the following guidelines on public interest:

What public interest factors can favour disclosure?

1. *Government accountability*

2. *Public participation in government*

The process of government policy making and decision-making can often be improved by constructive contributions from members of the public. These contributions are enhanced by disclosure of information that better informs those people who choose to take part. Any information created or received by government may enhance government accountability and public participation in a particular case. This may include:

- information that records reasons for decisions made;
- information that was considered in the course of making a decision, for example, advice and recommendations, background papers, witness statements, policy options papers;
- reports on performance of functions.

The availability of information about the advice and opinions given by public servants and considered in making agency decisions can be significant in terms of understanding how government and agencies have carried out their functions. The more information that can be reasonably disclosed about these processes, the better equipped the public will be to make judgements on the performance of government.

Information that shows the thinking processes behind government decisions is significant for the same reasons.

Disclosure of advice and opinions (including advice and opinions that may not have been adopted) can help members of the community to understand what options have been considered and why they have been accepted or rejected. This allows for better informed debate about issues of current relevance. Community members are put in a better position to consider whether options have been properly adopted or rejected, and to raise arguments that a

rejected option should be further investigated or an entirely new option should be investigated.

3. *Public awareness*

Government acts as a repository for large amounts of information. There may be a public interest in disclosing information simply because it will inform the community about matters of general concern.

For example, there may be a public interest in disclosing information:

- that will inform consumers about their choices in a particular market;
- that will inform people about general issues like public health and safety;
- for the purpose of research that may ultimately add to public awareness about issues of general concern.

4. *Special interest of class (Justice to an individual)*

While any person may apply for information, there can be a public interest in applicants from a particular class having access to information in which they have a special interest. For example, there may be a public interest in complainants getting information about how their complaint was handled. Or there may be a public interest in unsuccessful promotion applicants getting access to information that points to what changes they may have to make to improve their performance and their prospects for success in the future.

In some cases, a factor of this type may mean that the balance of the public interest favours disclosure of information to one person when it might not be in the public interest to disclose it to the world at large.

What public interest factors can go against disclosure?

1. *exemptions.*

2. *efficient and effective conduct of government operations*

If disclosure of particular information would prejudice the ability of government to carry out its functions on behalf of the community in an efficient and effective way, this will give rise to a public interest factor against disclosure.

3. *private interests (fairness to an individual)*

The Privacy exemption and the Privacy scheme included in the *Information Act* reflect the underlying public interest in protecting personal privacy.

A public interest factor may also arise in terms of ensuring fairness to an individual or private sector organisation, if, for example, there are allegations

of wrongdoing in a document that are untested, or in relation to which there has been no chance for response.

Factors that can't be raised :

The *Information Act* excludes 3 things from consideration:

- the reasons that access is being sought (s.17);
- the possibility that disclosure may result in embarrassment to, or a lack of confidence in, the Territory Government or a public sector organisation (s.50);
- the possibility that the applicant may misunderstand the information disclosed (s.50).

A person may or may not choose to explain the particular reason or reasons why they are seeking information. If they do explain, those reasons may suggest public interest factors that favour disclosure. But any stated reason does not affect the public interest factors that are relevant.

However, the Queensland Information Commissioner added two more additional factors against disclosure in their *information sheet on public interest balancing tests* :(www.infocomm.qld.gov.au)

1. interests of third parties-privacy, trade secrecy
2. flow of information to law enforcement and regulatory agencies from citizens

Annexure

Central Information Commission of India Decisions on Public Interest

Appeal No.ICPB/A-1/CIC/2006 dt.31.01.2006

Conscious of the fact that access to certain information may not be in the public interest, the Act also provides certain exemptions from disclosure.

Appeal No.ICPB/A-3/CIC/2006,dt.10.02.2006

Furnishing of copies of evaluated answer papers would be against public interest as has been rightly opined by the appellate authority that supply of a copy of the evaluated answer paper would compromise the fairness and impartiality of the selection process.”

Appeal 05/IC(A)/CIC/2006,dt.03.03.2006

The appellant has not made a case of bonafide public interest for disclosure of PAN/TAN Numbers of 26 companies on grounds of submissions of their application for above purposes or filing of tax returns.

Appeal No. 12/IC(A)/2006,dt.14.03.2006

The appellant has not indicated any bonafide public interest in having access to the Bank account of the Company, with, which he has no association or business relationship.

Appeal No. 15/IC(A)/2006,dt.22.03.2006

The appellant has not indicated any bonafide public interest in seeking the information about the Company or its Partners. Moreover, he has no association or business relationship with the Company.

Appeal No. 16/IC(A)/2006,dt. 28.03.2006

The appellant was involved in a litigation against the Company about which he sought the above information. He had also taken the matter with the High Court, Mumbai which observed that the issue raised by the appellant was not a bonafide public interest. The appeal is therefore not maintainable.

Appeal No. 17/IC(A)/2006,dt.28.03.2006

The link between valuation of mortgaged properties of borrowers and NPA is not clear. There is therefore no bonafide public interest in disclosure of valuation reports submitted to the Bank by the borrowers. The appellant has sought the details of loans already sanctioned and disbursed to a particular Company. He has however not indicated the bonafide public interest in seeking the information.

The appellant authority of the Bank has contended that the details of properties and securities submitted by the borrowers are in the nature of commercial confidence, the disclosure of which is exempted under Section 8(d) of the RTI Act. Also, the information sought relate to collateral and securities taken by the concerned Company and its directors, which are personal information. This has no relationship with any public activity or interest. Disclosure of such information would cause unwarranted invasion of privacy of individual / third party, as per Section 8(1) (j).

Appeal No CIC/WB/C/2006/00040,dt.24.04.2006

Although the Appellate authority is not covered by the penal provisions of this Act, Shri VK Gupta has clearly failed in this case to uphold the law or act in the public interest.

Appeal No. 22/IC(A)/2006,dt.30.03.2006

Income Tax Returns filed by the assessee are confidential information, which include details of commercial activities and that it relates to third party. These are submitted in fiduciary capacity. There is also no public action involved in the matter

In the spirit of RTI Act, the public authority is required to adopt an open and transparent process of evaluation norms and procedures for assessment of tax liabilities of various categories of assessee. Every action taken by the public authority in question is in public interest and therefore the relevant orders pertaining to the review and revision of tax assessment is a public action. There is therefore no reason why such orders should not be disclosed. The Chief Commissioner of Income Tax is accordingly directed to supply relevant copies of the income tax assessment orders, if any, provided that such documents are not exempted under Section 8(1) of the Act.

Appeal No. 23/IC(A)/2006,dt.10.04.2006

The appellant, while seeking a large quantity of data and information of different types and nature, has not indicated the bonafide public interest in seeking the information. An information seeker ought to keep in mind the cost effectiveness aspects of disclosure of information. The expected benefits from disclosure of information should invariably outweigh the costs of providing it. He is therefore directed to minimize and prioritize his information needs which can be provided without unduly jeopardizing the normal activities of the Bank, as the information is to be provided within the stipulated period of 30 days. The Commission is in possession of letters which the appellant, Mr. Kishur J. Aggarwal, Editor-in-Chief of a number of Daily Papers / Magazines has written to almost all the PSUs for eliciting their support for promotion of his business interests. His Company, named as NUURRIE Media Ltd. has launched thirty nine (39) websites covering the activities of all sections of the society. He has been asking for the favour of carrying out advertisements in his magazines / websites. Clearly, his modus operandi is to use RTI for influencing PSUs for promotion of his business, rather than serving the social interests such as ensuring transparency and efficiency in functioning of PSUs. This is indeed a blatant misuse of RTI Act which ought to be discouraged. As an enlightened citizen, every information seeker should resort to RTI Act responsibly, as most people are doing and reaping the benefits of this powerful Act.

Appeal No.27/IC(A)/06,dt.10.04.2006

Having already examined a large number of appeals against several public authorities from the appellant for similar information, which he is not utilizing for public purposes, we are convinced that the appellant is mis-using the Act for promotion of his own business as mentioned elsewhere in decision

No.23/IC(A)/06. There is no evidence of proper use of information that he has already been provided by several public authorities. As a media person, he could have highlighted if there was any malfunctioning in the organizations, which have supplied information to him. He is, therefore, warned to exercise restraint in seeking information that he is not making any use of it in the public interest. The appellant is seemingly using the tactics of seeking information from PSUs for furtherance of his own business.

Appeal No.32/IC(A)/06,dt.02.05.2006

The Banks are under obligation to maintain the secrecy of the Bank accounts of its customers, including the accounts of public authorities. There is also no overriding public interest in disclosure of such information.

Appeal: No.CIC/OK/A/2006/00046,dt.02.05.2006

The Commission was of the view that the information was in no way personal in nature and was in the public domain. It is, in fact, in the larger public interest to disclose the information pertaining to re-employment of staff to make decision-making process of the university transparent and accountable for its decision.

Decision No.37/IC(A)/2006,DT.12.05.2006

Appellant has made the case of public interest on the grounds of adulteration in distribution of diesel and petrol, he has however not substantiated his point as to how he would prove his allegations on the basis of disclosure of IT returns filed by the third party. Apparently there is no direct relationship between malpractices of petrol and diesel and IT returns, which is mainly the basis for seeking information.

Karnataka State Information Commission:

Karnataka State Information Commission ruled that assets and liabilities of a Government official is not a private or confidential document and, as such, may be requisitioned by any citizen.(The Indian Express, January 11, 2006)

[*This article reflects the law as at 20 May 2006*]

Art design--*Dhanunjay*

BALANCING THE PUBLIC INTEREST

