

To
Mrs. Sonia Gandhi
Chairperson
National Advisory Council
2, Motilal Nehru Place
New Delhi

2 December, 2005

Dear Mrs. Gandhi,

Over the month and a half that the Right to Information Act has been operational various problems have arisen that need urgent attention. Some of these are listed below.

- Many ministries and departments of the government of India seem to have appointed multiple public information officers (PIOs). This results in citizens having to run from office to office seeking out the correct PIO – sometimes in vain. Clearly there should be a single window approach in each department/ministry so that harassment to the citizen is avoided. Perhaps we should ask the Department of Personnel and Training – which, incidentally, itself has over The appointment of multiple PIO's in departments – like over thirty in the DoPT itself – should be a single window approach.
- The DoPT, despite its assurances to us, sent out no guidelines. This is especially critical because of the mess about appointing APIO's by state governments.
- No action has been taken by many states so far, and many central ministries and other public authorities are still not in compliance with the provisions of the act with regard to the *suo moto* requirements.
- The location of the Central Information Commission exclusively in Delhi could be problematic. It is reasonable to suggest that Central Information Commissioners should be located regionally, which was, as you may recall, the intent in the draft RTI Act the NAC originally sent to the government.
- It has also been reported that various ministries and departments of the Government of India are either insisting that they will only accept specific forms that they have designed (the DDA for example), or are demanding information or documentation that is not only not required, but the demand for which is specifically prohibited by the law (the Ministry of Home Affairs demands proof of residence with applications).
- The Central Chief Information Commission doesn't appear to have become functional, reportedly because it lacks the requisite staff and facilities, despite the fact the law has been in operation for almost two months now, and people should have been able to file complaints and appeals. Many of the other functions of the Central Chief Information Commission, including implementation and the resolution of many of the problems listed above, have also been ignored.

I would be grateful if you could ensure that necessary action is taken on all these fronts.

With regards,

Yours sincerely,

To
Mrs. Sonia Gandhi
Chairperson
National Advisory Council
2, Motilal Nehru Place
New Delhi

2 December, 2005

Dear Mrs. Gandhi,

Kindly recollect a letter sent by you on the 12th of August, to the former Chief Minister of Jammu and Kashmir (copy attached), on the subject of the initiation of the Right to Information Act in the state. At that time you had enclosed a copy of the national RTI Act 2005 and advised the Chief Minister to modify the state act in accordance with the national act. Considering that there is now a Congress Chief Minister in power in Jammu and Kashmir, it would be possible for you to impress upon him the importance of a strong act in the state, and instruct him to either adopt the national act, or modify the state act until it is in consonance with the national act.

With regards,

Yours sincerely,

Aruna Roy

To
Mrs. Sonia Gandhi
Chairperson
National Advisory Council
2, Motilal Nehru Place
New Delhi

11 December, 2005

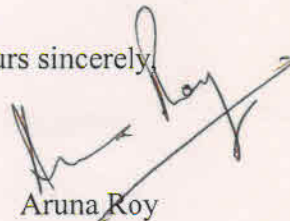
Dear Mrs. Gandhi,

Over the two months that the Right to Information Act has been operational, various problems have arisen that need urgent attention. I list some of these in the enclosure.

You might consider appropriately taking these up with the Department of Personnel and Training, which is the nodal ministry for the RTI act, and with the Central Information Commission, which has been given the authority to oversee the implementation of the RTI Act, specifically in section 18(1) and 19(8).

With regards,

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Aruna Roy', with a long horizontal stroke extending to the right.

Aruna Roy

SOME PROBLEMS WITH THE IMPLEMENTATION OF THE RTI ACT 2005

1. Many ministries and departments of the government of India seem to have appointed multiple public information officers (PIOs). This results in citizens having to run from office to office seeking out the correct PIO – sometimes in vain. Clearly there should be a single window approach in each department/ministry so that harassment to the citizen is avoided. Perhaps we should ask the Department of Personnel and Training (DoPT)- which, incidentally, itself has over 40 PIOs – to send out a circular to all central government public authorities asking them to ensure that there is a single window approach in receiving applications and appeals under the RTI, in order to prevent harassment to the people. We could also request the Central Information Commission (CIC) to consider sending out a similar circular.
2. There are also problems regarding people's access to PIOs. In many departments the PIO can only be met after a security pass has been obtained. However, in case the PIO is not in his/her seat, the security desk does not issue a pass. Therefore, people have to sometimes wait for hours till the PIO returns to his/her seat. Considering the PIOs are also performing other functions that could keep them away for long periods of time, each office could authorize the cashier or the person designated to collect the fee to also accept the RTI form and issue the acknowledgement along with the receipt. We could take this up with the DoPT and the CIC.
3. There appears to be a lot of confusion about the appointment of Assistant Public Information Officers (APIOs), both at the central and state levels. The RTI Act says: "...every public authority shall designate an officer....at each sub divisional level or other sub-district level as a Central Assistant Public Information Officer or a State Assistant Public Information Officer, as the case may be, to receive the applications for information or appeals under this Act...."(5)2)). However, in many states and in some central departments, APIOs are being appointed in the same offices where the PIOs are already located. Though there has been a welcome initiative from the DoPT to designate postal officers as central APIOs, the confusion still seems to prevail. We should again prevail upon the CIC to take up this issue.
4. It has also been reported that various ministries and departments of the Government of India are either insisting that they will only accept the specific forms that they have designed (the DDA for example), or are demanding information or documentation that is specifically prohibited by the law (the Ministry of Home Affairs demands proof of residence with applications). This also needs to be taken up with the CIC and he should be requested to send out a circular clarifying that the RTI Act does not require any form and that people are free to apply on plain paper, as long as all the required information is included. The CIC could also caution the various public authorities not to seek information that is at variance with section 6(2).
5. The RTI act requires that every public authority *suo moto* publish, within one hundred and twenty days from the enactment of the Act, the particulars of its organization, functions and duties, the powers and duties of its officers and employees, the procedure followed in the decision making process, including channels of supervision and accountability along with a great deal more information (section 4. (1) (b)). However, many state and central public authorities have taken no action so far. It is the responsibility of the Information Commission to ensure that the various

provisions of the act are complied with. Perhaps we should write to the CIC asking him to urgently pursue the compliance of this provision with the defaulting public authorities and take whatever action necessary, including the imposition of penalties, to ensure that the law is complied with.

6. The DoPT, despite earlier assurances, seems to have sent out no guidelines. The NCPRI had drafted a detailed set of rules and sent them to the NAC, which had forwarded them, after some discussion, to the DoPT. When I had met the Minister Personnel, he had promised that most of these draft rules would be converted into guidelines and widely circulated by the DoPT before the act became operational. However, nothing has happened and we could perhaps ask the DoPT and the CIC to urgently circulate required guidelines, especially in light of some of the problems listed above.
7. There are central public authorities all over the country. Also, people from different regions might like to seek information from the center. It would, therefore, seem impractical to locate all the central information commissioners in Delhi. Instead, it would be a good idea to have them located in different regions to facilitate filing of appeals and complaints by people in that region. We might need to take this up with the Prime Minister.
8. The office of the Central Information Commission doesn't appear to have become functional, reportedly because it lacks the requisite staff and facilities. This is despite the fact that the law has been in operation for almost two months now. Many of the functions of the Central Information Commission, including ensuring that all public authorities make the required suo moto disclosures, appoint PIOs, and otherwise obey the law, are also being compromised. Perhaps the NAC should ask the DoPT why the CIC has still not been made functional, despite the fact that they have had nearly seven months since the passing of the Act.

Aruna Roy

File Notings and the RTI Act

1. The RTI act, as passed by Parliament, does not in any way prohibit access to file notings. The definition of information in the act, quoted below clearly includes "opinion, advices" as a part of "any material in any form. Therefore, it is clear that the RTI act does not exclude any type of material.

 "information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force;" (2(f))
2. This definition is based on the definition contained in the draft bill sent by the NAC to the government. The NAC has more than once reiterated that it stands by the draft bill that it forwarded to the government.
3. The RTI act (in section 8) does exclude various types of information and, obviously, notings related to such type of information. Therefore:
 - a. It excludes notings 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 foreign State or lead to incitement of an offence"
 - b. It excludes notings "the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;"
 - c. It also excludes notings the "disclosure of which would impede the process of investigation or apprehension or prosecution of offenders;"
 - d. And many other categories.
4. Clearly, then, notings related to sensitive subjects where disclosure might not be in public interest are already excluded under section 8.
5. An attempt is now being made to reinterpret the act and claim that all file notings are exempt under the act. This is the position that, regrettably, the Department of Personnel has taken, by stating in its web site that "information" "does not include "file notings"". This is clearly an illegal stand. Interestingly, the DoPT web site remained unchanged even after the PMO had issued a revised interpretation (9-12-2005).
6. The PMO issued, on 1 December, a press note (attached) that states that severely restricts the access to file notings provided under the act.
7. In effect, if the PMOs prescription were to be accepted, then only a vaguely defined category of "substantive file notings" would be accessible "on plans, schemes, programmes and projects of the Government that relate to development and social issues". It would clearly allow refusal if the file notings were not considered substantive (whatever that means) or were considered to be dealing

with matters other than “plans, schemes, programmes and projects”, or were not related to “social or development issues”.

8. And even for these, the PIO has the discretion to withhold the identity of the functionary who wrote the note. Also, if any of these file notings related to “identifiable individuals, group of individuals, organizations, appointments”, they would be withheld.
9. It is also not clear what would be the status of the file notings, that would fall outside the “positive” and the “negative” list. Most likely, they would also be denied for they do not feature in the positive list.
10. This, then, would unquestionably be a very significant weakening of the RTI act. Without access to file notings, there is no real transparency. The public usually knows what decision the government has taken. What the file notings show is the basis on which this decision has been taken. Obviously, decisions of the government cannot be evaluated unless one knows the basis on which they were taken and the options that were considered and rejected. Surely, in a democracy, all decisions of the government (except the sensitive ones which are already protected under section 8) must be able to stand up to public scrutiny.
11. Without knowing who has made the file notings, there would be no accountability in the government. For, then, the civil servants could continue to give illegal or self-serving advice, secure in the knowledge that their identities are protected.
12. The oft-repeated argument that public access to file notings would pressurise officials against expressing their views frankly, is a seriously flawed one. The pressure to give dishonest or wrong advice, or advice that is not in keeping with public interest or the law, comes not from the public but from bureaucratic and political bosses, who already have access to file notings without needing the RTI act.
13. On the contrary, disclosure of file notings would help ensure that officers are not pressurised into recording notes that are not in public interest, and that decisions are based on reasonable grounds and are not arbitrary or self serving. This would strengthen the hands of the honest and conscientious officers and expose the dishonest and self serving ones.
14. The exclusion of notings from the purview of the RTI Act would also be contrary to the recommendation of the National Advisory Council, which has clearly taken the position that file notings are an integral part of a file and of the decision making process, and should therefore be as much in the public domain as any other information covered by the RTI law
15. In any case, the government cannot restrict access to file notings just by “suitably drafting” rules for the RTI Act. As the definition of information, which includes “any material in any form, including advices, opinions...” is contained in the Act and not in any rule, it cannot be amended through the rules. Similarly, as exemptions and exclusions are also listed in the Act and not in any rule, they cannot be added to through the rules.

16. In case the government still sees some difficulty in making public certain categories of file notings public, let it take the NAC into confidence and let the NAC suggest a solution that would address any legitimate concerns that the government might have, without emasculating the RTI act.
17. It would be unacceptable to weaken the RTI law in a manner that is contrary to the resolve of the people of India to move towards transparent and accountable governance and a participatory democracy.

**PRESS INFORMATION BUREAU
GOVERNMENT OF INDIA**

**DISCLOSURE OF FILE NOTINGS ON DEVELOPMENT & SOCIAL ISSUES
PERMITTED**

PM ASKS DOPT TO CHANGE RULES UNDER RTI ACT

**New Delhi, Agrahayana 10, 1927
December 1, 2005**

The Prime Minister, Dr. Manmohan Singh, has instructed the Department of Personnel & Training to incorporate certain changes in the Rules under the Right to Information Act, 2005 in consultation with the Ministry of Justice. These changes pertain to disclosure of file notings under the Right to Information Act.

After considering various representations made by concerned citizens and taking into account all relevant factors, it has been decided that substantive file notings on plans, schemes, programmes and projects of the Government that relate to development and social issues may be disclosed except those protected by the exemption clauses u/s 8(1) (a) to (j) of the Act. However, the Principal Information Officer appointed under Right to Information Act may withhold the individual identity of the functionary who has made the notings.

It has been decided, however, that file notings relating to identifiable individuals, group of individuals, organizations, appointments, matters relating to inquiries and departmental proceedings, shall not be disclosed.

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YSR/HK/CS