

The Right to Information Act 2005

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The RTI Act 2005 - Coverage

- Comes into effect 120 days after enactment.
- Covers central, state and local governments, and
 - all bodies owned, controlled or substantially financed;
 - non-government organisation substantially financed,directly or indirectly by funds provided by the appropriate Government (2(h))
- Covers executive, judiciary and legislature (2(e))
- Includes information relating to private body which can be accessed by under any other law for the time being in force (2(f))

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The RTI Act 2005 – Some Definitions

- "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.
- "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to-
 - (i) inspection of work, documents, records;
 - (ii) taking notes, extracts, or certified copies of documents or records;

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The RTI Act 2005 – Some Definitions...

"right to information" means....

- (iii) taking certified samples of material;
- (iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;
- "third party" means a person other than the citizen making a request for information and includes a public

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The RTI Act 2005 - Processes

- Application to be submitted in writing or electronically, with prescribed fee, to Public Information Officer (PIO).
- Envisages PIO in each department/agency to receive requests and provide information. Assistant PIO at sub-district levels to receive applications/appeals/complaints. Forward to appropriate PIO. These will be existing officers.
- Information to be provided within 30 days, 48 hours where life or liberty is involved, 35 days where request is given to Asst. PIO, 40 days where third party is involved and 45 days for human rights violation information from listed security/ intelligence agencies.
- Time taken for calculation and intimation of fees excluded from the time frame.
- No action on application for 30 days is a deemed refusal.
- No fee for delayed response

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The RTI Act 2005 – Processes...

Exempt information:

- a. Where disclosure prejudicially affects 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. Release of which has been expressly forbidden by any court or tribunal or may be contempt of court;
- c. Where disclosure would cause a breach of privilege of Parliament or Legislature;
- d. Commercial confidence, trade secrets or intellectual property, where disclosure would harm competitive position, or available to a person in his fiduciary relationship, unless larger public interest so warrants;
- e. received in confidence from foreign government;

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RTI Act 2005-Exemptions contd.

- f. endangers life or physical safety or identifies confidential source of information or assistance
- g. impedes the process of investigation or apprehension
- h. cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed:

- i. personal information which would cause invasion of the privacy unless larger public interest justifies it.

RTI Act 2005-Exemptions contd.

- Infringes copyright, except of the state.
- Where practicable, part of record can be released.
- Intelligence and security agencies exempt - except for corruption and human rights violation charges
- Third party information to be released after giving notice to third party
- Most exempt information to be released after 20 years (except a, c and h above).
- Provided that the information, which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.
- Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions (a to i), a public authority may allow access to information, if public interests in disclosure outweighs the harm to the protected interests.

RTI Act 2005 - Appeals

- Appeals
 - First appeal with senior in the department
 - Second appeal with Information Commission
 - Onus of proof on refuser/public authority
- Envisages an independent Information Commission at the Central and State level, to be an appellate authority and to oversee the functioning of the act. Has various powers under the Act.
- To be appointed by a committee of PM/CM, leader of opposition and one minister. To have the status of the Election Commission at the Centre and of election commissioner/chief secretary at the state.

RTI Act 2005 - Penalties

▪ Penalties

imposed by Information Commission on PIO or officer asked to assist PIO

- For unreasonable delay - Rs 250 per day up to Rs 25,000
- For illegitimate refusal to accept application, malafide denial, knowingly providing false information, destruction of information, etc. - up to Rs. 25,000 fine
- Recommendation for departmental action for persistent or serious violations
However, no criminal liability
- Immunity for actions done in good faith (21).

RTI Act 2005 - Access

- Universal Access - especially to the Poor
 - Fee at a reasonable level - though quantum not specified. No fee for BPL.
 - Assistant Public Information Officers at sub-district levels to facilitate filing of applications/appeals
 - No need to specify reason for seeking information or other personal details
 - Provision to reduce oral requests into writing
 - Provision to provide all required assistance, including to sensorily disabled persons.
 - Information to be provided in local languages
 - Provision for damages
 - However, only for citizens

RTI Act 2005-Responsibilities of Public Authorities

- Appointing PIOs/Asst. PIOs within 100 days of enactment (5(1)).
- Maintaining, cataloguing, indexing, computerising and networking records (4(1)(a)).
- Publishing within 120 days of enactment a whole set of information and updating it every year (4(1)(b)).
- Publishing all relevant facts while formulating important policies or announcing the decisions which affect public (4(1)(c)).

RTI Act 2005–Responsibilities of Public Authorities Contd..

- Providing reasons for its administrative or *quasi judicial* decisions to affected persons (4(1)(d)).
- Providing information *suo moto* (4(2)).
- Providing information to Information Commission (25(2)).
- Raising awareness, educating and training (26(1)).
- Compiling in 18 months and updating regularly local language guide to information (26(2) (3)).

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RTI Act 2005 – Frequently Raised Objections and Doubts

1. We will be overwhelmed by applications and will not be able to cope.
 - In Delhi, in almost 4 yrs about 7000 applications received in 120 Depts. Average of 1.2 per month per department. Highest no. (MCD) were 29 per month (for 25 departments) - again about 1 per month per department.
 - In Maharashtra about 15,000 in 3 years.
 - Much less every where else.
 - Besides, progressive *suo moto* disclosure will lessen pressure.¹⁴

RTI Act 2005 – Frequently Raised Objections and Doubts Contd...

2. The information will be misused.
 - The RTI Act will only provide the truth. How can the truth be misused?
3. Officers will be blackmailed.
 - One can only be blackmailed if information is privileged. Here the information will be available to all and even put up on the web.
4. Others will be blackmailed.
 - Same as above. Besides only those who have done something wrong can be blackmailed. RTI will be a deterrent.

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RTI Act 2005 – Frequently Raised Objections and Doubts Contd...

5. There will be a lot of frivolous applications.
 - This has not been the experience. Besides, there is a cost that would discourage these.
6. People should only be allowed to ask for information regarding themselves.
 - In a democracy, every individual has a right to know how the government is functioning. Besides, as tax payers we have a right to know how our money is being spent.

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RTI Act 2005 – Frequently Raised Objections and Doubts Contd...

7. The RTI Act will be very costly to implement.
 - If we recognise that this is a fundamental right, then this is a necessary cost.
 - Besides, if the Act is successful in raising accountability, then the financial and economic savings would be many times greater than the costs.
 - In the long run the law must become a deterrent rather than a *post facto* weapon.

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RTI Act 2005 – Frequently Raised Objections and Doubts Contd...

8. The civil servant has to make decisions under many pressures and the public will not understand this.
 - The possibility of exposure will inhibit the illegitimate pressures.
 - Besides, action against civil servants is still going to be difficult.
9. Government records are not in a state where RTI applications can be serviced.
 - One side benefit of RTI is that record keeping will have to drastically improve.

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