

Right to know, right to live



A Primer on
The Right to Information Act, 2005

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1. Introduction

The Right to Information (RTI) Act of India was passed in 2005 after a broad based movement for a transparency law. The RTI Act guarantees citizens the right to access information from the executive, legislature and the judiciary. It is recognised as one of the most progressive information access laws globally.

The Supreme Court of India in several judgements has held the right to information to be a fundamental right as it is derived from the right to freedom of speech and expression enshrined in Article 19(1)(a) of the Constitution of India.

A national study on the implementation of the RTI Act has estimated that 4-6 million RTI applications are filed every year in India. People are using the Act extensively on a range of issues – from holding the government accountable for delivery of basic rights and entitlements to questioning the highest offices of the country.

The RTI Act has undoubtedly been one of the most empowering legislations for the citizens of this country.

It has initiated the vital task of redistributing power in a democratic framework.

This primer, prepared in 2016, provides an introduction to the RTI Act and has been compiled in a question-answer format for easy comprehension and reference.

The bare RTI Act in various languages can be accessed at <http://rti.gov.in/rtiact.asp>

2. What is the meaning of Right to Information?

The RTI Act provides a practical regime for people to access information from public authorities.

Under the Act, people have the right to seek 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 which is held by or under the control of any public authority (Section 2(f)).

Further, it includes the right to: (i) inspect work, documents, records; (ii) take notes, extracts, or certified copies of documents or records; (iii) taking certified samples of material; (iv) obtaining information in the form of diskettes, tapes or electronic mode etc. (Section 2(j)).

Using the RTI Act, citizens can access copies of contracts, receipts, estimates, details of development funds, information about implementation of laws, schemes and policies, status of application forms, requests or

complaints submitted to the government, samples of material used in construction of roads, buildings etc.

The Supreme Court in the matter of CBSE Vs. Aditya Bandopadhyay in August 2011, held that if a public authority has any information, an applicant may access such information, subject to the exemptions of the Act. Where the information requested is such that it is required to be maintained under any law, or as per the rules or regulations of the public authority, there is an obligation on the public authority to provide this information, subject to the provisions of the RTI Act.

The Supreme Court in another case, T.S.R. Subramanian Vs. Union of India, held that all verbal and oral instructions to civil servants must subsequently be recorded so as to facilitate their disclosure under the RTI Act.

3. Who is covered under the RTI Act?

The RTI Act extends to the whole of India except the State of Jammu and Kashmir (Jammu and Kashmir has its own state RTI law). Under the Act, people can seek information from public authorities. Public authority means any authority or body or institution of self-government established or constituted-

- (a) by or under the Constitution;
- (b) by any law made by Parliament or State Legislature;
- (d) by notification issued or order made by Central or State Government;

It also includes any-

- (e) body owned, controlled or substantially financed directly or indirectly by Central or State Government;
- (f) non-Government organisation substantially financed, directly or indirectly by funds provided by Central or State Government; (Section 2(h))

Information can therefore be accessed from the central, state and local governments; the executive, legislature or judiciary; corporations established through law or notifications and all bodies owned, controlled or substantially financed by the government. Further even those non-government organisations which are substantially financed by the government are public authorities under the law.

An RTI application can be directly filed to seek information from any of the public authorities.

Apart from this, the Act also empowers people to seek information relating to any private body which can be accessed by a public authority under any other law for the time being in force (Section 2(f)). In order to access information related to a private body, the RTI application has to be filed to the public authority which is empowered by law to seek that information from the private body.

This is extremely significant as the government has wide powers to access information from private bodies under various laws, and therefore, the RTI Act can also

effectively be used to obtain a great deal of information about private bodies.

Intelligence and security organisations which are listed in the Second Schedule of the Act are exempt from disclosing information, except information pertaining to the allegations of corruption and human rights violations (Section 24).

The Supreme Court in the Thalappalam Ser. Coop. Bank Ltd. Vs. State of Kerala in October 2013 held that a body can be said to be substantially financed by the government only if the funding is so substantial that the body practically runs by such funding and but for such funding, it would struggle to exist.

In the above mentioned case, the SC held that if an applicant seeks information about a private body from a public authority, the relevant public authority is required to gather information, to the extent permitted by law, from the private body and disclose it to the information seeker, subject to exemptions of the RTI Act.

4. What information is exempt from disclosure?

The following categories of information which are listed in Section 8 and 9 of the RTI Act are exempt from disclosure-

- Where disclosure would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or leads to incitement of an offence;
- Where release of information has been expressly forbidden by any court/ tribunal;
- Where disclosure would cause a breach of privilege of Parliament or Legislature;
- Commercial confidence, trade secrets or intellectual property, where disclosure would harm competitive position, unless larger public interest so warrants;

- Information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
- information received in confidence from foreign Government;
- Which endangers life or physical safety or identifies confidential source of information or assistance given in confidence for law enforcement or security purposes;
- Which impedes the process of investigation or apprehension or prosecution of offenders;
- Cabinet papers, provided that after the cabinet has taken its decision and the matter is complete, 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;
- Personal information which would cause invasion of the privacy unless larger public interest justifies it.

- Which would cause an infringement of copyright, subsisting in a person other than the State.

To narrow the scope of exemptions, the Act specifies-

- Information which cannot be denied to the Parliament or a State Legislature cannot be denied to any person.
- If public interest in disclosure outweighs the harm to the protected interests, then even exempted information is to be disclosed (Section 8(2)).
- Most exempt information to be released after 20 years

Apart from categories of information listed in Section 8 and 9, all other information can be accessed under the RTI Act.

Further, Section 10 provides that if part of a record is exempt, then that part may be severed and the rest released.

The RTI Act overrides the Official Secrets Act, 1923, and any other law which is inconsistent with the provisions of the RTI Act (Section 22).

In RBI Vs. Jayantilal N. Mistry in 2015, the Supreme Court had held that where information is required by mandate of law to be provided to an authority, it cannot be said that such information is being provided in a fiduciary relationship.

Further, the SC stated, that by virtue of Section 22 the RTI Act overrides all other laws, practices etc. which are contrary to the RTI Act and the RTI Act will prevail insofar as transparency and access to information is concerned.

Therefore, even if a public authority has its own laws, rules or regulations which deny people certain categories of information, such laws, rules, regulations or practices will be overridden by the RTI Act and only that information which is exempt under the RTI Act can be legally withheld from people.

5. How to use the RTI Act?

A person can apply for information to the Public Information Officer (PIO), by making an application in writing or electronically, along with the prescribed fee.

A Public Information Officer (PIO) has been designated in each department/agency to receive requests and provide information. Further, to ensure ease of use in remote places, Assistant PIO (APIOs) have been designated at sub-district levels to receive applications and forward them to the appropriate PIO.

There is no mandatorily prescribed format for applying for information and therefore, an application can be made on a blank sheet of paper.

The applicant must include their contact details; the name of the public authority from whom information is sought and details of information sought under the RTI Act in their application for information.

The Central government provides a facility for filing online RTI applications to all the ministries and

departments of the Central government. The facility is can be accessed at <https://rtionline.gov.in/>

Upon receiving an RTI application, the PIO is either required to provide the information, after collecting the stipulated fee, or reject the application citing any of the exemptions enumerated in Section 8 or 9 of the Act (Section 7(1)). Where further fee is charged, the PIO must inform the applicant about the calculation used to arrive at the exact fee.

Wherever, an information request is rejected, the PIO must communicate the reasons for such rejection to the information seeker. Further, every reply must contain details of the right of the applicant to appeal the decision, including the particulars of the appellate authority.

6. Time frame for receiving information

The RTI Act clearly defines the time-frame within which the PIO is required to provide information.

Ordinarily, information is to be provided within 30 days. In certain circumstances, a different time-frame has been defined, details of which are given below-

- Where the RTI application pertains to life or liberty: 48 hours
- Where the RTI application was filed to Asst. PIO: 35 days
- Where information pertaining to allegation of corruption or human rights violation is sought from an exempt agency: 45 days

Upon receipt of an RTI application, the PIO is required to within thirty days of the receipt of the request, either provide the information on payment of further fee or reject the request for any of the reasons specified in sections 8 and 9. Where the PIO is seeking further fee, the period intervening between the despatch of the intimation of further fee and payment of fees is

excluded for the purpose of calculating the period of thirty days.

Failure of PIO to respond to the RTI application within the stipulated time-frame is a deemed refusal and the applicant can move to the appellate process.

Information shall be provided free of charge where a public authority fails to comply with the time limits specified in the law (Section 7(6)).

7. Is there any fee to be paid for accessing information?

Yes. The RTI Act stipulates that a fee may be charged as application fee and a further fee may be prescribed representing the cost of providing the information. However, the Act stipulates that the fee prescribed as application fee or further fee must be reasonable. The quantum of fee and mode of payment are to be prescribed by the appropriate government or competent authority through rules and therefore, may vary.

The Central government and most of the state governments have prescribed an application fee of Rs. 10 and a further fee of Rs. 2 per page of information or Rs. 50 for information on a CD. Usually the fee is payable through various modes including cash, Indian Postal Order etc. For online RTI applications filed to the Central government, the fee can be paid through debit/credit card or internet banking.

People living **below the poverty line are exempt** from paying any fee (application fee and further fee). Further,

Section 7(6) of the RTI Act states that if the requisite information is not provided within the stipulated timeframe, it shall be provided free of cost to the information seeker.

8. In case of violations of the law, is there an appeal process?

The appellate mechanism prescribed under the RTI Act consists of two appeals-

- First Appeal- If an applicant does not receive any reply in the requisite time-frame or is aggrieved by the decision of the PIO, (s)he can file a first appeal with the First Appellate Authority (FAA). The FAA is an officer senior in rank to the PIO and is located in the same public authority where the RTI application was originally filed.

The first appeal has to be filed within 30 days of the date of response of the PIO. In case of no response, it has to be filed within 30 days from the date of expiry of the stipulated time-frame. The First Appellate Authority is ordinarily required to decide each appeal within a period of 30 days, extendable to 45 days with reasons for delay to be recorded in writing.

- Second Appeal- The RTI Act envisages an independent Information Commission to be established at the Central and State level, to be the final appellate authority under the Act. Any person who does not receive a decision of the FAA within the stipulated time-frame or is aggrieved by the decision of the FAA, may file a second appeal to the Information Commission. The second appeal is to be filed within ninety days from the date on which the FAA decision should have been made or was actually received. For Central government public authorities, the second appeal will lie with the Central Information Commission while for state government public authorities, the second appeal will lie with the respective State Information Commission. The commissions consist of the chief information commissioner and up to 10 information commissioners, appointed by the President of India at the Central level and by the governor in the states.

The commissions have various powers under the Act, including ordering disclosure of information,

requiring public authorities to publish categories of information or make changes to its practices of information maintenance, , powers to penalise PIOs for violating the RTI Act, awarding compensation to information seekers for any loss or detriment suffered etc. The Act does not define any time-frame within which the Commission should dispose the second appeal.

- In any appeal proceedings, the onus to prove that a denial of a request was justified is on the PIO who denied the request.

9. In case of violations of the law, is there a complaint process?

Under Section 18 of the RTI Act a complaint can be filed to the Information Commission by any citizen who –

- has been unable to submit a request to a PIO because a PIO has not been appointed or if the PIO refused to accept the RTI application.
- has been refused access to any information requested under this Act;
- has not been given a response to a request for information within the stipulated time limit;
- has been required to pay an unreasonable amount of fee;
- has been given incomplete, misleading or false information under this Act;

Or

- in respect of any other matter relating to obtaining access to records under the RTI Act.

The powers of the ICs, while dealing with a complaint include setting up of an inquiry, penalising the PIO as provided in section 20 of the law and giving directions under Section 19(8) of the Act which include requiring the public authority to appoint a PIO, make changes to its practices related to record maintenance etc.

Subsequent to a Supreme Court judgement in 2011 in Chief Information Commissioner vs. State of Manipur, it has been clarified that the IC cannot direct disclosure of information while disposing a Section 18 complaint.

10. What action can be taken against officials who violate the RTI Act?

The Information Commissions have the power to penalise PIOs for violating the RTI Act under Section 20 of the Act. The penalty is to be paid by the PIO and not the public authority. The penalty recovered is not paid to the information seeker.

The RTI Act provides for the following penalties to be imposed on the PIO-

- Penalty of Rs 250 per day up to Rs 25,000 for each day of delay, without any reasonable cause.
- Penalty of up to Rs. 25,000 for, without any reasonable cause, refusing to accept an RTI application, malafidely denying the information request, knowingly giving incorrect/ incomplete/ misleading information or destroying information or obstructing furnishing the information.

The Act specifies that the PIO must be given an opportunity of being heard before a penalty is imposed on him/her.

Further, for persistently violating the RTI Act, the Information Commission can recommend disciplinary action against the PIO, under the service rules applicable to him/her.

The imposition of a penalty in cases of violation of the RTI Act is mandatory. Therefore, in disposing each appeal/complaint in which a violation of the Act is evidenced, the commission should either impose the penalty or record reasons on the mitigating circumstances due to which penalty is not being imposed.

11. What is proactive disclosure?

Section 4 is perhaps the most significant component of the RTI legislation. Among other things, it states that *“It shall be a constant endeavour of every public authority to take steps...to provide as much information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information”*.

Section 4 lists various categories of information which should proactively or *suo motu* be made available to the public and should not require the filing of any RTI application. It also prescribes the manner in which the information should be proactively provided.

Section 4(1) lists the particulars of information which were to be published within 120 days of the enactment of the RTI Act and subsequently updated every year, by each public authority. The particulars of information to be disclosed proactively by the public authority include-

- information about its functions
- duties of its officers,
- procedure for decision-making,
- documents held by it,
- norms/rules prescribed for its functioning,
- arrangements for public consultation,
- details about advisory committees,
- directory of officers,
- budget allocated to the authority,
- details of subsidy programs executed and details of beneficiaries,
- salaries of employees,
- facilities available for citizens to access information and contact details of the PIOs etc.

Section 4(1)(c) and (d) require public authorities to proactively disclose relevant facts while formulating policies and also provide reasons for their decisions.

Under Section 4(3) and 4(4), information has to be disseminated in the local language, taking into consideration, *“...the most effective method of communication in that local area and the information*

should be easily accessible...” Therefore information has to be made available not only through the internet, but also through notice boards, newspapers, wall paintings etc.

12. Some other useful provisions

a. Compensation

Under Section 19(8)(b) of the RTI Act, the Information Commission has the power to require the public authority to compensate the information seeker for any loss or other detriment suffered. No limits to the amount of compensation that may be awarded are defined in the law. In order to seek compensation, the appeal or complaint filed to the Information Commission must specifically seek that relief and also build a rationale by giving details of the loss or detriment suffered due to violation of the RTI Act. The compensation is to be paid by the Public Authority.

b. No need to specify reasons for seeking information-

Section 6(2) of the RTI Act specifies that an applicant making a request for information under the RTI Act shall not be required to give any reason for requesting the information. Applicants are also not required to give any personal details except their contact details.

c. Filing RTI applications to the wrong public authority-

The RTI Act specifies that if a person has filed an RTI application to a public authority requesting for information,—

(i) which is held by another public authority; or

(ii) the subject matter of which is more closely connected with the functions of another public authority-

the public authority which received the RTI application is required to transfer the application to the appropriate public authority within a period of 5 days from the date of receipt of RTI application. Further, the information seeker must be informed regarding such transfer.

13. Success stories

a. Accessing rations-

Sunita Devi, a resident of Jagdamba Camp in Delhi had a BPL ration card but had never received any grain from the ration shop. For years, she and other residents of the slum would be told by the ration shopkeeper that their ration had not been sent by the government. Upon learning about the RTI Act, they sought copies of the records of the ration shop – including the stock and sale registers. Records revealed that while every month ration had been reaching the shop, the shop keeper had been siphoning of all the grain and forging entries and signatures in the sale register. With evidence of the large scale corruption, the residents filed complaints to the food department and organised a public hearing wherein the records and the malpractices exposed through the RTI Act were publicly discussed.

Consequently, showcase notices were served to food department officials and licenses of several shops were cancelled. As a result of the use of the RTI Act, everyone

in the area started receiving their monthly entitlement of ration.

b. The struggle for pensions

Sumitra, a 73 year old widow lived alone in Lal Gumbad Camp, a slum in Delhi. With no other sources of income, she was wholly dependent of the meagre pension that she received under the old age pension scheme of the state government. In April 2012 she stopped receiving her pension without any information from the concerned department. Due to lack of resources, she became homeless. In June 2013, she filed an application under the RTI Act seeking information on the status of her pension. She filed a second appeal before the Central Information Commission (CIC) on in August 2013 as she did not receive complete information from the PIO even after filing her first appeal. Taking a strict view of the violation of the RTI Act, the CIC awarded a compensation of Rs. 48,500 to Sumitra and also imposed penalty of Rs 25,000 on the PIO.

Despite the public authority challenging the order of the CIC in the High Court, the Court finally awarded compensation to Sumitra matching it to the amount of pension she had lost over the years, without any information on the reasons for its discontinuation. Further, her pension benefits were also reinstated. She was able to again pay for a small room and secure a roof over her head.

c. Making NREGA accountable

Across the country, the RTI Act has been extensively used to enhance transparency and accountability in the functioning of the MGNREGA (Rural Employment Guarantee Act). People have used it to unearth corruption in muster rolls, disbursement of funds, expose ghost works and carry out social audits. In several places, based on the evidence and records accessed through RTI Act, action has been initiated against errant officials and recoveries made.

d. Securing admission in a private school

A Delhi High Court order made it mandatory for public schools to reserve 20% seats for students from economically weaker sections of society. Upon learning of the order, Kanhaiyah Lal, a resident of a low income colony in Chirag Delhi, applied for his grandson's admission to Apeejay School. Even though the new academic session started, Kanhaiya did not receive any response from the school. Finally, he filed an RTI application in the Directorate of Education seeking information on the status and progress of his grandson's admission application. In response to the RTI, he was informed that his grandson's application had been accepted. Finally, Kanhaiya's grandson was granted admission and was exempted from paying any fee for the education.

e. Questioning powerful officials

In Jammu and Kashmir, the state RTI Act was used to expose how the Chief Minister was using the official helicopter to travel over short distances. The CM was

forced to publicly state that henceforth he will not use the chopper and subsequent RTIs revealed that there has been a forty percent drop in expenditure on helicopter travel.

f. Securing water supply for the slum

For years, residents of slums in Begumpur faced acute water shortage. Despite repeated requests to the area MLA they received no reprieve. Each time the MLA would turn them away citing lack of availability of funds. Residents used the RTI Act to access details of the quantum of MLA local area development funds and the details of works recommended by the area MLA from the funds.

Information obtained using the RTI Act revealed that under the MLA funds scheme, each MLA in Delhi can allocate upto Rs 2 crores every year on addressing development problems of the electorate. The information further revealed that a very large proportion of the Local Area Development Scheme funds of the area MLA had been allocated for

construction of fountains and waterfalls in the constituency while people continued to suffer from scarcity of water.

With certified information, the residents confronted the MLA and demanded an explanation on why he was not allocating the funds to resolve their water problem. Peoples' pressure, strengthened by information accessed under the RTI Act, finally resulted in the MLA allocating funds for providing tubewells and water pipelines in the bastis.

g. Obtaining a passport-

Dilshad Hussain had applied for a passport in 2011 and was told that it would be ready within 45 days. Every week for eight months he visited the passport office suffering a loss of his daily wages. He was approached by several touts who offered to get his work done for a bribe.

He filed an RTI in April 2012 and asked details about the progress on his application, the reasons for delay and

details of the officers responsible for processing his application. Under pressure to respond to the RTI questions, the government officials immediately processed his application and delivered his passport. They replied to his RTI application and apologized for the delay and the inconvenience caused.

h. Towards a transparent democracy

In a landmark order in 2012, the Central Information Commission directed the Delhi Legislative Assembly to proactively provide information about Assembly proceedings in compliance with Section 4 of the RTI Act. The Assembly Secretariat was ordered to provide live telecast of the Assembly proceedings on the website. Further, the CIC directed that information about the proceedings of the Delhi Assembly, legislations introduced and passed by the Assembly, text of laws and information on the committees of the Assembly, should be made available on the official website of the Assembly. In order to ensure wide dissemination, the CIC held that a system for publishing new laws passed

by the Assembly, in Hindi and English, should be put in place.

i. Details of development funds displayed on boards

In February 2011, in two significant decisions, the CIC ordered the Delhi Government and the Municipal Corporation of Delhi to install boards in every ward of Delhi displaying expenditure details of local area development funds of the MLA and Councillor of that area, in compliance with Section 4 of the RTI Act. As per the orders, details of the expenditure incurred in the current year and the previous year have to be provided on these boards in Hindi. The Commission's orders were in response to complaints filed by Satark Nagrik Sangathan following Delhi-wide public hearings.

Information on utilisation of local area development funds which is now easily available through these boards has enabled people to monitor the expenditure of public funds, curb corruption in utilisation of public funds and meaningfully engage with their elected

representatives to address development needs of the constituency.

j. Transparency in functioning of public toilets-

Most public toilets charge arbitrary high user charges and are very poorly maintained. In many places, especially slums, public toilets are locked at night forcing women and children to resort to open defecation in unsafe locations. In the absence of information on the correct user charges and the terms of the agreement signed with the contractor responsible for maintaining and cleaning these toilets, people were not able to take action against the arbitrary functioning of these toilets.

In response to complaints, the Information Commission ordered the Delhi government to display boards outside each public toilet giving information on– charges for using the toilet; timings for opening and closing of toilets; schedule for cleaning the toilet; contact details of contractor operating the toilet; contact details of grievance redress authority of the toilet, etc.

14. Suggested format for an application under the RTI Act

APPLICATION UNDER THE RTI ACT, 2005

The Public Information Officer,

Name of Public Authority:

Name of Applicant:

Address:

PARTICULARS OF INFORMATION SOUGHT:

- 1.
- 2.
- 3.

Signature of applicant:

Date:

15. Sample questions for RTI applications

a. RTI application on development works

A drain/road/pavement/park is being constructed at _____ (exact location with landmarks). Please provide the following information in relation to this-

- i. Please provide a copy of the contract and tender awarded for the construction of the work.
- ii. Please provide a map showing the exact location, length, starting point and ending point of the work which is being constructed.
- iii. Please provide the date of start and date of completion of the work as per the contract/tender.
- iv. Please provide details of funds released, and sanctioned for the work as per government records.
- v. Please provide details of actual expenditure on the work incurred till date.
- vi. I would like to inspect all the papers and files (contract, tender, work files, measurement books,

inspection reports and any other files/papers) related to the construction of this drain. Kindly let me know the date, time & venue of the inspection.

b. Sample questions for status of application for government issued document

I had applied for a _____ (passport, ration card, driving license, income certificate etc.) on _____. My application number is _____. Please provide the following information with respect to my application-

- i. Please provide a copy of the action taken report of my application.
- ii. Please provide a copy of the file noting on my application.
- iii. Please provide reasons for the delay in processing my application

- iv. Please provide a copy of the relevant order which defines the stipulated time-frame within which the _____ (passport, ration card, driving license, income certificate) is supposed to be made.
- v. Please provide the name, designation and contact details of the official responsible for processing my application within the stipulated time-frame.
- vi. Please provide the name, designation and contact details of the official to whom I can file a complaint regarding the delay in processing my application.

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For more information and resources on the RTI Act, see-

www.snsindia.org

<http://www.rti-assessment.com/>

<http://righttoinformation.info/>

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