

Workshop on Right to Information Act: A Report

**A joint collaboration between the State Institute of Public Administration and Rural
Development (SIPARD), Tripura and the Government of Tripura**

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Inaugural Session:

Sri S. K Panda (Principal Secretary and Director, SIPARD) welcomed the audience with his speech on why RTI is relevant today. He said that many consider democracy as the best form of governance. However, in that context, he said that there needs to be a rethinking on whether India's democracy really belongs to its people. Presently, accountability is only at the level of the legislature and Parliament. However, as past experience clearly demonstrates, it has not delivered the right result. He said that the bureaucratic system in the country must be made germ free and the disinfectant is transparency. The tool to bring about such transparency is an act like the *Right to Information Act, 2005*.

Sri R. K Mathur (Chief Secretary, Government of Tripura) in his inaugural address explained that the RTI Act should not be seen as an imposition. This is an Act that will help the government serve its citizens better. As public servants, bureaucrats are supposed to constantly inform and update their masters, the public. Tripura has a comparatively cleaner, responsive and better administration. Therefore, the RTI Act should be seen as just another step in the process of bettering the administration. Whenever the decision making process is on, the civil society should be involved. The public should know what is the rationale behind a particular decision. In such a situation, there won't be distortions, since people would know the facts. Also, in course of time, as the government machinery becomes more transparent, the number of requests would also reduce.

Now that the State-level seminar has occurred, there will need to be more departmental-level training workshops which will have to be conducted by the officers who have attended this workshop. There will also need to be district-level seminars wherein the public can be oriented and sensitized to the RTI Act.

An important point to note is that the Act ultimately requires that everything be converted in electronic form.

Technical Sessions:

The Philosophy of RTI: Venkatesh Nayak

The central theme of Venkatesh Nayak's presentation was the government's agenda with regard to good governance and transparency. The bureaucracy exists not merely to run the country. Bureaucrats have to ensure that promises made in the Constitution to the poorest of the poor are implemented. The government has, as part of its agenda, linked RTI to good governance in the 10th five year plan. RTI is an implied fundamental right and follows from Article 19 (Freedom of Speech and Expression) –without information citizens cannot be expected to form opinions and express them. Article 21 (Right to life and liberty)-people have a right to information what concerns their life and physical liberty.

*The Right to Information Act 2005: Makarand Bakore**

Makarand Bakore's presentation aimed to orient and sensitize the participants to the contents of the RTI Act 2005. He explained that the RTI Act 2005 aimed to provide legal right to the citizens to obtain information under the control of public authorities, and thereby provide transparency and accountability in governance to India's citizens. He mentioned that the Act applies to the whole of India except J&K and very importantly, that the provisions shall have effect notwithstanding anything inconsistent with the Official Secrets Act, 1923. This Act was enacted on 15th June 2005 and will come into force *in toto* on 12th October 2005.

He explained the details of the Act pertaining to what is the right of a citizen, what are the types of information s/he can obtain under this Act, what are the types of records that can be obtained, what are the obligations of public authorities the roles and responsibilities of Public Information Officers (PIO) and Assistant Public Information Officers (APIO), Central and State Information Commissioners, exemptions, the time period for providing information, rejection of information request, the fees applicable etc.

*Proactive Disclosure: Renu Vinod**

Renu Vinod made a brief presentation on the concept of proactive disclosure, and its relevance. She elaborated some successful RTI stories in Delhi and Rajasthan. She also described how one particular case (that of the Public Distribution System in Delhi) resulted in the proactive disclosure of ration records in Delhi in the office of the Food and Civil Supply department as well as in the ration shops.

*Template for Proactive Disclosure: Renu Vinod**

In this presentation Renu Vinod elaborated on guidelines for proactive disclosure based on the experience of the Information Commissioner's Office in UK. The main guidelines she focused on included publication schemes, information assets registers, *suo motu* (voluntary) disclosure of frequently requested information, an RTI logo for each government department for citizens to easily identify it and an RTI link in each government department website for citizens to easily access information under RTI in that website.

Role of PIOs/APIOs/I Information Commissioners: Venkatesh Nayak

Venkatesh Nayak explained the roles and responsibilities of information officers in the three tiers of the information access regime. At the first level are the officers who have been designated to receive applications or information requests from people. The second level are the senior officers who have been designated to look into those cases where citizens' requests for information have been denied. At the third level is the independent state Information Commission set up to look into those cases where citizens are unsatisfied with the decision made at the second level (i.e. the departmental appellate authority).

Expectation: After this workshop, the officers should conduct workshops in their own respective departments.

*** Presentations can be viewed on CCS's website**

Issues and concerns raised by participants:

FEES:

Question (Q): What sort of fees should be charged for information?

Answer (A): Section 7 (5) of the Act states very clearly that where access to information is to be provided in the printed or in any electronic format, the applicant shall ... pay such fee as may be prescribed, provided that the fee prescribed... shall be reasonable and no such fee shall be charged from persons who are of below poverty line as may be determined by the appropriate Government.

While the government fixes a 'reasonable' fee for furnishing information, it must keep in mind that though BPL people won't be charged a fee, there are many people above poverty line who are borderline cases and therefore cannot afford to pay every time they have a request for information. Therefore, the government should keep this factor in mind while fixing a fee.

EXEMPT ORGANIZATIONS:

Q: Certain Central government organizations are exempt. Are State-level organizations also exempt?

A: According to Section 24 (4) of the RTI Act 2005, nothing contained in this Act shall apply to such intelligence and security organisation being organisations established by the State Government, as that Government may, from time to time, by notification in the Official Gazette, specify, provided that the information pertaining to the *allegations of corruption and human rights violations shall not be excluded* under this sub-section. This Section further provides that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the State Information Commission and, such information shall be provided within *forty-five days* from the date of the receipt of request.

CORRUPTION:

Q: Won't disclosing file clippings result in a paralysis of the bureaucracy? Bureaucrats will be wary about noting points if they go against points made by, say the Chief Secretary or the Chief Minister.

A: This law should not be seen as a weapon to harass officials. No honest officer should be worried about making notes in files regarding what s/he said or what points/issues/concerns were raised at different stages while taking a decision. This would result in a healthy bureaucracy and people will be informed of facts. This, in reality, would lead to non-harassment of honest and transparent public officials at the hands of the public rather than their constant scrutiny.

ROLES AND RESPONSIBILITIES OF PIOs AND APIOs:

Q: Should there be any appointment letter from the government to appoint the PIO? Who will the APIO report to?

A: Each public authority will have to *designate* an existing officer as PIO. With regard to the question on who will the APIO report to, the answer is that the APIO is *not* an assistant to the PIO. Rather s/he is the point that *receives* the request for information and then *forwards* it to the PIO for further action.

Q: What happens when the PIO, despite his/her best efforts, cannot get the requisite information?

A: Where a PIO cannot get the requisite information despite his/her best efforts, then, s/he shall communicate to the person making the request that the information cannot be provided with exact reasons for not being able to acquire such information. Moreover, this Act provides for the protection of acts done in good faith. Thus, as per Section 21 of the Act, no suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule made thereunder.

Q: What happens if the information request reaches the PIO, say, 28 days after the APIO sent it? Would the PIO then be held liable for not giving information in time?

A: The information officer has to record the date on which s/he received the information request, in his/her official records so that s/he is not held liable later on for not providing the information on time. However, the PIO could also send a letter to the applicant requesting him/her for more time considering the fact that the application arrived late from the office of the APIO.

Q: Can a PIO provide information verbally so as to save time?

A: The response to the information should be in the form and manner in which the applicant has requested for that information unless reproducing information in that manner would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question. As it is, there is no need for departments to stop the informal practice of providing information verbally, if it has been requested for verbally and the applicant is satisfied with a verbal response.

Q: If the citizen does not give additional fee, will the PIO still have to give information?

A: As per Section 7 (3) of the Right to Information Act 2005, the duty of a PIO with regard to payment of additional fee by the applicant is limited to sending an intimation to the person making the request, giving—

(a) the details of further fees representing the cost of providing the information as determined by him, together with the calculations made to arrive at the amount in accordance with fee prescribed... requesting him to deposit that fees, and the period intervening between the despatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of thirty days referred to in that sub-section;

(b) information concerning his or her right with respect to review the decision as to the amount of fees charged or the form of access provided, including the particulars of the appellate authority, time limit, process and any other forms.

The clock stops ticking the day the intimation for the additional fee is sent. Subsequently, the clock starts ticking again the day the additional fee arrives. It would be best to keep in mind the time limit when sending the intimation for additional fee. If the intimation is sent on the 28th day, for example, the PIO gets only 2 days to provide the information once the additional fee arrives. Therefore, it would be best to handle requests for information as expeditiously as possible.

Q: Who will appoint PIOs in organizations substantially financed by government such as SHGs?

A: Self Help Groups don't technically qualify as public authorities. But, since they are beneficiaries, the nodal agency that is providing the benefits will have to take the necessary steps to appoint the PIO at that level.

Q: With regard to publishing the list of PIOs, should the public authority go beyond the department to the district level and appoint PIOs there? Also, does there have to be a PIO and an APIO in the same office?

A: At the sub-district level and sub-divisional level the Act stipulates under Section 5 (2) that every public authority shall designate an officer within 100 days of the enactment of this Act as a Central Assistant PIO or State Assistant PIO, as the case may be. However, at the district level, there needs to be a PIO designated and his/her details be publicly listed. Their duties and functions need to be disclosed also.

As far as there being a PIO and an APIO in the same office, as has been mentioned in an earlier response, the duty if the APIO is two-pronged: to receive an information request and to forward that information request to the PIO. S/he does not serve as an assistant to the PIO in terms of providing information but, if s/he does have the requested information under his/her control, then s/he can reply to that request at the APIO level itself.

Q: Some public authorities don't have departments at the district and sub-district levels. Similarly, for those who have department's there, the officers are very junior and cannot be given the responsibility of a PIO. What should be the procedure followed in such cases?

A: In the case of public authorities that don't have offices at the district or sub-district level, the concerned public authority could request another department at that level who has a PIO/APIO there to act as APIO to it and forward requests to its PIO.

Where the officers are too junior to be designated as PIO, they can instead be designated as APIO and be obligated to forward requests for information to the PIO who will be seated in the public authority.

Q: Suppose an applicant's contact details are not clear and the PIO needs to correspond with him/her regarding say, additional fee or because of lack of clarity in the request?

A: The PIO is required to take a decision about giving or not giving information only if the application is complete in all respects. An application is complete only if it has, among other prescribed details, the contact details of the applicant. In this case, the PIO should keep a record of the date of receipt of the information request and s/he will get a chance to be heard if and when the matter gets taken to a higher authority like the Information Commission, where the PIO can clearly state that the applicant has not provided clear details for correspondence, therefore, his/her information request could not be handled ordinarily.

Q: What is the PIO cannot give information for fear that the disclosed information will expose superiors and whom they may be getting into trouble by giving away the requested information?

A: Once a PIO receives a request for information, s/he CANNOT deny that information citing personal reasons or fear of backlash from a senior officer.

The Honourable Chair Sri D. K. Chakravarthy added here that embarrassment to give information that might expose a senior or citing personal problems is no excuse for not providing information. The law is paramount and personal problems cannot come in the way of implementing any law, be it the *Right to Information Act 2005* or any other law that the government has to implement.

ACCOUNTABILITY OF PUBLIC AUTHORITY:

Q: Is the role of the public authority only to appoint PIOs? What provision does the RTI Act 2005 provide to ensure the accountability of public authorities?

A: No, the role of the public authority does not limit itself to merely appointing PIOs. Section 4 explicitly lays down what every public authority has to do including maintaining all its records duly catalogued and indexed, proactively disclosing information in the public domain so that citizens have minimum resort to the RTI Act 2005, publishing all relevant facts while formulating policies or decisions, providing reasons for administrative or quasi-judicial decisions to affected parties, disseminating information widely in a form that is accessible to the public, transferring information requests to another public authority if the requested information falls under the purview of the latter etc.

With regard to maintaining the accountability of the public authority, the RTI Act 2005 has certain provisions that provide for ensuring the accountability of public authorities: Section 25 (2) states that each Ministry or Department shall, in relation to the public authorities within their jurisdiction, collect and provide such information to the Central Information Commission or State Information Commission, as the case may be, as is required to prepare the report on the implementation of the provisions of this Act during that year in that Ministry or Department in relation to its public authorities.

Moreover, Section 25 (5) If it appears to the Central Information Commission or State Information Commission, as the case may be, that the practice of a public authority in relation to the exercise of its functions under this Act does not conform with the provisions or spirit of this Act, it may give to the authority a recommendation specifying the steps which ought in its opinion to be taken for promoting such conformity.

EXEMPT INFORMATION:

Q: How does the ban on disclosing exempted information apply to information that is 20 years old and that is being requested?

A: There is already a DOPT order that exists regarding classified information. With the RTI Act now in force, the DOPT will need to revisit some of its rules regarding classified information and clarify what information, which is 20 years old or more is applicable under information that can be disclosed under the RTI Act 2005.

In cases where the requested information, which is 20 years old or more has already been weeded out, the fault for not providing that information does not lie with the concerned PIO. Instead, s/he should respond to the applicant within the specified time limit specifying the reasons for not providing that information. On

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the other hand, the weeding rules need to be revisited so that citizens are not denied access to information that is more than 20 years old.

Q: In what way is the oath of secrecy applicable under the Right to Information Act 2005?

A: Section 22 of the RTI Act 2005 clearly states that this Act will have overriding effect on all other existing laws. According to Section 22, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

However, since these other Acts, instruments and laws that go against the spirit of transparency as envisaged by the RTI Act 2005 have not been repealed by the Act, it is for the government, through the concerned Competent Authority, to draw specific guidelines that clearly lay down how the RTI Act 2005 and other instruments that protect the secrecy of government functioning can best interact, while providing information and ushering in transparency.

DEFINITION OF INFORMATION:

Q: What is the extent of definition of the term "information"? Are file notings, notes etc. covered?

A: As per Section 2 (f) of the RTI Act 2005, "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.

With regard to whether file notings are included or not, Section 2 (i) of the RTI Act 2005, defines the term "record" as including any document, manuscript and *file*; any microfilm, microfiche and facsimile copy of a document; any reproduction of image or images embodied in such microfilm (whether enlarged or not); and any other material produced by a computer or any other device.

According to the Manual of Office Procedure prepared by the Central Secretariat of the Government of India, the definition of a 'file' includes notes and appendices to notes. Therefore, as per the above definition, the broader term "information", includes "records", under whose definition are included file notings, clippings, appendix, appendix to notes etc. Thus, file notings or notes *are* covered under the term information.

Q: Do photos taken during government seminars and workshops fall under the category of public documents?

A: According to Section 2 (i) of the RTI Act 2005, the term "record" includes any document, manuscript and file; any *microfilm, microfiche* and facsimile copy of a document; any *reproduction of image or images embodied in such microfilm* (whether enlarged or not); and any other *material produced by a computer or any other device*.

Thus photos fall under the category of documents that can be disclosed if there is a request for such disclosure.

The Honourable Principal Secretary, Sri S. K. Panda added here that if the photos affect the law and order situation or have the potential of say inciting communal riots then they would fall under the category of exempted information. Therefore, even in the case of photos, wherever necessary, provisions of Section 8 will need to be taken into account, unless there is an overriding public interest in disclosing that photo.

MISUSE OF INFORMATION:

Q: How can the government ensure that information disclosed under the RTI Act 2005 will not be misused?

A: As far as information disclosed in hard copy format is concerned, it is best to place a stamp on each piece of paper that is being given out so that it is clear that that piece of information is being given under the RTI Act 2005. In the case of information being given out electronically, it is best if there is a watermark that cannot be transferred to any other document unless a print out of the electronic document is taken.

Thus having a watermark or logo as the background of each electronic page is one method of ensuring that outsiders don't misuse that page especially if the watermark cannot be transferred electronically.

Q: What if an applicant seeks information with the aim of selling it/for commercial purposes?

A: As per the RTI Act 2005, it is the duty of the PIO to provide requested information to the applicant in the form and manner in which it has been applied for, unless that information falls under the category of exempted information and/or unless reproducing information in that manner would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.. Moreover, Section 6 (2) clearly states that an applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him. Therefore, unless the information falls under the category of those that are exempted, the duty of the PIO is simply to provide the requested information to the applicant.

DECISION MAKING WITHIN THE PUBLIC AUTHORITY:

Q: Who decides the public interest override factor?

A: According to Section 8 (1) (d), where the information includes commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, it is the *Competent Authority* that decides whether larger public interest warrants the disclosure of such information. Similarly, as per Section 8 (1) (e) where the information is available to a person in his fiduciary relationship, it will not be open for disclosure *unless* the *Competent Authority* is satisfied that the larger public interest warrants the disclosure of such information.

Section 8 (j) however clearly places the onus of making the final decision on public interest override on the *Public Information Officer*, where information relates to personal information, the disclosure of which has no relationship to any public activity or interest, or would cause unwarranted invasion of the privacy of the individual is concerned. In such cases, it is the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, who, decides whether the larger public interest justifies the disclosure of such information.

Q: Within a public authority, who makes the final decision on partial disclosure of information?

A: The Act is silent on *who* will make the final decision regarding partial disclosure of information. As per Section 10. (1), it is the duty of the PIO to *provide* partial access to information.

The Act provides in Section 10 (2) that where access is granted to a part of the record, it is the Central Public Information Officer or State Public Information Officer, as the case may be, who shall give a notice to the applicant, informing—

(a) that *only part* of the record requested, after severance of the record containing information which is exempt from disclosure, is being provided;

(b) the *reasons for the decision*, including any findings on any material question of fact, referring to the material on which those findings were based;

(c) the *name and designation* of the person giving the decision;

(d) the *details of the fees* calculated by him or her and the amount of fee which the applicant is required to deposit; and

(e) his or her rights with respect to *review of the decision* regarding non-disclosure of part of the information, the amount of fee charged or the form of access provided, including the particulars of the senior officer specified under sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be, time limit, process and any other form of access.

Thus Section 10 (c) makes it clear that it is not the PIO who necessarily makes the final decision with regard to partial disclosure of information. Therefore, at the rule making stage, it would be advisable for the *Competent Authority* to clearly lay down who is the final decision making authority with regard to partial disclosure of information within a public authority so that all ambiguities can be laid to rest.

INFORMATION COMMISSION:

Q: How will the Information Commission operate?

A: Though the Right to Information Act 2005 specifies details regarding the constitution Central and State Information Commissions, terms of office and conditions of service and procedure for removal of, powers and functions of Central/State Information Commissioners, it does not provide clearly *how* the Information Commissions will operate. For example, there are no provisions with regard to how the staff will be recruited, whether they will be from within the public service or from outside (specialists).

Similarly, though the Act states under Section 12 (7), that the headquarters of the Central Information Commission shall be at Delhi and the Central Information Commission may, with the previous approval of the Central Government, establish offices at other places in India, it does not clearly specify how these various offices will interact with one another, whether these offices will be taken into account when a decision is made etc.

Therefore, these are procedural aspects, which need to be covered in the rule making process itself so that decision making does not get delayed as a result of lack of structure and process in the Information Commissions.

PROACTIVE DISCLOSURE:

Q: What if the request is too large or voluminous to be furnished?

A: The Act does NOT permit rejection of a request on the grounds that it is too voluminous. Rather, it is up to the concerned PIO to correspond with the applicant and inform him/her that the request is very large, and come to a settlement with the applicant. Also, since the aim of this Act is to *proactively* place information in the public domain so that citizens have *minimum* resort to the RTI Act 2005, the Tripura government will have to gradually progress towards e-governance so that such information can be accessed by anybody. *E-choupals* at the village level in collaboration with government departments or NGOs there would allow access to such documents to villagers who may otherwise not be able to access government department websites.

Q: How will the proactive disclosure policy of the government be funded?

A: The government will have to fund its own proactive disclosure policy. The State can send a written request to the Central government to release funds to implement this Act in that State.

MISCELLANEOUS:

Q: Regarding making information available within 48 hours, please explain the word "liberty".

A: The word "liberty" primarily relates to situations where somebody is arrested and the constitutional provision that requires that s/he be reproduced in court within 24 hours is not met. In such a context, the immediate family members or other concerned parties have a right to information regarding that person.

The Honourable Chair, Sri D. K. Chakravarthy added that liberty is a wide term, and that in the context of the RTI Act 2005, it means "physical liberty", i.e., where the liberty of a body is threatened-such as in the context mentioned above- provisions of the RTI Act 2005 can be effectuated.

Q: Can one government department invoke the RTI Act 2005 to obtain information from another government department?

A: An official from one government department can invoke the RTI Act 2005 to obtain information from another department of the government. S/he cannot invoke information as a department, but as an individual citizen of the country.

Q: Can a citizen use the RTI Act 2005 to obtain information for another person?

A: There is no clause in the RTI Act 2005 that forbids one citizen from obtaining information using the Act for another citizen. As has been clearly stated in the Act, the citizens do not have to provide any reasons for accessing information. On the other hand, unless it is exempt information-which has to be justified with reasons by the PIO- the government cannot deny citizens access to information on any other ground.

Q: Can people have access to interview results?

A: Yes, citizens can now have access to interview results, reasons for rejection, criteria for selection etc. However, this can also come under Section 4-proactive disclosure-where the concerned body places in the public domain the selection criteria, the previous results etc.

Q: How can the difference involved in requesting for information via e-mail and via courier be overcome? The former won't involve courier charges or application fee charges.

A: The government needs to formulate in the rules that the fees charged for requesting information in written format and via e-mail should be the same. The government should issue guidelines for online payment for information. These guidelines should be formulated at the earliest during rule making itself. At the same time, fees that are collected for providing information should be placed under a separate budget head so as to monitor the funds that are flowing in and whether and how they are being spent.

Q: How will the public conduct inspection of documents?

A: The Act does not provide any specific procedure for the public authorities or for the public to follow when the latter inspects hard copies of documents in the government office. To take the case study of Delhi, citizens are allowed to inspect documents of the ration shops in a particular area in the Food and Civil Supplies office of that area every Saturday from 2 pm to 5 pm.

Information that has to be proactively disclosed under Section 4 has to be voluntarily made available by the public authority and not its Public Information Officer (PIO). So the citizen will approach the department directly since s/he would already expect the Section 4 information to be readily available in that department. The department will need to have a method in place whereby the public can know where and whom to head to, once they reach that department for inspecting public documents.

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