



# The Right to Information Act, 2005

## Understanding the Law

# An overview of the Act



- Preamble
- Six Chapters comprising thirty-one sections
- Two Schedules



# Preamble

- To provide for setting out the practical regime of right to information **for citizens**
- To secure access to information **under the control of public authorities,**
- In order to promote **transparency** and **accountability** in the working of every public authority
- The constitution of CIC and SIC and matters connected therewith or incidental thereto.

# Machinery for enforcement of law

- Central Public Information Officer(s) and State Public Information Officer(s)....
- Central Assistant Public Information Officer(s) and State Assistant Public Information Officer(s)....
- Central Information Commission and State Information Commission

# CPIOs and SPIOs




- As per section 5 (1) every public authority to designate in all administrative units or offices under it, as may be necessary, CPIOs or SPIOs.
- The purpose is to provide information to persons requesting for the information under this Act.
- If not designated, complaint u/s 18(1) clause (a) to CIC or SIC.

# Central Assistant Public Information Officer or State Assistant Public Information Officer

- As per section 5(2), at each sub-divisional level or other sub-district level, every public authority to designate. In addition to CPIOs or SPIOs.
- To receive the applications and appeals for forwarding the same forthwith to the CPIOs or SPIOs. Extra 5 days to be added.
- Complaint u/s 18(1) clause (a) can be made to the CIC or SIC.

# CIC or SIC

- An autonomous body, like Central Election Commission, constituted by the Central Govt to exercise the powers conferred on, and to perform the functions assigned to it under this Act.
- CIC to consist of:
  - (a) Chief Information Commissioner; and
  - (b) Central Information Commissioners, not exceeding 10.
- Appointed by the President on the recommendation of a committee consisting of:
  - The PM, who shall be the Chairperson of the committee;
  - The Leader of Opposition in the Lok Sabha; and
  - A Union Cabinet Minister to be nominated by the PM.
- CIC or Information Commissioners to be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.
- Not to be MP or MLA, or hold office of profit or connected with any political party or carrying on any business or pursuing any profession. Get salaries as for EC.
- Appointed for 5 years but shall not hold office once attained the age of 65 years. No reappointment.
- SIC on the same lines at State level, with parallel changes.



Main empowering section-  
Section 3

- ***Subject to provisions of this Act,***
- all citizens shall have
- the ***right to information.***

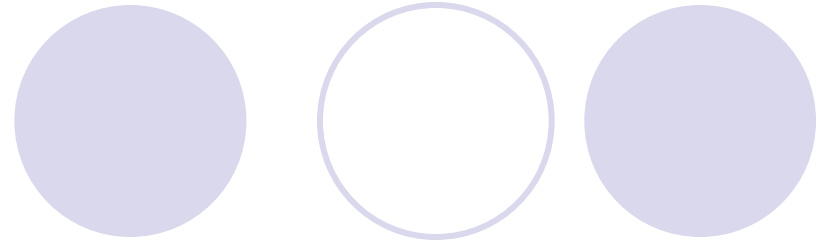


## Right to Information Section 2 clause (j):

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;
- (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 print outs where such information is stored in a computer or in any other device.

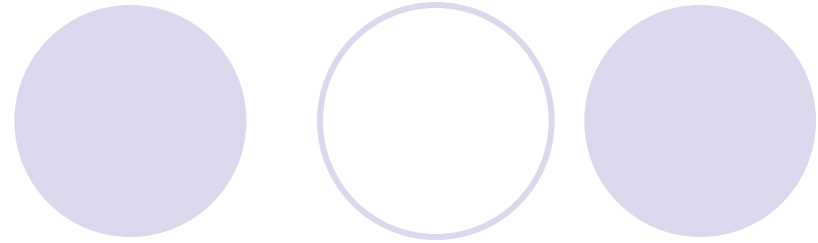
# Information section 2 clause (f)



- Means any material in any form, including records, documents, 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.

# Public Authority

## Section 2 clause (h)



Means any authority or body or institution of self-government established or constituted-

(a) by or under the Constitution;

(b) by any other law made by Parliament

(c) By any other law made by State Legislature;

(d) By notification issued or order made by the appropriate Government, and **includes any-**

**(i) body owned, controlled or substantially financed;**

**(ii) non-Government organisation substantially financed,**

**directly or indirectly by funds provided by the appropriate Government.**

# How to access the information?

- Section 4: *Suo motu* by public authorities
- Section 6: On specific request to Central Public Information Officer (CPIO) or State Public Information Officer (SPIO)
- Section 19 (1): On first appeal to senior rank officer
- Section 19 (3): On second appeal to the Central Information Commission (CIC) or to the State Information Commission (SIC)
- Section 18: On complaint to CIC or SIC.

*Suo motu.....*

(Obligations of public authorities)

Every public authority :

- to maintain the records so as to facilitate access
- to publish the prescribed information and then to update this every year
- to disseminate information through various means

# On specific Request



- Make a written request, specifying the particulars of information sought, to the CPIO or SPIO of the concerned public authority
- Pay the prescribed fee
- No need to give the reasoning or other personal details except the contact details
- If information sought includes information held by another public authority, transfer that part within 5 days to that public authority.

# Disposal of request

- CPIO or SPIO to dispose of within 30 days
- Where the information concerns the life and liberty of a person, to provide within 48 hours of request
- May either reject the request under sec. 8 and 9
- Or provide the information on payment of the prescribed fee
- No fee payable if fail to comply the time limit.
- If concerns a third party, within 5 days to give a written notice to that party and that party within 10 days to make representation, within 40 days of request either to give info or convey decision not to give.

## On first appeal to senior rank officer

- If within 30 days of request-
  - neither the information is received nor rejection conveyed, or
  - fee asked for the information is not acceptable,
- to make an appeal to senior rank officer of the public authority.



# Second appeal to CIC or SIC

- If CPIO or SPIO either did not provide the information or did not convey the decision to reject the request on the grounds under sections 8 and 9, or does not advise to the applicant any further fee to be paid, and
- the applicant has not, despite making the first appeal, got a satisfactory closure, within 30 days or within the extended time of 45 days
- The applicant can, within 90 days of the due date of receiving the decision of rejection or the actual information, can appeal to the CIC or SIC.



## CIC or SIC on appeal...

- Can reject the application
- Can require the public authority to provide access to information
- Can order compensation by the public authority
- Can impose penalties

**The Order of the CIC or SIC shall be binding.**

# On Complaint to CIC or SIC...

- A complaint can be filed with CIC or SIC if
  - Unable to submit a request since CPIO/SPIO not appointed or CPIO/SPIO refused to accept the application or appeal
  - Refused access to any information requested
  - No response given to the request, within specified time
  - Unreasonable fee required
  - Incomplete, misleading or false information given
  - Any other matter for that
- If CIC or SIC satisfied that there are reasonable grounds to inquire, may initiate an inquiry which may result into making the information accessible.



# “Subject to provisions of this Act”

## **SITUATIONS WHERE INFORMATION *MAY* NOT BE PROVIDED**

Section 8 : Exemptions from disclosure of information

Section 9: Grounds for rejection to access in certain cases

Section 10: Severability

Section 11: Third party information

## **SITUATIONS WHERE INFORMATION *SHALL* NOT BE PROVIDED**

Section 24: Act not to apply to certain organisations as listed in Second Schedule.

# Exemptions from Disclosure

## No obligation, if information:

- 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;
- has been expressly forbidden to be published by any court of law or tribunal..
- including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure.
- is available to a person in his fiduciary relationship, unless..
- received in confidence from foreign Government
- 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.
- which would impede the process of investigation or apprehension or prosecution of offenders;

.....contd

## Exemptions from Disclosure (Contd.)

### No obligation, if information:

- Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers:

*But 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.*

- which relates to personal information the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual unless....
- Normally, information upto 20 years old can be obtained.

## Grounds for rejection section 9

- Where providing access to information would involve an infringement of copyright subsisting in a person other than the State.

# Severability section 10

- Where out of the total information sought a part of the information is considered as exempt, the remaining part to be severed and information provided.
- For the part considered exempt, applicant to be informed and advised on his right to appeal against this decision of severance on the grounds of exemption.



# Third Party Information section 11

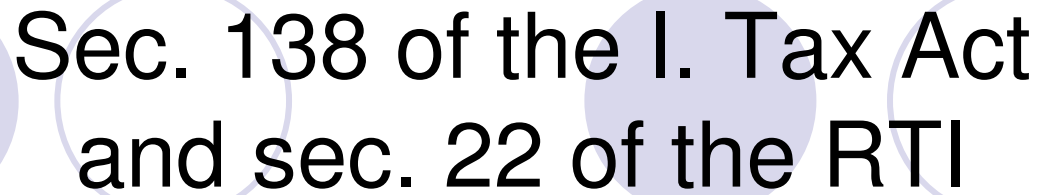
- Where CPIO or SPIO, against a request, intends to disclose the information, or part thereof, and
- that information has been supplied by a third party and has been treated as confidential by that third party.
- CPIO/SPIO within 5 days to give a written notice to such third party that s/he intends to disclose the information
- The third party can make a written representation, within 10 days of notice, against the proposed disclosure. CPIO/SPIO to keep in view the submission.
- But CPIO/SPIO in such case, to decide within 40 days of request, if notice to third party given, to disclose or not.
- Third party to be notified accordingly and advised the option to go under appeal within 30 days.

# Penalties section 20

- Penalty  
@ Rs 250 per day till the information is furnished. Limited to Rs 25000.
- Recommendation for Disciplinary action under the Service Rules
- Requisites:
  - Opinion of the Commission
  - without reasonable cause
    - Refusal to receive application
    - Non-submission of information within time
    - Malafide* denial to request for information
    - Knowingly given incorrect, incomplete or misleading information
    - Destroyed the information
    - Obstructed the furnishing of information
- Defence against Penalties  
(Decided cases of SC and HC)

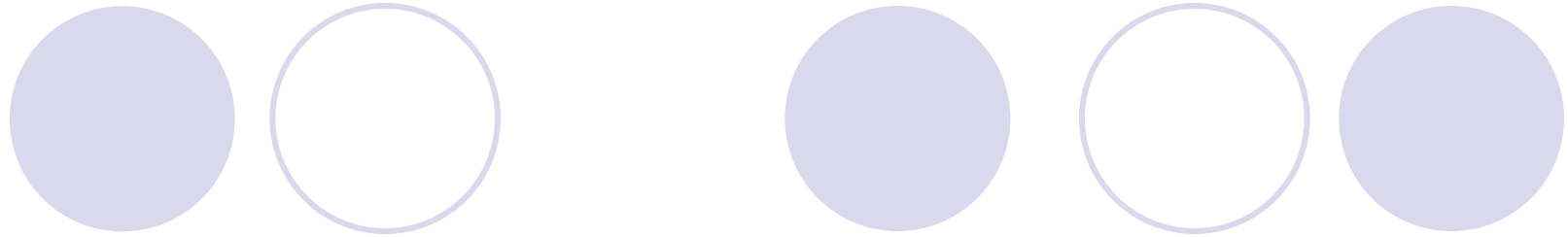
# Overriding Effect Section 22

- Sec. 22 gives overriding effect over-
  - The official Secrets Act, 1923
  - Any other law in force
  - Any instrument having legal effect
- Section 138(1)(b) of the Income Tax Act.



## Sec. 138 of the I. Tax Act and sec. 22 of the RTI

- Section 138(2) has a non-obstante phrase where it empowers the Central Govt to notify that the information will not be submitted by the Income Tax Authorities except in case as given in the notification.
- Section 22 of RTI Act has the non-obstante phrase and gives overriding effect to any other law “for the time being in force”.



# Thanks

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