

RTI TIMES

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Book Post

From the Editor's Desk

Dear Reader,

It has been two years since the 'RTI Act, 2005' has come into full force. Yet, for many 'Public Authorities', the Act in general, and S. 4(1)(b) [of the Act] in particular, is yet to sink in. It is a fact that many 'Public Authorities' are not complying with the letter and spirit of S. 4(1)(b). Among the violators or laggards are those, who, in a way, matter the most. These are the rural and urban local bodies (among the latter category – the smaller ones more so).

Much of the inputs behind this conclusion, though anecdotal, are plausible, for some of our and our CBAI project partners' experiences corroborate them. A study on implementation of the 'RTI Act, 2005' conducted at the Panchayat level in the Wayanad district of Kerala is a case in point. It was found that in some of the Panchayats, contact details of PIOs / APIOs were, either, not available in the first place or not prominently displayed.

Field visits by members of CGG's 'RTI Cell' to various panchayats and municipalities (in Andhra Pradesh) have thrown up similar findings. Further, our trainers have come across trainees admitting to their departments' (especially the line departments') less than desirable conformity with the relevant provisions.

Though, not the only category of 'Public Authorities' to have lapsed on this count, the LBs' non-compliance is a serious matter due to their immediacy, to the people in the governance and public service delivery context.

Could the lapse be due to absence of an explicit penalty clause for non-compliance by a 'Public Authority' with S. 4(1)(b)? But, one can complain 'in respect of any matter relating to requesting information' and Information Commissions (ICs) can impose penalties in deciding complaints.

Could it be because departmental heads aren't monitoring compliance of the line units? There is no gainsaying that they should. But, more concerted actions are called for. Media exposes and complaints by citizens and Civil Society Organisations to ICs supplemented by proactive surprise inspections by ICs can be a strong deterrent against this lapse and help address the problem.

Forthcoming Event

- 'CBAI Regional Review Workshop' at the 'Sardar Patel Institute of Public Administration' (SPIPA), Ahmedabad on 17th October, 2007.

The World Observes the Fifth 'International Right to Know Day' – 28th September, 2007



*Not all national laws have been implemented or are effective. See www.privacyinternational.org/foi/survey for analysis and updates of the laws and practices

The Fifth 'International Right to Know Day' was celebrated across the world on 28 September 2007.

The aim of this Day is to raise awareness of every individual's right of access to government-held information: the right to know how elected officials are exercising power and how the tax-payers' money is being spent.

On the occasion, over 180 organizations and over 190 individuals have called on European governments to ensure that the right of access to information is fully upheld in a forthcoming treaty, the '*European Convention on Access to Official Documents*', currently being drafted by the Council of Europe, a body that represents 47 countries and 800,000 people.

International Right to Know Day was established to mark the founding on 28 September 2002 of the global Freedom of Information Advocates Network. It was first celebrated on 28 September 2003.

Source: <http://www.foiadvocates.net>

On the occasion of the *Second Anniversary* of the 'RTI Act, 2005' coming into full force, we wish all the stakeholders of the RTI regime in India *All the Very Best*.

Other Sides of Right to Information.

Points of View.

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Is the Right of Patient Being Questioned? [Excerpts]

G Rajiv

[September 24, 2007]

The medical records of a patient is a professional secret and the doctors are bound to keep it as a secret unless a court of law is asked to divulge it, the International Code of Ethics framed by the Geneva Convention says.

Several cases are being reported where persons in no way related to the patient are seeking the confidential medical records without divulging any specific reason. In fact, over 90 percent of those seeking patient information are third parties not related to the patient.

This suggests that the act, by opening doors to confidential medical records, is being exploited for dubious reasons... by seeking the confidential medical reports of a patient public interest is being violated than safeguarded.

“It is against medical ethics. The medical records are not a public document and cannot be revealed without the consent of the patient. If there is a legitimate reason then it can be revealed to an investigating officer. A third party¹ has no right to know the medical record,” Kerala Government Medical Officers Association state president Dr Sunny P Orathel said.

The association is ready to fight against any move in any court of law, he added. Echoing the concern, IMA state secretary Dr R Ramesh said a third party had no right to know the medical record of a patient.

Going by the third party applications pouring into the medical colleges in the state a new unhealthy trend seems to have been set where the Act is being used to mock at the right of privacy of a patient.

Since the applicant need not reveal the reason for seeking the medical report, anyone can get information from any (government) hospital by paying just Rs 10. As a result private hospitals become more safe than a government hospital for a patient.

“Ninety percent of the requests that come through the Act are concerning confidential information of a third person. There has to be (a) strict guideline whether the medical records can be divulged,” Kerala Government Medical College Teachers Association president Dr A Sarathkumar said.

This article was posted on Newindpress.com

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Not Above the Law [Excerpts]

Sudhanshu Ranjan

[ToI Editorial September 24, 2007]

On September 21, Delhi high court moved against three 'Mid Day' journalists for reporting about the former Chief Justice of India (CJI). An impartial inquiry into the matter is essential to rescue the office of CJI from possible disrepute.

Earlier this year, the Delhi HC stayed a Central Information Commission (CIC) directive to the law ministry to make the file pertaining to appointment of judges public. The Supreme Court has asked the government to amend the RTI Act to take it out of the purview of CIC, an autonomous body, and also to provide that the CJI can stop any release of information.

SC has, however, praised RTI on other occasions. In the 'UP vs. Raj Narain' (case) it held: *"In a government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. ... people... have a right to know every public act, everything, that is done in a public way, by their public functionaries. (and) are entitled to know the particulars of every public transaction in all its bearing... The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption"*.

The court again rejected government's claim of privilege on a correspondence saying: *"Where a society has chosen to accept democracy as its creedal faith... citizens ought to know what their government is doing... an open government is clean government and a powerful safeguard against political and administrative aberration and inefficiency"*.

In what is known as the 'Judges' Case', judges insisted on the disclosure of the correspondence between the Union law minister and the CJI regarding their appointment and transfer on the ground that government was performing a constitutional function and it was a matter of public interest why a particular judge was dropped or allowed to continue.

Judges invoked the right to know when they found their own interests in jeopardy. But why should the same right not be invoked when people demand information or accountability from the judiciary? Judges generally take the plea that the functioning of the judiciary is transparent, as proceedings take place in the open court and every judgment is a public document which is subject to criticism.

However,...little is known about the administrative actions of the judiciary. Most High Courts have not even appointed public information officers (PIOs)... Those which have appointed PIOs have framed their own rules which clearly prohibit the disclosure of information on administrative matters relating to expenditure on judges and procedures followed in appointments of class III and IV employees of the high court. High court rules have enhanced the application fees to even Rs 500. Penalty for non-disclosure has been reduced from Rs 25,000 to a meager Rs 500.

Whether it is the Justice Sabharwal controversy or functioning of the judiciary at large, greater transparency is called for.

The writer is a TV journalist and columnist.

[www dot **F R E E D O M I N F O** dot org](http://www.freedominfo.org)

An Online Network of Freedom of Information Advocates

www.freedominfo.org is a one-stop portal for critical resources about freedom of information laws and movements around the world.



The site describes best practices and lessons learned, compares campaign strategies, and links the efforts of freedom of information advocates globally. It contains crucial information on freedom of information laws and how they were drafted and implemented, including how various provisions have worked in practice.

In the last decade, dozens of countries have enacted formal statutes guaranteeing their citizens' right of access to government information. Elsewhere, even without legal guarantees, citizens are asserting their right to know. Throughout the world, freedom of information movements are changing the definition of democratic governance.

freedominfo.org is a virtual network that links these movements as they struggle for greater openness. It is the online institutional memory of freedom of information campaigns throughout the world.

freedominfo.org's partners include the **FOI Advocates Network**, the **Global Transparency Initiative**, the **Global Transparency Initiative (GTI)**, the **Open Society Institute [Budapest]** and the **Ford Foundation**. The former was established in response to a growing global movement for access to information, to meet the need for cooperation among NGOs working actively in the freedom of information area and to facilitate the development of common projects. The Network aims to help NGOs with campaigning, advocacy, and fundraising, through exchange of information, ideas and strategies and by providing a forum for collaboration.

GTI is a network of civil society organisations promoting openness in the International Financial Institutions (IFIs), such as the World Bank, the IMF, the European Investment Bank and Regional Development Banks. The Open Society Institute provided initial funding for the site. **The National Security Archive at the George Washington University** serves as the site's secretariat. The Ford Foundation has provided grant funding to support freedominfo.org's monitoring of openness in the international financial and trade institutions.



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CBAI Focus State: Kerala

- The 'Institute of Management in Government' (IMG), headquartered in *Thiruvananthapuram*, which is the apex training institute for the State of Kerala is the 'State Implementing Agency' (SIA) for the 'CBAI Project'. Kerala was covered in the first phase of the project.
- *Palakkad* and *Wayanad* are the two project districts with their respective Collectorates as District Implementing Agencies (DIAs).
- The physical progress achieved by SIA for the period starting Jan' 06 to Mar' 07 comprised training of a total 693 persons including Resource Persons (trained by NIA & SIA); PIOs/APIOs/AAs/Other Officials and representatives of Media and Civil Society Organisations (CSOs).
- In the first quarter of 2007–08, a total of 145 persons have been trained at the State level. These include 101 PIOs/APIOs/AAs/Other Officials and 44 representatives of Media and CSOs.
- Remarkably, in *Wayanad*, 1,429 representatives have been trained in the first quarter of 2007-08.

More News Coming in from Wayanad District.....

A study was conducted in, Wayanad district, by **IMG** and '**RTI Cell, Wayanad**' on the implementation of the 'RTI Act, 2005'. The study was conducted in 3 panchayats – 2 gram panchayats and 1 block panchayat). Samples were drawn for three categories: citizens, panchayat officials and elected members of the panchayats.

The different sets of respondents were administered 3 separate questionnaires designed to gather information on prevailing practices, ongoing processes, felt effects & felt needs, visible trends and suggestions for improving efficacy. The study aimed at:

- Understanding stakeholders' knowledge about the Act (& the source & extent of knowledge);
- Assessing the strengths and weaknesses of the Act from the viewpoints of stakeholders;
- Identifying the measures needed for better / effective implementation of the Act;
- Assessing the capacity building status and needs.

The findings (as submitted) fall into 3 categories: *Positive Aspects of Implementation*; *Negative Aspects of Implementation*; and *Difficulties faced and Suggestions for Improvement*. It would be helpful to note the key points from the findings. The benefits as seen are the usual well known ones *viz* (i) Availability of almost all the needed information (including, pertaining to NREGS, police complaints and charges, beneficiary lists of schemes etc.) within a fixed time; (ii) Increased vigilance of public officials and people alike; and (iii) Cost-free provisioning of information to BPL persons.

The negative aspects, in several cases, include (i) Lack of information about PIOs / APIOs; (ii) Lack of needed awareness among the people including the scope of definition of 'information' (as defined in the Act); (iii) Absence of 'Model Formats' (for Application / Appeal) with the PIO and non-acknowledgement of applications / appeals received; (iv) Increased workload for PIOs, yet lack of cooperation from other staff; (v) APL persons people seeking information through BPL persons; (vi) Lack of specific 'Record Sections' in panchayats; and (vii) Blackmailing of officials for ransom for not exposing corruption.

The recommendations of the study team are as follows: (i) Displaying signboards and distributing leaflets; (ii) Necessitating availability of model formats and acknowledging applications / appeals; (iii) Providing a copy of the bare Act to every office as reference material; (iv) Charging BPL persons, if information provided exceeds 10 pages; and (v) Making available consolidated lists of PIOs / APIOs of all Departments / 'Public Authorities' at the District and State Levels.

Note: Solutions have not been offered for all the problems that the study highlighted. Some of the solutions cannot be overemphasized, whereas some are debatable. Some of these are basic requirements under the Act, while some others call for amendment(s) to the 'RTI Act, 2005' and / or the Rules made thereunder. **All comments / suggestions from readers are welcome.**

Right to Information Quiz

1. Which is the nodal agency of the Government of India to oversee the general implementation of the 'RTI Act, 2005'?
2. Do the 'Information Commissions' (ICs) have the authority to recommend measures to 'Public Authorities' to better their compliance with the 'RTI Act, 2005'?
3. Is a 'Public Information Officer' (PIO) liable to be penalised if non-compliance or violation takes place owing to factors beyond her / his control?
4. What is the remedy available to a citizen, if a 'Public Authority' fails to comply with any or all the provision(s) of Section 4(1)(b) of the 'RTI Act, 2005'?
5. What is the nature of the adjudicative authority that the ICs exercise?
6. Do 'Information Commissioners' have security of tenure?
7. Is there a limit to the duration for which an 'Information Commissioner' can hold office?

Note: Find answers to this quiz in the next issue.

Please visit 'R2I NET' for a detailed account of our activities and related updates at www.rti.org.in or at www.r2inet.org

Right to Information: TRIVIA

The **July** issue of **RTI TIMES** had – in the '**Right to Information: Trivia**' section – carried a decision of the 'Central Information Commission', which held that 'since India's Foreign Missions are set up by the 'Ministry of External Affairs', they should not be exempted from the provisions of the 'RTI Act, 2005'. This decision had come in the wake of the Indian mission in Paris issuing a statement that "*it was taken for granted that the missions abroad were not covered by the RTI Act*".

In this regard, it may be noted that a list of 'Public Information Officers' (PIOs) and 'First Appeal Officers' (AAs), of Indian embassies has been uploaded on the website of the 'Central Information Commission' [www.cic.gov.in]*. This information includes the stations, names, e-Mail IDs and fax numbers of the embassy officials concerned.

** A link is available on the Homepage (on the left side).

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We Invite You to Share:

- Your ideas / comments on the 'RTI Act, 2005' or the 'CBAI Project';
- Your experiences in using / implementing the 'RTI Act, 2005';
- Other inputs in the form of relevant photographs / video footages.

You may send your inputs to:

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Answers to Quiz in Issue VII

1. Under the 'RTI Act, 2005', the penalty imposed by the 'Information Commission' (IC) on a 'Public Information Officer' (PIO) is incident on the PIO, and NOT on the 'Public Authority' to which he / she belongs.
2. Yes. An IC is a 'Public Authority' for all ends and purposes of the 'RTI Act, 2005' and as such should, indeed, be an exemplar in its compliance with the provisions of the Act.
3. Yes. In hearing an appeal, an IC will have to give the PIO an opportunity to be heard to present her / his case. This derives from the principle of 'Natural Justice' in 'Jurisprudence' (i.e. philosophy / science of law), whereby nobody shall be condemned unheard.
4. As per the 'RTI Act, 2005', a State IC would have to have at least one '(Chief) Information Commissioner' and can have a maximum of 10 'Information Commissioners' (including the 'Chief Information Commissioner').
5. There is no provision in the 'RTI Act, 2005' for a single IC for more than one State. Every State has to have an IC, whose jurisdiction would extend to all the 'Public Authorities' in that State.
6. There is nothing in the 'RTI Act, 2005' that specifies recourse to any action in the event of failure on part of an 'Appropriate Government' (Central / State Governments, as the case may be) to constitute an 'Information Commission' as per the 'RTI Act, 2005'. Clearly, however, it would a violation of the 'RTI Act, 2005' not to do so.

Featured Resources

- www.freedominfo.org
- <http://spipa.gujarat.gov.in>
- www.imgkerala.org
- *'YOUR RIGHT TO KNOW– A Citizen's Guide to the Freedom of Information Act'* by Heather Brooke – London: Pluto Books. [Second Edition - 2007] www.plutobooks.com

As far as providing the ICs with required resources is concerned, it is the responsibility of the 'Appropriate Government'. How the latter goes about this is reflective of the seriousness with which it views the 'RTI Act, 2005' and its effective implementation.

7. The Central IC has no jurisdiction, whatsoever, over the State ICs. Every IC is independent and autonomous in the exercise of its jurisdiction and in its functioning.

Disclaimer

While all efforts have been made to ensure that the information presented in this Newsletter is accurate, yet, no warranty is assumed for either its completeness or its fitness for a particular purpose.

All opinions and views expressed in this Newsletter are personal and do not, necessarily, represent any policy or position of any organisation.