

RTI TIMES

Volume II Issue VI

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Book Post

From the Editor's Desk

Dear Reader,

The "First Appeal Officer" (FAO) is the designated authority in a (Central / State) Public Authority (PA) to receive and hear appeals of applicants / 'third parties' – dissatisfied with a Public Information Officer's (PIO) response to an RTI application.

It was recently reported that the Maharashtra State Information Commission – acting on a complaint – summoned a Joint Police Commissioner for having dismissed 74 appeals without hearing arguments even in one case.

There have been other reported instances, where FAOs have failed to provide succour to the aggrieved. Worse still, FAOs have been found to be hand-in-glove with PIOs (and / or other officials of the PA concerned) in adding to the misery of the aggrieved applicant. This could be due to the FAOs' lack of understanding of the law and / or interest in implementing it.

Information Commissions (ICs) have reprimanded FAOs for their unscrupulous acts of commission / omission. As per the law, however, the FAOs' liability does NOT extend to a monetary penalty as it does for a PIO. But (like PIOs), FAOs do enjoy "protection for action in good faith" (as per S. 21), which applies to "...any person for anything done or intended to be done...".

S. 19(1) of the 'RTI Act, 2005' requires the FAO(s) of a PA 'to be senior in rank to all the PIOs in that PA and though time-bound in disposing the appeals, FAOs have the discretion to admit appeals past the stipulated time limit (for admitting them). It is also notable that ICs have insisted on the 'First Appeal Process' being exhausted before they are approached with an appeal.

Thus, given the obvious significance accorded to an "internal-administrative review" of a PIO's decision, it won't be inordinate to expect an FAO to, not just hear and dispose appeals according to the law, but also to assume a leadership role in ensuring a PA's sound compliance with the 'RTI Act, 2005'. Apathy on the part of a FAO, thus, cuts both ways.

Indeed, if the FAOs shed their indifference to the 'RTI Act, 2005', they can make a positive difference to the RTI regime.

An Account of the National Review and Experience Sharing Workshop

RSIPA, Jaipur – 22nd & 23rd January, 2009

This workshop was flagged off by Shri. Vineet Pandey, Director, Training, DoPT, GOI who welcomed the participants for the workshop. This was followed by introduction of all the participants to each other. In his keynote Address, Dr. Rakesh Hooja, IAS, Additional Chief Secretary and Director General, Rajasthan Institute of Public Administration (RIPA) stressed upon the following points, as the focal areas for future Capacity Building endeavors on RTI:

- Improvement in Record Management at the department and public authority levels.
- Insisting on complete reporting 16 points of Suo Motto disclosure on an annual basis.
- Documentation and dissemination of experiences of APIOs/PIOs/FAOs in handling/disposing RTI applications;
- Organising workshops for inspiring attitudinal and behavioural change among the officials concerned.

Sri. Ajay Sawhney, Joint Secretary, Training, DoPT, GoI, in his opening remarks, welcomed the participants and conveyed his contentment to the presence of representatives from more than 20 project states and that he looked forward to a fruitful experience sharing by the States in the workshop. Dr. Rajiv Sharma, IAS, Director General, Centre for Good Governance (CGG), Hyderabad provided a detailed overview of the project covering the following points:

- Project Strategy; Executing Agencies; & Coverage
- Project Components; Key Achievements; & Issues
- Key Deliverables of NIA (CGG)
- Work Plan 2009 – Key Propositions
- Key Objectives of this Workshop

While reviewing the project, its objectives, key achievements and bottlenecks encountered in its implementation, Dr. Sharma laid down as the objectives of the workshop:

- Joint stocktaking of progress in Phase-I & Phase-II States and
- Getting inputs for 'Project Completion Report.

While appreciating the cooperation of many states with reference to online reporting of the project's physical and financial progress, Dr. Sharma also urged those states that have not been regular in the above regard to regularize their online reporting.

The following are the key points presented by the representatives of the participating states, about their achievements in and experience of implementing the CBAI project.

Andhra Pradesh

- The ATI has created a base of resource persons whose services can be solicited for capacity building efforts in the impending planned scheme. Their services can also be used to identify training needs of various stakeholder groups.
- ATI has contributed an additional Rs. 12 lakhs for capacity building efforts under the project.
- There is a huge demand for training on office automation and procedures.
- ATI has developed material on record maintenance, case laws, based on that provided by CGG, Hyderabad as well as indigenously.
- It was suggested that Regional Information Commissions could be thought of. This is expected to reduce the burden on the SICs.. .

Chattisgarh

- Village motivators were used to disseminate the RTI related information and were found could be useful medium for the same.
- Modes of communicating RTI related information included Wall writings and Samachar Samiti. These samitis would
 - Oversee implementation of the act
 - Act as facilitators for supply as well as demand side.
- ATI has enabled RTI related enquiry over the mobile phone.
- It was reported that codal formalities have delayed the decision making process.
- It was reported that grouping of components in the project monitoring system is not clear, thus making reporting difficult.
- It was expressed that outsourcing of certain project components could be explored, if the human resources are inadequate.
- It was suggested that a DoPT representative must visit ATIs at least once in 2 months.
- It was also suggested that the Assistant Nodal officer should not be a regulatory officer.

Gujarat

- Motorcycle road shows were used for spreading awareness about RTI Act and were found to be a useful medium for the same.
- Management games like role-play were a part of the RTI trainings and were found effective pedagogic tools.
- It was suggested that Gram sabha is an excellent forum for creating awareness on the act.
- It was emphasized that the study material for the training courses provided by the ATIs must preferably be in the vernacular language.

Karnataka

- It was reported that Satellite broadcast were used for disseminating information and creating awareness on the act. It was expressed that the same acted as one of the earliest examples in the project, of using Information and Communication Technologies for training- and dissemination-related work. Radio programmes were also used for the same.
- It was suggested that the ATI faculty must not be burdened with project management. HR must be separately hired, if need be, for the same.
- It was suggested that the focus must not be on the punitive aspects merely; rather, RTI must be seen as a facilitator of good governance.
- It was suggested that Bal panchayat could be used to question the non delivery of basic services.

Madhya Pradesh

- Focused first on guiding the community on the use of RTI to question the non-delivery of basic services.

Rajasthan

- Rajasthan Government has issued guidelines to all the state departments to include at least 1 day of RTI training for all training programmes of 3 days and of at least 2 days for those of 1 week's duration.
- The following are the focus areas:
 - Record keeping
 - Processing procedures
 - Ease of retrieval
- Developing the 17 reports on suo motto disclosure under 4(1)B of the Act must be emphasized.

Tamil Nadu

- Change management course for senior officers at IIM Bangalore
- There is a lack of clarity about responsibility of the PIOs.
- Developing systems for 4(1)B will eventually help reduce the number of applications

Uttarakhand

- Information fairs held where other fairs are in progress.
- Use news clippings etc. to make a collage.
- Studied the department wise break up of RTI applications – to analyse various trends and designed several subsequent interventions based upon the findings.
- Students could be an effective medium to disseminate information on RTI.

West Bengal

- Citizens charter
- E-records management
- Sensitization of political representatives at block level is a very difficult task.
- Political will is the most important factor.

Arunachal Pradesh

- Efforts of ATI recognized in an address by CM in assembly. The Director of the institute has assured the completion of planned activities by June 2009.

Delhi

- RTI trainings were already under way by the time the act was introduced.
- Essay competition was a useful medium.
- Directory of PIOs and APIOs.
- Audit of pro active disclosure was undertaken.

Haryana

- PIOs information secured over the phone, to compile the directory
- Focused effort of preparing guides and manuals in simple language.
- Mentioned the GO designating the village sarpanch as the PIO, as against the usual practice of panchayat secretary as PIO.
- Echoed concerns regarding poor records management, and below par pro active disclosure.

Bihar

- It was reported that the ATI faced difficulties in tracing NGOs to be involved in improving the effectiveness of implementation of the Act.
- It was suggested that PIOs be provided with incentives for better performance and compliance.
- It was reported as a matter of concern that under Section 4 (1) of the Act, there is no mention of penalty for officers not complying with pro-active disclosure.

Jharkhand

Some of the awareness strategies highlighted are the following

- Orientation workshops of Govt functionaries
- Workshop of Information Commissioners
- Sensitization of Media-persons
- Advocacy workshops for NGOs and other stakeholders
- Production of documentary film

Meghalaya

- It was reported that RTI on wheels- a mobile van carrying posters, pamphlets, pictures and other IEC materials was found to be a successful medium to create awareness among the masses.
- It was suggested that workshops on RTI Act be held in schools and colleges.

Answers to Quiz in Volume II, Issue V

1. A decision of an Information Commission (IC) would emerge out of it hearing either a second appeal or a complaint as per the provisions of the 'RTI Act, 2005'. As per S. 19(9) the Central or State IC, as the case may be, shall give a notice of its decision, including any right of appeal, to the complainant and the PA. Even though this provision has been included in the section which has the caption "Appeal", yet it can be construed from reading this provision that it applies to IC's decisions, both, on second appeals as well as complaints. It may be noted that most of the IC's have also been publishing all their decisions (along with the cause lists) on their respective websites.

2. The 'RTI Act, 2005' requires that a 'Public Information Officer' (PIO) of a 'Public Authority' (PA) should consult the 'third party' concerned about disclosing what the Act defines as "Third Party Information". There is no provision in the Act, however, to impose fine on a PIO for disclosing 'Third Party information' without consulting with the 'Third Party' at all.

It must be mentioned, however, that after consulting with the 'Third Party', a PIO may decide to disclose 'Third Party Information' even against the 'Third party's' wishes, in which case he / she has to communicate the decision to the 'Third Party' and the latter has an option to file first appeal (with the 'First Appeal Officer' (FAO) – as applicable) and second appeal (with the 'Information Commission' (IC) – as applicable) against the PIO's decision.

3. At present, there is no provision in the 'RTI Act, 2005' for either a PIO or a PA concerned to if the PIO concerned mistakenly or maliciously discloses 'Third Party Information'.

4. It is against the 'RTI Act, 2005' for an Assistant Public Information Officer (APIO) to decide upon applications filed under the Act. This is the responsibility of the PIO. The duty of the APIO is only to forward the RTI application to the PIO at the earliest and not exceeding beyond 5 days of having received it.

5. Central PAs may not have geographically as spread a presence (say, at levels below the district) as most State PAs do. Hence, in order to make it more convenient for the citizens to file RTI applications with Central PAs, certain Post Offices within the postal circles in each State have been designated as Central Assistant PIOs. **Note:** Department of Posts is a Central PA. A list of such post offices which are Central APIOs is available at www.rtiindia.org/forum/2157-list-post-offices-accepting-right-information-applications.html

6. The fact that certain Post Offices across the country have been designated as APIOs for Central PAs, does not in any way prevent any of the Central PAs from having other officials within their organisation as APIOs. Central PAs can have APIOs from among their own staff in their own geographically spread units / branches. Incidentally, there is no restriction, as such, on the number of APIOs / PIOs / FAOs that a PA can have so long as the requirements in the 'RTI Act, 2005' and in the relevant Rules – as applicable – of 'Appropriate Governments' regarding the designation of these officials are met.

7. There is NO provision in the 'RTI Act, 2005' for expediting the hearing of first and / or second appeals in cases where they may have been made against the decision of a PIO in the disposal of an RTI application requesting for information pertaining to a citizen's life and / or liberty. It can be affirmed that the absence of such a provision creates a kind of a dichotomous situation, especially, given that a PIO has to honour such RTI applications within 48 hours.

Right to Information: Trivia

The 'Right to Information Act,2007' of Nepal was endorsed by the Interim Legislature Parliament on 18 July 2007. The Nepal National Information Commission was constituted on 13th June 2008, under the chairmanship of Shri Biaya Kasaju. Shri Acharya and Sabita Baral are the other members of the Commission. Though there are many similarities between Indian and Nepalese laws, it has been pointed out that the Nepalese law seems to be stronger on some points that are delineated below:

Immediate disclosure of information

Information officer should provide the information immediately if the information by its nature could be provided immediately and the officer shall have to provide within fifteen days from the date of application if the information by its nature could NOT be provided immediately. If it is not possible to provide information immediately Information officer shall instantly provide a notice with the reason to the applicant.

contd. on pg. 8...

CBAI Focus State: Sikkim

- As in the case of the North Eastern States, except Assam, Sikkim too got on board the CBAI project in project's second phase. The State 'Administrative Training Institute' (ATI) became the 'State Implementing Agency' and the 'Collectorates' of East District and South District became the 'District Implementing Agencies' (DIAs), for these districts were selected as project districts.
- It can be gleaned from the online reporting from the State that the project got kick-started at the SIA-level with the training of 27 Resource Persons by YASHADA in the first quarter itself. The SIA also started on the right foot in that one of its other earliest activities was translation of the 'RTI Act' in the local language. Distribution of Act copies and advertising through the print media were other activities taken up in the 1st quarter.
- In the second quarter, the SIA conducted 2 stakeholder workshops; distributed 2000 pamphlets, posters, banners etc. and organised 2 road shows. It also trained 50 representatives of media organisations on the Act. In the next quarter, another 20 media representatives were trained along with such other activities as organising 5 road shows and 1 seminar on RTI. The number of pamphlets, copies of RTI Act and User Guides on RTI distributed during this period were 1,000; 500; and 1,000 respectively.
- Similar activities continued in the next quarter with the difference being that this quarter saw 82 PIOs / APIOs / FAOs trained at the ATI. Another 200 were trained in the first quarter of the next year in addition to 80 representatives of media organisations also being trained.
Notably, 5 seminars, 5 workshops / talkshows and 1 information fair were also organised in this quarter. In the second quarter of 2008-09, an additional 4 resource persons got trained at the SIA level, 1 T. V. advertisement was released and 2 talkshows and 2 workshops were organised. \
- There was a slowdown in the project-related activities in the quarter that followed and only a couple of seminars could be conducted in addition to release of a print advertisement and preparation of a report on mass awareness.
- For the whole of the first financial year of the project, no activities could be carried out in either of the districts. In the South district, 37 APIOs / PIOS / FAOs were trained in the first quarter of 2008-09. Further reporting of activities and utilisation of funds is pending. East district hasn't reported about its activities for the three quarters of 2008 yet.

Right to Information Quiz

1. Do the Rules made by the Central Government for the implementation of the 'RTI Act, 2005' override the rules made by the the State Governments to the extent of repugnancy?
2. How can a citizen locate a 'Public Information Officer' (PIO) in order to submit an RTI application? What if a PIO cannot be located?
3. What should an applicant do if a PIO is not available in office when the applicat visits to submit an RTI application?
4. Can a PIO refuse to accept an application?
5. Can the PIO's / APIO's transfer be an excuse for a PA to not accept or act on a citizen's application?
6. Can a citizen be asked to pay further fees simply for providing the information expeditiously?
7. Can a citizen be penalised for "vexatious" / "frivolous" RTI applications?

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: Good Practice – RTI Week Indore

'Indore RTI week' is the initiative by the students of 'Indian Institute of Management (IIM), Indore' to spread awareness about the 'RTI Act, 2005'. This five-day event was planned to educate students of various B-schools, Engineering and other Colleges in Indore about the 'RTI Act, 2005'.

The initiative was aimed at generating awareness among the students on how to draft RTI applications and file them. Workshops were conducted at premier institutes of city of Indore from December 1st to 5th and hundreds of students were trained on various aspects of exercising the citizens' right to information.



अब इंदौर जागेगा ... जवाब मांगेगा

Ten workshops (@ of 2 per day) were conducted by eminent Activists from Delhi, Mr. Sourabh Sharma and Mr. Santosh Jha. In order to spread the message to the citizens, Mr. Sharma also responded to public queries on RTI in the shows that were aired by Radio FM from December 1st to 6th.

On 7th December, the "Direct Action Day", volunteers from the colleges spread out in the city to mingle with and reach out to the city's denizens with their message of RTI. They established stalls at various places in Indore to help people draft their RTI applications. The idea was to empower the citizenry and make it aware of the right to seek information and question government officials for their lapses.

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contd. from pg. 3...

Whistleblowers' protection

It shall be a responsibility of employee of public agency to provide information on any ongoing or probable corruption or irregularities or any deed taken as offence under the prevailing laws. If any punishment or harm is done to the whistleblower, the whistleblower may complaint, along with demand for compensation, to the commission for revoking such decision.

Data protection and correction of personal information

Public agency shall protect the information of personal nature held in for preventing unauthorized publication and broadcasting. If anyone believes that the information in public agency on a certain topic is wrong, he may appeal to the concerned Chief along with necessary evidences for the correction of the information.

Public Agency includes registered Political Party

Information Officers provide information to citizens. The only weak feature is that the requester has to mention the reason for the request. Unofficial Translation of the law by Freedom Forum is available at Citizens'.

Source: *RTI Footprints (Website of the Campaign for Right to Information: www.rtinepal.org)*

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:

Right to Information Cell (RTI) Cell,
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Road No 25, Jubilee Hills,
Hyderabad – 500 033.

E-mail: nia@cgg.gov.in

Featured Resources

- www.cic.gov.in
- www.rti.org.in
- **'Treatise on Right to Information Act, 2005'** by Dr. Niraj Kumar (Lucknow) and Shri Sunil Kumar (Noida). Bharat Law House Pvt. Ltd., New Delhi – 110083. E-mail: blh1@vsnl.com

Note:

We receive several requests for the dispatch of the latest as well as previous of our publications (including our Newsletter – 'RTI TIMES').

We request our readers to, kindly, note that the soft copies of all our publications are available on and freely downloadable from our 'Web Portal' on RTI.

The URL for the said portal is www.rti.org.in



Capacity Building for
Access to Information
A GoI-UNDP Initiative



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