

## Guide For First Appellate Authority

It is the responsibility of the Central Public Information Officer (CPIO) of a public authority to supply correct and complete Information within the specified time to any person seeking information under the RTI Act, 2005. There are possibilities that a CPIO may not act as per provisions of the Act or an applicant may not otherwise be satisfied with the decision of the CPIO. The Act contains provision of two appeals to tide over such situations. The first appeal lies within the public authority by the concerned public authority. The first Appellate Authority happens to be an officer senior in rank to the CPIO. The second appeal lies with the Central Information Commission. The Central Information Commission (Appeal Procedure) The Guidelines contained in this document are meant for the First Appellate Authorities. In order to perform his/her duties effectively, the Appellate Authority should study the Act carefully and understand its provisions correctly. This document explains some of the important aspects of the Act which a First Appellate Authority should, in particular, be conversant with.

### What is Information

- Information is any material in any form. It includes records, documents, memos, e-mail, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic relating to any private body which can be accessed by the public authority under any law for the time being in force.
- A citizen has a right to seek such information from a public authority which is held by the public authority or which is held under its control. This right includes inspection of work, documents and records; taking notes, extracts or certified copies of document or records; and taking certified samples of material held by the public authority or held under the control of the public authority.
- The act gives the citizen a right to information at par with the Members of Parliament and the Members of State Legislatures. According to the Act, the information which cannot be denied to the Parliament or a State Legislature, shall not be denied to any person.
- A citizen has a right to obtain an information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through print-outs provided such information is already stored in a computer or in any other device from which the information may be transferred to diskettes etc.
- The information to the applicant should ordinarily be provided in the form in which it is sought. However, if the supply of information sought in a particular form would disproportionately divert the resources of the public authority or any cause harm to the safety or preservation of the records, supply of information in that form may be denied.
- The Act gives the right to information only to the citizens of India. It does not make provision for giving information to corporation, Associations, Companies etc. which are legal entities/persons, but not citizens. However, if an application is made by an employee or office - bearer of any Corporation, Association, Company, NGO etc. indicating his name and such employee/office bearer is a citizen of India, information may be supplied to him/her. In such cases, it would be presumed that a citizen has sought information at the address of the Corporation etc.
- Only such information is required to be supplied under the Act which already exists and is held by the public authority or held under the control of the public authority. It is beyond the scope of the Act to create information; or to interpret information; or to solve the problems raised by the applicants; or to furnish replies to hypothetical questions.

### Information Exempted From Disclosure

Sub-section (1) of section 8 and section 9 of the Act enumerate the categories of information which is exempt from disclosure. Sub-section (2) of section 8, however, provides that information exempted under sub-section(1) or exempted under the Official Secrets Act, 1923 can be disclosed if public interest in disclosure outweighs the harm to the protected interest. Further, sub-section (3) of section 8 provides that information exempt from disclosure under sub-section (1), except as provided in clauses (a), (c) and (i) thereof, would cease to be exempted after 20 years from the date of occurrence of the related event etc. It may be noted that section 8 (3) of the Act does not require the public authorities to retain records for indefinite period. The records should be retained as per the record retention schedule applicable to the concerned public authority. Information generated in a file may survive in the form of an OM or a letter or in any other even after destruction of the file record. The Act requires furnishing of information so available after the lapse of 20 years even if such information was exempt from disclosure under sub-section (1) of Section 8. It means that the information which, in normal course, is exempt from disclosure under sub-section (1) of Section 8 of the Act, would cease to be exempted if 20 years have lapsed after occurrence of the incident to which the information relates. However, the following types of information would continue to be exempt and there would be no obligation, even after lapse of 20 years, to give any citizen -

- information disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interest of the State, relation with foreign state or lead to incitement of an offence;
- information the disclosure of which would cause a breach of privilege of Parliament or State Legislature; or
- Cabinet papers including records of deliberation of the Council of Ministers, Secretaries and other Officers subject to the conditions given in proviso to clause (i) of sub-section (1) of Section 8 of the Act.

### Right to Information Vis-à-vis Other Acts

The RTI Act has over-riding effect vis-à-vis other laws inasmuch as the provisions of the RTI Act would 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 the RTI Act.

### Free for Seeking Information

An applicant, along with his application, is required to pay a sum of Rs. 10/- as application fee in case or by way of a demand draft or a banker's cheque or an Indian Postal Order payable to the Accounts Officer of the public authority. The applicant may also have to pay additional fee, as prescribed by the Right to Information (Regulation of Fee and Cost) Rules, 2005 for supply of information as given below:

- rupees two (Rs.2/-) for each page (in A-4 or A-3 size paper) created or copied;
- actual charge or cost price of a copy in Larger size paper;
- actual cost or price for samples or models;
- for inspection of records, no fee for the first hour; and a fee of rupee five (Rs. 5/-) for each subsequent hour (or fraction thereof);
- for information provided in diskette or floppy rupees fifty (Rs50/-) per diskette of floppy; and
- for information provided in printed form at the price fixed for such publication or rupees two per page of photocopy for extracts from the publication.

If the applicant belongs to 'below poverty line (BPL)' category, he/she is not required to pay any fee. However, He/she should submit a proof in support of his/her claim to belong to the below poverty line. The application not accompanied by the prescribed fee of Rs. 10/- or proof of the applicant's belonging to below poverty line, as the case may be, shall not be a valid application under the Act and, therefore, does not entitle the applicant to get information.

It may be noted that where the CPIO decides that the information shall be provided on payment of fee in addition to the application fee, CPIO is to inform the applicant:

- the details of further fees required to be paid;
- the calculations made to arrive at the amount of fee asked for;

### Contents and Format of Application

An applicant making request for information is not required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him. Also, the Act or the Rules do not prescribe any format of application for seeking information. Therefore, the applicant should not be asked to give justification for give details application in any particular form.

### Transfer of Application

- If the subject matter of the application concerns any other public authority, it should be transferred to that public authority. If only a part of the application concerns the other public authority, a copy of the application may be sent to that public authority, clearly specifying the part which relates to that public authority. While transferring the application or sending a copy thereof, the concerned public authority should be informed that the application fee has been received. The applicant should also be informed about the transfer of his application and the particulars of the public authority to whom the application or a copy thereof has been sent.
- Transfer of application or part thereof, as the case may be, should be made as soon as possible and in any case within five days from the date of receipt of the application. If a CPIO transfers an application after five days from the receipt of the application, he would be responsible for delay in disposing of the application to the extent of number of days which he takes in transferring the application beyond 5 days.
- The CPIO of the public authority to whom the application is transferred, should not refuse acceptance of transfer of the application on the ground that it was not transferred to him within 5 days.
- A public authority may designate as many CPIOs for it, as it may deem necessary. It is possible that in a public authority with more than one CPIO, an application is received by the CPIO other than the concerned CPIO. In such a case, the CPIO received by the application should transfer it to the concerned CPIO immediately, preferably the same day. Time period of five days for transfer of the application applies only when the application is transferred from one public authority to another public authority and not for transfer from one CPIO to another in the same public authority.

### Supply of Information

The answering CPIO should check the information sought or a part thereof is exempt from disclosure under section 8 or Section 9 of the Act. Request in respect of the part of the application which is so exempt may be rejected and rest of the information should be provided immediately or after receipt of additional fees, as the case may be.

### Supply of Part Information by Severance

Where a request is received for access to information which is exempt from disclosure but a part of which is not exempt and such part can be severed in such a way that the severed part does not contain exempt information then, access to that part of the information/record may be provided to the applicant. Where access is granted to part of the record in such a way, the Central public Information Officer should inform the applicant that the information asked for the exempt from disclosure and that only part of the record is being provided, after severance, which is not exempt from disclosure. While doing so, he should give the reasons for the decision, including any finding on any material any findings on any material question of fact, referring to the material on which those findings were based. The CPIO should take the approval of appropriate authority before supply of information in such a case and should inform the name and designation of the person giving the decision to the applicant also.

### Time period for Supply of Information

- The CPIO should supply the information within thirty days of the receipt of the request. Where the information sought for concerns the life or liberty of a person, the same should be provided within forty-eight hours of the receipt of the request.
- Every public authority is required to designate an officer at each sub-divisional level or other sub-district level as a Central Assistant Public Information Officer (CAPIO) to receive the application or appeals under the Act for forwarding the same to the Central Public Information Officer or the First Appellate Authority or the Central Information Commission, as the case may be. If request for information is received through the CAPIO, the information may be provided within 35 days of receipt of application by the CAPIO in normal course and 48 hours plus 5 days in case the information sought concerns the life or liberty of a person.
- In case of application transferred from one public authority to another public authority reply should be provided by the concerned public authority within 30 days of the receipt of the application by that public authority in normal course and within 48 hours in case the information sought concerns the life or liberty of a person.
- The Central Public Information Officers of the intelligence and security organizations specified in the Second Schedule of the Act may receive applications seeking information pertaining to allegations of corruption and human right violations. Information in respect of allegation of violation of human right, which is provided only after the approval of the Central Information Commission, should be provided within forty-five days from the date of the receipt of request. Time limit prescribed for supplying information in regard to allegation of corruption is the same as in other cases.
- Where the application is asked to pay additional fee, the period intervening between the dispatch of the intimation about payment of fee and the payment of fee by the applicant shall be excluded for the purpose of calculation of the period of reply. The following table shows the maximum time which may be taken to dispose off the application in different situations:

Situation	Time limit for disposing off applications
Supply of information in normal course	30 days
Supply of information if it concerns the life or liberty of a person	48 hours
Supply of information if the application is received through CAPIO.	05 DAYS SHALL BE ADDED TO THE TIME PERIOD INDICATED AT Sr. No. 1 and 2.
Supply of information if application/request is received after transfer from another public authority:  1. In normal course 2. In case the information concerns the life or liberty of a person.	1. Within 30 days of the receipt of the concerned public authority. 2. Within 48 hours of receipt of the application by the concerned public authority.
Supply of information by organizations specified in the Second Schedule:  1. If information relates to allegations of violation of human right. 2. In case information relates to allegations of corruption.	1. 45 days from the receipt of application. 2. Within 30 days of the receipt of application.
Supply of information if it relates to third party and the third party has treated it as confidential.	Should be provided after following the procedure given in para 32 to 36 of these guidelines.
Supply of information where the applicant is asked to pay additional fee.	The period intervening between information the applicant about additional fee and the payment of fee by the applicant for calculating the period of reply.

If the CPIO fails to give decision on the request for information within the prescribed period, the Central Public Information Officer shall be deemed to have refused the request. It is pertinent to note that if a public authority fails to comply with the specified time limit, the information to the concerned applicant would have to be provided free of charge.

### First Appeal

The information sought by an applicant should either be supplied to him or his application should be rejected within the time prescribed by the Act. If additional fee need be charged from the application, communication in this regard should be sent to him within the time limit prescribed for sending information. If the applicant does not receive information or decision about rejection or request or communication about payment of additional fee within the specified time, he can make an appeal to the First Appellate Authority. Appeal can also be made if the applicant is aggrieved by the decision of the CPIO regarding supply of information or the quantum of fee decided by CPIO.

### Appeal in relation to Third Party Information

- Third party in relation to the Act means a person other than the citizen who has made a request for information. Any public authority other than the public authority to whom the request has been made shall also be included in the definition of third party.
- It may be noted that information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, is exempt from disclosure. Section 8(I)(d) requires that such information should not be disclosed unless the competent authority is satisfied that larger public interest warrants the disclosure of such information.
- If an applicant seeks any information which relates to or has been supplied by a third party and that third party has treated that information as confidential, the Central Public Information Officer should consider whether the information should be disclosed or not. The guiding principle in such cases should be that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party. However, procedure as given below should be followed before disclosing such information. It may be noted that this procedure need be followed only when the third party has treated the information as confidential.
- If the CPIO intends to disclose the information, he should within five days from the receipt of the application, give a written notice to the third party that the information has been sought by the applicant under the RTI Act and that he intends to disclose the information. He should request the third party to make a submission in writing or orally, regarding whether the information should be disclosed. The third party should be given a time of ten days, from the date of receipt of the notice by him, to make representation against the proposed disclosure, if any.
- The Central Public Information Officer should make a decision regarding disclosure of the information keeping in view the submission of the third party. Such a decision should be taken within forty days from the receipt of the request for
- information. After taking the decision, the CPIO should give a notice of his decision to the third party in writing. The notice given to the third party should include a statement that the third party is entitled to prefer an appeal under section 19 against the decision.
- The third party can prefer an appeal to the First Appellate Authority against the decision made by the Central Public Information Officer within thirty days from the date of the receipt of notice. If not satisfied with the decision of the First Appellate Authority, the third party can prefer the second appeal to the Central Information Commission.
- If an appeal has been filed by the third party against the decision of the CPIO to disclose the third party information, the information should not be disclosed till the appeal is decided.

### Time Limit for Filing of First Appeal

The first appeal may be made within 30 days from the date of expiry of the prescribed period or from the receipt of communication from the CPIO. If the First Appellate Authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal, the appeal may be admitted after 30 days also.

### Disposal of Appeal

Deciding appeals under the RTI Act is a quasi-judicial function. It is, therefore, necessary that the appellate authority should see to it that the justice is not only done but it should also appear to have been done. In order to do so, the order passed by the appellate authority should be a speaking order giving justification for the decision arrived at.

### Time Limit for Disposal of Appeal

The appeal should be disposed off within 30 days of receipt of the appeal. In exceptional cases, the Appellate Authority may take 45 days for its disposal. However, in cases where disposal of appeal takes more than 30 days, the Appellate Authority should record in writing the reasons for such delay.

If an appellate Authority comes to a conclusion that the appellant should be supplied information in addition to what has been supplied to him by the CPIO, he may either (i) pass an order directing the CPIO to give such information to the appellant; or (ii) he himself may give information to the appellant while disposing off the appeal. In the first case the appellate authority should ensure that the information ordered by him to be supplied is supplied to the appellant immediately. It would, however, be better if the appellate authority chooses the second course of action and he himself furnishes the information along with the order passed by him in the matter.

If, in any case, the CPIO does not implement the order passed by the appellant authority and the appellate authority feels that intervention of higher authority is required to give his order implemented, he should bring the matter or the notice of the officer in the public authority competent to take action against the CPIO. Such competent officer shall take necessary action so as to ensure implementation of the provisions of the RTI Act.