

FIRST APPEAL & APPELLATE AUTHORITY

Channels of Appeal

The Act provides for two channels of appeal against the decision of a PIO on the request for information by a citizen-an internal or 'first' appeal to a designated officer "senior in rank" to the PIO, called the first appellate authority as notified by the Public Authority and a 'second' appeal to the Information Commission.

First Appellate Authority

Under Section 7(8)(iii), it refers to "appellate authority" to whom appeal can be made by a person whose request has been rejected. Section 19(1) refers to first appeal being made to such "officer who is senior in rank to the Central PIO or State PIO, as the case may be".

It is important to note that the Appellate Authority must be an officer senior in rank to the PIO such that he is fully conversant with the work of the organization, the subjects dealt with by it and the functions discharged by various PIOs. The number of designated Appellate Authorities in a Public Authority could be small as compared to the number of PIOs. One Appellate Authority could easily meet the requirement of appeals arising out of the decisions of a number of PIOs. However, keeping the nature of responsibilities to be discharged under the Act and the structure and functions of the organization at various levels in views, each Public Authority has to determine

the number of senior officers to be designated as AA, the rank at which the designation would be made and (if applicable) the PIOs against whose decisions they would hear appeals.

The Appellate Authority within a Public Authority should attempt keep himself/herself updated such that he/she:

- * Would be fully conversant with the functioning of the organization;
- * Would be able to command various sources of information of the authority and meet the access requirements of the public.
- * Would be able to present to the parent department a complete and correct picture regarding the state of implementation of the Act by the authority;
- * Would usually have first hand knowledge of the operation of the Act within his/her organization.
- * Would be in a position to explain to the next appellate authority, i.e. the Information Commission regarding the reasons behind the outcomes of first appeals.
- * Would be able to inculcate a sense of responsibility among the PIOs and APIOs within the authority to be responsive to the requests of citizens for information.

Furthermore as the head of the authority, analyzing the type of information sought from the organization, he or she can be in a better position to determine additional areas requiring proactive disclosure/publication.

The advantages listed above may be weighed against factors such as whether the heads of the public authority would be in a position to devote time for deciding time-consuming appeals, given the nature and extent of his/her workload. The departments concerned may take appropriate decisions weighing the pros and cons.

Disposal of First Appeals

Section 19(1) of the Act stipulates that any person who, does not receive a decision on request for information within the stipulated time or is aggrieved by a decision of the PIO including intimation of fees to be paid may within 30 days from the expiry of such period or from the receipt of such a decision prefer an appeal to the designated AA. Section 19(2) allows a third party to make an appeal against the order made by the PIO.

The AA may admit the appeal after the expiry of the period of 30 days if he/she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

Where an appeal is preferred against an order made by a PIO to disclose "third party" information, the appeal by the concerned third party, however, shall be made within 30 days from the date of the order.

The Act prescribes that the appeal shall be disposed of within 30 days of the receipt of the appeal or within such extended period not exceeding a total of 45 days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.

Importance of Public Interest in Disposal of Appeal

The Right to Information Act, 2005 calls for a paradigm shift in the approach to governance. It is an Act which will be implemented by the people and acted upon by the Government. The larger public interest will always be more important than private or protected interest. Overall, if the public interest in disclosure to the citizen outweighs the harm to the protected interest, then the public authority may provide information.

The Appellate Authorities would need to give due consideration to 'public interest' as the predominant consideration in the supply of information to citizens where dealing with appeals, including cases where the PIOs might have erred in judging the privacy of individual.

Action in Good Faith

Under Section 21 of the Act, any action taken in good faith is protected. The General Clauses Act, 1897 defines 'good faith' as "a thing..... deemed to be done in "good faith", where it is in fact done honestly, whether it is done negligently or not".

No suit, prosecution or other legal proceeding lies against the person who has done or intended to do anything which is in good faith. That an action was done in good faith must, however, be proved based on documentary evidence.

The documents to be presented as proof to establish that a decision was taken in good faith cannot be got prepared overnight. To a large extent, quick and effective disposal of information requests will depend on the manner in which the Public Authority maintains and manages its records. Yet, in any case, the registers to be maintained for receipt of request applications,

acknowledgements, those for transfer of applications to other public authorities and officers with dates(and the acknowledgement of such transfers), reasons for decision etc. would all be required. The entries in such registers will have to be correct and complete.

Section 5(5) states that any officer whose assistance has been sought shall render all the assistance to the PIO by furnishing information, and in the event of any contravention of any provisions of the Act by such other officer, the said officer shall be deemed to be a PIO. Hence, it is important for the PIO to maintain records/ acknowledgements of letters seeking assistance from other officers.

Since the Appellate Authority (or the Information Commission) is to hear evidences, peruse and inspect documents and receive evidences for arriving at a decision on an appeal, the PIO is to be provided ample opportunity to defend him/herself with supporting evidences (in the form of records of the disposal of a request at his end).

Well Reasoned Order

The onus to prove that a denial of request was justified lies on the PIO, who denied the request. This burden of proof under Section 19(5) has to be supported by documentary evidence.

As per the provision of Section 7(8) of the Act, the PIO, when rejecting a request has to communicate (to the person making a request) the following:

- (i) The reasons for such rejection;
- (ii) The period within which an appeal against such rejection may be preferred.

(iii) The particulars of the Appellate Authority to whom appeal can be preferred.

Similarly, for the requests where information is provided, he/she is required to intimate the amount of fees to be paid, the calculation details of fees charged and also that the decision of charging a certain amount of fee can be appealed against, details of Appellate Authority and the period within which the appeal could be preferred.

While providing requisite information or rejecting the request, the PIO has to issue well-reasoned communications. The reasons are to be given in proper order and the rights of the citizen to appeal are to be explicitly stated. Such communication should clarify the position to the applicants and enable the AA (or the Information Commission hearing a second appeal) to identify the cause for rejection or basis for fee determination etc. It will also help the Appellate Authority or the Information Commission in issuing decision(s).

Principle of Natural Justice

The procedure for deciding an appeal by an Appellate Authority (or the Information Commission) must take into account the application of the principles of natural justice. No person should be condemned unheard. Both the sides will have to be given opportunity to be heard and also to submit any document etc. for perusal and inspection by the concerned, during appeal. Fair play will thus be an essential ingredient of any decision taken.

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