

# THE FREEDOM OF INFORMATION ACT, 2002

Freedom of Information Act, 2002 is an Act to provide for freedom to every citizen to secure access to information under the control of public authorities, consistent with public interest, in order to promote openness, transparency and accountability in administration and in relation to matters connected therewith or incidental thereto. Freedom of information is the right to obtain information from any public authority by means of (i) inspection, taking of extracts and notes ; (ii) certified copies of any records of such public authority; (iii) disketts, floppies or in any other electronic mode or through printouts where such information is stored in a computer or in any other device. Information in this context means any material in any form relating to the administration, operations or decisions of a public authority. The Act provides for making information held by executive agencies of the State available to the public unless it comes within any one of the specific categories of matters exempt from public disclosure . Virtually all agencies of the executive branch of the government are required by the Act to issue regulations to implement the provisions of the Act. These regulations inform the public where certain types of information may be readily obtained, how other information may be obtained on request and what internal agency appeals are available if a member of the public is refused the requested information. The freedom of information Act is designed to prevent abuse of discretionary power of the Governmental agencies by requiring them to make public certain information about their working and work product.

## THE FREEDOM OF INFORMATION ACT, 2002

An Act to provide for freedom to every citizen to secure access to information under the control of public authorities, consistent with public interest, in order to promote openness, transparency and accountability in administration and in relation to matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Fifty-third Year of the Republic of India as follows :

### CHAPTER - I

#### PRELIMINARY

#### 1. Short title, extent and commencement

- (1) This Act may be called the Freedom of Information Act, 2002
- (2) It extends to the whole of India except the State of Jammu and Kashmir
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

#### 2. Definition

In this Act, unless the context otherwise requires –

- (a) "appropriate government" means in relation to a public authority established, constituted, owned, substantially financed by funds provided directly or indirectly or controlled –
  - (i) by the Central Government, the Central Government;
  - (ii) by the State Government, the State Government;
  - (iii) by the Union territory, the Central Government.
- (b) "competent authority" means –
  - (i) the Speaker in the case of the House of the People or the Legislative Assembly and the Chairman in the case of the Council of States or the Legislative Council;
  - (ii) the Chief Justice of India in the case of the Supreme Court;
  - (iii) the Chief Justice of the High Court in the case of a High Court;
  - (iv) the President or the Governor, as the case may be, in the case of other authorities created by or under the Constitution;
  - (v) the administrator appointed under Article 239 of the Constitution.
- (c) "freedom of information" means the right to obtain information from any public authority by means of –
  - (i) inspection, taking of extracts and notes;
  - (ii) certified copies of any records of such public authority;
  - (iii) disketts, floppies or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.
- (d) "information" means any material in any form relating to the administration, operations or decisions of a public authority;
- (e) "prescribed" means prescribed by rules made under this Act by the appropriate Government or the competent authority, as the case may be;
- (f) "public authority" means any authority or body established or constituted –
  - (i) by or under the Constitution;
  - (ii) by any law made by the appropriate Government, and includes any other body owned, controlled or substantially financed by funds provided directly or indirectly by the appropriate Government;
- (g) "Public Information Officer" means the Public Information Officer appointed under sub-section (1) of Section 5;
- (h) "record" includes –
  - (i) any document, manuscript and file;
  - (ii) any microfilm, microfiche and facsimile copy of a document;
  - (iii) any reproduction of image or images embodied in such microfilm (whether enlarged or not); and
  - (iv) any other material produced by a computer or by any other device.
- (i) "third party" means a person other than the person making a request for information and includes a public authority.

## COMMENTS

**Appropriate government**

Under S.2 (a) of the Contract Labour (Regulation and Abolition) Act, 1970 –

Appropriate government means –

(1) in relation to –

- (i) any establishment pertaining to any industry carried on by or under the authority of Central Government or pertaining to any such controller industry as may be specified in this behalf by the Central Government, or
- (ii) any establishment of any railway, Cantonment Board, major port, mine or oilfield, or
- (iii) any establishment of a banking or insurance company, the Central Government.

(2) in relation to any other establishment, the Government of the State in which that other establishment is situated.

Section 2 (a) of the Industrial Disputes Act, 1947 defines “appropriate government” to mean –

- (i) in relation to any industrial dispute concerning any industry carried on by or under the authority of the Central Government or by any railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial dispute concerning the Industrial Financial Corporation of India established under S.3 of the Industrial Finance Corporation Act, 1948 or the Employees’ State Insurance Corporation established under S.3 of the Employees’ State Insurance Act, 1948 or the Indian Airlines and Air-India Corporation established under S.3 of the Air Corporation Act, 1953 or the Life Insurance Corporation of India established under S.3 of the Life Insurance Corporation Act, 1956 or the Agricultural Refinance Corporation established under S.3 of the Agricultural Refinance Corporation Act, 1963 or the Deposit Insurance Corporation established under S.3 of the Deposit Insurance Corporation Act, 1961 or the Unit Trust of India established under S.3 of the Unit Trust of India Act, 1963 or the banking or an insurance company, a mine, an oilfield, a Cantonment Board or a major port, the Central Government, and
- (ii) in relation to any other industrial dispute, the State Government, Under sub-clause (i) of Section 2 (a) of the Payment of Gratuity Act, 1972, the Central Government is the appropriate government only in relation to an establishment having branches in more than one State. There is no like provision made in relation to such an establishment having factories in different States – *Jeewanlal Ltd. v. appellate Authority under the payment of Gratuity Act, AIR 1984 SC 1842.*

The Central Government and not the State Government is the ‘appropriate government’ under Section 2 (a) of the Industrial Disputes Act, in the matter of industrial disputes arising between the management and the workmen of the Regional Provident Fund organisation– *Regional Provident Fund Commissioner, Karnataka v. Workmen represented by the General Secretary, Karnataka Provident Fund Employees’ Union, AIR 1984 SC 1897.*

In relation to an industrial dispute raised by workmen of an industry in the Union Territory, the appropriate government would be the Central Government and not the State Government for the

purpose of making reference of dispute under Section 10 (1) of the Industrial Disputes Act, 1947– *Goa sampling Employees' Association v. General Superintendence Co. of India Pvt. Ltd.* AIR 1985 SC 357.

### **Competent authority**

The word “competent” means duly qualified ; answering all requirements ; having sufficient capacity, ability or authority ; possessing the requisite physical, mental, natural or legal qualifications; able ; adequate; suitable; sufficient; capable; legally fit – *Black's Law Dictionary*.

Authority is a legal body invested with some power. A body of persons who are not recognized by law as a legal entity cannot be considered to be an authority within the meaning of the word in the Constitution of India – *Badri Prasad v. President District Board* AIR 1952 All 681.

Authority means a right ; an official or judicial command ; also a legal power to do an act given by one man to another – *Wharton's Law Lexicon*. It may be expressed or implied.

Authority (in Administration Law) is a body having jurisdiction in certain matters of public nature. The ability conferred upon a person by the law to alter by his own will directed to that end the rights, duties, liabilities or other legal relations either of himself or of other person, must be present ab extra to make a person an authority– *Ved Prakash v. State of Haryana* AIR 981 SC 643.

An authority is said to be express when it is given by words spoken or written. An authority is said to be implied when it is to be inferred from the circumstances of the case : and things spoken or written or the ordinary course of dealing, may be accounted for circumstances of the case.

The word ‘authority’ in the context of the Constitution of India may include any government in an appropriate case – *Lt. Col. Khajoor Singh v. Union of India* AIR 1961 SC 532.

The expression “competent authority”, as applied to courts and public officers, imports jurisdiction and due legal authority to deal with the particular matter in question.

Sec. 2 (a) of the Delhi Right to Information Act, 2001, defines “competent authority” to mean any authority or officer notified by the government from time to time in the Official Gazette for the purposes of that Act.

Under Art. 239 of the Constitution, every Union Territory shall be administered by the President acting through an administrator to be appointed by him with such designation as he may specify. The President may appoint the Governor of a State as the administrator of an adjoining Union Territory, and where a Governor is so appointed, he shall exercise his functions as such administrator independently of his Council of Ministers.

### **Freedom of Information**

In the U.S., the Freedom of Information Act (5 U.S.C.A. 552) provides for making information held by federal agencies available to the public unless it comes within one of the specific categories of matters exempt from public disclosure. Virtually all agencies of the executive branch of the Federal Government have issued regulations to implement the Freedom of Information Act. These regulations inform the public where certain types of information may be readily obtained, how other information may be obtained on request, and what internal agency appeals are available if a member of the public is refused requested information. This Act is designed to prevent abuse of discretionary power of federal agencies by requiring them to make public certain information about their workings and work product.

Sec. 3 of the Delhi Right for Information Act, 2001 confers on every citizen the right to obtain information from the competent authority subject to the provisions of that Act. Sec. 2 (i) of the said Act defines “right to information” as the right of the access to information and includes the inspection of works, documents, records, taking notes and extracts and obtaining certified copies of documents or records, or taking samples of material.

### Information

The word ‘information’ is synonymous with knowledge or awareness, in contradistinction to apprehension, suspicion or misgiving – *CIT v. Jagan Nath AIR 1957 Punj. 226*.

The word ‘information’ in the Income-tax Act means instruction or knowledge derived from an external source concerning facts or particulars or as to law relating to assessment – *ITC v. A. Raman AIR 1968 SC 49*.

The word ‘information’ in Section 34 (1) (b) of the Indian Income-tax Act, 1922 includes information as to the true and correct state of the law and so would cover information as to relevant judicial decision—*Maharaj Kumar Kamal Singh v. CIT, Bihar AIR 1959 SC 257*.

Information may come from external sources or even from materials already on the record or may be derived from the discovery of new and important matter or fresh facts. The word ‘information’ will also include true and correct state of the law derived from relevant judicial decisions either of the Income-tax Authorities or other courts of law which decide Income-tax matters. Whether the ground on which the original assessment is based is held to be erroneous by a superior court in some other case, that will also amount to a fresh information which comes into existence subsequent to the original assessment – *Kalyanji Mavji & Co. v. CIT, AIR 1976 SC 203*.

The ‘information’ may be of facts or of law. The ‘information’ of the fact may be from external source – *R.K.Malhotra, ITO v. Kasturbhai Lalbhai (HUF), AIR 1977 SC 2129*.

“Information” means instruction or knowledge concerning facts and particulars, but when S. 147 (b) of the Income-tax Act, 1961 is read as referring to “information” as to law, what is contemplated is information as to the law created by a formal source, that is, from a competent legislature or from a competent judicial or quasi-judicial authority, which influences the course of the assessment and decides any one or more of those matters which determine the assessee’s tax liability – *Indian & Eastern Newspapers Society, v. CIT, AIR 1979 SC 1960*.

The word ‘information’ occurring in S. 20 of the Evidence Act, 1872 is not to be understood in the sense that the parties desired to know something which none of them had any knowledge of. Where there is a dispute as regards a certain question and the Court is in need of information regarding the truth on that point, any statement which the referee may make is nevertheless information within the purview of Section 20. – *Hirachand Kothari (Dead) by LRs. v. State of Rajasthan AIR 1985 SC 998*.

Under S.2 (1) (v) of the Information Technology Act, 2000, “information” includes data, text, images, sound, voice, codes, computer programmes, software and database or microfilm or computer generated microfiche.

The Delhi Right to Information Act, 2001, by its S. 2(d) defines “information” to mean any material or information relating to the affairs of the National Capital Territory of Delhi except matters with respect to Entries 1, 2 and 18 in List II of Schedule VII to the Constitution, and also Entries 64 to 66 in that List insofar as they relate to said Entries 1, 2 and 18. These Entries relate to Public order

(Entry 1), Police (Entry 2), Land (Entry 18), Offences against laws with respect to any of the matters in List II (Entry 64), Jurisdiction and powers of Courts except Supreme Court, with respect to any of the matters in List II (Entry 65), and Fees in respect of any of the matters in List II, not including fees taken in any Court (Entry 66). No material or information relating to the affairs on these subjects is open to public inspection.

### **Prescribed**

“To prescribe” means to lay down authoritatively as a guide, direction, or rule; to impose as a peremptory order, to dictate; to point, to direct; to give as a guide, direction, or rule of action; to give law. To direct; define; mark out—*Black’s Law Dictionary*.

“Prescribed” has been defined as prescribed by the rules made under the Act—*State of Punjab v. British India Corporation Ltd.*, AIR 1963 S.C. 1459.

Under S. 17(1), the Freedom of Information Act, 2002, the Central Government is empowered to make rules to carry out the provisions of the Act, in particular, rules to provide for all or any of the matters, namely, (a) intervals at which matters referred to in sub-clauses (i) to (vi) of Clause (b) of Section 4 shall be published; (b) the fee payable under sub-section (1) of S. 7; (c) the authority before whom an appeal may be preferred under sub-section (1) of S. 12; (d) any other matter which is required to be, or may be, prescribed. Section 18(1) confers power on the State Government to make rules, in particular for matters relating to (a) the fee payable under sub-section (1) of Section 7; (b) the authority before whom an appeal may be preferred under sub-section (1) of Section 12; (c) any other matter which is required to be, or may be, prescribed : Provided that initially the rules shall be made by the Central Government by notification in the *Official Gazette*. Section 19(1) gives rule-making power to the competent authority also, in particular, for matters relating to (a) the fee payable under sub-section (1) of Section 7; (b) the authority before whom an appeal may be preferred under sub-section (1) of Section 12; (c) any other matter which is required to be; or may be, prescribed.

### **Public Authority**

A “public authority” is an agency established by government though not a department thereof but subject to some governmental control, e.g., Port Authority—*Opinion of Justices 334 Mass. 721, 136 N.E. 2d 223,235*.

A public authority may be described as a person or administrative body entrusted with functions to perform for the benefit of the public and not for private profit. Not every such person or body is expressly defined as a public authority or body, and the meaning of a public authority or body may vary according to the statutory context—*Halsbury’s Laws of England, 4th Ed. Vol. 1, Para. 6, pp. 9-10*.

A “public authority” is a body which has public or statutory duties to perform and which performs those duties and carries out its transactions for the benefit of the public and not for private profit. Such an authority is not precluded from making a profit for the public benefit—*Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi*, AIR 1975 S.C. 1331.

Section 2(g) of the Delhi Right for Information Act, 2001 defines “public authority” to mean any authority or body established or constituted, (i) by or under the Constitution, or (ii) by any law made by the Government (Lt. Governor referred in Art. 239AA of the Constitution), and includes any other body owned, controlled or substantially financed by funds provided directly or indirectly by the Government. The definition of “public authority” in Section 2(f) of the Freedom of Information Act, 2002 is also in similar line.

### Public Information Officer

Section 5(1) of the Freedom of Information Act, 2002 provides for the appointment of Public Information Officers by the public authority. Every such officer shall deal with requests for information and shall render reasonable assistance to any person seeking such information, and may seek the assistance of any other officer as he may think necessary for the discharge of duties, and any officer whose assistance is so sought shall render all assistance to the Public Information Officer.

### Record

Written account of some act, court proceeding, transaction, or instrument, drawn up, under authority of law, by a proper officer, and designed to remain as a memorial or permanent evidence of the matters to which it relates. People ex ref. – *Simons v. Dowling*, 84 Misc. 201, 146 N.Y.S. 919, 920. – A memorandum public or private, of what has been done, ordinarily applied to public records, in which sense it is a written memorial made by a public officer– *Nogueira v. State*, 123 Tex. Cr. R. 449.59 S.W. 2d 831. A computer printout qualifies as a “record” within business records exception to hearsay rule – *American Oil Co. v. Valenti*, 179 Conn. 349, 426 A.2d 305, 309.

The act or fact of recording or being recorded; reduction to writing as evidence, also, the writing so made. A register, a family record, official contemporaneous writing, an authentic official copy of document entered in book or deposited in keeping of officer designated by law; an official contemporaneous memorandum stating the proceedings of a court or official copy of legal papers used in a case– *Shimmel v. People*, 108 Colo. 592, 121 P. 2d 491, 493.

The term “records” means accounts, correspondence, memorandums, tapes, discs, papers, books, and other documents or transcribed information of any type, whether expressed in ordinary or machine language – *Black’s Law Dictionary*.

Record means any disc, tape, performed roll or other device in which sounds are embodied so as to be capable of being reproduced therefrom, other than a sound track associated with a cinematograph film within the meaning of the Copyright Act, 1957, S.2 (w), since omitted.

A record is a formal writing of any fact or proceeding; anything entered in the rolls of a court– *Superintendent and Remembrancer v. Sardar Bahadur Singh* AIR 1969 Cal. 451.

“Record” in S. 35(1) of the Indian Income Tax Act, 1922 refers not only to the order of assessment but comprises all proceedings on which the assessment order is based and the income tax officer is entitled for the purpose of exercising his jurisdiction under Section 35 to look into the whole evidence and law applicable to ascertain whether there was an error. – *Maharana Mills (P) Ltd. v. Income Tax Officer* AIR 1959 SC 881.

Information that is written on a tangible medium (a document) or record in an electronic or other medium and retrievable in perceivable form is “record” for the purposes of the Information Technology Act, 2000.

“Electronic form” with reference to information means any information generated, sent, received or stored in media, magnetic, optical, computer memory, microfilm, computer generated micro fiche or similar device.

## CHAPTER II

## FREEDOM OF INFORMATION AND OBLIGATIONS OF PUBLIC AUTHORITIES

## 3. Freedom of information

Subject to the provisions of this Act, all citizen shall have freedom of information.

## COMMENTS

No fundamental right meted out under Part III of the Constitution is absolute and it is to be within the permissible reasonable restrictions. Hence, every individual right has to give way to the right of public at large.—*State of Punjab v. Ram Lubhaya Bagga AIR 1998 SC 1703*. The primacy of the interest of the nation and the security of the State must be read into every article dealing with fundamental rights—*Chairman, Railway Board v. Chandnma Das AIR 2000 SC 988*. Article 19 (1) guarantees those great and basic rights which are recognised and guaranteed as natural or common law rights inherent in the status of a citizen of a free country, as distinguished from rights which are created by statute and must be exercised subject to conditions imposed by it. Where a right is created or a freedom is given by a statute, it can be taken away by the Legislature, but when a right is fundamental. It cannot be taken away by the Legislature and can be subjected to such restrictions only as are permitted by the Constitution itself, e.g. on the grounds specified in clause (2) and (6) of Art 19.

In the Freedom of Information Act, 2002, S. B.(1) exempts informations enumerated in cls. (a) to (g) from disclosure and S. 9 provides grounds as given in cls. (a) to (d) thereof for refusal to access in certain cases.

## 4. Obligations on public authorities

Every public authority shall—

- (a) maintain all its records, in such manner and form as is consistent with its operational requirements duly catalogued and indexed;
- (b) publish at such intervals as may be prescribed by the appropriate Government or competent authority :—
  - (i) the particulars of its organisation, functions and duties;
  - (ii) the powers and duties of its officers and employees and the procedure followed by them in the decision making process.
  - (iii) the norms set by the public authority for the discharge of its functions;
  - (iv) rules, regulations, instructions, manuals and other categories of records under its control used by its employees for discharging its functions;
  - (v) the details of facilities available to citizens for obtaining information and
  - (vi) the name, designation and other particulars of the Public Information Officer;
- (c) publish all relevant facts concerning important decisions and policies that affect the public while announcing such decisions and policies;
- (d) give reasons for its decisions, whether administrative or quasi-judicial to those affected by such decisions;



- (e) before initiating any project, publish or communicate to the public generally or to the persons affected or likely to be affected by the project in particular, the facts available to it or to which it has reasonable access which in its opinion should be known to them in the best interests of natural justice and promotion of democratic principles.

### COMMENTS

This Section is closely synonymous to S.4 of the Delhi Right for Information Act, 2001 with the same caption "Obligations on public authorities". The only exceptions are that (i) instead of the words "appropriate government or competent authority" in cl. (b) of S. 4 of the present Act, the Delhi Act contains the word "government" only, and (ii) instead of "Public Information Officer" in sub-cl. (vi) of cl. (b) of S. 4 of the present Act, the other Act uses the words "competent authority", though the functions of both Public Information Officer and competent authority are same.

### 5. Appointment of Public Information Officers

- (1) Every public authority shall for the purposes of this Act, appoint one or more officers as Public Information Officers.
- (2) Every Public Information Officer shall deal with requests for information and shall render reasonable assistance to any person seeking such information.
- (3) The Public Information Officer may seek the assistance of any other officer as he considers necessary for the proper discharge of his duties.
- (4) Any officer whose assistance has been sought under sub-section (3), shall render all assistance to the Public Information Officer seeking his assistance.

### 6. Request for obtaining information

A person desirous of obtaining information shall make a request in writing or through electronic means, to the concerned Public Information Officer specifying the particulars of the information sought by him.

PROVIDED that where such request cannot be made in writing, the Public Information Officer shall render all reasonable assistance to the person making the request orally to reduce it in writing.

### COMMENTS

A person desiring information shall make a request in writing or through electronic form, to the Public Information Officer appointed under S. 5(1) giving the particulars of the matter relating to which he seeks the information. Where a person cannot, for valid reasons, make the request in writing, the Public Information Officer may accept an oral request which may, subsequently, be reduced in writing or render reasonable assistance to such person in making a written request.

### 7. Disposal of requests

- (1) On receipt of a request under Section 6, the Public Information Officer shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information requested on payment of such fee as may be prescribed or reject the request for any of the reasons specified in Sections 8 and 9 :

Provided that where the information sought for concerns the life and liberty of a person, the same should be provided within forty-eight hours of the receipt of the request :

PROVIDED FURTHER that where it is decided to provide the information on payment of any further fee representing the cost of providing the information, he shall send an intimation to the

person making the request, giving the details of the fees determined by him, requesting him to deposit the fees and the period intervening between the despatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of thirty days referred to above.

(2) Before taking any decision under sub-section (1), the Public Information Officer, shall take into consideration the representation made by a third party under Section II.

(3) Where a request is rejected under sub-section (2), the Public Information Officer shall communicate to the person making request, –

- (i) the reason for such rejection ;
- (ii) the period within which an appeal against such rejections may be preferred ;
- (iii) the particulars of the appellate authority.

(4) Information shall ordinarily be provided in the form in which it is sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question.

### COMMENTS

Upon receipt of an application under Section 6 requesting for an information, the Public Information Officer shall consider it and either furnish the required information on payment prescribed by rules, or pass orders refusing the request for reasons specified under Sub-Section 8 and 9 within 30 days.

### 8. Exemption from disclosure of information

(1) Notwithstanding anything hereinbefore contained, the following information not being information relating to any matter referred to in sub-section (2), shall be exempted from disclosure, namely :—

- (a) information, the disclosure of which would prejudicially affect the sovereignty and integrity of India, security of the State, strategic scientific or economic interest of India or conduct of international relations;
- (b) information, the disclosure of which would prejudicially affect public safety and order, detection and investigation of an offence or which may lead to an incitement to commit an offence or prejudicially affect fair trial or adjudication of a pending case;
- (c) information, the disclosure of which would prejudicially affect the conduct of Centre-State relations, including information exchanged in confidence between the Central and State Governments or any of their authorities or agencies;
- (d) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers;
- (e) minutes or records of advice including legal advice, opinions or recommendations made by any officer of a public authority during the decision making process prior to the executive decision or policy formulation;
- (f) trade or commercial secrets protected by law of information, the disclosure of which would prejudicially affect the legitimate economic and commercial interests or the competitive position of a public authority; or would cause unfair gain or loss to any person; and
- (g) information, the disclosure of which may result in the breach of privileges of Parliament or the Legislature of a State, or contravention of a lawful order of a court.

(2) Subject to the provisions of clause (a) of sub-section (1), any information relating to any occurrence, event or matter which has taken place occurred or happened twenty-five years before the date on which any request is made under Section 6 shall be provided to any person making a request under that section :

PROVIDED that where any question arises as to the date from which the said period of twenty-five years has to be computed, the decision of the Central Government shall be final.

#### COMMENTS

Section 8 (1) imposes certain restrictions on the freedom of information, under which the Public Information Officer may, for reasons to be recorded in writing, withhold the information the disclosure or contents of which are exempted from disclosure for any of the grounds mentioned in clauses (a) to (g) of Section 8(1). Under clause (a) information the disclosure or contents of which will prejudicially affect the sovereignty and integrity of India or security of the State or international relations shall be withheld. Subject to this clause, any information relating to any occurrence, event or matter which has taken place occurred or happened twenty-five years before the date on which any request is made under Section 6 shall be provided to any person making a request under that Section.

#### 9. Grounds for refusal to access in certain cases

Without prejudice to the provisions of Section 8, a Public Information Officer may reject a request for information also where such request –

- (a) is too general in nature or is of such a nature that, having regard to the volume of information required to be retrieved or processed would involve unreasonable diversion of the resources of a public authority or would adversely interfere with the functioning of such authority :

PROVIDED that where such request is rejected on the ground that the request is too general, it would be the duty of the Public Information Officer to render help as far as possible to the person making request to reframe his request in such a manner as may facilitate compliance with it ;

- (b) relates to information that is required by law, rules, regulations or orders to be published at particular time and such information is likely to be so published within thirty days of the receipt of such request ; or
- (c) relates to information that is contained in published material available to public.
- (d) relates to information which would cause unwarranted invasion of the privacy of any person.

#### COMMENTS

The information relating to an individual or other information, the disclosure of which would constitute a clear and unwarranted invasion of personal privacy and has no relationship to any activity of the Government or which will not subserve any public interest, is exempt from disclosure. If the information requested for, has already been published and the published material is available to public or is required by law to be published at a specified time, access to information can be refused. Again, a request for information too general in nature which would adversely interfere with the functioning of the public authority, also can be rejected.

#### 10. Severability :

(1) If a request for access to information is rejected on the ground that it is in relation to information which is exempted from disclosure, then notwithstanding anything contained in this Act, access may be given to that part of the record which does not contain any information that is exempted from disclosure under this Act and which can reasonably be severed from any part that contains exempted information.

(2) Where access is granted to a part of the record in accordance with sub-section (1), the person making the request shall be informed—

- (a) that only part of the record requested, after severance of the record containing information which is exempted from disclosure, is being furnished; and
- (b) of the provisions of the Act under which the severed part exempted from disclosure.

#### **COMMENTS**

If a request for information is rejected it being exempt from disclosure under Section 8 (1), the authority may give access to that part of the record not covered by the exemption clause, but the person making the request be informed that the severed part of the record requested for is exempt.

### **11. Third party information**

(1) Where a public authority intends to disclose any information or record, or part thereof, on a request made under this Act which relates to, or has been supplied by a third party and has been treated as confidential by that third party, the Public Information Officer shall, within twenty-five days from the receipt of a request, give written notice to such third party of the request and of the fact that the public authority intends to disclose the information or record, or part thereof :

PROVIDED 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.

(2) Where a notice is given by the Public Information Officer under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within twenty days from the date of issuance of notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in Section 7, the Public Information Officer shall, within sixty days after receipt of the request under Section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal against the decision under Section 12.

#### **COMMENTS**

Third party is a person other than the person making for request for information under Section 6 of the Act and includes a public authority as defined under Section 2 (f). If the decision of the Public Information Officer against which an appeal under sub-section (1) or second appeal to the Central Government under sub-section (2) of Section 12 also relates to information of third party as defined in clause (i) of Section 2, the appellate authority shall give a reasonable opportunity of being heard to the third party.

### **12. Appeals**

(1) Any person aggrieved by a decision of the Public Information Officer may, within thirty days of receipt of such decision, prefer an appeal to such authority as may be prescribed :

PROVIDED that such authority may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) A second appeal against the decision under sub-section (1) shall lie within thirty days of such decision, to the Central Government or the State Government or the competent authority, as the case may be :

PROVIDED that the Central Government or the State Government or the competent authority, as the case may be, may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) The appeals referred to in sub-sections (1) and (2) shall be disposed of within thirty days of the receipt of such appeals or within such extended period, as the case may be, for reasons to be recorded in writing.

(4) If the decision of the Public Information Officer against which the appeal is preferred under sub-section (1) or sub-section (2) also relates to information of third party, the appellate authority shall give a reasonable opportunity of being heard to that third party.

### COMMENTS

Every appeal shall be disposed of as expeditiously as possible and endeavour shall be made to dispose of the appeal within thirty days from the date on which it is presented. No order adversely affecting any person shall be passed, except after affording that person a reasonable opportunity of being heard in consonance with the principles of natural justice.

### CHAPTER III

### MISCELLANEOUS

#### 13. Protection of action taken in good faith

No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule made thereunder.

### COMMENTS

Good faith is an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage, and an individual's personal good faith is concept of his own mind and inner spirit and, therefore, may not conclusively be determined by his protestations alone – *Doyle v. Gordon*, 158 N.Y.S. 2d 248, 259, 260. Honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry. An honest intention to abstain from taking any unconscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious. In common usage this term is ordinarily used to describe that state of mind dealing honesty of purpose, freedom from intention to defraud, and, generally speaking, means being faithful to one's duty or obligation. – *Etron v. Kalmanovitz* 249 Cal. App. 187.57 Cal. Rptr. 248, 251.

Under Section 3 (22) of the General Clauses Act, 1897, a thing shall be deemed to be done in good faith where it is in fact done honestly, whether it is done negligently or not.

Under Section 52 of the Indian Penal Code, nothing is said to be done or believed in good faith which is done or believed without due care and attention. Honest intention free from taint of fraud or fraudulent design is a constant element of the connotation of good faith. – *Brijendra Singh v. State of U.P.* AIR 1981 SC 636.

The definition of the term in the General Clauses Act lays stress on the one aspect of honesty only irrespective of negligence, but in the Indian Penal Code stress is laid on two aspects, viz., honesty of intention along with due care and attention. Both the definitions retain the real essence of good faith, which is honesty. Good faith precludes pretence, deceit or lack of fairness and uprightness as also wanton or wilful negligence. – *Kailas Sizing Works v. Municipality of Bhivandi and Nizampur AIR 1969 Bom. 127.*

#### **14. Act to have overriding effect**

The provisions of this Act shall 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 this Act.

#### **COMMENTS**

The Official Secrets Act, 1923 is an Act consolidating and amending the law relating to official secrets. It provides for penalties for spying for any purpose prejudicial to the safety of the State, wrongful communication, etc. of information, interfering with officers of the police or members of the Armed Forces of the Union, harbouring spies, attempts, incitements, etc. and for matters connected with or incidental thereto. The expression "official secret" in the Official Secrets Act, has reference to a secret of one or the other department of the Government or the State and not to any secret of a private office. The word "official" by itself has obtained the meaning attached to it in the Act and it cannot be held that the expression "official secret" is a wider term including secrets of a private institution and are protected by the Indian Official Secrets Act, 1923. Spying is punishable under Section 3 of that Act. Another penal section is Section 6 which punishes forgery, personation and the like. There is a duty cast on everyone under Section 8 to give information to the Superintendent of Police. The non-constante clause in Section 14 of the Freedom of Information Act gives this Act an overriding effect over any provisions inconsistent with this Act, in the 1923 Act or any other law.

#### **15. Bar of jurisdiction of courts**

No court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act.

#### **16. Act not to apply to certain organisations**

(1) Nothing contained in this Act shall apply to the intelligence and security organisations, specified in the Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government.

(2) The Central Government may, by notification in the Official Gazette, amend the Schedule by including therein any other intelligence or security organisation established by that Government or omitting therefrom any organisation already specified therein and on the publication of such notification, such organisation shall be deemed to be included in or, as the case may be, omitted from the Schedule.

(3) Every notification issued under sub-section (2), shall be laid before each House of Parliament.

(4) Nothing contained in this Act shall apply to such intelligence and security organisations which may be specified, by a notification in the Official Gazette, by a State Government from time to time.

(5) Every notification issued under sub-section (4), shall be laid before the State Legislature.

### COMMENTS

The Schedule to this Act enlists the intelligence and security organisations established by the Central Government. They are : (1) Intelligence Bureau, (2) Research and Analysis Wing of the Cabinet Secretariat, (3) Directorate of Revenue Intelligence, (4) Central Economic Intelligence Bureau, (5) Directorate of Enforcement, (6) Narcotics Control Bureau, (7) Aviation Research Centre, (8) Special Frontier Force, (9) Border Security Force, (10) Central Reserve Police Force, (11) Indo-Tibetan Border Police, (12) Central Industrial Security Force, (13) National Security Guards, (14) Assam Rifles, (15) Special Service Bureau, (16) Special Branch (CID), Andaman and Nicobar, (17) The Crime Branch—C.I.D.—CB, Dadra and Nagar Haveli, (18) Directorate of Vigilance including Anti Corruption Branch, National Capital Territory of Delhi, and (19) Special Branch, Lakshadweep Police.

#### 17. Power to make rules by Central Government

(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) intervals at which matters referred to in sub-clauses (i) to (vi) of clause (b) of Section 4 shall be published;
- (b) the fee payable under sub-section (1) of Section 7;
- (c) the authority before whom an appeal may be preferred under sub-section (1) of Section 12;
- (d) any other matter which is required to be or may be prescribed.

### COMMENTS

Section 4 deals with the obligations on public authorities, clause (b) whereof requires every public authority to publish at such intervals as may be prescribed by the appropriate Government or competent authority, (i) the particulars of its organisation, functions and duties ; (ii) the powers and duties of its officers and employees and the procedure followed by them in the decision making process ; (iii) the norms set by the public authority for the discharge of its functions ; (iv) rules, regulations, instructions, manuals and other categories of records under its control used by its employees for discharging its functions ; (v) the details of facilities available to citizens for obtaining information ; and (vi) the name, designation and other particulars of the Public Information Officer.

The rules regarding such publication are to be framed by the Central Government.

On receipt of a request for obtaining information under Section 6, the Public Information Officer shall, within thirty days at the most, provide the information required or reject the request for reasons recorded. The quantum of and the mode of payment for access to information are also to be governed by the rules framed under Section 17 by the Central Government.

Under Section 12 (1), any person aggrieved by a decision of the Public Information Officer may within thirty days of receipt of such decision, prefer an appeal to such authority as may be prescribed, provided that such authority may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. The authority before whom the appeal is to be preferred under this section is also to be governed by the rules to be made by the Central Government by notification in the Official Gazette.

**18. Power to make rules by State Government**

(1) The State Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) the fee payable under sub-section (1) of Section 7 ;
- (b) the authority before whom an appeal may be preferred under sub-section (1) of Section 12 ;
- (c) any other matter which is required to be, or may be, prescribed :

PROVIDED that initially the rules shall be made by the Central Government by notification in the Official Gazette.

**19. Rule making power by competent authority**

(1) The competent authority may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

- (a) the fee payable under sub-section (1) of Section 7 ;
- (b) the authority before whom an appeal may be preferred under sub-section (1) of Section 12 ;
- (c) any other matter which is required to be, or may be, prescribed.

**20. Laying of rules**

(1) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(2) Every rule made under this Act by a State Government shall be laid, as soon as may be after it is notified, before the State Legislature.

**21. Power to remove difficulties**

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removal of the difficulty :

PROVIDED that no such order shall be made after the expiry of a period of two years from the date of the commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before the Houses of Parliament.