

# NATIONAL CONFERENCE

**Effective Implementation:**

**Preparing to Operationalise the  
*Right to Information Act, 2005***

## Conference Report



**Commonwealth Human Rights Initiative**

## COMMONWEALTH HUMAN RIGHTS INITIATIVE

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the *practical* realisation of human rights in the countries of the Commonwealth. The objectives of CHRI are to promote awareness of and adherence to the Harare Principles, the Universal Declaration of Human Rights, and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in Commonwealth member states.

Human rights advocacy and education are at the core of all of CHRI's activities. Through its reports, workshops and periodic investigations, CHRI continually draws attention to progress and setbacks to human rights in Commonwealth countries. In advocating for approaches and measures to prevent human rights abuses, CHRI addresses the Commonwealth Secretariat, member governments and civil society associations. By holding workshops and developing linkages, CHRI's approach throughout is to act as a catalyst for activity around its priority issues.

Originally based in London, United Kingdom, CHRI moved to New Delhi, India in 1993. It now has offices in London and in Accra, Ghana.

CHRI is working in the following areas:

- Human Rights Advocacy
- Right to Information
- Constitutionalism
- Police Reforms
- Facilitation of Judicial Dialogue
- Prison Reforms

**CHRI wishes to thank the British High Commission for their support for this Conference.**

**CHRI is grateful to the Ford Foundation and Sir Dorabji Tata Trust for their core funding towards CHRI's Right to Information Programme.**

**Conference report authored by Ms Charmaine Rodrigues, with support from Ms Mandakini Devasher, Ms. Sohini Paul and Mrs. Maja Daruwala, Commonwealth Human Rights Initiative 2005.**

**Cover design by Chenthilkumar Paramasivam.**

**CHRI New Delhi Office**  
B-117, First Floor  
Sarvodaya Enclave  
New Delhi - 110017 INDIA  
Tel: +91-11- 2685-0523,  
2652-8152, 2686-4678  
Fax: +91-11-2686-4688  
E-mail:  
[chriall@nda.vsnl.net.in](mailto:chriall@nda.vsnl.net.in)

**CHRI London Office**  
C/o Institute of  
Commonwealth Studies  
28, Russell Square  
London WC1B 5DS, UK  
Tel: +44-020-7-862-8857  
Fax: +44-020-7-862-8820  
E-mail: [chri@sas.ac.uk](mailto:chri@sas.ac.uk)

**CHRI Ghana Office**  
of The British Council  
PO Box GP 771  
Accra, Ghana  
Tel: + 233-21-683068, 683069,  
683070  
Fax: + 233-21-683062  
E-mail:  
[chri@gh.britishcouncil.org](mailto:chri@gh.britishcouncil.org)

**[www.humanrightsinitiative.org](http://www.humanrightsinitiative.org)**

## TABLE OF CONTENTS

<b>PRIME MINISTER’S MESSAGE</b> .....	<b>4</b>
<b>EXECUTIVE SUMMARY</b> .....	<b>5</b>
<b>INTRODUCTION</b> .....	<b>8</b>
<b>OVERVIEW OF THE RTI ACT 2005</b> .....	<b>9</b>
COVERAGE .....	9
PROACTIVE DISCLOSURE.....	9
PROCESSING APPLICATIONS .....	9
PROCESSING APPEALS.....	10
PENALTIES .....	10
MONITORING & EDUCATION .....	10
<b>CLARIFYING STATE AND CENTRE RESPONSIBILITIES AND COMMITMENTS</b> .....	<b>11</b>
<b>PREPARING FOR IMPLEMENTATION</b> .....	<b>12</b>
IDENTIFYING KEY PARTNERS .....	12
DEVELOPING AN ACTION PLAN.....	13
PROMULGATING RULES .....	14
SETTING IN PLACE SYSTEMS/PROCESSES/GUIDELINES TO FACILITATE ACCESS .....	14
APPOINTING PIOs AND APPELLATE AUTHORITIES .....	15
RECORDS MANAGEMENT .....	15
<b>IMPLEMENTING PROACTIVE DISCLOSURE</b> .....	<b>17</b>
<b>SETTING UP AN INFORMATION COMMISSION</b> .....	<b>19</b>
STRUCTURE OF COMMISSION.....	19
ENTRENCHING INDEPENDENCE .....	20
EMPLOYING STAFF .....	21
DEVELOPING PROCEDURAL RULES .....	21
DEVELOPING GUIDELINES.....	22
<b>RUNNING AN INFORMATION REGIME</b> .....	<b>23</b>
PROCESSING APPLICATIONS .....	23
PROCESSING APPEALS .....	24
<b>TRAINING / CAPACITY BUILDING</b> .....	<b>27</b>
SUGGESTED ACTIVITIES .....	28
<b>MONITORING</b> .....	<b>29</b>
<b>RAISING PUBLIC AWARENESS</b> .....	<b>30</b>
<b>ANNEX A: PARTICIPANTS LIST</b> .....	<b>32</b>
<b>ANNEX B: RTI ACT 2005 PROACTIVE DISCLOSURE REQUIREMENTS</b> .....	<b>35</b>
<b>ANNEX C: RTI ACT 2005 EXEMPTIONS</b> .....	<b>36</b>
<b>ANNEX D: CANADA - PROCESS OF AN ACCESS REQUEST: STEP BY STEP</b> .....	<b>37</b>
<b>ANNEX E: CANADA - PROCESS OF A COMPLAINT: INVESTIGATION</b> .....	<b>40</b>

## Prime Minister's Message



प्रधान मंत्री

### Prime Minister MESSAGE

I am glad to know that the Commonwealth Human Rights Initiative is organizing a Conference on "Effective Implementation : Preparing to Operationalise the Right to Information Act 2005."

The passage of the Right to Information Bill, 2005 in Parliament recognizes the people's right to information which has been proclaimed by numerous judicial pronouncements as a fundamental right enshrined in our Constitution. By encompassing in its scope the Central and State Governments as also the grassroots democratic bodies and the institutions receiving government grants, the legislation has got a wider reach to empower citizens with information for ensuring transparency, accountability and good governance. The implementation of this far reaching legislation augurs well for deepening and revitalizing democracy and make it more relevant for the lives of our citizens. Any attempt to focus attention to put it into practice and in full measure will be a step in the direction of making it an instrument to overhaul our democratic system for well being of our common people.

On this occasion, I extend my greetings and good wishes to the organizers and participants for the success of the Conference.

  
(Manmohan Singh)

New Delhi  
May 24, 2005

## Executive Summary

- The new all India Right to Information law [RTI] is probably one of the most important laws to be passed since Independence. Its successful implementation is directly linked to the level of commitment within government: especially the commitment of the political leadership and the bureaucracy. This in turn directly correlates with their knowledge and their understanding of the beneficial effects the new RTI Act will have on overall governance. It is therefore imperative that there be immediate and wide scale dissemination of knowledge about the law and also assistance provided for all the many queries and concerns that will naturally arise. The burdens and enormity of the tasks ahead will be much ameliorated when civil society and government collaborate on working through strategic initiatives designed for effective implementation
- The new RTI law creates obligations for State and Centre and sets up implementation and monitoring mechanisms for both. It is therefore important to maximise as much uniformity as possible in the way in which the Act functions. An early National Conference of Chief Ministers and/or Chief Secretaries should be called to disseminate knowledge of the new law and to work through implementation and harmonisation. Never forgetting that this act, besides underpinning administrative reforms, enables a human right to be realized, this Conference should establish an empowered Committee to look into creating easy to use common modalities so that the people of the country, wherever they are, end up with the same right with similar rules and processes
- The nodal agency responsible for implementation of the Act must design an implementation process that is inclusive and therefore works in collaboration with multiple stakeholders, including State nodal agencies, other key departments (eg. Panchayat Raj, Finance, Law, Social Development), Administrative Training Institutes, civil society, the media, academics, international RTI officials
- As a first step, the “Action Plan for Implementation” should be collaboratively developed as a matter of absolute priority. The outlines of this plan can be more quickly laid out through the Conference above-mentioned
- The Action Plan should identify what systems and tools will need to be developed/produced to support implementation, eg. guidance notes for officials, IT monitoring systems, forms, template responses, etc
- Rules should be developed participatorily and should be open for public comments
- A consistent set of Rules should be developed across the country to minimise implementation confusion
- PIOs and Appellate Authorities need to be identified and trained as a matter of priority
- Records management and archiving need to be reviewed and improved as necessary
- Leadership for ensuring effective proactive disclosure should come from Chief Ministers, Chief Secretaries – with the Heads of Department directly responsible for implementation and the Information Commissions responsible for monitoring
- A directory of PIOs and other key officials responsible for implementing the Act should be collated and published as a matter of absolute priority
- Information should be updated regularly, although how often depends on the nature of information (eg. information on subsidies or concessions, which is both important for the public and constantly changing, needs to be updated immediately)
- Develop guidelines on minimum requirements regarding content of each proactive disclosure obligations and the methods of publication
- Consider an additional requirement via the Rules, that where certain information is repeatedly requested or is of particular public interest, it should be proactively disclosed
- Clarify the Structure of the Commission – will it operate as a collegiate body making decisions by majority or with individual Commissioners and Commission staff making decisions?

- Select Information Commissioners through a process which is as transparent and open as possible
- Give the Information Commissions operational and budget autonomy (including their own line item in the national budget)
- Permit Information Commissions to employ staff from outside the public service to ensure that staff have appropriate expertise on the subject
- Empower Information Commissions to make their own procedural rules
- Develop clear process guidelines to ensure that decisions are made in a consistent manner and with proper oversight over final outcomes
- Set in place systems, guidelines and processes to ensure that all officials with duties under the law properly know how to discharge their functions
- Clarify the application process, in particular how application receipts will be given, how fees will be paid, how Assistant PIOs and PIOs will interact, etc (see p.21 for details)
- Clarify how Appellate Authorities (AAs) will be appointed and supported in their duties
- Clarify how Appellate Authorities and Information Commissions are expected to function, in terms of their hearing processes, their outreach, the interaction between the various Commissioners, etc (see p.22 for details)
  - Clarify how PIOs, AAs, and Information Commissions are to be encouraged to make consistent decisions (eg. by developing guidance notes, process manuals, casework guidelines and capturing decisions for future reference)
  - The Training Division of the Department of Personnel and Training (DoPT) should be the lead agency for coordinating the training programme for the PIOs, Appellate Authorities and other government officials across the country
  - The DoPT needs to develop a training strategy as a matter of immediate priority. Its strategy should identify who will have responsibility both for undertaking training, monitoring the implementation of the training programme, and preparing training modules and materials. It should be time-bound
  - Training should be done in a “cascade” mode, which works on the model of “training of trainers”. As soon as possible, an initial batch of trainers should be drawn from all the States and trained by DoPT as an absolute priority. These trainers would then be tasked to take responsibility for leading training for PIOs and Appellate Authorities in their respective States
  - Central and State government training institutes along with civil society organisations should also be supported to carry out training for officials
- Clarify within each public authority who will be responsible for managing, monitoring and interfacing with the Information Commission and nodal agency
- Set in place application and appeals monitoring systems (whether paper-based or computerised) from the outset, to ensure that proper information can be collected for the annual reports required to be produced by the Information Commissions
  - Give Information Commissions the power to initiate their own complaints (even in the absence of a complaint) so that they can monitor and, where necessary, investigate patterns of non-compliance and not just individual cases
- Individual departments at the Centre and in the States should be responsible for implementing outreach strategies, eg. through their Publicity/Information Departments
- At the district level, District Magistrates, revenue officers and panchayat representatives should be made responsible for outreach
- Partnerships with civil society are crucial – need to utilise civil society networks when undertaking public outreach activities
- Develop a detailed dissemination plan which prioritises which information needs to be disseminated most urgently and in what form

- Develop a detailed media plan, so that the mass media are utilised to the greatest extent possible
- Rural people are the most critical target. Approaching them will take a long time though, such that strategies need to be developed for outreach in both the short and longer term.

## Introduction

On 12 May 2005, the Rajya Sabha finally passed the keenly awaited Right to Information Bill. Having been passed by the Lok Sabha earlier, with the President's assent, the Bill will finally come into force as the new national *Right to Information Act 2005*. This overwhelming success comes after hectic lobbying by civil society with the United Progressive Alliance Government. One year ago, the UPA's Common Minimum Programme promised to provide transparent and accountable government by making the national RTI law more "progressive, participatory and meaningful". To a large extent, the Government has redeemed that promise. The new RTI law is a much improved version of the old *Freedom of Information Act 2002*, which was passed by the previous Government but never implemented.

Notably, the new law contains a provision which explicitly states that the Act will come into force within 120 days of enactment. This means that there will be only 4 months to prepare for implementation once Presidential assent for the Bill is received. In real terms, implementation poses a huge challenge to government – the new law covers both Central, State, and local (panchayat and nagarpalikas) government agencies. As the Act is applicable to the whole of India (with the exception of Jammu and Kashmir), ensuring that all offices throughout the country are prepared in time is no small task. Both the Central Government and all of the State and Union Territory Governments will need to get to work immediately to bed down the key provisions of the Act and ensure that all offices are prepared to process applications from the public as soon as possible.

To assist Central and State Governments to prepare for implementation of the new act, CHRI organised a Conference on "*Effective Implementation: Preparing to Operationalise the New Right to Information Act 2005*" from 24-26 May 2005. The Conference was designed to bring together government officials from the Centre and the States, as well as civil society representatives (see Annex A for a Participants List) to focus on some of the key implementation issues that all stakeholders will have to consider. The first day was devoted to a civil society consultation, while the next two days involved all stakeholders.

To facilitate discussions and share experiences on challenges and good practices, CHRI also invited international experts on RTI and its implementation, from Mexico, UK, Canada, Jamaica and South Africa as resource people. In attendance were:

- **Mr Juan Pablo Guerrero Amparan** - Information Commissioner with the Mexican Federal Institute for Access to Public Information (IFAI).
- **Mr Phil Boyd** - Assistant Information Commissioner from the UK Information Commissioner's Office.
- **Mr Marc Aurele Racicot** - Assistant Adjunct Professor, University of Alberta, on secondment from the Office of the Information Commissioner of Canada.
- **Ms Aylair Livingstone** - Director of the Jamaican Access to Information Unit.
- **Mr Mothusi Lephena** - Director of the Access to Information Unit in the South African Human Rights Commission.

This report summarises the key discussion over the three days and attempts to capture the suggestions, ideas and queries of participants with a view to assisting Governments to identify key implementation priorities and develop a comprehensive, time-bound Action Plan for operationalising the new law. This Report is best read in conjunction with the Resource Materials distributed at the Conference. For a copy of the Resource Materials please contact Ms Mandakini Devasher at CHRI at [mandakini@humanrightsinitiative.org](mailto:mandakini@humanrightsinitiative.org) or +11 2685 0523.

## Overview of the RTI Act 2005

To fully appreciate the key implementation challenges facing the Government, it is first necessary to understand the key elements of the new RTI Act 2005.

### Coverage

In response to strong lobbying from civil society, the original Bill was amended to extend coverage to all State and local bodies as well as Central Government public authorities. This reflects the approach taken in the earlier *Freedom of Information Act 2002*. It is undoubtedly positive that the Act is designed to apply across the country at all levels, because only eight States and one Union Territory have passed their own access laws. However, in practice it remains an open question as to whether and how a law which was passed by the Central Parliament will be implemented by State Governments.

The Act purports to cover all "public authorities". These have been broadly defined to include any body established or constituted by a law of the Central or State Governments (which serves to cover Panchayats and municipal bodies). Public authorities also include any body owned, controlled or substantially financed by a Government and any non-Government organisation substantially financed, directly or indirectly by funds provided by a Government.

The Act confers a right to "information" rather than just "records" or "documents". In keeping with best practice in some Indian States, information has broadly been defined to permit the inspection of public works including taking samples of materials. (In Delhi, a similar provision has been used to expose corruption in public construction activities). The definition also includes "information relating to a private body which can be accessed by a public authority under any law". This provision is an interesting variation on promoting disclosure by private bodies because it is designed to keep the onus on the Government to collect information from private bodies, rather than requiring the public to chase private bodies themselves.

### Proactive Disclosure

The list of information to be proactively published by public authorities is very broad (see Annex B for a comprehensive list). In addition to standard provisions commonly contained in access laws, public authorities must publish: the budget allocated to each agency, including plans, proposed expenditure and reports on disbursements; the manner of execution of subsidy programmes, including the amounts allocated and beneficiaries; recipients of concessions, permits, licenses; and relevant facts while formulating policies or announcing decisions. The Act explicitly states that it "shall be a constant endeavour...to provide as much information *suo motu*...so that the public have minimum resort [to the Act]".

### Processing Applications

Public Information Officers (PIOs) are required to be appointed "in all administrative units/offices...as may be necessary to provide information to persons requesting it". Assistant PIOs are also to be appointed at each sub-divisional or sub-district level, and these Assistants are tasked with receiving applications and appeals and passing them on to the relevant PIO/Appeals body. These provisions combined are designed to bring access closer to the people, by ensuring that applicants can submit requests in their local area, rather than having to rely on the post or travel to the administrative headquarters.

Most applications must be processed within thirty days, although the time limit is extended to 40 days where third party submissions are to be called for. These time limits are reduced to a mere 48 hours where the information sought "concerns the life and liberty of a person". An application fee can be levied, although this is to be prescribed in Rules. Any fees must be "reasonable" and no application fee shall be charged for persons who are below the poverty line. Where a public authority fails to comply with time limits under the Act, the information shall be provided to the applicant free of charge.

When processing an application, a PIO must release the information requested unless it is covered by one of the exemptions contained in the law, which are intended to protect particularly sensitive information (see Annex D for a detailed list of the Exemptions). Unfortunately, some exemptions are overly broad, with entire agencies exempt from disclosure and a very broad exemption for Cabinet papers and other internal deliberation documents. Notably, however, all of the exemptions (save those related to copyright) are still subject to a public interest override, whereby information may be disclosed "if public interest in disclosure outweighs the harm to the protected interests".

### **Processing Appeals**

The Act contains a two-step appeals process. First, if an applicant is aggrieved by the actions of a PIO, he/she can appeal to an Appellate Authority, which is defined as an "officer senior in rank to the PIO". It remains to be seen how this provision will be implemented in practice. Will as many Appellate Authorities as PIOs need to be appointed? Or, recognising that a smaller number of appeals will be received than applications, can a lesser number of Appellate Authorities accordingly be appointed? This may make it easier to conduct training programmes and develop the expertise of Appellate Authorities.

If the applicant is still unhappy after making a complaint to the Appellate Authority, he/she can complain to (newly established) Information Commissions, which need to be set up at the Centre and State levels. The Commissions will be headed by a Chief Information Commissioner supported by up to 10 Information Commissioners. Commissioners will be selected by a Committee comprising the Prime Minister/Chief Minister, the Leader of the Opposition and a Cabinet Minister. The Commissions are given broad powers to hear appeals and are also tasked with regular monitoring of the law (including production of annual reports). The Commissions can make any order required to bring about compliance with the law, including ordering release of documents, appointment of PIOs and publication of specified information.

If an applicant is still unhappy with the outcome of his/her complaint, he /she can appeal to the State High Court or the Supreme Court.

### **Penalties**

Every PIO (or an officer from whom the PIO requested assistance) can be penalised Rs 250 per day up to a maximum of Rs 25,000 for not accepting an application; delaying information release without reasonable cause; denying information in bad faith; knowingly giving incomplete, incorrect, misleading information; destroying information that has been requested or obstructing furnishing of information in any manner. The final form of the Act removed references to imprisonment for serious acts of non-compliance with the Act. Disciplinary action under the relevant service rules may be initiated against officials for persistent violation of this Act.

### **Monitoring & Education**

The Act requires that each Information Commissioner produce an annual report on the implementation of the Act, which is to be submitted to the relevant Government. In support of this, each Ministry or Department is required to collect and provide such information to the relevant Information Commission as is required to prepare the report. The Government is then required to cause a copy of the report to be tabled before each House of Parliament/Legislature. The Information Commission may also provide recommendations to any authority specifying the steps that, in its opinion, ought to be taken to promote compliance with the Act.

The Act also specifically requires that Governments must, to the extent of available financial and other resources, organise educational programmes for the public, in particular for disadvantaged communities and encourage public authorities to do the same; produce a User's Guide on the Act for the public; promote timely and effective dissemination of accurate information by public authorities; and train PIOs and produce other relevant training materials.

## Clarifying State and Centre responsibilities and commitments

### Recommendations:

- The commitment of the bureaucracy will directly correlate with their understanding of the new RTI Act, such that it is imperative that there is immediate dissemination at State Headquarters, supported by a commitment from national leaders. This could be done in collaboration with civil society organisations.
- Need to maximise uniformity in the law as much as possible. This could be done by calling a National Conference of Chief Ministers and/or Chief Secretaries to discuss the law. This Conference could establish an empowered Committee to look into common modalities, so that the country ends up with the same right for people throughout the country with the same rules and processes.

One participant noted at the outset of discussions that Minister Shri. Suresh Pachouri (the Minister who piloted the Bill in Parliament) stated in the Lok Sabha that the Government envisaged that Central and State Acts could co-exist and that citizens would have an option to apply for information under either Act. Where there is a conflict the Central Act will prevail. Others felt that this approach could lead to complications, particularly in terms of practical processing of applications and complaints by public officials in the States. Some felt that any conflicts at the edges would have to be decided by the Courts. There was also some sense that if the Central Act was well implemented, State Acts might eventually simply fade away.

Comparatively, it was noted that in Canada, Mexico and Australia, each State has a separate Act with exclusive jurisdiction and the national access laws cover only national public bodies. In Canada however, the new Privacy Act *does* cover both national and provincial bodies *unless* a province passes its own law, at which point the national law ceases to have effect in the province. In South Africa, there is one law for the entire country, including the provinces (none of which have their own access laws), but as a result there has been confusion over which courts have jurisdiction to hear complaints - State Courts or the Supreme Court. Currently, all appeal cases have to go to the Supreme Court, which puts appeals beyond poor people.

It was agreed by participants that it would be very helpful for the Central Government to clarify the position on how to implement the Central Act in the States, in particular in those States that already have an Act. For example:

- If a State Act already has an independent appeals mechanism, will a State Information Commission still need to be set up? If so, will this mean that there are 2 parallel systems for accessing State information?
- Clarity needs to be given as to how implementation costs will be covered. Will the Centre finance State Governments to set in place proper systems for access? In such a case, should the Planning Commission include an item for RTI in the 5 year plans? Even if money is sent to the States by the Centre to embed access, how will the Centre ensure that it will be spent on RTI?
- How will Governments ensure that the law will be applied consistently across the country? This is particularly important because the right to information is a fundamental right such that it needs to be equally and non-discriminately enjoyed by citizens throughout India. Likewise, a civil servant should not be penalised in one State for something that will not be treated as an offence in another State. Even if a single set of Rules is not developed, they should be developed cooperatively between the Centre and States with a view to promoting consistency;

It is hoped that Jammu and Kashmir, the only State not covered by the Central Act, will incorporate the more progressive provisions of the RTI Act 2005 into their FOI Act 2003.

## Preparing for implementation

### Recommendations

- The nodal agency at the Centre responsible for implementation of the Act should work in collaboration with multiple stakeholders, including State nodal agencies, other key departments (eg. Panchayat Raj, Finance, Law, Social Development), Administrative Training Institutes, civil society, the media, academics and international RTI officials
- A time-bound Implementation Action Plan should be collaboratively developed as a matter of absolute priority
- The Action Plan should identify what systems and tools will need to be developed/produced to support implementation, eg. guidance notes for officials, IT monitoring systems, forms, template responses, etc
- Rules should be developed participatorily and should be open for public comments
- A consistent set of Rules should be developed across the country to minimise implementation confusion
- PIOs and Appellate Authorities need to be identified and trained as a matter of priority
- Records management and archiving need to be reviewed and improved as necessary

### Identifying key partners

Throughout the Conference, resource people and participants repeatedly stressed the importance of institutionalising collaborative, strategic partnerships, both as a means of encouraging buy-in from all stakeholders, but also as a smart way of maximising scarce resources to greatest effect.

The Jamaican experience provided an excellent case study. In Jamaica, the Access to Information Unit (ATI Unit), set up under the Prime Minister's Office, developed an implementation strategy which prioritised inclusion. It was recognised at the outset, that scarce resources for implementation would need to be creatively utilised to stretch further. One strategy was to draw in other government agencies with complementary mandates, such as the Information Department, Social Development Department, Consumer Affairs Group and the Records Office (a critical group because without easy retrieval and ordered records, implementation would be easily undermined). Jamaica also has an intricate matrix of local government infrastructure and this has been utilised for implementation as well.

As a Unit working as part of Government, the ATI Unit recognised that the historical suspicion between Government and civil society needed to be overcome, because civil society partnerships are essential. Accordingly, immediately upon commencement of the Act, the ATI Unit sent out introductory letters to MPs, the Opposition, civil society groups, human rights organisations, educational groups and the media. The Unit was keen to devise a collaborative rather than a confrontational strategy for working with NGOs. Institutionally, this objective was taken forward by establishing a Stakeholders Advisory Group, comprising of civil society, media and Government representatives (including the responsible Minister on occasion). The Group's terms of reference include assisting the Government with implementation, monitoring and making recommendations for improvements. With such wide representation, the ATI Unit has found that there is less suspicion from civil society and Government.

The UK resource person endorsed the Jamaican approach and advised that in the UK, the Commission also recognised that building strategic relationships was the key to successful implementation. With only 100 people regulating Freedom of Information in the UK, it was recognised early on that the Government/Commission would not be able to do everything themselves. To this end, the Commission enlisted the expertise of:

- Statutory partners: For example, the Department of Constitutional Affairs (the Department in Government responsible for implementation), the National Archives, the Scottish Commissioner and the Ombudsman
- Key Public Authorities: For example, the Ministry of Defence, Home Office and the Association of Chief Police Officers. Wherever possible, they entered into MOUs with these bodies that set out how they would deal with applications, refusals and complaints. They also had detailed discussions about the authorities' concerns and tried to address these issues directly.
- Campaign and pressure groups: They built links with FOI campaigners, recognising that they would be useful intermediaries who could assist the public in using the law. Encouraging NGOs to take a key role in facilitating people's access was a key strategy.

### **Developing an Action Plan**

The experience of both the national and international participants who have been involved in implementing a new access law was very illuminating. In Mexico, the UK and Jamaica, the implementing agencies were given a time lag of between 1-5 years during which to prepare for implementation and generally used this opportunity to develop a detailed time-bound Action Plan which identified key stakeholders, their specific responsibilities and the deadlines for each activity. Conversely, in Delhi and Maharashtra, the law came into force before any preparations had been made and the Government was forced to be reactive.

The UK resource person took participants through the development and implementation of their Project Plan for Implementation (please contact CHRI for a copy of the MS PowerPoint presentation). Interestingly, the Project Plan was published on the Information Commission's website, both as an exercise in transparency and also so that the public could monitor that they were doing what they said they were going to do. One of the key issues was to work cooperatively to bring officials together: (i) to minimise their fear and defensiveness; and (ii) to identify individual difficulties of public authorities and then develop a strategy to address them, in particular by at least agreeing on some common denominators. It was important to encourage buy-in across the public service.

The Jamaican resource person, advised that the Government had an implementation time lag of 2 years, and even then, decided to implement the Act using a phased approach, whereby in the first phase, only Head Office Ministries had to implement the law, and in the current second phase, the remainder of public authorities are now working towards implementing the law.

A representative of the Delhi Government noted that the Government had no plan for implementation until after the Act came into force. This was clearly not ideal. The first thing that the Government did was to prioritise training of both Competent Authorities (the equivalent of PIOs) and support personnel. NGOs actually provided some of the impetus for this training, because they were often the ones who identified that officials did not know what their duties were under the law. The Government also worked with Resident Welfare Associations on an information dissemination campaign.

Maharashtra officials also observed that their law was implemented without proper preparation. Much of their implementation work commenced in response to problems being identified by most notably the Maharashtra Right to Information Council, which has civil society representatives, and the Office of the Lokayukta. This was the case in relation to the poor implementation of proactive disclosure obligations as well as processing of requests. Consequently, YASHADA (Yashwantrao Academy of Development Administration), the State Government Training Institution, was tasked with undertaking training activities across the State (see the section on Training for details). The Secretary of the General Administration Department also issued a number of orders clarifying particular provisions and duties on public officials.

A key theme arising out of discussions was the importance of a participatory process when developing and implementing an Action Plan. Civil society was recognised as a key collaborator, with useful expertise that could effectively be drawn on by Governments to the benefit of their implementation activities. A State government official identified that the main issue was political leadership. There was support for this view and a strong sense that the lead on implementation, developing political partnerships and ensuring consistency across the country should be taken by the Centre - and by the Prime Minister himself.

### **Promulgating Rules**

In the current Act, the power to make Rules is conferred on the Central Government as well as on the Competent Authority. The version of the final Bill obtained from the Central Government appeared not to give State Governments the power to make Rules, but clarification from a Government representative indicated that this was a typographical error and would be dealt with via a corrigendum.

Any Rules should be developed openly and participatorily. The key principles underpinning the rules should be: easy access, certainty, consistency, efficiency, transparency and practicability. The nodal department in the Central Government should circulate their initial draft Rules to other Central Government Departments as well as to the nodal agencies at the State Government level. This will maximise the likelihood that Rules will be consistently made across jurisdictions. If they are not, there may be confusion, as citizens may have to use different forms and pay different fees. Additionally, as one participant noted, it is not appropriate that people in different states should have different access to a fundamental right like the right to information.

The Rules should be open for public comment before they are finalised. The drafters should be careful not to take away or diminish any of the rights given by the Act via the Rules. (For example, in Karnataka, the Rules require applicants to state the purpose of their request, even though this is not required under the Act. This provision can be abused to reject applications which don't state their purpose.)

Specific recommendations in relation to the content of the Rules included:

- Specifying that requesters should be given an acknowledgement receipt when they submit an application;
- Clarifying how often each of the proactive disclosure items in s.4(1)(b) needs to be updated;
- Clarifying the procedures for taking samples and inspecting records and public works;
- Clarifying the definition of "Cabinet papers" under the exemption in s.8(1)(i) as well as clarifying when a matter is considered completely over;
- Formulating criteria to guide how an intelligence and security agency can be added to the list of exempt agencies at s.24(2).

### **Setting in place systems/processes/guidelines to facilitate access**

One of the most useful preparatory steps identified by resource people and participants alike, was the importance of setting in place systems and processes to give guidance to officials with responsibilities under the Act. This would not only assist officials to better understand their duties, it would also ensure consistency in the approach they take when dealing with the public.

The Upa-Lokayukta of Maharashtra recommended that the Government should issue specific operational guidelines to assist public officials to better understand what they could and could not release. This would make the process easier for officials, as well as reducing the likelihood of litigation because it would promote consistent responses in relation to an Act that will in practice be applied by thousands of public servants throughout the country. In Maharashtra, such guidelines could have been approved through the State RTI Council. The Jamaican resource person, who advised that her ATI Unit developed a policy manual called "Guidelines for the Discharge of Public Functions" which was distributed to PIO equivalents, endorsed this approach. The manual included template responses, step-by-step instructions, recommended

practices and procedures, explanations of key provisions (eg. calculation of days) and assistance with exemptions and the meaning of “public interest”.

In Mexico, a heavy emphasis was put on systems. The priority for the Government and Commission was to set in place an easy, accessible, robust system that could withstand the pressure of more and more requests as the system was entrenched. Mexico developed a unique IT application and appeals processing system (called SISI) that allows requesters to lodge their applications and appeals via the internet. In this way, they are assured of a receipt with a reference number, and their application is automatically directed to the relevant public office. Since the Act came into force 2 years ago, the Government has received approximately 70,000 requests and 92% were made online. Very few Mexicans have the internet BUT a computer with internet access is closer to more Mexicans than the federal capital where the Government is based. Recognising this, the Commission has worked with civil society and other agencies to agree on MOUs to allow people to use their computers to make applications.

### **Appointing PIOs and Appellate Authorities**

It was generally agreed that Public Information Officers (PIOs) and Appellate Authorities (AAs) need to be appointed as a matter of absolute priority because they will form the frontline of the RTI regime. They are not the same as a Press Information Officer, but custodians of the right to information. There was considerable discussion about the rank that PIOs and AAs should have. There was some suggestion that PIOs should be relatively senior officers so that they have enough power and authority to make effective decisions and are not too scared of releasing information. In Canada, it was noted that the equivalent of PIOs were originally picked from very low level ranks, but there is now increasing support for a requirement that they should be more senior so that they have real decision making power. There was also some discussion around the seniority of the AA – should the AA simply be anyone of “senior rank” to the PIO, or for easy identification and to maximise the likelihood that they will have the authority and expertise to deal with an appeal, should there be an agreed rank of officer, such as the Head of the public authority or his delegate? The rank of these positions could be clarified in the Rules.

The YASHADA representative noted that, in support of key officials such as PIOs and AAs, it was essential that there be good training designed to break down cultures of secrecy. It was particularly noted that the provision in the law, which protects public officials for *bona fide* disclosures, was important because it was a practical way of reassuring officials that they would not be penalised for releasing information. Another participant noted that the fact that the *Official Secrets Act* has been overridden but not repealed could also make public officials more reluctant to release information. Likewise, oaths of office currently still require a commitment to official secrecy. This hangover from a previous era of closed government needs to be abolished.

It was also recognised that the support of senior management is crucial in overcoming resistance to the Act. To promote openness, in some government institutions internationally, FOI prizes are even awarded to employees! Consideration could also be given to including RTI compliance in the performance evaluations of civil servants. The Jamaican resource person also noted that the ATI Unit regularly brought together all officers responsible for the daily administration of the Act to share their problems and ideas. Obviously, this would be more difficult in India where there will be considerably more PIOs, but some other model of support for PIOs and AAs could be considered.

### **Records Management**

A number of participants recognised the centrality of proper records management to the effectiveness of an access regime. Notably, there are multiple benefits in improving records management – other countries have actually reported that since they started responding to access requests, they themselves can more easily find information in their files. The archiving and classification systems that are in place should also be considered when reviewing records management. In Mexico, one of their major challenges has been to make sure that public document archives were properly organised. Consideration could also be given to electronic

archives. In this context, it is notable that the Act currently specifically requires computerisation and networking of records. It was felt that within 6 months each public authority should produce a time-bound plan for how they will work towards achieving that objective.

## Implementing Proactive disclosure

### Recommendations

- Leadership for ensuring effective proactive disclosure should come from Chief Ministers, Chief Secretaries – with the Heads of Department directly responsible for implementation and the Information Commissions responsible for monitoring;
- A directory of PIOs and other key officials responsible for implementing the Act should be collated and published as a matter of absolute priority;
- Information should be updated regularly, although how often depends on the nature of information (eg. information on subsidies or concessions, which is both important for the public and constantly changing, needs to be updated immediately);
- Develop guidelines on minimum requirements regarding content of each proactive disclosure obligation and the methods of publication;
- Consider an additional requirement via the Rules, that where certain information is repeatedly requested or is of particular public interest, it should be proactively disclosed;

The proactive disclosure requirements under the law are fairly comprehensive (See Annex B for details). They have been designed with a view to minimising the number of requests on the basis that the most important information, which is of relevance to the public, should already be in the public domain. Two themes dominated discussion:

- (1) How can the proactive disclosure requirements be most effectively implemented for the first time, because collecting, collating and publishing all the information will be a very big task?
- (2) How will the information be most effectively published, to ensure that ordinary people, particularly in rural areas can access it?

In considering the first question, it was notable that in the UK, the Information Commissioner produced guidance notes on the content and structure of publication schemes (See the Resource CD for a copy) to assist public authorities to properly implement their proactive disclosure obligations. Considering the amount of information that must be pulled together, it would be useful to have some guidance to ensure consistency of content of proactive disclosure schemes. Similarly, the Mexican resource person noted that, after poor initial implementation of the proactive disclosure requirements under the Mexican law (which are almost identical to India's), some Ministers actually asked the Commission to help them deal with the situation and this gave the Commission an opportunity to standardise information disclosure approaches. They are now consistent across different departments.

Notably, in Mexico information is updated by agencies every 3 months. The Commission and the Internal Controller supervise this. The current challenge for the Commission is now to assess the accuracy of the information. Statistics show that as more information was proactively disclosed, requests for such information went down accordingly. The areas where access requests increased were those that, by law, were not on the internet.

The bigger challenge that was identified was the mode of publication of this information. It was suggested that internet publication should be a priority. The Chairperson of the Delhi Public Grievances Commission noted that they have been very active in using the internet, with almost every Department putting up information on the web. Electronically making information available is absolutely essential, although it should be in the regional languages of India wherever possible. The Mexican experience also relied heavily on the internet as their primary mode of proactive disclosure. They recognised that a considerable amount of materials being produced by public authorities was now being generated on computers anyway. However, one of their notable innovations in trying to get past the digital divide has been to liaise with other federal

public bodies which have a local public presence – such as schools, the police, hospitals or universities – and encourage them to support the implementation of proactive disclosure obligations. At a minimum these organisations could put up general information on a board, but they could also make a computer free for use by the public in accordance with the Mexican law.

Some participants were concerned that too heavy a focus on the internet was not appropriate considering the conditions of rural India today, where connectivity and literacy rates are low. To address this problem, more effective use of local office notice boards needed to be considered, as well as requiring all offices to hold hard copies of the relevant information, to be made available immediately for free inspection upon request. It was also suggested that perhaps ration shops, which are scattered throughout the country, could be used as a dissemination point. Any dissemination strategy should make sure to target vulnerable groups in the community.

At a minimum, the South African resource person noted that it was important to at least publish details about what information was available from government and where it could be found. Combined with a note that such information is also freely available, this would at least go some way towards meeting the initial needs of proactive information disclosure. The Canadian resource person also advised that immediate work should begin developing a department directory of PIOs because even if nothing else is ready, this will be a very useful instrument for all citizens because it is like a map of Government which at least tells you where you need to go to find what information.

## Setting up an Information Commission

### Recommendations

- Clarify the Structure of the Commission – will it operate as a collegiate body making decisions by majority or with individual Commissioners and Commission staff making decisions?
- Select Information Commissioners through a process which is as transparent and open as possible
- Give the Information Commissions operational and budget autonomy (including their own line item in the national budget)
- Permit Information Commissions to employ staff from outside the public service to ensure that staff have appropriate expertise on the subject
- Empower Information Commissions to make their own procedural rules
- Develop clear process guidelines to ensure that decisions are made in a consistent manner and with proper oversight over final outcomes

### Structure of Commission

The new law provides for the establishment of Central Information Commissions as well as State Information Commissions throughout the country. There will be one Chief Information Commissioner and up to 10 Information Commissioners in each Commission. Additionally, the Commission will have as many staff as necessary to discharge their functions.

The Act does not clarify how the Commissioners will interact with each other, which is significant because the experience of the international resource people made it clear that there are a number of different structural models from which to adopt.

- The Mexican Information Commission has 5 Commissioners that operate as a collegial body that makes decisions jointly. The Commissioners take a vote on decisions and the majority wins. A collegial system was chosen because it was felt that this would reduce corruption by making it harder for vested interests to capture the Commissioners. The Commission has two roles: (i) regulatory, as the arbiter on complaints and the monitor of compliance and (ii) promoter of the law. These roles can conflict because of the need to have a good relationship with government to promote the law, but a potentially confrontational approach when enforcing compliance. To deal with the tension, the Commission has been split into two separate sections. The Commission has a staff of 200, a budget of around US\$20 million and oversees a bureaucracy of about 3 million public servants. The Commission has only a single office in the Federal Capital.
- The UK and Canada have a single Information Commissioner who is the head of the body and has staff who supports his/her work. Decisions are made in the name of the Commissioner, who has final legal responsibility for all decisions. However, in practice, staff at the Office of the Commissioner process the majority of complaints, with only the more complex or sensitive requiring close oversight by the Information Commissioner. In the UK, the advice and promotion function has been split from their complaints function, because of the potential conflict between the two roles. Notably, the UK has regional offices in Wales, Scotland and Northern Ireland, because it was felt they would more appropriately handle regional complexity.

There was considerable discussion regarding how the structure for each of the different Indian Commissions would be decided. Would they all be the same? How would it be decided how many Commissioners would need to be selected (in some smaller States would there be a need for even one full time Commissioner?)? How would it be decided whether and where to locate additional offices? If regional offices were not set up, how would all of the Commissioners ensure that they were making decisions that were consistent with one another?

### **Entrenching independence**

The Mexican resource person stressed the importance of the first moments of a Commission in entrenching its independence and observed that his Commission was lucky to have 2 strong allies in the President and the Minister of Internal Control. Political support is crucial to success.

### ***Selection Process***

All of the international resource people described the different selection processes for their Commissioners. In Canada, the Governor General chooses the Information Commissioner, but his/her appointment needs the approval of both Houses of Parliament. No specific criteria are laid down for the post. Likewise, in the UK there are no particular qualifications required from the Commissioner. The appointment is made by the Queen, on the recommendation of the Department for Constitutional Affairs (the nodal agency for the law). In both the UK and Canada, the Information Commissioner can only be removed by Parliament.

In Mexico, a Commissioner needs to be over 35 years old and have experience with RTI, or accountability or transparency. Commissioners do not have to be lawyers (which can be useful because it has made them less process focussed). Commissioners are also not bureaucrats which means that they do not rely on bureaucratic or political considerations and are confident that they can always go back to their independent professional lives. This gives strength and independence to the Commission. The appointment is made by the President but must be ratified by the Senate. Notably, when the first Commissioners were being selected, two were actually opposed and one did not get approved. Three Ministries are in charge of gathering information on candidates for the position of Commissioner. The first process took 4-5 months.

There was some concern from participants about the selection process in India because the Selection Committee is now dominated by Government representatives. To counter this, it was suggested that a list of candidates for the post should be tabled in Parliament to promote transparency and open discussion on the topic. It was recognised by participants that it will not be easy to find people qualified to be Commissioners, particularly as the new law permits the appointment of up to 28 new Chief Commissioner posts which are equivalent to an Election Commissioner and more than 300 Information Commissioner posts which are the level of Chief Secretaries. Ideally, the Commissions should not be dominated by civil servants, particularly in the first Commissions. It is important to set a good precedent so that it will not become a post for retired civil servants. In Jamaica, when it came to selecting officers for key information posts, the Government took inputs from civil society. Civil society representatives were even involved in suggesting criteria for selecting officials and this was seen as another way of promoting transparency. It was agreed that at the very least, there should be clear criteria for the post, ideally informed by civil society suggestions, and the selection process should be open.

### ***Budget autonomy***

The Mexican resource person was particularly emphatic that essential to real independence was budget autonomy. The Mexican law gives the Commission budget, decision-making and operational autonomy. All the Commissioners felt that budget autonomy was the most important issue, because the Treasury is very powerful and if subordinated to their rules it would be impossible to be independent because the Commissioners would need to waste time negotiating for even small expenditures. The Mexican Commissioners therefore designed their own budget, deciding at the same time on their own structure and internal rules. Their big concern was where they would be placed in the Budget. If placed under a Ministry line item, then autonomy would be dead. They insisted on a different line item in the Budget with specific expenditure rules for the Commission but the Treasury ignored them. In response, the entire Commission went to the press and threatened to resign on the first day the Commission came into existence. The Government consequently backed down and the Commission now has its own budget line.

The Upa-Lokayukta of Maharashtra endorsed the observations about the importance of adequate funding, noting how difficult it has been to implement the law in his state without

additional money. The Office of the Lokayukta has an increased workload, but no additional funds or staff to cope with it.

### **Reporting channels**

In Canada, the Information Commissioner functions as an officer of Parliament. He lays his annual reports directly before Parliament (via the Speaker of each House) because they are the elected officials responsible for overseeing the Executive. Likewise, the UK Commissioner also reports directly back to Parliament. Notably, he not only lays his annual report before Parliament, but he may also be called on to give evidence before the Constitutional Affairs Committee, which has responsibility for overseeing the Commissioner. This direct relationship with Parliament is considered a strong guarantee of independence.

### **Employing staff**

It was notable that all three of the representatives from Information Commissions (UK, Canada and Mexico) noted that they were able to employ staff from outside the public service if they wanted to. As one participant noted, there could otherwise be a conflict of interest because the staff at the Information Commission would be from the same public authorities that were being complained against. More generally, the perception of independence could be undermined if the Commission staff is comprised of civil servants. Ideally therefore, it was acknowledged that it would be most appropriate to have a separate cadre of staff at the Information Commission.

In the UK, the Commissioner needed to appoint 1-2 Deputy Commissioners but had complete autonomy as to how many staff were employed. The Commissioner even has power to determine the terms and conditions of Commission staff. Staff are employed directly by the Commissioner and are not civil servants. This means that they are accountable to the Commissioner and do not have divided loyalties. The Commissioner can also employ staff on secondment from the public service, if he wants. The Office of the UK Information Commissioner has about 70 staff that work on RTI and of those, about 35 handle complaints. It was important to employ enough staff to match expected workloads because otherwise big backlogs can pile up which can lead to disillusionment of the public, giving resistant bureaucrats confidence that they will not be sanctioned for non-compliance. The Commissioner spent considerable time on recruitment and on providing training for Commission staff. Given that India has a shorter implementation time, the key to success will be having a knowledgeable and resourceful staff from the outset.

In Canada, the Information Commissioner can also appoint staff himself. His staff are predominantly public servants, although he can go outside the public service if he needs to recruit in particular expertise for specialised tasks. Notably, although the Canadian law permitted the employment of an Assistant Information Commissioner, this has never been done because it was felt that the selection process for the position (which was enshrined in the statute) was too Government dominated. Consequently, the Commissioner has created the post of Deputy Information Commissioner. The Commissioner has a number of lawyers on staff, as well as a cadre of investigators. Where investigators need legal advice, they go to the Legal Department. If a case goes to Court, the same lawyers handle it.

### **Developing procedural rules**

The new law does not clarify the jurisdiction of each of the Information Commissions, nor does it explain the interaction between the State and Central Commissions. It also does not specify a process or model for how the Information Commission should manage appeals.

All three international resource people from Information Commissions advised that they have the power to develop their own procedural rules. The Canadian resource person was particularly clear that it was important for the Commissioner to determine his own rules and guidelines for conducting investigations because his Office needs investigative flexibility. The procedures developed by the Commissioner give investigators options in respect of processing complaints depending on degree of difficulty of the case. Notably, the Canadian legislation says that Rules

**can** be made by Government officials that deal with the procedures of the Commission, but the Government has not exercised its power under that clause.

### **Developing Guidelines**

The UK resource person specifically noted that the Office of the UK Information Commissioner has seen its role as a regulator facilitating good practice rather than as a tough enforcer of the law. The appropriate approach for Indian Commissions however will need to be decided taking into account the context, which may require more hard regulation. As regulators, the Commissioner was keen not to play the role of policeman, but to work **with** the civil service towards effective implementation.

The Commissioner took an early decision to focus on compliance by public authorities rather than public awareness raising, on the basis that they wanted to keep the onus on public authorities to ensure that access was easy. The Commission realised early on that individual civil servants would likely feel threatened by the new law and that many of their concerns would be genuine and would need to be taken seriously. They were wary of creating an antagonistic relationship with public authorities and were keen instead to stress the benefits of the Act and the obvious benefits that accountability and greater public participation will bring.

The Commissioner was also particularly active in supplementing the work of the nodal agency responsible for implementing the Act and providing officials with guidance about their duties under their Act as well as giving them support on how best to discharge said duties. To this end the Commissioner has produced a series of Awareness Guidance Notes explaining what each of the exemptions under the law mean and how they can be applied (See the Resource CD for examples). The Commissioner has also developed a guidance note on how to apply the public interest test (See the Resource CD), which encouraged public officials to focus on a few key issues. Notably though, as each case comes up for decision, the Commissioner is given a practical opportunity to reconsider his guidance and has been using the opportunity to develop his thinking on various policies and around the coverage of the exemptions.

As regards the question of a classificatory scheme for public records, the criteria should be precise. In Mexico, one of the Commission's functions was to establish guidelines or secondary rules that would bring down the level of abstract terms like national security in order to limit the hypothetical cases where public officials could classify information under this vague head. The Information Commission had to prepare the scheme for classification within the 1 year preparatory period. The Mexican Commissioner has kindly volunteered to translate the rules for classifying information from Spanish to English for use in India.

The Commissioner was also strongly of the view that the key to the success of the Commission would be how effectively they could deal with complaints. It was felt that bad processing could lead to loss of morale and disillusionment with the process. As such, considerable attention was given to developing a good casework system that lay down the different steps in the appeal process and guided staff through their duties (see Annex E for an example from Canada). The Commissioner recognised the need to lay down good procedures because there was no way he could attend to all complaints himself. As such, he relies on his staff to carry on a lot of the actual complaints casework. Thirty-five staff were trained to deal with an expected 3000 complaints in Year 1. It was necessary that they were guided by clear, transparent and robust procedures. Robust management systems needed to be implemented to ensure proper decision-making. For example, it is a requirement that more junior staff have to get their decisions approved, most likely by their manager who might then encourage them to seek advice from the legal department or other staff.

## Running an Information Regime

### Recommendations

- Set in place systems, guidelines and processes to ensure that all officials with duties under the law properly know how to discharge their functions
- Clarify the application process, in particular how application receipts will be given, how fees will be paid, how Assistant PIOs and PIOs will interact, etc (see p.21 for details)
- Clarify how Appellate Authorities will be appointed and supported in their duties;
- Clarify how Information Commissions are expected to function, in terms of their hearing processes, their outreach, the interaction between the various Commissioners, etc (see p.22 for details);
- Clarify how PIOs, AAs, and Information Commissions are to be encouraged to make consistent decisions (eg. by developing guidance notes, process manuals, casework guidelines and capturing decisions for future reference)

### Processing applications

Participants discussed a range of relatively technical issues, many of which appear minor but which could have a serious impact on accessibility in practice. The crux of the issue is that very simple procedures need to be developed in terms of payment, receipting and actually accessing information. For example:

- It was repeatedly stressed that it was essential that the Rules did not water down the law by inserting a requirement that a purpose for the request be given. The purpose is not relevant;
- Concern was raised over where PIOs will be physically located. There are stories in the States of PIOs being located in the far reaches of a Department so that they are difficult to find. Perhaps this could be clarified in the Rules? Perhaps the Rules should specify that any officer in an organisation should be able to accept an application but must then pass it on to the PIO immediately? Perhaps there could be a box where requests are placed?
- It was strongly recommended that the Rules include a requirement that a written receipt be provided to all requesters. Jamaica, Mexico and South Africa all require receipts to be issued. In Mexico in fact, applications are most commonly made on-line and the internet system they use automatically generates a receipt number which serves as a follow up number to track an application;
- Noting the fee waiver available for requesters who are below the poverty line, it was suggested that a BPL card from anywhere in the country should be sufficient to access information in any State. But consideration would need to be given on how to provide that a requester is below the poverty line where an application is sent in by email;
- Rules should clarify the contents of applications (date, name, address, etc) to ensure that applications are not rejected for not containing sufficient information to be processed, but a specific form should not be required;
- Rules should permit clarification of requests. This does not mean that the PIO can ask the requester to reformulate their request, but simply that, if it is illegible or does not make sense then the PIO can ask questions to better understand what information is being requested. This is permitted in Karnataka, Rajasthan and Maharashtra;
- Rules should clarify the process for taking samples and inspecting public works;
- Rules should specify that where an application is transferred, notice of the transfer should be given to the requester in writing, noting for the record that the information was not within the PIOs domain to ensure accountability;
- Consideration needs to be given at the outset to how applications will be monitored;

- Consideration could be given to having a single window to process applications. In fact, in its original form, this is what was intended by s.5(2) which was originally drafted to require an Assistant PIO to be appointed at the district level to receive any application and then forward it to the appropriate public authority;
- Consideration could be given to permitting applications via the telephone.

Fees were a contentious issue. There were some who argued that there should be no application fee, because the time and energy spent in processing the payment was more than the fee proposed. This suggestion was supported by Mexico, Canada, Jamaica and the UK where there are no application fees. In the UK there are also no access fees where the information is in an electronic form and can be emailed. This approach to fees has resulted in a more streamlined, less bureaucratic application process. Some went further and suggested that fees should only be charged where the information requested is complex. In other cases, it could be given for free. One practical way of dealing with this is to include a provision in the Rules that where the cost of collecting the fee is more than the fee itself, it will be waived. Other participants though, felt that fees were necessary to ensure that applicants took their request seriously. At a minimum, all agreed that the Rules should clarify that fees should not exceed the actual cost of producing the information and that there will be no search costs. Additionally, the modes of payment should be flexible, including cheque, banks, post, postage stamps, cash etc.

The Mexican model for handling applications was particularly interesting. The Mexican Government focussed heavily on utilising IT when developing their implementation strategy. They recognised that even if people do not have the internet at home, they can relatively easily go to a coffee shop, liaison unit, or a Government office and use a computer there. It was felt that an IT-based system would streamline the application process. After two years, this seems to be the case, with more than 70,000 requests and 3000 appeals, 100s of front page news stories after two years of the act coming into force.

The Mexican internet-based application and appeals system is called SISI. It was designed not only to enable the public to more easily use the law, but also because the Mexican Government feared the normal tendency of each public authority to create their own system for dealing with applications, and instead wanted to promote a system that was homogeneous and as efficient as possible. It was felt that a web-based system would be most appropriate. It is significant that even where an application is received by post, orally or by email, all applications are still entered into SISI because public authorities are required to use SISI as an applications tracking/monitoring system. The system has been designed to minimise the number of times the requester has to personally deal with an official. As such, no application fees are levied (this was felt to be a bureaucratic nightmare anyway). Once an application is lodged in SISI, the requester automatically gets a reference number. When they are notified that the information requested is ready, that is the only time a fee may be levied and the requester may have to leave their home/computer. If the information is held electronically, they may not even have to do this. On average, about 500 applications are processed per week.

### **Processing appeals**

The practicalities of the appeal process under the law was one of the more challenging topics addressed during the Conference. There remain a number of outstanding questions posed by participants, who requested clarification from the Central Government:

- What Appeals: The PIO and AA are not clearly identified in the act leading to confusion. Regarding the question of defining 'senior in rank' – we suggest that it should be specified who the PIOs and AAs are – there is a need for departments to identify them at the state level. One of functions of the IC could be to specify who the PIOs and the AAs are.
- Will the Central Information Commission be able to overrule the decision of a State Information Commission?
- Will multiple offices for both Central and State Commissions be set up throughout the country? If so, does this assume that complainants always need to appear before the appeal body?

- As a practical matter, will the public accept the costs associated with setting up so many different Commissions and employing so many Information Commissioners? This was a concern raised by the Mexican resource person who noted that they had considered having multiple State offices (Mexico has 32 States), but came to the conclusion that these would just turn into white elephants and would undermine public support for the law. This was another reason why they opted for an internet based application and appeals system (see SISI described above).
- If Information Commissioners are scattered throughout the country, how will the Government ensure that they are all making consistent decisions?
- What is the role of complainants in the appeal process? Do they need to hire a lawyer? Do they have to appear before the AA or the Information Commission? Or is it the case that because the burden of proof is on the party denying the request, in fact the requester does not need to engage with the AA or the Information Commission until those bodies find a compelling argument, at which point they can then give the requester a hearing? The key principle that should underpin the process is the need to ensure no disadvantage to the complainant.

The experience of appellate bodies in India and internationally shed some interesting light on the aforementioned questions. The international resource people from Information Commissions were all agreed that there should be no requirement for complainants to attend hearings of the Commission. In the UK, Canada and Jamaica (which has an appeals tribunal), this is partly because high levels of literacy and a reliable mail system means that appeals can usually be done “on the papers”. In Mexico, the internet was seen as a reliable substitute. Nonetheless, all noted that in any case, it was not necessary for the public to attend, because the onus was usually on the public authority to make their case, not the citizen. As the Mexican resource person noted, the Commission is in charge of becoming the defender of the citizen; Commissioners are supposed to do research and replace deficiencies of the complaint – which should minimise the burden on the complainant. So far, in Mexico even if the complainant is a big attorney, they hardly attend hearings. People seem happy enough to submit their complaints in writing. In any case, even where the citizen was called on for an explanation, it was rare that a member of the public had the capacity to make the kind of technical arguments that come into play when a second appeal is being heard.

In Delhi, appeals under the RTI Act can be filed on the internet, although this facility has not been heavily used. The Chairperson of the Delhi RTI appeals body (the Public Grievances Commission) stressed that more effective use of the internet is not only possible, but absolutely essential. Paper will not make RTI effective – IT needs to be harnessed for the benefit of the people. In Canada and Mexico, the Information Commissions also have free call numbers to encourage complainants to seek help.

In terms of appeals processes, in the UK, complaints are handled by complaints resolution managers. These managers decide whether a complaint is eligible. They will then either issue a Decision Notice (in practice, this will be issued by staff members, not the Commissioner himself) or the complaint is abandoned or withdrawn (usually because it has been resolved without the need for a formal decision. Notably, in the early days of bedding down the law (the UK Act came into force on 1 January 2005), the Commissioner is not really promoting mediation because he is keen to issue decision notices to test the law. However, once some good practice has been established it is possible that the Commissioner might encourage mediation because they will have more compelling arguments to encourage parties to settle. Even now, the Commissioner does sometimes issue preliminary notices, which are then talked through with the parties. Notably, the Commissioner’s formal decisions are captured in paper and electronic form to build up a set of precedents that can then be referred to by staff.

In Mexico, although the law does not require the Commission to have open hearings, within 6 months of commencing work, the Commission realised that they were not often actually

discussing the specific content of the information but were engaged in more general principled discussions. Their initial concern had been that public hearings could result in the publication of sensitive information. With this worry put to rest, some Commissioners started pressurising for the Commission to hold public sessions. The Commission now holds a first meeting in private, where they can discuss the details of the case and anything that is confidential (this usually takes about 2 hours), after which they will go to open hearings where the press or public can watch. Outsiders remain silent, but sessions are open. This is significant. Anecdotally, it was felt that when sessions were closed, if there was a doubt, the Commission would tend to secrecy, but now that the hearings are open, the balance has shifted towards more openness.

The rulings of the Mexican Commission are final for public authorities, but can be appealed to the Court by the public. The Commission can review any document requested and can start any investigation for administrative action if the law has been violated. The Commission must make rulings within 30 days. Appeals are decided by majority vote, and while discussion can last for hours, at the end, they **have** to vote! Cases are randomly distributed to Commissioners who are responsible for researching them and then presenting them back to the collegium. Commissioners could specialize, but since none were experts to begin with, it was felt that it would be more appropriate for them to be generalists, and they can hire outside experts to examine really specialised issues (eg. energy, telecom related information).

The Mexican Commission has already made a study on the application of exemptions by public authorities and submitted their results to the Government. They are already considering amendments because they now have empirical evidence about the problems that are being encountered when public authorities apply the exemptions. They have found that the most difficult concept for officials applying the law has been the concept of “public interest”. Whether “harm” will be caused by disclosure has also been found to be very subjectively determined.

In Delhi, the process involves filing an appeal and then usually having a hearing with both parties. The independent appeals body Chairperson is strict about not letting in extraneous issues. Once a decision is made, the order is dictated in the presence of both parties. These orders are retained by the Chairperson and sometimes referred to in subsequent orders, but they have not been collated or made public. It was noted that the imposition of penalties for non-compliance has been a key factor in Delhi in encouraging officials to apply the law properly. Trying to persuade officials to care about transparency did not gain much traction, but the fear of a reckoning has had a significant effect. Although the Chairperson does not impose penalties herself, but by the disciplinary authority, when she started making hard orders about dereliction of duty, she found that lots of officials would attend her office and try to clear the matter before the hearing. She also found that Competent Authorities would come to hearings assuming that she would sort out the problem for them, rather than that they needed to explain why they had refused to provide information.

In Canada (see Annex E for a detailed description of the appeals process), 90% of all investigations are informal. The Commissioner can summon appearances, but rarely uses those powers. Usually, he first meets with officials in their offices and talks to them off the record to try to identify where their sensitivities lie and how a mediated solution can be reached. As with the Indian Commissioners, the Canadian Commissioner has the power to look at ALL documents which are subject to a request, even if they allegedly fall under an exemption.

## Training / Capacity Building

### Recommendations

- The Training Division of the Department of Personnel and Training (DoPT) should be the lead agency for coordinating the training programme for the PIOs, Appellate Authorities and other government officials across the country.
- The DoPT needs to develop a training strategy as a matter of immediate priority. The strategy should identify who will have responsibility both for undertaking training, monitoring the implementation of the training programme, and preparing training modules and materials. It should be time-bound.
- Training should be done in a “cascade” mode, which works on the model of “training of trainers”. As soon as possible, an initial batch of trainers should be drawn from all the States and trained by DoPT as an absolute priority. These trainers would then be tasked to take responsibility for leading training for PIOs and Appellate Authorities in their respective States.
- Central and State government training institutes along with civil society organisations should also be supported to carry out training for officials.

The centrality of training for public officials as a priority implementation activity was a consistent theme across all three days of the Conference. Capacity building for the officials responsible for providing information to citizens is an essential pre-requisite for an effective access regime, particularly as there is such a short time for officials to become familiar with their duties under the law. Training needs to raise awareness about the content of the new law, developing skills to handle applications and appeals, and should focus on breaking down old cultures of secrecy and developing a mindset and attitude in public officials that is pro-openness. A training strategy needs to be put in place which will cover all PIOs and Appellate Authorities, at least in the first four months of implementation.

The South African experience shed light on some of the challenges of undertaking RTI training. In South Africa, PIOs were not trained on time and consequently, problems were faced during the implementation phase. It was a particular problem that even where training was provided, many officers were transferred such that their learning was lost. In response, the South African Human Rights Commission not only offers annual training programmes, but they have also developed a certificate course in RTI via the internet. The Government is now also promoting the training of **all** civil servants, to reduce the problems caused by the transfer of the trained officials. In Jamaica, at the start of the implementation period, 500 PIOs were trained every week. Experts (including civil society people) from different fields were brought in to address participants.

In Maharashtra, YASHADA, the Administrative Training Institute, has played a very important role in the implementation of their access law, by providing effective training courses for Government officials, especially PIOs. Appellate Authorities have also been targeted though, in recognition of the fact that AAs were not being responsive to the public and AAs with no background in rulings had the power to make important decisions. In one year, YASHADA has already trained close to 2000 officials in Maharashtra. YASHADA has used computer-based training on CDs, distance learning via booklets and internet training side by side with training modules. YASHADA identified that the training needs of the PIO and the AA were different and have tailored their training accordingly. A significant learning from these trainings has been the need to put a greater emphasis on changing the attitude and mindset of bureaucrats towards implementation of this law. Simply building their awareness and knowledge about the provisions in the law will not lead to effective implementation. There is a need to sensitise the officials about the philosophy of right to information and its value to Government.

### **Suggested Activities**

Participants made a number of suggestions regarding the approach that could be taken to designing and implementing a capacity building programme for government officials.

In the first four months of the preparatory phase, the training programme could focus on the supply side of information and would therefore include the following activities:

- Training of Trainers
- Training of the PIOs and Appellate Authorities across the country

DoPT will be the lead training agency and they will be responsible for the preliminary preparation. This would include

- Preparation of training modules;
- Identification of resource persons and participants from each State. At least two participants could be identified from each state for the first batch of Training of Trainers programmes. The initial idea would be to draw resource persons from the States which have already had experience implementing RTI Acts;
- Central Government and State Government Training Institutes could also collaborate with DoPT to bed down training, just as YASHADA has been working with the Maharashtra Government to train officials;
- Professional institutes and civil society organisations will be identified as partners and collaborators.

DoPT along with training institutions such as YASHADA will also take up the responsibility of preparing learning materials. These will include:

- Background note on the Right to Information
- Simplified version of the Act and a copy of the Rules and any additional Orders
- Concept papers on issues such as applying exemptions, dealing with third parties, implementing proactive disclosure requirements, processing applications, handling appeals, determining public interest etc. In order to write these papers, the expertise of legal experts, citizens, activists etc should be drawn upon
- Paper on effectively implementing Citizens Charters
- Paper on citizen-centred records management
- Distillation of best practice implementation approaches and lessons learned

Besides the conventional training programmes other methods of capacity building could be used, such as computer based training (CBT), net based training, distance learning modules etc. Each training programme should be conducted using participatory training methodologies, which identify the training needs of participants (through questionnaires perhaps) with a view to tailoring the training sessions to their requirements. At the end of each training programme, the participants need to do a detailed evaluation with the purpose of improving the training design and content. Post training follow-up activities also need to be carried out as all the resource people were agreed that continuous learning is essential.

Other than the specialised training programmes and workshops dedicated to awareness and capacity building of PIOs and Appellate Authorities, it was also suggested that all Government training programmes for officials should now incorporate a session on RTI, since the law is now applicable to all public authorities at all levels of Government.

## Monitoring

### Recommendations

- Clarify within each public authority who will be responsible for managing monitoring and interfacing with the Information Commission and nodal agency;
- Set in place application and appeals monitoring systems (whether paper-based or computerised) from the outset, to ensure that proper information can be collected for the annual reports required to be produced by the Information Commissions;
- Give Information Commissions the power to initiate their own complaints (even in the absence of a complaint) so that they can monitor and, where necessary, investigate patterns of non-compliance and not just individual cases;

The Act clearly gives both Information Commissions and Departments responsibility for monitoring implementation of the law. At a minimum, this requires that proper statistics are kept of all applications and appeals and how they are dealt with. To do this, it is necessary to develop clear processes and systems which PIOs and Appellate Authorities will be required to follow. (NB: The Resource CD contains a model monitoring tool used in the UK, which is a simple computer database that tracks all applications and appeals.)

In Canada, there is a very sophisticated monitoring system, whereby all Departments are required to send the nodal agency monthly reports. These are all collated and published on the internet. The Federal Canadian Information Commissioner has also developed a system of annual "Report Cards" (see the Resource Materials at p.411 for an example), whereby he chooses certain public bodies each year for review and then grades their level of implementation. In Canada also, the Information Commissioner has the power to conduct investigations into public bodies on his own motion, for example, if his monitoring reveals a pattern of non-compliance. The Mexican resource person drew attention to the fact that the people are monitors themselves because they are the ones who let the Information Commissions know when something is going wrong. Nevertheless, the Commission also reviewed proactive disclosure compliance and the complaints system every 3 months, and undertook random checks to see whether there was compliance with their rulings.

In Jamaica, the ATI Unit requires Departments to submit monthly and quarterly reports which the Unit reviews. They also issue "Report Cards" as part of their annual report, and have found them quite useful, because no public body wants to look bad and it can be quite embarrassing for Ministers who need to defend their ministries. The ATI Unit also gets reports from the ATI Advisory Group Stakeholders and other individual civil society leaders, which feed into their monitoring reports. RTI compliance is also included in the regular departmental evaluations that are undertaken. In the UK, the Information Commission's monitoring is usually focussed around the complaints they receive. However, they can also undertake "Assessments" (which are like audits), but only if invited to do so by a public authority. Consideration could be given to giving the Information Commissions the power to conduct audit whenever they want.

In South Africa, the South Africa Human Rights Commission (SAHRC) has a similar responsibility as the Indian Information Commissions, because it compiles an annual report based on other department's annual reports. Unfortunately, they have sometimes had trouble obtaining such reports, which makes their job harder. SAHRC also has a mandate to modernise their RTI legislation, by monitoring implementation, identifying gaps and making recommendations for change. Parliament takes SAHRC's recommendations very seriously. This monitoring is done through partnerships with civil society – SAHRC holds an annual meeting with civil society and government officials to discuss concerns and listen to their submissions for improving the law. In Maharashtra, the Upa-Lokayukta noted that he has regular interactions with the Maharashtra Government with a view to apprising them of problem areas he has identified through his monitoring of appeals, in the hope that they would then issue orders to deal with the problem.

## Raising Public Awareness

### Recommendations

- Individual departments at the Centre and in the States should be responsible for implementing outreach strategies, eg. through their Publicity/Information sections.
- At the district level, district magistrates, revenue officers and panchayat representatives should be made responsible for outreach.
- Partnerships with civil society are crucial – need to utilise civil society networks.
- Need a detailed dissemination plan which prioritises which information needs to be disseminated most urgently and in what form
- Need a detailed media plan, so that the mass media are utilised to the greatest extent possible.
- Rural people are the most critical target. Approaching them will take a long time though, such that strategies need to be developed for outreach in both the short and longer term

It was recognised that ideally civil society and Government could work together to raise public awareness and demonstrate the relevance of the law. A repeated theme was the need to maintain public interest in the movement, to avoid people becoming cynical because they feel the law is being ineffectively implemented. Notably though, the new law specifically puts a duty on Governments to undertake public outreach activities (especially for disadvantaged groups), resources permitting. It was recognised that the focus needed to be on building the capacity of requesters, although in the early stages, attention could also usefully be given to building the capacity of civil society groups (in a train-the-trainers kind of approach). One participant noted that in some States people are already using Administrative Orders or panchayat regulations to access information, and in these areas it might take more time for the RTI Act to be used by people who are already used to using another method.

Participants and resource people alike recognised that the media was an important group which needed to be exploited to stimulate dialogue and raise the public's awareness of the usefulness of the Act. In Jamaica, the ATI Unit requested the media when they published stories based on access requests to attribute them to the Act so that the public would make the connection between the issues and the value of the law. In South Africa, the SAHRC is using community radio for public outreach. In the UK, the Information Commission held a series of workshops for journalists because they recognised that if the press were on board, they would need to do less public awareness work because the legislation would "generate its own publicity". In India, CHRI has focussed some training workshops specifically on media people. In Delhi and Pune, it was noted that the *Indian Express* newspaper was very helpful in running a campaign in their paper ("Tell Them You Know") which was designed to raise awareness and direct citizens to groups who could assist them to use the law. They were also very supportive in publishing RTI success stories.

Some practical ideas for public outreach included:

- Publishing the names, telephone and fax numbers, and email addresses of PIOs, Appellate Authorities and Information Commissions in the telephone directory. This has been done in South Africa and Jamaica to good effect;
- Using post offices and libraries as outlets for proactive dissemination of information as well as a hub for receiving requests;
- Targeting key community organisations, such as Residents Welfare Associations, focussing particularly on key features of the law, how it can be used, what information was being sought – and all in the local language;

- Establishing Information Clearing Houses which would access, demystify, contextualise and publicise information;
- Mobilising a volunteer lawyers' panel, which could work to represent applicants at complaints body if needed, and help people understand the information they access;
- Setting up "Help Groups" through whom applications could be routed. This has been done in Jamaica, where these groups provide citizens with assistance in getting the information they want. There was some concern though, that in India, institutionalising such groups could lead to corruption as people would become "information brokers";
- Produce on-line and hard copy leaflets, brochures, etc, but in particular, Users Guides. In Delhi, it was found there was major need for How-To Guides because many people were struggling to frame their questions appropriately.
- Including RTI in the curriculum of secondary and tertiary educational institutions. This idea has already been picked up by the Maharashtra Government. In Delhi, the Government went to schools and universities to talk to students about the new law.

## Annex A: Participants' List

### International Resource People

- Aylair Livingstone, Director, Access to Information Unit, Jamaica, [ati@cwjamaica.com](mailto:ati@cwjamaica.com)
- Juan Pablo Guerrero Amparan, Information Commissioner, Federal Institute for Access to Public Information, Mexico, [juanpablo.guerrero@ifai.org.mx](mailto:juanpablo.guerrero@ifai.org.mx)
- Marc-Aurele Racicot, Assistant Adjunct Professor, University of Alberta, Canada, [marc-aurele.racicot@ualberta.ca](mailto:marc-aurele.racicot@ualberta.ca)
- Mothusi Lepheana, Director, Access to Information Unit, South African Human Rights Commission, South Africa, [MLepheana@sahrc.org.za](mailto:MLepheana@sahrc.org.za)
- Phil Boyd, Assistant Information Commissioner, Information Commissioner's Office, UK [Phil.Boyd@ico.gsi.gov.uk](mailto:Phil.Boyd@ico.gsi.gov.uk)

### Civil Society Participants

- A.K. Venkat Subramanian, IAS (Retd), Trustee, The Catalyst Trust Chennai, [akvmani@md5.vsnl.net.in](mailto:akvmani@md5.vsnl.net.in)
- Abha S. Joshi, Executive Director, MARG, [marg@ngo-marg.org](mailto:marg@ngo-marg.org)
- Ajit Bhattacharjea, Former Director, Press Institute of India, [ajitbhattacharjea@yahoo.com](mailto:ajitbhattacharjea@yahoo.com)
- Anjuman Ara Begum, Legal Associate, North East Network, [anjumanara@rediffmail.com](mailto:anjumanara@rediffmail.com)
- Anuradha Rao, Program Coordinator, RTI Program, PAC, [anu\\_rao6@yahoo.co.uk](mailto:anu_rao6@yahoo.co.uk)
- Ashok Khosla, President, Development Alternatives, [akhosla@hotmail.com](mailto:akhosla@hotmail.com)
- B.G. Verghese, Chair, CHRI, [bgverghese2002@yahoo.co.in](mailto:bgverghese2002@yahoo.co.in)
- Bharat Dogra, Journalist
- Chitta Behera, Advisor, Project Swarajya, Cuttack, Orissa, [chittabehera@rediffmail.com](mailto:chittabehera@rediffmail.com)
- D.V.V.S. Varma, Campaign Coordinator, Lok Satta, [loksatta@satyam.net.in](mailto:loksatta@satyam.net.in)
- Deepika Mogilishetty, Consultant, Global Rights, [deepika@globalrightsindia.org](mailto:deepika@globalrightsindia.org)
- Dharti Daftary, Programme Manager, Sustainable Development and GCPP, British High Commission, [Dharti.Daftary@fco.gov.uk](mailto:Dharti.Daftary@fco.gov.uk)
- Dipti Kulkarni, Research Assistant, Centre For Media Studies, [dipti@cmsindia.org](mailto:dipti@cmsindia.org)
- Dr. Chittaranjan Mishra, Researcher, Centre for Media Studies, [chittaranjan@cmsindia.org](mailto:chittaranjan@cmsindia.org)
- Dr. K.R. Viswanathan, Focus In Charge & National PWG Officer, SDC, [kr.viswanathan@sdc.net](mailto:kr.viswanathan@sdc.net)
- Dr. M. Mukhtar Alam, National MEAC Coordinator, Development Alternatives, [malam@devalt.org](mailto:malam@devalt.org)
- Dr. N. Bhaskara Rao, Chairman, Centre For Media Studies, [nbraocms@vsnl.com](mailto:nbraocms@vsnl.com)
- Harinesh Pandya, Secretary, JanPath Group, [janpath1ad1@sancharnet.in](mailto:janpath1ad1@sancharnet.in)
- Ishita Shruti, Programme Officer, Voluntary Action Network India, [ishitas@vaniindia.org](mailto:ishitas@vaniindia.org)
- Jason Tierney, Second Secretary, British High Commission, [Jason.Tierney@fco.gov.uk](mailto:Jason.Tierney@fco.gov.uk)
- Kalpna Gahlot, Correspondent, Prabhat Khabar, [kalpnagahlot@yahoo.com](mailto:kalpnagahlot@yahoo.com)
- Kumar Shailabh, Project Coordinator, Samarthan, [kshailabh@yahoo.co.in](mailto:kshailabh@yahoo.co.in)
- M. Shyam Prasad, Secretary, Human Rights Council, Visakhapatnam, [mantri\\_sp@yahoo.com](mailto:mantri_sp@yahoo.com)
- Misha Singh, National Campaign For People's Right to Information, [mishye@hotmail.com](mailto:mishye@hotmail.com)
- Monisha Behal, Chairperson, North East Network, [director@northeastnetwork.org](mailto:director@northeastnetwork.org)
- Neeti Malhotra, Deputy Head, Governance, British Council, [neeti.malhotra@in.britishcouncil.org](mailto:neeti.malhotra@in.britishcouncil.org)

- Neha Chaturvedi, State Coordinator, UPVAN UP, nehachaturvedi@yahoo.com
- Nikhil Dey, MKSS Rajasthan, nikhildey@gmail.com
- P.K. Dave, CEO, Common Cause, info@commoncauseindia.org
- P.S. Bawa, Vice Chairman, Transparency International India, p\_s\_bawa@yahoo.co.in
- Poonam Muttreja, Director, MacArthur Foundation, pmuttreja@macfound.org.in
- Pradeep Sharma, ARR, UNDP, pradeep.sharma@undp.org
- Prakash Kardaley, Senior Editor, Express Initiatives, Pune, pmk1504@gmail.com
- Prashant Bhushan, Senior Advocate, Supreme Court of India, sbhushan@vsnl.com
- Prateek Pandey, External Collaborator, CHRI, prateekcgci@rediffmail.com
- R.K. Atri, President, CEO, LEAFF, rkatri@yahoo.com
- Rakesh Ranjan, External Collaborator, CHRI, rakeshranjan\_rti@yahoo.co.in
- Ravinder Singh, Inventor, povertyfree77@yahoo.com
- Renu Vinod, Research Associate, Centre For Civil Society, renu@ccsindia.org
- Rishi Pandey, Reporter, Total TV, rishi\_13jan@yahoo.co.in
- Sachin Patel, Coordinator, Gujarat Initiative For RTI, janpath1ad1@sancharnet.in
- Sanjoy Hazarika, Managing Trustee, Centre For North East Studies and Policy Research, sanjoy@c-nes.org
- Saurabh Sharma, Coordinator, Satark Nagrik Sangathan, snsindia@snsindia.org
- Shailendra Kumar, Trainee, Reporter, ETV, shail7141914@yahoo.co.in
- Shekhar Singh, Convenor, National Campaign For People's Right to Information, shekharsingh@vsnl.com
- Siddharth Narrain, Reporter, Frontline, siddharthnarrain@yahoo.co.in
- Suchit Ranjan Singh, Director, REALS, suchitrsingh@hotmail.com
- Sunil Kumar Singh, Coordinator, CGC Center, sunilk.singh@sify.com
- Sunita Thakur, Executive, Programmes, FNSt, sunita.thakur@india.fnst.org
- Umesh Rohatgi, Social Worker, rurohatgi@yahoo.com
- V.C. Ravindran, E-Procurement Consultant, ravindran.vc@gmail.com
- Vinod, Support for Good Governance, vinudirect@gmail.com
- Vishaish Uppal, National Campaign For People's Right to Information, vishaish@vsnl.net
- Y.B. Reddy, Organizing Secretary, Human Rights Council, Hyderabad
- Y.G. Muralidharan, CREAT, Bangalore, creatorg@sify.com

### **Government Participants**

- A.B. Maindoliya, SRO, Training Division, Department of Personnel and Training, Government of India, abmaindoliya@nic.in
- B.S.N. Prasad, Additional Director, NADT Nagpur National Academy of Direct Taxes, bsnprasad@nadt.gov.in
- Bela Trivedi, Secretary and Rememberancer of Legal Affairs, Legal Department, Government of Gujarat, seclegal@govt.in
- Dr. Kul Bhushan Rai, Deputy Director, Administrative Reforms and Public Grievances Department, Government of Delhi, drkbrai@hub.nic.in
- Dr. M Vijayanunni, IAS, Additional Chief Secretary, Government of Kerala, mvu@softhome.net
- Dr. P. Saran, IAS, Commissioner, Government of Assam, drpremsaram@yahoo.com
- E. Warjri, Secretary of Law, Government of Meghalaya
- J.S. Bhatia, Assistant Director, Administrative Reforms Department, Government of the National Capital Territory of Delhi

- John Claude Pompei Mariadassou, Deputy Secretary of Law, Law Defendant, Government of Pondicherry
- K.S. Saha, Deputy Secretary, Training Division, Department of Personnel and Training, Government of India, kssaha@nic.in
- Khawaja Farooq Ranzu, Director, Department of Information and Public Relations, jmt\_information@sanchamnet.in
- Mrs. Kishori Gadre, Assistant Professor, Yashwantrao Chavan Academy of Development Administration (YASHADA), kishorigadre@hotmail.com
- Madan Mohan, Deputy Secretary, Department of Secondary and Higher Education, Government of India, mohan811@hotmail.com
- Mrs. Nivedita, Government of Chhattisgarh, [niharika@eg.nic.in](mailto:niharika@eg.nic.in)
- Mukhtiar Singh, Principal Secretary, Department of Personnel and Administrative Reforms, Government of Jharkhand
- Niharika Singh, IAS, Additional Commissioner, Government of Chhattisgarh, niharika@eg.nic.in
- Peter James Bazeley, Chief Secretary, Government of Meghalaya, peterbazeley@sanchamnet.in
- Pradip Bhargava, IAS, Principal Secretary, General Administration Department, Government of Madhya Pradesh
- Prakash Kumar, Secretary, Department of Information Technology and Department of Administrative Reform, Government of National Capital Territory of Delhi, secyit@nic.in
- R.K. Srivastava, Secretary, Public Grievances Commission, Government of Delhi, rjsh\_srivastava@yahoo.com
- Rakesh Malhotra, Under Secretary, Department of Personnel and Training, Government of India, rakeshmalhotra@dpt.nic.in
- S.K. Mehrotra, Deputy Commissioner, Municipal Corporation of Delhi, City Zone
- Salim Haque, Director, Training Division, Department of Personnel and Training, Government of India, shaque@nic.in
- Mrs. Shailaja Chandra, Chairman, Public Grievances Commission, Government of Delhi, shailaja@nic.in
- Suresh Kumar, Upa-Lokayukta, Maharashtra State, upalokayukta\_mah@rediffmail.com

## **Annex B: RTI Act 2005 Proactive Disclosure Requirements**

The proactive disclosure requirements in s.4 of new law commence with immediate effect and in any case, no later than 120 days from the enactment of this law. At present, the law requires every public authority to proactively publish and disseminate the following information:

- (1) The particulars of its organisation, functions and duties;
- (2) The powers and duties of its officers and employees;
- (3) The procedure followed in its decision making process, including channels of supervision and accountability;
- (4) The norms set out by it for the discharge of its functions;
- (5) Information regarding the rules, regulations, instructions, manuals and records used by its employees for the discharge of its functions,
- (6) A statement of the categories of the documents held by it or under its control;
- (7) Information regarding any arrangement that exists for consultation or representation, by members of the public, in relation to the formulation of policy or implementation;
- (8) Advice given by the boards, councils, committees and other bodies consisting of two or more persons. Additionally information as to whether the meetings of these are open to the public, or the minutes' of such meetings are accessible to the public;
- (9) A directory of its officers and employees;
- (10) The monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
- (11) The budget allocated to each of its agencies, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
- (12) The details of the implementation of subsidy programmes, including the amounts allocated and the details and beneficiaries of such programmes;
- (13) Particulars of recipients of concessions, permits or authorisations granted by it;
- (14) Details of the information available to, or held by it, reduced in an electronic form;
- (15) The particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
- (16) The names, designations and other particulars of the Public Information Officers.

### **Annex C: RTI Act 2005 Exemptions**

Section 8 of the Act contains the main list of grounds on which non-disclosure can be justified, while s.9(1) adds an additional exemption for copyright material. In accordance with the Act, the following information can be exempted:

- (1) Information that would prejudicially affect the sovereignty, integrity, security, scientific or economic interest and relation with a foreign state
- (2) Information received in confidence from a foreign government
- (3) Information which would lead to commission of an offence
- (4) If information disclosure endangers life and physical safety of any person
- (5) If it is likely to impede investigation and prosecution processes
- (6) If it is about a source of information or assistance given in confidence of law enforcement or security purposes
- (7) Cabinet Papers including deliberations of Ministers, Secretaries and other officers (but decisions and related reasons contained in them will be made public after the decision has been taken and the matter is complete or over)
- (8) Information whose release is forbidden by a court or tribunal or disclosure which might constitute contempt of court
- (9) Personal or private information – subject to larger public interest – to be decided by the Public Information Officer.
- (10) Commercial and trade secrets, intellectual property etc. that would harm competitive position of third party – subject to public interest – to be decided by Competent Authority.
- (11) Information available to a person in his fiduciary relationship – subject to public interest – to be decided by the Competent Authority.

**BUT:** Even where information which falls under an exemption or the Official Secrets Act, s.8(2) states that if the public interest in disclosure outweighs the harm to the protected interest, the information may still be released by the public authority.

### Annex D: Canada - Process Of An Access Request: Step By Step

Step	Title	Action
1	Receive the Request	<ul style="list-style-type: none"> <li>• Date stamp the letter</li> <li>• Retain the envelope</li> <li>• Copy the cheque, money order or other form of payment or transaction record.</li> </ul>
2	Open a file	<ul style="list-style-type: none"> <li>• Placement in an official numbered file</li> <li>• Destroy only as per record management and privacy regulations</li> </ul>
3	Track the request	<ul style="list-style-type: none"> <li>• Ledger and file control form</li> <li>• Use software application</li> </ul>
4	Assign/Acknowledge the request	<ul style="list-style-type: none"> <li>• Paraphrase the wording of the request</li> <li>• Invite the application to contact the assigned officer</li> </ul>
5	Coordinate processing of requests with other public bodies	<ul style="list-style-type: none"> <li>• Develop a process by which other institutions will know is a similar request for similar records has been made</li> </ul>
6	Confirm required fee as part of the request	<ul style="list-style-type: none"> <li>• Request is incomplete without the fee and time frame for responding to it does not begin until the fee has been received.</li> <li>• Contact requester by letter, phone or email to explain the situation and request payment of fee</li> </ul>
7	Clarify the request	<ul style="list-style-type: none"> <li>• In addition to missing fees, you may need to call applicants</li> <li>• If ambiguity, request clarification</li> <li>• Negotiate the scope of a request</li> <li>• Explore possibility of providing previously processed records</li> <li>• Discuss option of processing the request informally.</li> </ul>
8	Evaluate	<ul style="list-style-type: none"> <li>• Volume of records required</li> <li>• Whether or not the request is specific or general</li> <li>• Time permitted for reply</li> <li>• Nature of records involved</li> </ul>
9	Determine if "greater interest"	<ul style="list-style-type: none"> <li>• Transfer request if another public body has a greater interest</li> </ul>
10	Negotiate the transfer	<ul style="list-style-type: none"> <li>• Forward the file</li> <li>• Notify the applicant that the transfer has occurred</li> <li>• Complete tracking in the CAIR system (computer program to log access requests)</li> </ul>
11	Watch for overlap with the Privacy Act	<ul style="list-style-type: none"> <li>• Contact the applicant to explain and clarify the situation</li> <li>• Protect the applicant's identity by not sharing it with program officials</li> </ul>
12	Estimate/Assess additional fees	<ul style="list-style-type: none"> <li>• May include reproduction fees, surcharges for searches requiring more than 5 hours of work, fees for computer processing time. Advance deposits may be requested</li> <li>• Fee assessment procedure: <ul style="list-style-type: none"> <li>○ record time spent on search and retrieval</li> <li>○ consult with program officials to see if fee will be charged</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>○ if fee is to be charged, contact applicant with estimate, whether deposit is required, if the fee can be reduced by viewing records in person, and requester's right to complain to the Information Commissioner</li> <li>• Fees not charged for reviewing documents to determine if they are exempt, filing records, providing facilities for processing or public access, shipping records, or for information already searched or prepared for another request</li> </ul>
<b>OR</b>		
12	Waive/Reduce fees on case by case basis	<ul style="list-style-type: none"> <li>• May be waived/reduced due to financial hardship to the requester, public interest, timeliness of response to the requester, and whether fee would be less than it would cost to administer the fee</li> <li>• Record reasons for waiver, refund or reduction of fees</li> <li>• Track the time spent in processing after decision to waive fee has been made</li> </ul>
13	Observe time frames, delays and extensions	<ul style="list-style-type: none"> <li>• Basic 30-day limit to respond once request is received</li> <li>• Extension possible if request involves a large number of records or searching through a large number of records and meeting the 30-day limit would unreasonably interfere with operations; extra-departmental consultations are required that cannot be reasonably completed within the 30 days; or third party notification is required</li> <li>• Notify requester of extension, reasons for it, and right to complain to Information Commissioner</li> <li>• Notify Commissioner of extension if it exceeds 30 days</li> </ul>
14	Search the requested records	<ul style="list-style-type: none"> <li>• 'Records' defined broadly under the Act: software needed to read a machine readable record, published material available to the public, and Cabinet confidences are excluded</li> <li>• Records under control or custody of a government institution are subject to search – includes records held outside Canada, records merely physically possessed by government, or held elsewhere on the government's behalf</li> </ul>
15	Establish if other legislation applies to override the Act and conduct paramountcy analysis	
16	Apply the relevant exemptions to disclosure, including severing	<ul style="list-style-type: none"> <li>• Exclusions (records outside scope of Act)</li> <li>• Mandatory exceptions</li> <li>• Discretionary exceptions</li> <li>• Look for situations where severing exempt or excluded material can maximize disclosure</li> </ul>
17	Prepare your response	<ul style="list-style-type: none"> <li>• Documents for disclosure, with notations of severances and reasons for them, or</li> </ul>

		<ul style="list-style-type: none"> <li>• Grounds for withholding the requested materials and any other necessary explanation</li> </ul>
18	Submit recommendations for approval according to departmental procedure	
19	Notify the requester of decision, reasons and right to appeal	
20	Be prepared to advise your organization and defend your decision in any resulting reviews or appeals	

## Annex E: Canada - Process Of A Complaint: Investigation

Step	Action	Considerations
1	Establish Validity	<ul style="list-style-type: none"> <li>• Is it in writing?</li> <li>• Is it within one year of original request?</li> <li>• Is complaint about matters within Commissioner's jurisdiction?</li> </ul>
2	Open the investigation	<ul style="list-style-type: none"> <li>• Create a file</li> <li>• Assign an investigator</li> <li>• Acknowledge the complaint by letter to applicant</li> </ul>
3	Clarify complaint, if necessary	
4	Create and send Summary of Complaint to government institution	
5	Determine mode of investigation	<ul style="list-style-type: none"> <li>• Formal or informal?</li> </ul>
6	Create investigation plan	<ul style="list-style-type: none"> <li>• Tasks</li> <li>• Information required</li> <li>• Time frame</li> </ul>
7	Engage in representations	<ul style="list-style-type: none"> <li>• Ongoing process of meeting with parties, hearing statements, providing feedback to confirm statements Use good listening skills to earn trust</li> <li>• Maintain confidentiality; disclose only what is necessary to ground findings</li> </ul>
8	Draw conclusions	<ul style="list-style-type: none"> <li>• Check with all parties, including complainant, to ensure accuracy of conclusions</li> </ul>
9	Make Report of Findings	<ul style="list-style-type: none"> <li>• If no breach of Act found, file closed marked 'not substantiated'</li> <li>• If breach of Act resolved, file closed marked 'resolved'</li> <li>• If breach of Act found and unresolved, recommend method to resolve complaint and deadline to implement method before Commissioner takes court action</li> </ul>
10	Respond to government institution's response	<ul style="list-style-type: none"> <li>• Report to complainant</li> <li>• Send final letter to institution's Access to Information Coordinator evaluating strengths and weaknesses encountered in investigation and solutions reached, reference to Report of Findings, arrangements for returning institution's documents</li> </ul>
11	Go to court, if necessary	<ul style="list-style-type: none"> <li>• Must have consent of complainant</li> </ul>

## COMMONWEALTH HUMAN RIGHTS INITIATIVE

### Members of the Executive Committee

- **B.G. Verghese, Chairperson** – Formerly associated with the Commonwealth Journalists Association (CJA), former Information Advisor to the Prime Minister of India; former Editor of the Hindustan Times and Indian Express; Columnist and Author.
- **Maja Daruwala, Executive Director** – Barrister and Human Rights Advocate, Board Member, Open Society Justice Initiative, New York, International Women's Health Coalition, New York, International Records Management Trust, London, Multiple Action Research Group and Charkha in New Delhi;
- **Anu Aga – Co-opted Member** – Director, Thermax group of Companies, the leading Indian player in energy and environment management.
- **K.S. Dhillon, IPS (Retd.)** – Co-opted Member. Visiting Professor, Barkatullah University, Bhopal (India); Senior Faculty in the Madhya Pradesh State Academy of Administration, Bhopal.
- **P.H. Parekh, Treasurer** – Co-opted Member. Senior Advocate of the Supreme Court of India; President of the Supreme Court Bar Association; General Secretary of International Institute of Human Rights.
- **R.V. Pillai, IAS (Retd.)** – Co-opted Member. First Secretary-General of the National Human Rights Commission (NHRC), India; Member of the UN Committee on the Elimination of Racial Discrimination.
- **Harivansh** – Co-opted Member. Chief Editor of Prabhat Khabar, Ranchi, Jharkhand. Under his leadership this paper has grown in circulation from a low of 500 copies in 1989 to about 2,70,000 and a readership of 9,52,000, and is focused on people's issues and concerns.
- **Prof. B. K Chandrashekar** – Co-opted Member. Professor of Law at Indian Institute of Management, Bangalore until 1997; UGC Visiting Professor at the National Law School of India University, Bangalore until 1999; Lecturer, Faculty of Law at University of Belfast, N. Ireland; part of faculty of International Management and Workers Training Program, ILO Geneva.
- **Bhagwan Das** – M.A History; LLB from Delhi University. Joined the Supreme Court in 1978 and later practised as a lawyer in the Supreme Court, High Court and Administrative Tribunal. Founder member and president of Dalit Solidarity People, New Delhi; elected for a second term as President in 2004.
- **Sanjoy Hazarika** – Consulting Editor, The Statesman; Managing Trustee, Centre for North East Studies and Policy Research and Research Professor, Centre for Policy Research.
- **Poonam Muttreja** – Regional Director, MacArthur Foundation.
- **Moolchand Sharma** – Director, National Law School University, Bhopal. He taught at the Central Faculty of Law, Delhi University.