

Right to Information and Good Governance

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Lecture 30

Public Information Officers -II

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(3) Every Central Public Information Officer or State Public Information Officer, as the case may be, shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information.



- Responsibility of PIO:
- 1. Receive application and give acknowledgement.
- 2. Process the application by accepting the application fee
- 3. Deposit the application fee
- 4. If necessary, assist the citizen in drafting the application or putting the oral request into writing.
- 5. Decide whether the information sought can be provided or not.
- 6. access the officer, department, office, desk, where the information is available.
- 7. Seek assistance of any Officer
- 8. Provide the information within the specified time under Sec. 7.
- 9. Is information sought belongs to another PA, transfer the application



The next responsibility of the public information officer, keeping the spirits of the Right to Information Act is to decide whether the information sought can be provided or not and this is a very important and a crucial decision that a public information officer must have with him. Now, he must read the application, he must scrutinize the application and he must check whether what is sought can be provided or not.

Because under the Right to Information Act the prima facie decision of providing the information squarely lies in the public information officer because he is the starting point of the implementation, enforcement, interpretation and application of the Right to Information Act. So, unless the PIO knows whether the said information that is asked can be given or cannot be given.

If he cannot make that decision I think the whole RTI regime gets into a difficult situation and it collapses and it would just end up in litigation and so on and so forth and it will probably escalate the whole matter and hence look at the role of the PIO, it is so crucial and important if you are seeking redressal of grievances, if you are saying that the RTI should end

and stop the PIO than in that sense the ability to PIO to make this decision become so very critical and crucial as well.

And it is his attitude that will determine whether a complaint will be filed before the information commission or not. So, the PIO will decide whether the information sought can be provided. He has to make this if it can be provided then he should start collecting the information from whom, where, how much. If not, he immediately takes the decision and probably has to communicate to this citizen that this information cannot be provided.

And please note this if he comes to this decision that the information cannot be provided, he has to find out under which provision of law he is going to exercise that decision of not providing the information. For example, the exempted information is defined under section 8. So, he makes the decision, he codes the section and then he sends the communication as the case maybe as required to the citizen.

So, this decision of to give or not to give is completely on the public information officer. Thus, the next responsibility, the sixth responsibility that a PIO has is to look at accessing the office or the department or office is concerned where the information is. So, this is like he has to scout for the information because remember the public information officer is not the custodian of all the information.

He is not a storekeeper, he is not a record keeper, he is not an archive officer. So, the information that is sought may be available in his organization, but in which department it is, in which office it is, in which desk it is or with which officer it is. I think he has that kind of hands on information and experience to know that who may have this information so that he can call for the same and assess what should be the reply that has to be given to the citizen.

So, this is where he gets into a role of coordination, monitoring, supervision and also collecting the said information that is necessary and required to be provided in the citizen under the Right to Information Act. Following the responsibility of point number 6 comes point number 7 where he says that look I need the assistance of offices in the organization. It could be a person who is doing the photocopying, he could be a person who is taking printouts.

It could be people who are managing computers and systems so that the information can be known where it is allowed, he must seek the assistance of the procurement division to have contracts immediately required the assistance of his own boss or a senior with whom the information is available. So, I think despite seniority or juniority everybody in the organization is duty bound to assist the public information officer in his function under the Right to Information Act.

That is something that he can definitely seek and please note, seeking assistance of any officer in the organization is a statutory right to the PIO and I will explain this when we discuss section 5(4). So, the law provides, I must say, empowers the public information officer to seek the assistance and please note that cannot be denied. So, the PIO has been empowered adequately enough to fulfill his functions under the Right to Information Act.

Point number 8 it is the responsibility of the public information officer to provide the information within the specified time under section 7. So, the PIO cannot take his sweet time in providing the said information, the law stipulates a timeframe. We will discuss this right from 30 days to 45 days within which he has to process the application and provide the information.

And please note the information should reach the citizen within those number of days is what the law prescribes. So, that is what the law clearly states so he must provide the information within the specified time if not he is liable for penalty. The function or the responsibility, number 9, of the public information authority is that if the information is sought that belongs to another public officer now what happens in applications are citizens have the tendency of seeking information from more than one public authority.

So, the first information may be concerning the current public authority, the second information may be collected to some other public authority. The citizens very often than not they have more clue or idea where this information is. So they may misdirect the application and hence this misdirection of application by citizens, it is a duty of the public information officer to check to which public authority the information sought belongs to.

And if it belongs to some other public authority it is a duty, kindly note, of the PIO under section 6(3) to transfer the application to the concerned public authority. So, we will also deal

with this transfer provision in some detail, but just to tell you what a PIO must do. So, what is concerning him he has to process, what is not concerning him probably the public information officer has a duty to transfer.

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PIO duties

- 10. In allowing partial access, the PIO shall give a notice to the applicant, informing: a. That only part of the record, after severance of the record containing information which is exempted from disclosure, is being provided.
- 11. Reply of the PIO must contain:
 - The reasons for the decisions, including any findings on any material, question of fact, referring to the material on which those findings were based.
 - The name and designation of the person giving the information.
 - The details of the fees calculated and the amount of fee which the applicant is required to deposit etc.
- 12. If information sought has been supplied by third party or is treated as confidential by a third party, the PIO shall give a written notice to third party within 5 days from the receipt of the request and take its representation into consideration.
 - Third party must be given a chance to make a representation before the PIO within 10 days from the date of receipt of such notice.



The responsibility, number 10, on a public information officer is that he may allow partial access to the information and this is also critical in terms of the judgment that the PIO has to make because if he comes to this conclusion that the information largely pertains to exempted information he may deny that information. However please note the PIO has to apply his mind, he has to take a reasoned decision, he has to look at equity and justice.

He has to look at ensuring the right protecting the right and when he does that it would be very relevant to understand that sometimes there could be some information that can be allowed. This is what is known as a partial access to information that the PIO is supposed to do or take and when partial access is allowed and the PIO makes his decision, he has to give notice to the application or the applicant as the case maybe.

Informing that look the record or the information that you have sought is unfortunately exempted. However, a part of the same is permissible and can be provided for and hence the doctrine of severability is going to be applied to those records and documents and what is accessible I am going to share with you what is not accessible sorry is being derived under the provisions of the law.

This kind of decision-making capacity must be there in the PIO and he must know that partial access is something that is provided under the Right to Information Act and he is supposed to facilitate even a partial access if the case is so and can be done under the Right to Information Act. Kindly note, partial access of information can be vis-à-vis even one page of a document

where the public information officer decides to block a paragraph.

And probably give the rest of the page and the information in that page through a certain point. He can block a file noting if the case is so sensitive or the noting is so sensitive that he thinks is to be exempted under section 8. So, all of these are brought under the issue of partial access and so he has to apply his mind and he has to make a delicate balance between the right of information of the citizen to seek the information, access the information, know the information as well as balance the interest of the public authority and the concerned officer in terms of confidentiality trade secret, threat to life and property and so on and so forth. So, that kind of delicate balance is what the PIO is supposed to do under the Right to Information Act. Responsibility number 11 is that the PIO must reply finally to the application in whichever sense either in the positive sense or in negative sense.

The reply of the PIO is very, very important and hence there are certain guidelines on what the reply must contain. First and foremost the PIO reply must contain the reasons for the decision, either a positive or a negative, he has to give reasons. Secondly, if he has any finding on the material then he must disclose those findings as well the finding to be 'Did I take the transfer, did I transfer it and this is what I have done in terms of the transfer?'

So, he will have to probably take those material findings and probably communicate the same. Very important he must give the name and designation of the person giving the information. He must give his name and designation and he must give the name and designation of the concerned individual caseworker who has provided this information. Because finally please note there are multiple allegations that the information is inaccurate, inadequate, false and deliberately misleading.

Now, you will notice that the public information officer is not always the person who is expert in the information that is sought and if he has sought the assistance of another officer to providing the said information, if that officer deliberately gives misleading, false, inaccurate information then the penalty is going to be on PIO and hence it should be very clear on the part of the PIO.

He must say 'look this is the officer who had the information and he has provided the same'. So, that is very clear about who is or was that for so that tomorrow the penalty is not on the

public information officer. Very important that he should communicate the details of the fee that the applicant has to pay. Please note we have two kinds of fee structures under the Right to Information Act.

First is the application fee which I have already mentioned is 10 rupees per page and the second fee is also very important it is called the information fee. So, finally after processing the application the PIO comes to know that say the information sought is amounting to 100 pages and hence 100 pages and the rules very clearly say 2 rupees per page that is 200 rupees is something that the public information officer has to communicate to the citizen as the information fee has to be paid and deposited.

Once the information fee is paid and deposited then the information is generally supplied to the citizen under the Right to Information Act that is the communication that the public information officer ought to do. The last responsibility, responsibility number 12, please note, these are not exhausted, but these are just indicative responsibilities that the PIO has. However, the last responsibility that the PIO may have is to the third parties.

Generally, the information sought belongs to a third party and please note that is something that is covered under section 11 of the Right to information Act. Who is the third party? It could be a contractor, it could be any other individual whose information exists in the government organization. It could be a private institution or a private authority as well whose information is available or is there in the government of organization and hence he is a designated third party.

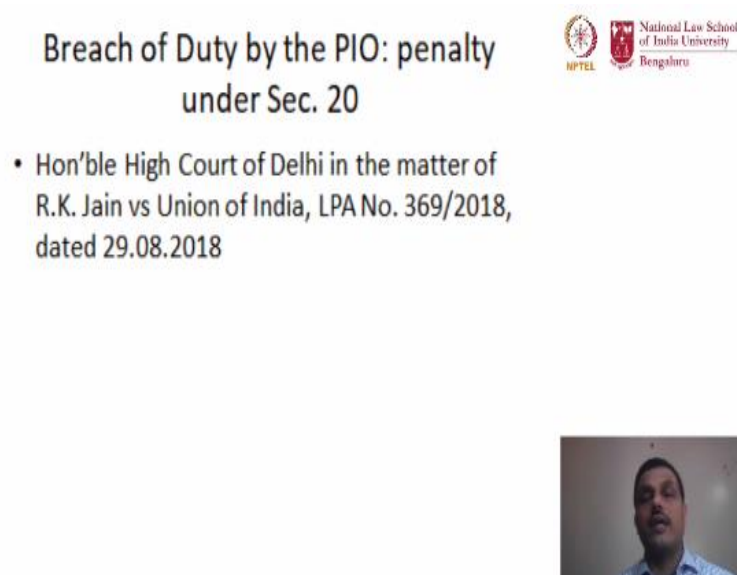
In those circumstances, it is the duty of the public information officer to seek objections from the third party and so he has to write to the third party and he has to state that 'look somebody is seeking information that is in relation to you. You may want to treat it as confidential, please let us know if you have any objections'. So, taking the third party into confidence is one of the primary responsibilities of the public information officer.

And kindly note the third party should be given an opportunity of representation if the PIO considers it necessary and do not forget the fact that if third party information is disclosed without giving him a notice or receiving objections from him., the third party may go in appeal, he may go to the information commission, he can go to the first appellate authority.

So, a third party is an aggrieved party per se.

And hence the process and the procedure when the information of third party sought is something that a PIO has to necessarily comply with and so he has to determine whether the information sought is relating to a third party and the process under section 11 has to be completely followed by the public information officer. So, I think these are some of the responsibilities and the duties I would want to say that are encapsulated briefly in terms of the points. So that we know what exactly the PIO must do under the Right to Information Act.

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Breach of Duty by the PIO: penalty under Sec. 20

- Hon'ble High Court of Delhi in the matter of R.K. Jain vs Union of India, LPA No. 369/2018, dated 29.08.2018

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Now, let us take some of the sections under the RTI Act to discuss briefly what is the role and the responsibility of the PIO. Now, before we go forward and look at the provisions of section 5(4) and section 5(5), kindly note, that these 12 duties that I had just mentioned and if there is a breach of those duties by the PIO. So, the public information officer is supposed to commit, perform these duties like you know we discuss the duties of the public authorities.

Now, we are discussing the duties of the public information officer. So, when the law imposes a duty and if there is a breach of the same, the law generally prescribes a sanction and the sanction under the Right to Information Act is prescribed under section 20 and hence in the case by R.K. Jain versus Union of India, a case decided by Delhi High Court in 2018, the court very clearly said that the law expects the PIO to perform his duties responsibly.

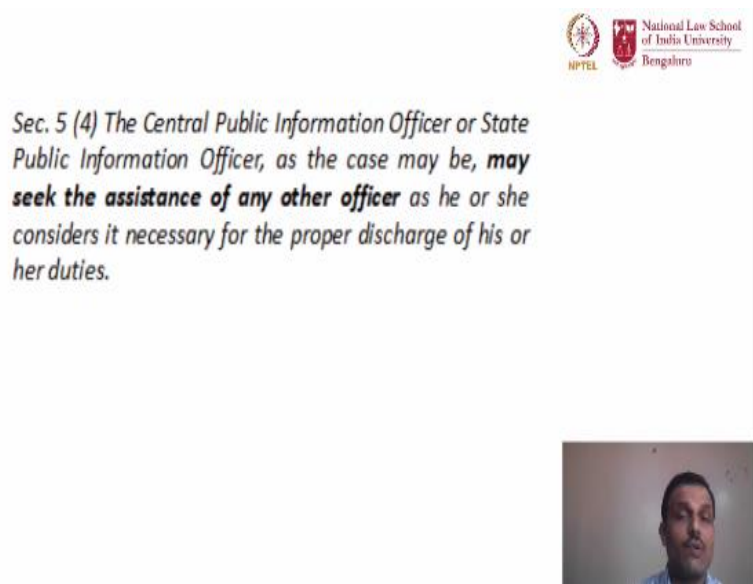
And it is his responsibility to ensure that the information sought is provided for within the

stipulated time and he should be assisted by other officers. That is inevitable. However you would notice that if the PIO fails in his duties obviously there could be an attraction of the penalty provision. So, very often than not PIO suffers sanctions and liability for the failure of his duty.

And hence you will notice that the PIO plays a very, very important role vis-a-vis ensuring or performance of his duties to that of the effect of the liability of penalty that will be imposed upon. And kindly note the courts have consistently held that if the public information officer has committed a breach of his duty then imposing penalty unfortunately becomes mandatory. So, the public information officer may not probably escape from the penalty provision as well.

So, the duty is a strict one, there are probably very less exceptions to escape from the same and it is probably inevitable for the PIO to go about performing his obligations under the Right to Information Act.

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*Sec. 5 (4) The Central Public Information Officer or State Public Information Officer, as the case may be, **may seek the assistance of any other officer** as he or she considers it necessary for the proper discharge of his or her duties.*

Now, coming to section 5(4). I think it is a very important section according to what I feel in terms of the internal office management. That has to be taken care of the public within the public authority. Now, what does section 5(4) say? 5(4) says that PIOs may seek the assistance of any other officer he is senior or junior if he considers it is necessary for the proper discharge of his or her duties.

Now, there have been so many instances where the public information officers have not received cooperation from their colleagues in the implementation of the RTI. Please note, one, to receive cooperation is so very important, but that cooperation also has to be in a time bound manner because the information has to be given within 30 days. So, it is not cooperation at the sweet will and discretion of the officer concerned.

So, while the PIO is a designed officer he is not the sole and the whole responsible person to discharge the functions, to fulfill the mandate under the Right to Information Act and hence if any other officer fails to give assistance I think the public information officer will be an aggrieved individual under section 5 a that is what the statute's main purpose is. Now, generally speaking any PIO would want to have assistance because the number of applications may increase, the number of information pages may increase.

The communication may increase this can become a full-time job at one point of time for the PIO and hence every other person who is around him. Either, when I say around him I mean either vertically or horizontally, either in a hierarchy structure or in the structure otherwise that you talk about it, the PIO needs assistance and we all know one that government officers are very complicated in nature.

They are complex in terms of the structure and the process that are in place. The worst of all is the record management systems. They are very poorly kept and the records are also poorly maintained and hence all of these cannot be done by the PIO without getting the assistance of people around him. So, the PIO can invoke the statutory law and seek the assistance of any other officer and it is the duty of those officers who provide the said assistance to the PIO under section 5.

This is where most dynamic and interesting provisions comes section 5(5). Now, generally you know in government organizations if you seek the assistance of any other officer you expect that it will complete.

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Se. 5 (5) Any officer, whose assistance has been sought under sub-section (4), shall render all assistance to the Central Public Information Officer or State Public Information Officer, as the case may be, seeking his or her assistance and for the purposes of any contravention of the provisions of this Act, such other officer shall be treated as a Central Public Information Officer or State Public Information Officer, as the case may be.

Delhi High Court in the case of J.P Agrawal v. Union of India-
2013(287)ELT25(Del.)



So first is to request the assistance, cajole the same and seek cooperation. However, you know in most organizations this may not come by so there are those difficulties where cooperation is not received at all. So, then what happens and what should be done in those circumstances? I think comes the mixed important section in the internal office management structure is section 5(5).

Now, let me read section 5(5) it says any officer whose assistance has been sought under section 5(4) kindly note. So, in 5(4) I have sought the assistance and that officer is supposed to give. We think he will give, but there are chances that they may not give. Now section 5(5) says shall render all assistance. So, if your assistance is sought you have no option you have to render as the case maybe.

However, in case there is any contravention by such officer that means if such an officer does not give assistance as sought by the PIO then in those circumstances that officer who has failed to render assistance shall be treated as a PIO. This is exactly the process of what is known as the deemed PIO. So, I am the actual PIO. I have sought your assistance for the implementation of the RTI you refuse to give it to me, you refuse to cooperate.

You refuse to assist then in those circumstances you shall be considered as the deemed public information officer. One will assume , what does this do? What is this deemed PIO actually mean? The deemed PIO actually means that in case tomorrow for the contravention of the duties of the public information officer. I told you there are 12 duties that I have listed. If there is any contravention or breach of duties of PIO, say the most classic example of not

providing the information within a time frame then generally the penalty will be imposed on the PIO.

However, in this case because the other officer has not provided assistance in a time bound manner and that is the cause of the delay in providing information that other officer will be treated as a PIO and deemed PIO will be summoned by the information officer. The deemed PIO will have to justify why there is a delay and finally if he is not able to adequately justify, the penalty under section 20 will not be imposed on the designated PIO.

The penalty will be imposed on the deemed PIO. So, this is where the designated public information officer can simply wash his hands off and say look it is not my whole and sole responsibility in implementing RTI. I think the responsibility is to be shared by all other officers whose assistance has been sought and if one delinquent officer has not given that kind of assistance he shall be held responsible.

He shall be designated as a deemed PIO and the penalty should be imposed on him and not me. So, the public information officer can clearly be of the sanction and the liability for the breach of the duties under RTI act and the breach of duties shall be squarely fixed on this person or the deemed PIO. So, I think section 5(4) and 5(5) are very critical, very important.

Now, what do these two sections do? They very clearly say that the PIO cannot give an excuse saying that he did not get the cooperation of other PIO that is point number 1. When general PIO tend to shift the accountability saying that 'look I asked his assistance he is not giving'. So, very clearly whoever has been asked the assistance must be provided otherwise the penalty squarely going to be imposed upon him.

So, that is how probably the provisions of law have been clearly designed and they empower the PIO, please note that it is interesting. So, one has been designated the PIO gets a right to seek the assistance and it the duty of those officers who actually do the same. So, I think it is an all empowering section, it is an all facilitating section and the obligations are very clearly fixed and hence you must note the section 5 (4) and section 5(5).

Then the penalty under 20 on the RTI act shall not be only imposed on the public information

officer it can be imposed on any officer whose assistance was sought and not delivered and due to those sort there has been a denial of the right to information that is the most important part that gets reflected by reading section 5(4).

Now, before we just go forward I just have a word of caution. The word of caution is that section 5(4) and section 5(5) do not necessarily abdicate the role of the PIO, and do not reduce the role of the PIO.

I think the court has made it abundantly clear that the primary role is always on the PIO. So, you cannot shift this making people as deemed PIO. This is not possible. So, you are primarily responsible for providing the information. However, if there is fault that can be fixed on somebody else. So, the designated PIO cannot abdicate his responsibility, cannot shift his responsibility, cannot run away from the responsibility.

The provisions of the law are delivered in a goodwill manner to empower the PIO. It is a manner to actually strengthen the role of the PIO and to strengthen the RTI regime completely and absolutely and hence I do not think by the use of section 5(4) and 5(5) the PIO should run away or shrink his position and responsibility and just act like somebody who is kind of the forwarding authority.

I think there is a caution that the courts have said very clearly that they do not expect the provisions of section 5(4) and 5(5) to be used as somebody with some forwarding authority example. So, you just cannot do that and rather the misuse of 5(5) is something which the court wanted to stop and hence they have cautioned the PIO for misusing of sections 5(5).

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Postmaster can act as an APIO:

- Role of APIO
- Qualification of APIO
- Liability of APIO
- The appointment of PIO is mainly to facilitate the applicant in multiple ways. The CIC while considering a related issue in *P. Muthaiah v. P.M.O., CIC/WB/A/2007/1645*, observed that even the Postmaster of the post office where the applicant wanted to post his application under the RTI Act could act as an APIO and assist him in writing and posting his application as provided under Section 6 (1) of the Act.



Again let us come to the role of an APIO to reiterates the assistant public information officer plays also a very important role. There is again no qualification prescribed of who can be APIO, but the role of APIO is to assist the PIO. Now, one of the fundamental questions that has often been asked is can an APIO independently process an RTI application? Can you give information directly? The answer to that is a negative and APIO is there only to assist a PIO.

So, you can receive the application, give the acknowledgement, you can help the PIO in providing the said information, preparing the replies so on and so forth, but an APIO cannot act independently. He cannot provide the information without any delegation of authority from the PIO. If there is specific delegation of authority from the PIO you can go on doing the same otherwise an APIO is purely there only to assist a PIO and nothing more than.

No prescribed qualification for an APIO however the liability of the APIO is like any other officer. So, if the assistance of APIO is sought under 5(4) and he does not give it then under 5(5) as a deemed public information officer is not deemed, he is an assistant designed APIO then in those circumstances penalty can be imposed on APIO elsewhere. So, this case of Muthaiah versus P.M.O. It is the case decided by the central information commission in 2007.

The question was can the government designate postmasters Post office is a very small unit like you know small place where people go and take a lot of services. So, those places very small maybe it has some 10 or 15 people maximum or less than that. Sometimes in rural areas the post master maybe the single person who is dealing. So, can the postmaster be designated

as a APIO under the Right to Information Act?

The commission said why not there is no qualification that is no prescription of who should be a PIO, who should be an APIO. I think it is up to the government of designated any person be it a postmaster, be it a postman as an APIO. So, that is the freedom that the law provides for.

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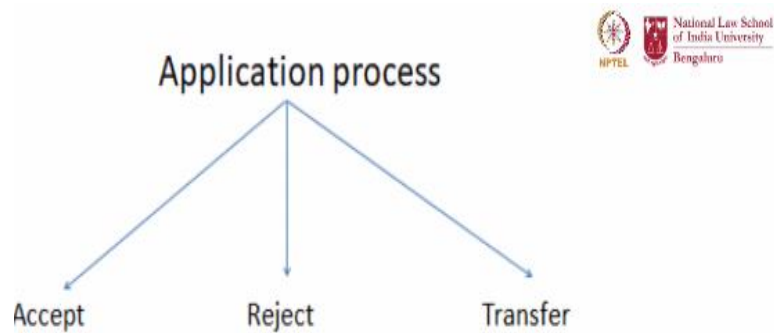
The Application process

PIO may take the following actions



Let us move to the application process. So far we have discussed responsibilities of public information officer and the assistant public information officer. We have looked at section 5(4) and section 5(5). However, let us look at how the application is processed within a public authority. Now, the PIO may take the following actions on an application.

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Among them are possible three things, just to get you a clarity on how an application is processed within an hour. The first thing is that the application can be accepted and the information is provided. Second action that he takes is that the application is accepted and the decision is taken and communicated to the citizen saying that 'sorry we cannot provide the information because it is an exempted information.'

And hence the application for information is rejected. That is a second action. The third action is obvious action as I told you earlier that PIO comes to know that the information sought does not pertain to his organization it pertains to another organization and hence what he does is he cannot reject kindly note that is the most important. He will have to transfer that application to the concerned designated public. So, these are the three actions that a public information officer ought to take when an application is received in his organization.

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Request for Obtaining Information

- Section 6 of the Right to Information Act, 2005 provides that:
- (1) A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed to:
 - (a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;
 - (b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, specifying the particulars of the information sought by him or her:
- Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.



Let us move to section 6. Section 6 of the Right to Information Act provides in section 6 1 that a person who desires to obtain information under this act shall make an interest in writing or through electronic means. In English or in Hindi or in the official language of that area in which the application is being made, accompanied by such fees as may be prescribed by the law.

Now, the PIO as the case maybe, has to be approached and he is a person who is designated to receive this application when it is made by the citizen. So, how can I make the application? I can make it in writing or I can send it electronically. What is the language? It can be in English, Hindi or in the local language. So, these are three ways in which the application can actually be made to the public information officer.

What should the application contain? The application should contain certain details who the applicant is, what is the information sought and what is the address to which the communication has to be made. These are certain basic information that should exist in the application. If the applicant requires any assistance obviously, he can seek the same from the PIO.

And it should be the duty of the PIO to provide the assistance in making the application or in writing. You may notice that certain public authorities have designed a format for filing the RTI application and during some early stages they insisted that the application should be in that format only and they justified why they require the format because there can be some

kind of uniformity in the application so that record management is easier.

But the CIC has consistently held that yes you can have a format but you cannot insist on the application being only in that part. The format is good, but you cannot insist so just because the application is not in that format you cannot reject the application is what the CIC has very clearly stipulated. Have a format. If people know that there is a format and they file it in that format, excellent. If people do not know the plainly written application should also be accepted and processed is what has been communicated by the central information commission.

Now, you will also notice that you know the official language of a given area is depending upon which state are you finding the RTI application. Now, please note if it is in relation to central government organization even in the state of Karnataka, the applications are usually made in English and Hindi, but can they be made in Kannada? yes they should be and the central government organization should have a translator.

They may cover the information only in English and Hindi they are not going to translate the information into Kannada and Hindi. The application can be made in kannada is what is something that we can infer from reading section 69(1).

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Application




- Is there a format for the RTI application?
- What should be the language of the RTI Application?
- Can RTI be filed electronically?



So, three questions you can answer immediately from the discussion that I have first is that format for RTI application quickly I think you can just answer this on your own. What should


be the language for an RTI application? that is the second question that you would want to just answer on your own and third can an RTI be filed electronically? What do you think?. So, fine after you answered these three questions let us go forward.

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No addition in appeal:

- While making an application under Section 6 (1) of the Act, it may be kept in mind that the required information has to be clearly and specifically mentioned in the application made under the Act. Any information not mentioned in the application shall not be provided as a matter of right under the Act, nor such addition can be made in appeal at any level. The PIO is not supposed to go beyond what is required in the application. Therefore, to consider any additional request under the Act at any subsequent stage including the appeal would not be justified. The CIC held accordingly in *Rajinder Prasad v. Directorate of Health Services NCT Delhi*, Complaint No. CIC/PB/A/2008/00399 & 00626.



Now very important is this case of Rajinder Prasad versus Directorate of Health Services NCT Delhi, a case decided by in CIC in 2008. Now, this case very clearly states that look when an application is made by citizen you cannot amend that application at a later part. So, what he is seeking as information you should stick on till every process is completed. So, you cannot change that I actually wanted this information.

So, I want to amend that RTI application. So, one application whatever is stated as in the application continuous to be the subject matter of adjudication till it is decided by even the high court also. If you require some additional information you have to file a fresh application. So, please note citizens do not have a right to amend their application and the PIO is not supposed to go beyond what is there in the application.

Generally, what happens is citizen orally make some request, they orally want to make some addition changes. This is something that citizens often just ought to, but I think the information commission has very clearly said that except what is there in writing the PIO is not supposed to go beyond what is there in the application. I think PIO generally get into some kind of conversation with the citizen, want to get clarification especially when the application is made.

There is no certainty I think they go about seeking clarification so that they facilitate the right to information. People are not very expressive at clear when they ask sometimes. So, there is nothing wrong with what the PIO communicates and finds out what exactly he is required by the citizen. So, he is sure of what is exactly required by the citizen then he can provide the said information. So, I think that role and responsibility the PIO can definitely make while looking at the right to information.

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Sec. 6(2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.



- The right to information is based on the premise that apart from a few exceptions, every information pertaining to the functioning of the public authority in a democratic country is public information.
- Therefore, this provision is strictly as per the spirit of the Act, nor the applicant is liable to give his personal details except where it is required for correspondence and contact. It is not within the jurisdiction of the PIO to question the justification or reasonability of the information sought.



Let us move to section 6(2) when we move to section 6(2) of the right to information act you will notice that an applicant making a request for information shall not be required to give any reason for requesting the information or any other personal detail except those that may be necessary for contacting. Now, I think section 6(2) is the most interesting section here. Why is it so very interesting?

Because it very clearly says that a citizen need not justify why he is making the information. Section 6(2) very clearly empowers applicants and citizens to say that I need this information. Why I need it I need not explain, what will I do with it I need not say. It is as section 6(2) very clearly says an applicant making a request for information need not give any reason.

So, are you an aggrieved individual are you a victim, how is this information concerning you no you do not have to comment for him. So, I think it very clearly states that information can

be asked as a matter of right rather than as a matter of grievance or anything. So, very clearly citizens will say I would need information A, B and C. Now very often than not public information officers are always very curious.

They are curious about two facts: first who is the applicant? Second, why is he seeking this information? Three what will he do with this information? Now, for all these three questions you will clearly notice that section 6 (2) says this is something that will never be made available. Why I am seeking this information is because I am a public-spirited individual. I want to keep a watch on the organization.

I want to gain more knowledge, I want to report it in the press, I want to probably use it in my research. There could be several purposes nobody needs to say or state this purposes. Now section 6(2) is so important because remember if section 6(2) was not there at RTI let me tell you very clearly if it was not there and that is why we feel it is a heart and soul of this legislation if it was not there and just imagine that the public information officer can ask for reasons. 'Why are you seeking this information?'

If that power is given to the PIO then every PIO would ask why are you seeking this information and if the citizen gives a justification the PIO will think that justification is not right to provide the said information. So, he will seek in judgment of the reason for seeking the information and unless he is convinced that the reason is adequate, appropriate, justified he will not provide the information at all.

And hence that kind of a role on the PIO is completely taken off and I think the burden of the citizen is also taken off in giving justifications. So, it is not only victims, it is not only an aggrieved person, it is not only an injured individual who has the right to information I think every person irrespective of whether you are a victim whether you are affected, whether you are aggrieved you have the right to information.

You may ask the information just for fun. That is also okay, but please note you should also be cautious that you do not misuse the rights, you do not abuse the rights that has been provided. So, you must use it in a very cautious, responsible manner and I think section 6(2) is very important. It means also the fact, if you recollect, in the previous module I told you that principle rule of locus standi 'why are you before us'. You that is what is something the

courts will ask.

So, suppose you find a writ petition in the high court or the supreme court you have to justify why you are before the court of law. The exception to the locus standi and principle is the public interest litigation concept. Now, here again you should notice that the locus standi principle is not there. Why are you seeking this information is definitely not there. So, you are seeking the information in public interest for public cause.

What he will do with it I think is not the business of the public information officer. However, kindly note section 6 2 is the rule and you do not have to have reasons, but the exception is that sometimes a citizen may seek information that is exempted under section 8. You know you are seeking exempted information so you are a well informed RTI applicant. So, you know information that you sought is definitely not going to be provided because it is going to be exempted.

However, under section 8 which will come to a little while later see exempted information are not always exempted. The right to information act is so beautifully designed that some of the exempted information may be provided if there is a larger public interest that can be proved or justified. Take the example of information that is confidential or private, these are exempted information.

But the section very clearly states that the said information can be provided if there is a larger public interest than protected interest. So, that is a test, there is a kind of justification that can be made. Now, the citizen in his applications can give reasons for seeking an exempted information. The citizen can justify by seeking that exempted information. He may explain why he is seeking that exempted information.

And through his justification and explanation if one comes to know that yes there is a larger public interest then it will help the PIO to make a decision in disclosing the said information that is the only basis on which the PIO can decide. So, if he thinks a reason on the justification are strong enough he will favor disclosure. If the reasons and justifications are not strong he will favor rejecting that application.

So, by section 6(2) says reasons need not be provided that is the rule. However, reasons have to be provided if the citizen is seeking an exempted information. It is the duty of the citizen to

make the justification, it is the duty of the citizen to justify larger public interest and if he does not then the PIO has the every right to reject it. So, PIO is not going to sit in make his own judgment about disclosing exempted information.

Rather he has no business or no role to play whether it is a larger public interest or not. This is the citizen who has to justify the same and if those explanation justifications are good enough for the PIO to make a decision he will definitely go for and make that decision. So that is where I think very clearly section 6(2) becomes the most integral part of the right to information.

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The slide features the logo of the National Law School of India University, Bangalore, and HPTEL in the top right corner. The main text reads: *(3) Where an application is made to a public authority requesting for an information: (i) which is held by another public authority; or (ii) the subject matter of which is more closely connected with the functions of another public authority, the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer. Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.* Below the text, it says 'Time frame for Transfer of Application: 5 days'. In the bottom right corner, there is a small video inset showing a man speaking.

Section 6(3) as I told you earlier is the transfer power. So, section 6(3) says if an applicant or an application is misguided. This can very well happen because so much less information with citizens. We are not sure which public authority has what information so what they do is sometimes they combine the required information into one application. So these are the possibilities. So, there is a foreseeability of the chances of misguided, misinformed citizens filing RTI applications.

In those circumstances, please note, the PIO cannot reject it and section 6(3) says in the subject matter in the application, please note, one pertains to the concerned public authority and the other that pertains is also closely connected. So it should not be randomly two different questions that are asked or information that are asked on RTI, but they are closely connected and the PIO thinks that one belongs to me, the other, yes it belongs to one of our sister organization, but not mine closely connected with the functions of another public

authority then the application shall be transferred to that concerned public authority. By whom? Not by the citizen with a public information officer himself. So, this is where the transfer power under section 6(3) has to be exercised by the public information officer.

So, once he does this under section 6(3) he has to notify it to the citizen. So, he should tell the citizen what action has been taken under the application because the citizen has the right to be informed saying that look point number one I am going to be. Point number two I have transferred it to my sister organization. I can give you an example regarding the same. See suppose I apply for information from say Karnataka State Road Transport Corporation.

Now, the Karnataka State Road Transport Corporation runs intercity buses. Whereas the intracity within the city is run by BMTC that is Bangalore Metropolitan Transport Corporation. Now if in my said application I seek information about KSRTC as well as BMTC. Now, the public information officer to whom the application first is being made the PIO who gave the information will process the information that he or his organization can provide.

Whereas from the second information of BMTC he will have to exercise section 6 3 is BMTC has a separate functional officer public authority. So, he will transfer it under section 6 3 and he will tell the citizen look regarding BMTC I have transferred it to the concerned PIO you will receive BMTC information from that PIO whereas KSRTC information is something that happens.

Any such decision to transfer an application under section 6(3) has to be made within the first 5 days of receiving that application. He cannot take his own sweet time to transfer this information. So, the PIO must read the application very, very carefully. It is his duty to provide his concerned information within 30 days. It is his duty to see, evaluate whether the information sought is closely connected with another public authority.

And if it is such within the first 5 days he must transfer that application to the second public authority under section 6(3). Now, the second public authority will get another 30 days from the time it has received that request to provide the said information, but the timeframe for transfer of application is just merely 5 days. In the first five days the transfer has to be made by the public information officer.

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Responsibility after the transfer:

- It may be clarified further that once the application is duly transferred to the Public authority under the provisions of the RTI Act, it is the liability and responsibility of the concerned Public authority to which the application is transferred to provide the information which is in its possession or custody. If such Public authority fails, it is not the responsibility of the transferring authority. The CIC considered this issue in *Arvind Kejriwal v. DOPT, Govt of India, Appeal No. CIC/MA/A/2006/00204, 2007 & 2008*, and held that once the RTI application was transferred to the actual custodian of the records, it was incumbent on the part of such authority to respond to the RTI request.



Now, the responsibility after transfer is also very important. Most public information officer think that after they have exercised the responsibility to transfer their responsibility is over and they do not have to do anything regarding what has been given access to a citizen. So, they sometimes fail to communicate to the citizen, fail to keep the citizen updated with what is happening with that transfer application.

Hence an Arvind Kejriwal versus DOPT government of India the central information commission very clearly said that if an RTI application is transferred to the actual custodian of the request if it is done so and the power of section 6(3) is used by the PIO it does not mean that the PIO role has ended. It is still the responsibility of the PIO to see that the citizen finally gets the information or it is the responsibility of the PIO to see that finally the communication reaches the citizen.

So, the citizen must be well informed, the citizen must be kept updated with and the PIO continuous to hold the responsibility for section 6(3) transfer applications as well. So that is again a very important judgment that comes from PIO in terms of the role and responsibility of the public information officer.

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Misuse of transfer power

- Ministry of Railways v Girish Mittal, Delhi High Court 2014 decided on sec. 6(3) powers: 15 points information was sought from Railway Board regarding Garib rath trains in all zones of the Railways. CPIO transferred the application to RDSP Lucknow. It was alleged that the CPIO transferred the application under sec. 6(3) in a *malafide* intent.
- Unless the information belongs to 'another public authority', use of Sec. 6(3) is misplaced. The Court held that the CPIO is not a forwarding authority. He should arrange for information. CPIO action were not helpful and not in consonance with the spirit of the Act.



Now, section 6(3) like any other power has also been misused and if you look at this case called Girish Mittal versus Ministry of Railways decided by the Delhi High Court in 2014, this was a classic case where there was misuse of the transfer. What happened with this case was there were 15-point requests for information that was sought from the railway board by an applicant and all this information was regarding the train called Garib Rath in all zones of the Indian railways.

This Garib Rath was just introduced and it was running in many places. Now the PIO and ministry of railways thought that the best thing to do is to section 6(3) and transfer it to all the divisions and zones. So, he thought he was just a forwarding authority and the best thing is to do is to use 6(3), forward it to all the divisions and they will provide the said information. Now, in this case the court came down heavily on the PIO.

And they said he had misused the power under section 6(3) and there was a malafide intent because what happens in this case was that the PIO did not even apply his mind. He did not even consider whether this information was already there in the ministry before transferring to the zonal or the division level and he randomly kept on using section 6(3). So the court said please note PIO is not a forwarding authority.

He is not to use section 6(3) and abdicate his role under the Right to Information Act and he should have arranged for the information. He should have been far more helpful in giving the said information and in this case misuse is quite clear and what has been used is not in

consonance with the spirit of the Right to Information Act is what was decided in this case.

So, there is a caution against the use of section 6(3). When should it be used?

How often it should have been used? What is the intention for the use of the same is something” That has to be often looked into before the PIO can exercise the powers under section 6 (3).