

Dos and Don'ts for Public Information Officer

Dos

The Public Information Officer shall :-

1. deal with requests from persons seeking information and render reasonable assistance to such persons. [Section 5 (3) of RTI Act, 2005]
2. take assistance, if required, of any other officer for proper discharge of his/her duties. [Section 5 (4 & 5) of RTI Act, 2005]
3. accept request in writing or through electronic means in English or Hindi or in the official language of the concerned area, accompanying the prescribed fee and where such request cannot be made in writing, the PIO shall provide all reasonable assistance to the person making the request orally to reduce the same in writing. [Section 5 (6)(1) of RTI Act, 2005]
4. transfer the application or part of it to the public authority concerned if subject matter of the application is not related to this Ministry under immediate intimation to the applicant within five days from the date of receipt of the application. [Section 5 (6)(3) of RTI Act, 2005]
5. provide information as quickly as possible and in any case within 30 days from the date of receipt of request or reject the request for any reasons as specified in Section 8 & 9 of RTI Act, 2005. Where the information sought for concerns the life or liberty of a person, the same shall be provided within 48 hours of the receipt of the request. [Section 7(1) of RTI Act, 2005]
6. be deemed to have refused the request, if the information sought for is not provided within 30 days from the date of receipt of request. [Section 7(2) of RTI Act, 2005]
7. intimate the applicant the details of the enhanced fee, if any, in addition to normal fee. [Section 7(3) of RTI Act, 2005]
8. assist to enable access to the information, including assistance for proper inspection, where access to the record or a part thereof is required to be provided specially to the sensorily disabled persons. [Section 7(4) of RTI Act, 2005]
9. allow access information in the printed or in any electronic format on payment of prescribed fee. No fee shall be charged from the person who are below the poverty line. [Section 7(5) of RTI Act, 2005]
10. provide information free of charge, if a public authority fails to provide information within 30 days from the date of the receipt of the request. [Section 7(6) of RTI Act, 2005]
11. consider the representation, if any, made by a third party, before taking any decision. [Section 7(7) of RTI Act, 2005]
12. 12. intimate the requester, the reasons for rejection, the period within which an appeal against rejection may be preferred and particulars of the appellate authority, in case the request is rejected. [Section 7(8) of RTI Act, 2005]

13. provide information in the form in which it has been sought unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record in question. [Section 7(9) of RTI Act, 2005]
14. provide the information related to decision of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken, after the decision has been taken and the matter is complete, or over. [Section 8(1) (i) of RTI Act, 2005]
15. provide such information which cannot be denied to the Parliament. [Section 8(1) (j) of RTI Act, 2005]
16. allow to access information relating to the Official Secrets Act, 1923 and any of the exemptions permissible in accordance with sub-section (1) of section (8) of RTI Act 2005, if public interest is involved and disclosure of which do not affect the protected interests. [Section 8(2) of RTI Act, 2005]
17. provide any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made. [Section 8(3) of RTI Act, 2005]
18. reject a request for information if the request for providing access is involved the matter relating to copyright subsisting in a person other than the State. [Section 9 of RTI Act, 2005]
19. serve a notice to the applicant, if access to a part of the record which is exempt from disclosure, intimating (a) that only part of the record requested ; (b) reasons for decision ; (c) the names and designation of the person given the decision ; (d) the details of the fees calculation to which the applicant is to deposit; and (e) his or her right to review the decision regarding non disclosure of part of the information, the amount of fee charged or the form of access provided. [Section 10 of RTI Act, 2005]
20. disclose, if intends, the information which is confidential in nature provided by the third party after obtaining the views of the third party in writing or orally within five days from the receipt of the request. [Section 11 (1) of RTI Act, 2005]
21. serve a notice to the third party to make representation against the proposed disclosure. [Section 11 (3) of RTI Act, 2005]
22. provide information within forty days after receipt of the request if the third party is given an opportunity to make representation on a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party. [Section 11 (3) of RTI Act, 2005]

Don'ts

The Public Information Officer shall not :-

1. ask an applicant making request for information to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him. [Section 6 (2) of RTI Act, 2005]
2. be obliged to give any citizen, - (a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence (b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court (c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature (d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information (e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information (f) information received in confidence from foreign Government (g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes (h) information which would impede the process of investigation or apprehension or prosecution of offenders (i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers (j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information. [Section 8 (1) of RTI Act, 2005]

Channels of Appeal

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

The term "Appellate Officer" (AO) connotes the appellate authority to whom the first appeal can be preferred under the Act if an applicant feels aggrieved by any decision by a PIO. This module covers the first appeal process.

First Appellate Authority

The Act does not define the First Appellate Authority precisely. Under Section 7(8)(iii), it refers to “appellate authority” to whom appeal can be made by a person whose request has been rejected. Section 19(1) refers to first appeal being made to such “officer who is senior in rank to the Central PIO or State PIO, as the case may be”.

It is important to note that the Appellate Officer must be an officer senior in rank to the PIO such that he is fully conversant with the work of the organization, the subjects dealt with by it and the functions discharged by various PIOs. The number of designated Appellate Officers in a Public Authority could be small as compared to the number of PIOs. One Appellate Officer could easily meet the requirement of appeals arising out of the decisions of a number of PIOs. However, keeping the nature of responsibilities to be discharged under the Act and the structure and functions of the organisation at various levels in view, each Public Authority has to determine the number of senior officers to be designated as AO, the rank at which the designation would be made and (if applicable) the PIOs against whose decisions they would hear appeals.

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

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

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

The advantages listed above may be weighed against factors such as whether the head of the public authority would be in a position to devote time for deciding time-consuming appeals, given the nature and extent of his / her

workload. The departments concerned may take appropriate decisions weighing the pros and cons.

Disposal of First Appeals

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

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

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

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

Importance of Public Interest in Disposal of Appeal

The Right to Information Act, 2005 calls for a paradigm shift in the approach to governance.

It is an Act which will be implemented by the people and acted upon by the Government.

The larger public interest will always be more important than private or protected interest.

Overall, if the public interest in disclosure to the citizen outweighs the harm to the protected interest, then the public authority may provide information.

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

Action in Good Faith

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

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

The documents to be presented as proof to establish that a decision was taken in good faith cannot be got prepared overnight. To a large extent, quick and effective disposal of information requests will depend on the manner in which the Public Authority maintains and manages its records. Yet, in any case, the registers to be maintained for receipt of request applications, acknowledgements, those for transfer of applications to other public authorities and officers with dates (and the acknowledgement of such transfers), reasons for decision etc. would all be required. The entries in such registers will have to be correct and complete.

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

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

Well Reasoned Order

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

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

- The reasons for such rejection;
- The period within which an appeal against such rejection may be preferred;
- The particulars of the Appellate Authority to whom appeal can be preferred.

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

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

Principle of Natural Justice

The procedure for deciding an appeal by an Appellate Officer (or the Information

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

An Instance of Information Commission Imposing a penalty on the PIO and issuing strictures against the Appellate Officer

Discussion

- The participants to discuss the rationale and the significance of the First Appeal process.
- Appellate Officer(s), may share their experiences with respect to their performance of their role as an Appellate Officer.
- Finding an Appellate Officer reversing the decision of a PIO denying information to an applicant.
- Any other issue(s) / aspect(s) that any participant(s) may want to discuss.