

RTI

Appeals & Complaints

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Objectives

- The Role and Responsibilities of First Appellate Authority(FAA) within Public Authorities
- The process involved in making first appeals to the FAA so designated
- Timelines for making a first appeal and the disposal of the appeal
- The situations when a complaint can be made
- Powers of the Information Commissions while disposing Appeals and Complaints

Channels of Appeal

Two Channels of Appeal – against the decision of a PIO on request for information:

1- an internal or ‘first’ appeal to a senior officer designated within the Public Authority

Note: It is required for a PIO to communicate to the applicant details about the Appellate Officer and the time limit for a first appeal,

2- a ‘second’ appeal to the Central / State Information Commission (as applicable)

Designation of FAA

According to Section 19 (1)

- It is required on the part of all public authorities to designate Appellate Officers (FAA) (along with the designation of Assistant / Public Information Officers)
- The officers to be designated as FAA is required to be senior in rank to the PIO as the case may be
- The FAA, so designated is to hear appeals made by a person aggrieved by the decisions of a PIO.

Important Considerations in designating FAA

- Is fully conversant with the functioning of the organisation
- Would be the best judge of the public authority's activities and be able to command various sources of information of the authority and decide upon the access needs of the public
- Can present to the parent department a complete and correct picture regarding the state of implementation of the Act by the authority

Important Considerations in designating FAA

- Would usually have first hand knowledge of the operationalisation of the Act within his / her organisation
- may be able to inculcate a sense of responsibility in the PIOs within the authority to be responsive to citizens' requests for information

Important Grounds for First Appeal

The obvious grounds stated in the RTI Act on which an appeal may lie against the decision of a PIO can be said to be:

- Not receiving a decision within the time limit specified by the Act
or
- With respect to the communication (received from the C/SPIO) about payment of fees / form of access/partial disclosure

Time Limit for Preferring Appeal

A person aggrieved by the decision of a PIO can prefer an appeal within thirty days –

- of the expiry of the period within which she should have received a decision
- of receipt of such a decision (from the PIO)

However,

The Act (also) provides that –

The Appellate Officer may admit the appeal after the expiry of thirty days if s/he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time

Involvement of Third party

The Act Stipulates that –

where an appeal is preferred against an order made by a PIO, as the case may be, to disclose third party information, the appeal by the third party concerned shall be made within thirty days from the date of the order

Time Limit for disposal of 'First' Appeal

The Act requires that a first appeal preferred to the Appellate Officer shall:

- be disposed of within thirty days of the receipt of such appeal
- or within such extended period not exceeding a total of forty-five days from the date of the filing of the appeal

In the latter case, however, the reasons have to be recorded in writing

From First Appeal to **Second Appeal**

A second appeal against the decision (of the FAA):

- can be made to the Central Information Commission or the State Information Commission as the case may be
- is to be made within ninety days from the date on which the decision (by the FAA) should have been made or (the decision by the FAA) was actually received

Note: The Information Commission concerned may admit the appeal after the expiry of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time

** No time limit has been stipulated for disposal of second appeal*

Onus of Proof

- In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the PIO who denied the request

Important Considerations for the FAA in disposing first appeals

Natural Justice, in essence, in this context would mean that:

- 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 be an essential ingredient of any decision taken

Important Considerations for the FAA in disposing first appeals

Public Interest

A decision on disclosing / providing information or withholding / denying it has to be made on the basis of which of the two courses of action would serve the larger public interest. It must also be noted that ‘public interest’ is a relative and dynamic concept and can be best decided on a case-by-case basis.

Important Considerations for the FAA in disposing first appeals

Action in Good Faith Section 21 of the Act, protects such action...

Thus,

- 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.

Note: It is important for the FAA to employ these considerations, for the Information Commission (in deciding on a second appeal, if a Second Appeal is preferred), will, in all likelihood apply these parameters to both the PIO's action and FAA's decision.

Instance of strictures being passed against FAA

Under the RTI Act, the FAA is not liable for being penalised (like the PIO is). However, there has been an instance of a State Chief Information Commissioner (of the Madhya Pradesh State Information Commission) taking serious note of the lapse on part of the FAA and issuing strictures against the officer in question.

To conclude...

- Designation of FAA is as much an imperative for all public authorities as is the designation of Public Information officers
- There is a need to ensure adequate seniority of the officer to be designated as FAA, with due regard to the his / her capability to discharge this important responsibility

To conclude...

- FAA need to not only to be fully aware of the provisions of the Act and be updated on the recent developments in its implementation
- They should also be sensitised about such important aspects of their responsibility as understanding of the concepts of natural justice, public interest more so because these concepts have not been clearly defined in the Act. Hence, they are more a matter of interpretation in keeping with both the letter and the spirit of the Act.

Powers of Commission while hearing an appeal

Require the public authority to take any such steps as may be necessary to secure compliance with the provisions of the Act, including

- by providing access to information, if so requested, in a particular form;
- by appointing a Public Information Officer;
- by publishing certain information or categories of information;
- by making necessary changes to its practices in relation to the maintenance, management and destruction of records;

- by enhancing the provision of training on the right to information for its officials;
- by providing it with an annual report
- require the public authority to compensate the complainant for any loss or other detriment suffered;
- impose any of the penalties provided under the Act;
- reject the application

Inquiry into Complaints

Section 18 (1) of the Act stipulates that the Information Commission shall receive and inquire into a complaint from any person

- who has been unable to submit a request to a Public Information Officer either by reason that no such officer has been appointed under this Act,
- who has been refused access to any information requested under the Act;
- who has not been given a response to a request for information or access to information within the time limit specified under the Act

- who has been required to pay an amount of fee which he or she considers unreasonable;
- who believes that he or she has been given incomplete, misleading or false information under the Act; and
- in respect of any other matter relating to requesting or obtaining access to records under the Act.

Powers of Commission While Enquiring into Complaints

- Summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;
- Requiring the discovery and inspection of documents;
- Receiving evidence on affidavit;
- Requisitioning any public record or copies thereof from any court or office;
- Issuing summons for examination of witnesses or documents; and
- Any other matter which may be prescribed.

Imposition of Penalty

Impose penalty on erring PIOs in cases where the PIO has, without any reasonable cause:

- refused to receive an application for information
- has not furnished information within the time specified [u/s 7(1)]
- malafidely denied the request for information or
- knowingly given incorrect, incomplete or misleading information
- destroyed information which was the subject of the request
- obstructed in any manner in furnishing the information.

Q & A

Thank You

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