RIGHT TO INFORMATION

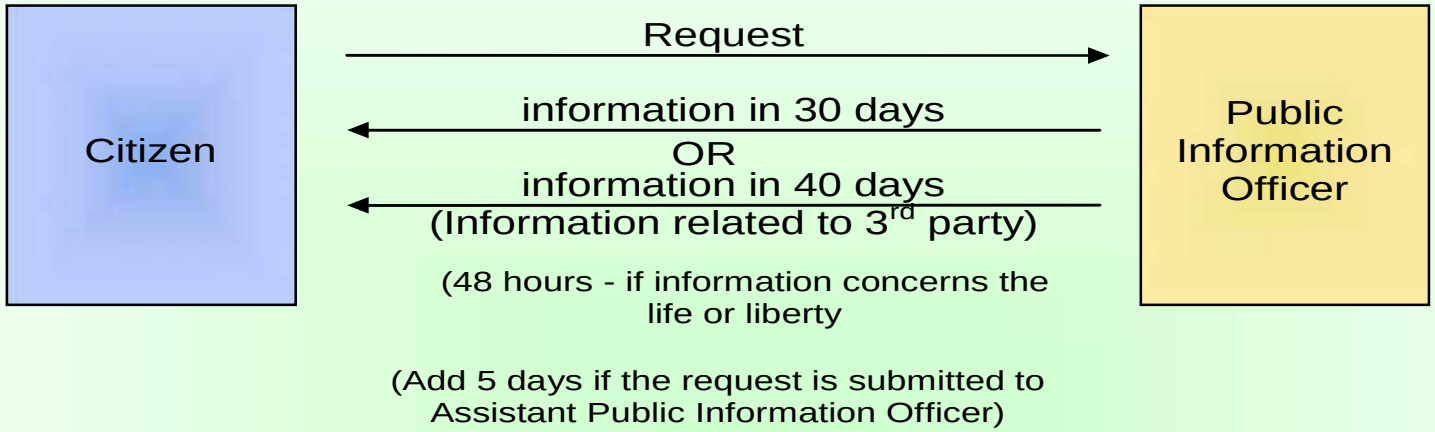
A DISCUSSION

Progressive law

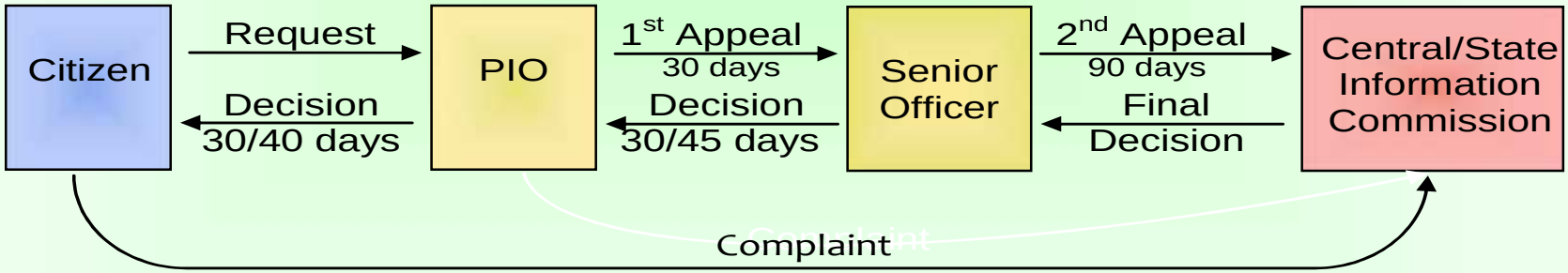
"Indian RTI law is the best in the world."

- Former CIC Sri Satyananda Mishra on 20 Jan.2012 at Chennai.

Flow chart of the Request for Information



Flow chart of the Request for Information (if rejected)



New laws

Right of Citizens for Time Bound Delivery of Goods and Services and Redressal of their Grievances Bill, 2011

Penalty up to Rs 50,000.

- Clause 25 (2)

The RTI Act is 'applicant blind'

- No need to give personal details except address for contact.

Section 6 (2)

Law is 'purpose blind'

- No need to give reasons for requesting information.

Application fee

Application fee is not charged in many countries.

‘Held’ test

- Information pertaining to any period, if held by the public authority, can be obtained;

Independent PIOs

- The Minister of State in the Ministry of Personnel, Public grievances and Pensions stated in the Lok Sabha as follows:

  - Lok Sabha Unstarred Question No 1762. Answered on 28.11.2007.

Independent PIOs

- The Right to Information Act, 2005 contains provisions enabling the Public Information Officers to work objectively and fearlessly.

- P.I.O. has the ‘duty to assist’ requesters.

Provide necessary help

- "[T]he responsibility of a public authority and its public information officers is not confined to furnish information but also to provide necessary help to the information seeker, wherever necessary. While providing information or rendering help to a person, it is important to be courteous to the information seeker and to respect his dignity. O.M. No.4/9/2008-IR on 24th June, 2008.

Presumption in favor of disclosure

- Sets disclosure as the default position.

Section 7 (8)
Section 19 (5)

Government of India
Ministry of Personnel, PG & Pension
Department of Personnel & Training

North Block, New Delhi
Dated 6th October, 2015

Office Memorandum

Subject: Format for giving information to the applicants under RTI Act- issue of guidelines regarding.

It has been observed that different public authorities provide information to RTI applicants in different formats. Though there cannot be a standard format for providing information, the reply should however essentially contain the following information:

(i) RTI application number, date and date of its receipt in the public authority.
(ii) The name, designation, official telephone number and email ID of the CPIO.
(iii) In case the information requested for is denied, detailed reasons for denial quoting the relevant sections of the RTI Act should be clearly mentioned.
(iv) In case the information pertains to other public authority and the application is transferred under section 6(3) of the RTI Act, details of the public authority to whom the application is transferred should be given.
(v) In the concluding para of the reply, it should be clearly mentioned that the First Appeal, if any, against the reply of the CPIO may be made to the First Appellate Authority within 30 days of receipt of reply of CPIO.
(vi) The name, designation, address, official telephone number and e-mail ID of the First Appellate Authority should also be clearly mentioned.

First Appellate Authority should also be clearly mentioned.

2. In addition, wherever the applicant has requested for 'certified copies' of the documents or records, the CPIO should endorse on the document "True copy of the document/record supplied under RTI Act", sign the document with date, above a seal containing name of the officer, CPIO and name of public authority; as enumerated below:

True copy of the document/record supplied under RTI Act. Sd/- Date (Name of the Officer) CPIO (Name of the Public Authority)

Further in case the documents to be certified and supplied is large in number, information on RTI application should be supplied by a designated PIO but the certification of the documents, if need be, could be done by an other junior gazetted officer.

3. This may be brought to the notice of all concerned.

(G. S. Arora)
Deputy Secretary (IR)
Tel.23092755

1. All the Ministries / Departments of the Government of India.

2/-

‘Information’ broadly defined

- Records
- e-mails
- samples
- Models and so on.

File notings

- The Minister of State in the Ministry of Personnel, Public grievances and Pensions, replying to a Question in the Rajya Sabha, stated as follows:

- Rajya Sabha Unstarred Question No 73. Answered on 02.07.2009 by the Minister of State in the Ministry of Personnel, Public grievances and Pensions.

File notings

- "The Government *vide* Department of Personnel and Training Office Memorandum no 1/20/2009-IR dated 23rd June, 2009 has clarified that the file noting can be disclosed except file noting containing information exempt from disclosure under section 8 of the Right to Information Act, 2005."

Universal access to information held by the public authorities.

All citizens have right to access information, in any form.

Disclosure of personal information

- CIC while deciding a case has cited the decision of Supreme Court of India in the matter of *Girish R. Deshpande vs. CIC and others* (SLP (C) no. 27734/2012) in which it was held as under:-

--Department of Personnel & Training, O.M. No. 11/2/2013-IR (Pt.),14 Aug.2013

Disclosure of personal information

- *"The performance of an employee/Officer in an organisation is primarily a matter between the employee and the employer and normally those aspects are governed by the service rules which fall under the expression 'personal information', the disclosure of which has no relationship to any public activity or public interest. On the other hand, the disclosure of which could cause unwarranted invasion of the privacy of that individual."*
- The Supreme Court further held that such information could be disclosed only if it would serve a larger public interest.

Suo motu disclosure on official tours

- PublicAuthorities may proactively disclose the details of foreign and domestic official tours undertaken by Minister(s) and officials of the rank of Joint Secretary to the Government of India and above and Heads of Departments, since 1st Jan.2012.

--Department of Personnel & Training, O.M. No. F. No. 1/ 8/2012-IR,11 Sep.2012

Suo motu disclosure on official tours

- Information to be disclosed proactively may contain nature of the official tour, places visited, the period, number of people included in the official delegation and total cost of such travel undertaken. Exemptions under Section 8 of the RTI Act, 2005 may be taken in view while disclosing the information. These advisory would not apply to security and intelligence organisations under the second schedule of the RTI Act, 2005 and CVOs of public authorities. -- Department of Personnel & Training, O.M. No. F. No. 1/ 8/2012-IR,11 Sep.2012

Suo motu disclosure

- Implementation of suo motu disclosure under Section 4 of RTI Act, 2005 – Issue of guidelines

- --Department of Personnel & Training, O.M. No.
- No.1/6/2011-IR,15 April.2013

Requests by Associations

- Paragraph 8 of the '*Guide for the Public Authorities- Guidelines for the public authorities under the Right to Information Act,2005'*, published by Department of Personnel & Training, Ministry of Personnel, P.G. and Pensions, Government of India states as follows:

- O.M.No.1/4/2008-IR dated: 25th April, 2008

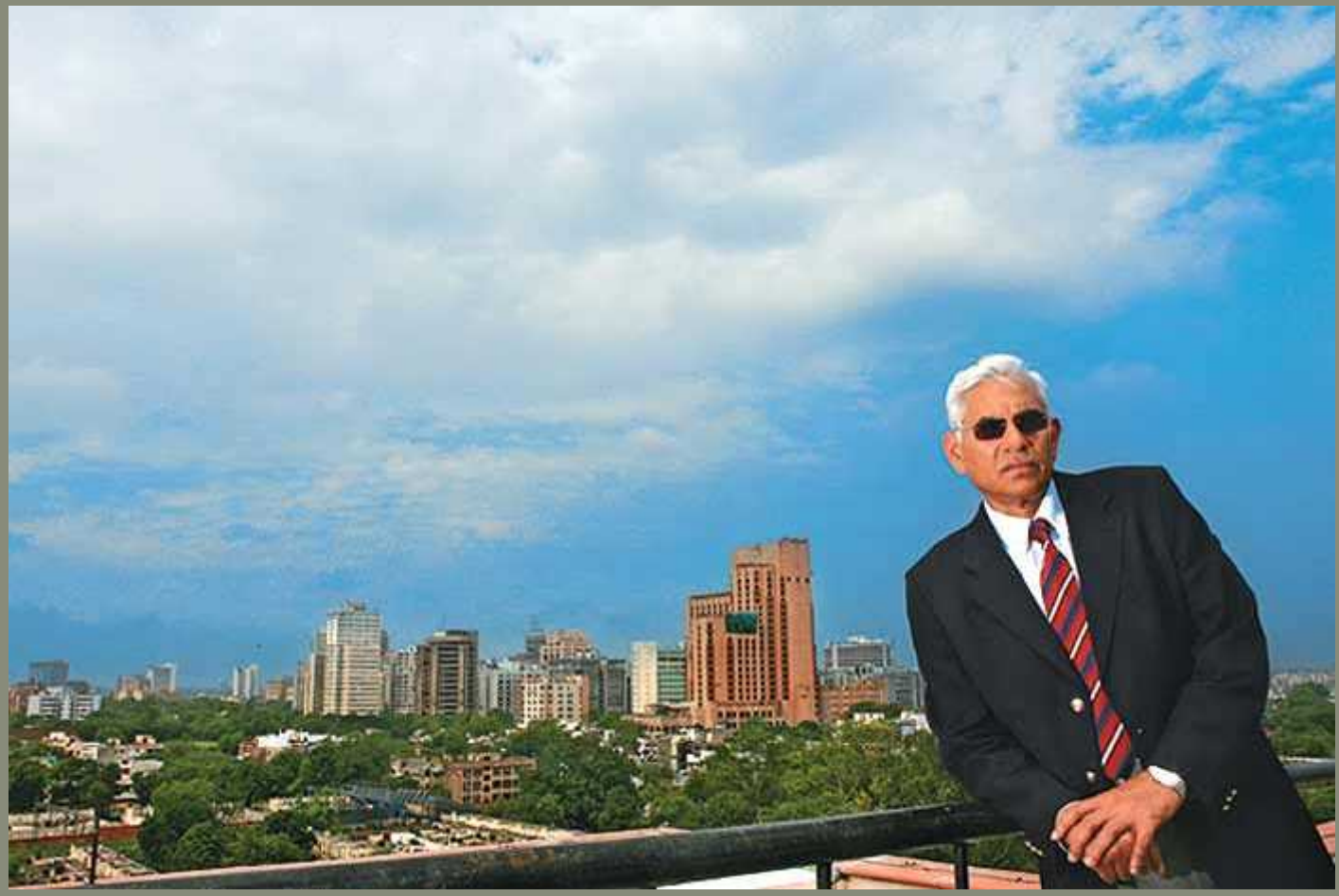
Requests by Associations

"8. The Act gives the right to information only to the citizens of India. It does not make provision for giving information to Corporations, Associations, Companies etc. which are legal entities/persons, but not citizens. However, if an application is made by an employee or office bearer of any Corporation, Association, Company, NGO etc. indicating his name and such employee/office bearer is a citizen of India, information may be supplied to him/her. In such cases, it would be presumed that a citizen has sought information at the address of the Corporation etc."

Citizen Auditors

- Right to information includes inspection of records, works and taking certified samples of material

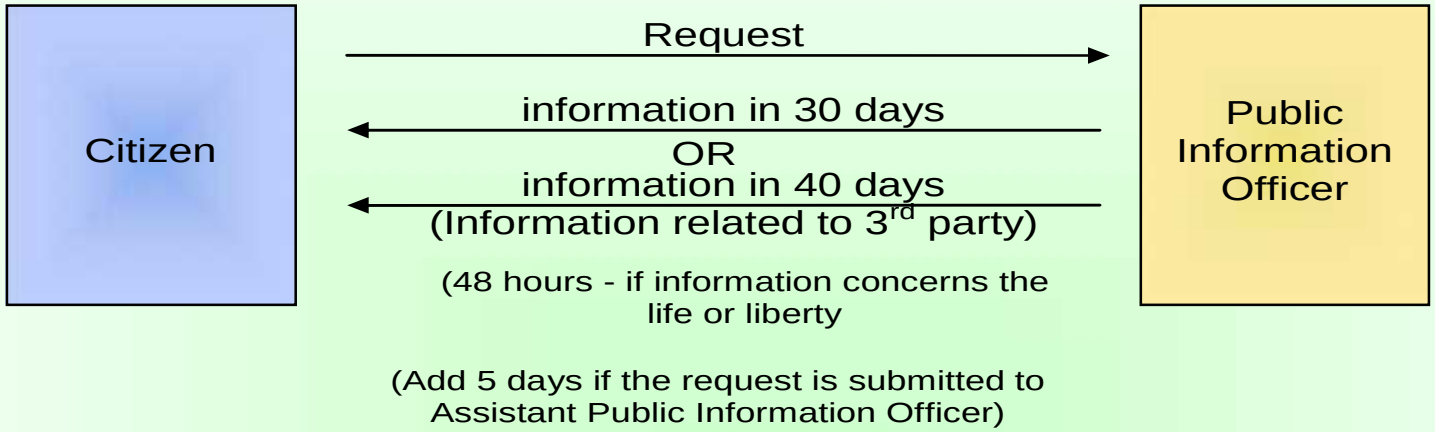
Vinod Rai, Former Comptroller and Auditor General of India



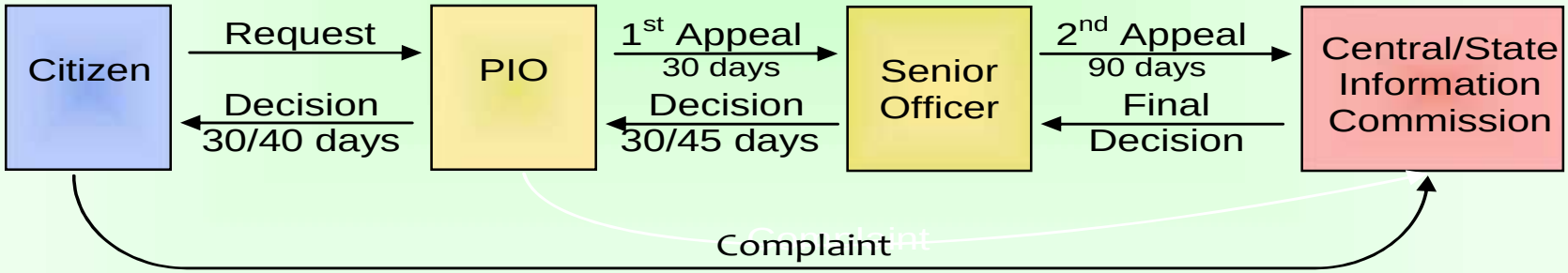
Vinod Rai, Former CAG

- "If I went for an audit and asked for comments, you could give it to me in a day, in a month, in six months, or never give it and I could not do anything about it except remind you. Today, the government has empowered citizens with the RTI Act. We are asking for similar powers so that my audit queries are answered in 30 days."
  - *Outlook*, 11 July 2011

Flow chart of the Request for Information



Flow chart of the Request for Information (if rejected)



Retrospective Effect

- Information pertaining to any period, if held by the public authority, can be obtained;
- Applies to information held or collected before it came into force.

DOPT ON COMPILATION OF INFORMATION

- Careful reading of the definition of 'information' and 'right to information' makes it clear that … the Act, however, does not require the Public Information Officer to deduce some conclusion from the 'material' and supply the 'conclusion' so deduced to the applicant. The PIO is required to supply the 'material' in the form as held by the public authority and is not required to do research on behalf of the citizen to deduce anything from the material and then supply it to him. No.11/2/2008-IR on 10 July, 2008.

CIC ON COMPILATION OF INFORMATION

- Under Rule 4 (a) of the RTI Act (Regulation of Fee & Cost Rules) 2005 which came into force on September 16, 2005 a fee is expected to be charged for each page "created or copied", which indicates that all information held by or under the control of any public authority is accessible to the public as is covered by the 'right to information' defined in sec. 2(j), even when it needs to 'collected'." Complaint No.CIC/WB/C/2007/00345-Decision date:18.02.2008

Section 4

- The requirement of creation of information under the RTI Act is reflected in section 4. Section 4(1) (c) requires publication of relevant facts while formulating important policies etc. and Section 4(1) (d) requires disclosure of reasons for administrative or quasi-judicial decisions.

THE UK ON COMPILATION OF INFORMATION

- On 9 July 2008, the day before issuance of this Memorandum, the U.K. Secretary of State for Justice, in his intervention before of the House of Lords in *Common Services Agency v. Scottish Information Commissioner*, submitted :
- "the obligations of public authorities ought to be limited to information which is truly held by them so that they are not put into the position of having to conduct research or create new information on behalf of requesters".

THE UK HOUSE OF LORDS ON COMPILATION

- This submission was neither accepted nor rejected by the House of Lords. However, it went on to opine
- "as the whole purpose of FOISA is the release of information, it should be construed in as liberal a manner as possible". Opinion of UK House of Lords in *Common Services Agency v Scottish Information Commissioner* [2008] UKHL 47 (9 July 2008)

NGOs, private bodies

Covers:

- all public authorities
  - Judiciary
  - Legislature
  - Executive

- NGOs
- private bodies

subject to provisions.

Section 3

- Subject to the provisions of this Act, all citizens shall have the right to information.
- What provisions?

What provisions?

- Section 8: Exemptions
- Section 9: Grounds for rejection
- Section 24: Exclusions

Section 9

- Only absolute exemption from disclosure of information

Section 8

- All other exemptions are subject to public interest test.

Exclusions

- The RTI Act partially excludes the following from the ambit of the Act:
- Organizations specified in the Second Schedule
- Information furnished by such organizations to the Government

Voluntary disclosure

- Voluntary disclosure of maximum (16 categories of) information on Nationwide network.

Obligations of a public authority

- Paragraph 2 of the '*Guide for the Public Authorities- Guidelines for the public authorities under the Right to Information Act,2005'*, published by Department of Personnel & Training, Ministry of Personnel, P.G. and Pensions, Government of India states as follows:
  - O.M.No.1/412008-IR dated: 25th April, 2008

Obligations of a public authority

- "2.The Act casts important obligations on public authorities so as to facilitate the citizens of the country to access the information held under their control. The obligations of a public authority are basically the obligations of the head of the authority, who should ensure that these are met in right earnest. Reference made to public authority in this document is, in fact, a reference to the head of the public authority."

Updating

- Paragraph 19 of the '*Guide for the Public Authorities- Guidelines for the public authorities under the Right to Information Act,2005'*, published by Department of Personnel & Training, Ministry of Personnel, P.G. and Pensions, Government of India states as follows:

- O.M.No.1/412008-IR dated: 25th April, 2008

Updating

- "19. An another important point to note is that it is not sufficient to publish the above information once. The public authority is obliged to update such information every year. It is advisable that, as far as possible, the information should be updated as and when any development takes place. Particularly, in case of publication on the internet, the information should be kept updated all the time."

People's participation in decision making

- Voluntarily publish relevant facts while formulating important policies or announcing the decisions which affect public.

Affected persons.

- Every public authority should voluntarily provide reasons for its administrative or quasi-judicial decisions to affected persons.

- No prescribed form.

Reasonable fees.

Mute refusal

- Deemed to be refused if no response is given.

First Appeal

- Internal First Appeals against PIO's decisions on fees/form of access/rejection/partial disclosures.

First Appeal

- Paragraph 38 of the '*Guide for the First Appellate Authorities*' states as follows:

- Published by Department of Personnel & Training, Ministry of Personnel, P.G. and Pensions, Government of India (O.M.No.1/3/2008-IR dated: 25th April, 2008)

First Appeal

- "Disposal of Appeal
- 38. Deciding appeals under the RTI Act is a quasi-judicial function. It is, therefore, necessary that the appellate authority should see to it that *the justice is not only done but it should also appear to have been done.* In order to do so, the order passed by the appellate authority should be a speaking order giving justification for the decision arrived at."

CIC suggested as follows:

- Central Information Commission Appeal Procedure Rules 2005 are clear that an appellant may be present in person or through his duly authorized representative, or may opt not to be present in appeal before this Commission. Such a principle will apply *mutatis mutandis* to any appeal before any lower authority under the Right to Information Act. CIC/WB/A/2006/00321,14 Dec.2006

First appeal may be preferred by one of the following:

- The requester under sub-section (1) of section 19 of the Act
- Time limit under sub-section (1) of section 19 is 30 days; however the appellate authority has the discretion to admit the appeal after 30 days.

First appeal may be preferred by one of the following:

- Third party under sub-section (2) of section 19 of the Act:
- Time limit under sub-section (2) of section 19 is 30 days. Here the appellate authority has *no discretion* to admit the appeal after 30 days.
- The 30 day clock for the third party starts from the *date of the order* itself and not from the date of the receipt of the order.

Complaints

- Citizens can directly make complaints and appeals to Information Commissions.

Burden of proof

- Presumption in favor of disclosure of information – Burden of proof on P.I.O.

- Overriding effect on other secrecy laws.

- Educational programmes to disadvantaged communities.

- Annual reporting by the Information Commissions.

Thank you!

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