
RECOMMENDATIONS ON PROACTIVE DISCLOSURE UNDER RTI ACT, 2005

Department of Correctional Administration

COMMONWEALTH HUMAN RIGHTS INITIATIVE

INITIATING TRANSPARENCY¹

BACKGROUND

Public accountability is one of the essential ingredients of transparent governance. The need for such accountability increases manifold when the institution in subject is a prison. Opening up prisons is an indispensable necessity for those who directly or indirectly come in association with it such as a prisoner, prisoner's family and those who advocate for the rights of the prisoners. Lack of awareness of one's legal and fundamental rights and lack of disclosure on part of the State renders the prisoners and prisoners' family extremely vulnerable and those who advocate for the rights of the prisoners, ineffective.

LEGAL MANDATE

One of the most important tools that has initiated a movement of transparency in Indian establishment is the Right to Information Act, 2005 (hereinafter referred to as 'Act'). Under Section 6(1) of the Act, any person can obtain information by making a written request to Central Public Information Officer or the State Public Information Officer of the concerned Public Authority. Moderate use of this section has opened up prisons to quite a considerable extent however; there still remains a wide expanse which has yet not been utilised.

Section 4 of the Act mandates and obliges every public authority to disclose information regarding its functions, power and duties, employees, organizational chart, remuneration, documentation, concessional schemes, norms to discharge their functions, activities undertaken, budgetary details and other significant details proactively in a way that is accessible by the public within 120 days from the enactment of the Act. Under Section 4(1)(b), there are 17 sub clauses that provide for the type of information to be disclosed. This information is vital to the functioning of the public authority and sufficiently crucial to be in the knowledge of a citizen.

Additionally, consistent compliance of Section 4 eventually leads to reduction of burden from the shoulders of both the information provider (State) and the information seeker (citizen) which is an essential appendage of Section 6. To substantiate on it further, according to a study done by RTI

¹ Prepared by Mrinal Sharma, Prison Reform Programme, Commonwealth Human Rights Initiative. For more information visit: www.humanrightsinitiative.org

Assessment and Advocacy Group (RAAG) and Saamya-Centre for Equity Studies, it was found that nearly 70% of the RTI applications seek information that should have been proactively made public without citizens having to file an RTI application.² This clearly portrays the necessity of collectively shifting the weight from Section 6 to Section 4 of the Act.

STATUS OF CURRENT DISCLOSURE

Despite there being a statutory binding, many public authorities still function in an archaic fashion and have been giving it a miss. According to the 2008-2009 Annual Report of the WB IC that the public authority is bound to disclose under Section 25 of the Act, out of 61 State Departments only 39 Departments submitted their reports in response to West Bengal Information Commission's order No. 885(92) WBIC/1R-1/08 dated 25.04.2008. Out of those 39 Departments, only 19 Departments had uploaded the 17 manuals³ on their website as required under Section 4(1) (b) of the Act.⁴ The Department of Correctional Administration counted amongst those who did not submit the report to the WB IC.

A public authority's performance vis-à-vis the compliance with Section 4 can be gauged by examining the following factors:

1. Completeness of the data – The entirety and totality of compliance with the 17 sub clauses under Section 4(1)(b) of the Act by the Department.
2. Specificity of the data – The precision, exactness and accuracy of the information that has been provided under Section 4(1)(b).
3. Frequency of updating the data– The regularity with which the information is upgraded and refreshed under Section 4(1)(b).
4. Visibility of the data – The accessibility of information under Section 4(1)(b) and the convenience with which it could be located by the public eye.

² Page 5, People's Monitoring of RTI Regime, 2011-2013

³ The 17 manuals as they are popularly known are compiled information as sought under 17 sub-clauses of Section 4(1)(b). These manuals were devised by the Uttarakhand Information Commission as a convenient and user friendly method of disseminating information as sought by the Act.

⁴ <http://wbic.gov.in/Section/sec%204%20report%20nov%2008htm.htm>

This is the latest Annual Report uploaded by the West Bengal Information Commission.

5. Language friendly – The user-friendliness in terms of language and outreach to maximum number of people with a focus on the local public.

NEED AREAS

With regards to the 17 manuals prepared by the Department of Correctional Administration, West Bengal as part of its compliance with Right to Information Act, 2005 under Section 4(1)(b), CHRI recommends the following additions to make the disclosure helpful to the target beneficiaries, namely – prisoner, prisoner’s family and those who advocate for prisoners’ rights.

1. CHAPTER 2 of Department’s RTI Manual

The power and duties of its officers and employees

Need – The power and duties of senior officers must be laid down clearly point wise with regards to their tasks of reference.

Rationale - It is highly unlikely for citizen to own a copy of local and special laws or all government circulars and order. Therefore, it is pertinent for the website to contain the important duties and powers of the senior officers for transparency.

Good practice – The Right to Information Manual of Department of Pharmaceuticals has laid down the duties of all its officials starting from Joint Secretary to Deputy Secretary. For more information: <http://pharmaceuticals.gov.in/>

2. CHAPTER 3 of Department’s RTI Manual

The procedure followed in the decision making process, including channels of supervision and accountability

Need - There should be a more transparent and precise articulation of the channels of submission and how a files moves in the department regarding different issues of a prisoner especially in the cases of remission, parole, release, repatriation, transfer of a prisoner, medical treatment, bail and visiting a prisoner.

Rationale - For a closed world of prison, it is important that the procedure for decision making is laid down as it is with utmost transparency. Currently, chapter 3 relates more to the power of the officers than the procedure followed in the decision making process.

Good practice – The Compendium on Right to Information of Department of Economic Affairs, Ministry of Finance clearly sets down the channel of submissions. For more information:

http://finmin.nic.in/the_ministry/dept_eco_affairs/rtimain/manual/manual3.pdf

3. CHAPTER 4 of Department's RTI Manual

The norms set by it for the discharge of its functions

Need – (1) The circulars, leaflets, handbooks and advisories, office procedure manuals that are used for execution of the work of the Department must be written in this section. (2) The soft copy of these must also be uploaded. If they are already uploaded separately on the website, their link must be placed next to their names on the manual. If they cannot be uploaded for certain pressing reasons, the fee amount for such a norm must be placed against it thereby enabling a citizen to directly send the fee amount with the RTI application to the Department for seeking a copy of desired norm.

Rationale - Considering the bureaucratic laches, it is important for a citizen, prisoner and prisoner's family to be abreast with the latest circular, leaflets, handbooks and advisories issued by the Department itself and other authorities as well for smooth discharge of its functions. Proactively disclosing the fee amount streamlines the process of receiving information and saves both the Department and the citizen certain amount of unnecessary postal costs.

4. CHAPTER 5 of Department's RTI Manual

The rules, regulations, instructions, manuals and records, held by the Directorate of Correctional Services under its control and used by its employees for discharging its functions

Need – A soft copy must of all the rules, regulations, manuals and records mentioned in the document must be uploaded on the website.

Rationale – Most of the RTI applications under Section 6 of the RTI Act, 2005 relate to the rules governing jails. Providing the soft copies of the rules and regulations will put aside a huge amount of exchequer's money.

Good Practices – The Assam Home Department has uploaded the soft copy of all the Act, rules and regulations that are used by it for the discharge of its functions. For more information: <http://artassam.nic.in/Home%20Department/Home%20Department.htm>

5. CHAPTER 6 of Department's RTI Manual

A statement of the categories of documents that are held by Directorate of Correctional Services

Need – (1) The list of all the registers maintained by the Correctional Homes must be mentioned. (2) The list of Undertrial prisoners eligible for release on bail under Section 436A must also be listed. (3) The list of *Jankhalaash* prisoners must also be listed (4) The list of prisoners who were transferred to other countries to serve the rest of their sentence must also be listed. (5) The list of asylum seekers in detention in Correctional Homes must also be listed. (6) The statistics held by the Correctional Homes must also be listed.

If the soft copy of all the above mentioned documents cannot be uploaded for certain pressing reasons then the Department must place the fee amount for all the records against their names thereby enabling a citizen to directly send the fee amount with the RTI application to the Department for seeking a copy of desired norm.

Rationale – There are around 40 registers starting from Entry Register, Release Register, Visitor's Book, Undertrial Register, Peshi Register/ Production Register, Register of letters received (West Bengal Form No. 16), Register of letters despatched (West Bengal Form No. 19), Punishment Register (Section 12(3) of the Prisons Act), Release Register (Section 12(2) of the Prisons Act), Cash Property Register, Remission of Sentence Register (Rule 1325(a)(3)), Gate Register etc that are maintained by the Correctional Homes besides the Annual Reports and Returns, Record of Escaped convicts.

Good Practice – Department of Economic Affairs, Ministry of Finance lists all the documents that it holds. For more information:

http://finmin.nic.in/the_ministry/dept_eco_affairs/rtimain/manual/manual6.pdf

Rajasthan Prisons uploads a comprehensive list of foreign nationals lodged in its prisons. For more information: <http://rajprisons.nic.in/download/fpi3112.pdf>

Maharashtra Prisons uploads a comprehensive list of prisoners eligible under Section 436A of the Code of Criminal Procedure, 1973. For more information: [http://mahaprisons.gov.in/1084/Undertrial-Prisoners-\(CRPC-436-A\)](http://mahaprisons.gov.in/1084/Undertrial-Prisoners-(CRPC-436-A))

6. CHAPTER 7 of Department's RTI Manual

The particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of policy or implementation thereof

Need – (1) The status of the current composition and constitution of the committees mentioned must be listed. (2) The composition and constitution of Parliamentary Committees must be listed. (3) The Parliamentary questions in Rajya Sabha related to prisoners lodged in West Bengal Correctional Homes and their answers must be listed. (3) The Reformation Partners of the Department, their contact details and the work that they undertake must also be listed.

Rationale – The proper functioning of these committees is highly instrumental in enhancing correctional administration. The disclosure of current composition and constitution of the committees ensure that these committees are operational and working as per their mandate.

7. CHAPTER 8 of Department's RTI Manual

A statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public

Need – The minutes of meetings held by all the committees, boards and panels and their decisions must be uploaded and frequently updated by the Department.

Rationale – The clause provides for minutes of the meetings as well which have not been included in the RTI Manual prepared by the Department.

Good Practice – Rajasthan Prisons uploads the minutes of meetings of Parole Boards, open air camps committees etc. For more information: <http://rajprisons.nic.in/meetingminutes-right.htm>

8. CHAPTER 12 of Department's RTI Manual

The manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes

Need – (1) The year wise details of Prisoner Welfare Fund or Prison Staff Welfare Fund and their beneficiaries must be listed. (2) The details of programmes and schemes for prisoners or prisoner's family must be listed.

Rationale – The details of schemes and subsidy programmes must be publicly available for the knowledge of its beneficiary – the public.

Good Practices – The website of Karnataka prisons has uploaded the information on the Prison Staff Welfare Fund. It has also uploaded information on their Arogya Bhagya Scheme. For more information: <http://www.karnatakaprison.in/medicalbenefits.html>

9. CHAPTER 13 of Department's RTI Manual

Particulars of recipients of concessions, permits or authorizations granted by it

Need – The list of visitors that are permitted to meet the prisoners must be listed.

Rationale – Visitors often have to wait unduly long in harsh conditions to meet their relatives in prison. Prior disclosure on a public portal of those who have been allowed to meet their relatives will considerably ease one of the ramifications that incarceration brings about to the family of the prisoner.

Good Practice – The website of Himachal Pradesh prisons has uploaded the information about the visitors that were permitted by the Government to meet the prisoners. For more information: <http://admis.hp.nic.in/hpprison/VisitorDetail.aspx>

10. CHAPTER 15 of Department's RTI Manual

The particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use

Need – The facilities available to the prisoners, prisoners' family and the lawyers of the prisoners to obtain information must be listed with regards to meeting hours, telephonic facilities, reading facilities and remuneration made to prisoners for their labor.

11. CHAPTER 16 of Department's RTI Manual

Particulars of the Public Information Officers

Need – The Public Information Officers of all the Correctional Homes must be mentioned.

Rationale – Since there are no separate websites for individual correctional homes, it becomes imperative on the Department of Correctional Administration to make available the list of PIOs in all the CHs.

Good Practices – Rajasthan Prisons mentions the name, address and contact details of all the Public Information Officers of all the prisons in the State. For more information: http://rajprisons.nic.in/PIO_list.htm

12. CHAPTER – 17 of Department's RTI Manual

Other Information

Need

- List of legal aid lawyers, jail visiting lawyers, paralegals and visitors and their contact details.
- List of Placement agencies in working towards employment of prisoners after their release.
- List of Probation Officers and their contact details
- Compliance with landmark judgments like RD Upadhaya vs. State of Andhra Pradesh, Sunil Batra vs. Delhi Administration, Bhim Singh vs. Union of India
- Visitor Slip Form and Parole Form (Good practice - <http://rajprisons.nic.in/downloadforms.htm>)

- Result of Recruitment drive
- Promotion Orders of the staff
- Career Opportunities