

Mr. H R Bharadwaj
Minister of Law and Justice
Ministry of Law and Justice
Room No. 402, A – Wing
Shastri Bhawan, Dr Rajendra Prasad Road
New Delhi – 110001

13 October 2005

Dear Minister Bharadwaj

Re: Exclusion of 'File Notings' from the Purview of the Right to Information Act 2005.

I am writing to you deeply disturbed by reports of intensifying resistance to the fulsome implementation of the new Right to Information Act 2005 (RTI Act). We are most particularly concerned to hear that there are moves within Government to exclude 'file notings' from the purview of the Act. The latest news report about the operationalisation of the RTI Act published in the Times of India dated 13 October 2005 states that "file notings by bureaucrats wont be made public". This position is based on the FAQs about the RTI Act publicised on the website of the Department of Personnel and Training.

In this regard we have written to the Hon'ble Prime Minister, Shri Manmohan Singh voicing our concerns. A copy of the referenced letter is being enclosed for your consideration.

The definition of a 'file' as given in the Public Records Rules, 1997 includes 'file notings'. The same definition is used in the Manual of Office Procedure issued by the Central Secretariat. The definition of a 'record' as given in Sec. 2 (i) of the RTI Act includes a 'file' in the generic sense without excluding file notings explicitly.

'File notings' therefore come firmly within the purview of the RTI Act. These notings, - unless they satisfy the criteria for exemptions under Sec. 8, must be made public on request. Even where these fall within the exemptions under Sec.8, file notings can be made public where the greater interest is served in disclosing the information. Moreover, the nature of file notings is inevitably that of advice, opinions, recommendations or suggestions etc and these are specifically covered by the definition of 'information'.

Exempting file notings would not only truncate the definition of the term 'file' mentioned in the Act but also irreparably damage the other important facets of the term 'information' such as 'opinions' and 'advice' contained in Sec. 2(f). Similarly exclusion of notings would completely nullify the operation and the import of Sec. 4(1)(c) and (d) which requires every public authority to proactively "publish all relevant facts while formulating policies or announcing the decisions to affected persons" and "provide reasons for its administrative or

quasi-judicial decisions to affected persons.” In short such an amendment would rend asunder the very core and spirit of the RTI Act.

Sec. 30 of the Act gives the Government the power to remove any difficulties that may arise in giving effect to the Act’s provisions. This power is to be used to further the objectives of openness and transparency and remove hindrances and obstacles. It must be exercised consistently with the provisions of the Act and not in a manner that will defeat the very purpose of the law. Under Sec. 25(3)(g) of the Act, Ministries in the Government have the power to recommend amendments for operationalising the right to access information. Far from operationalising the right, any amendment to exclude file notings would only curtail this fundamental right. Such retrograde measures intended to curtail the citizen’s right to access information are also against the mandate provided within the Act for amendment, clarification and reform.

Any support for a move to exclude file notings would go back on the promise contained in the UPA Government’s Common Minimum Programme, that “the Right to Information Act would be made more progressive, participatory and meaningful.” It will take us so far back that the legislative effort of the present Government will have been meaningless. Sir, we trust that the Ministry of Law which has been involved in drafting this legislation will not permit any attempts at diluting the Act when it gives its opinion on the matter.

We are happy to provide any clarification on this issue or discuss this further with your office. We would be deeply appreciative of an opportunity to do so

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'M. Daruwala', with a horizontal line underneath the name.

Maja Daruwala
Director

Encl: As above.