

Guidance Series

Information Commissions: Roles & Responsibilities

Right to Information Act 2005



COMMONWEALTH HUMAN RIGHTS INITIATIVE

Working for the practical realisation of human rights in the countries of the Commonwealth

Commonwealth Human Rights Initiative

The Commonwealth Human Rights Initiative (CHRI) is an independent, non-partisan, international non-governmental organisation, mandated to ensure the *practical* realisation of human rights in the countries of the Commonwealth. In 1987, several Commonwealth professional associations founded CHRI. They believed that while the Commonwealth provided member countries a shared set of values and legal principles from which to work and provided a forum within which to promote human rights, there was little focus on the issues of human rights within the Commonwealth.

The objectives of CHRI are to promote awareness of and adherence to the Commonwealth Harare Principles, the Universal Declaration of Human Rights and other internationally recognised human rights instruments, as well as domestic instruments supporting human rights in Commonwealth member states.

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Guidance Series

Information Commissions: Roles & Responsibilities

"A popular government without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their own governors, must arm themselves with the power knowledge gives."

- James Madison, Former US President, 1822

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Foreword

It was with great excitement that the *Right to Information Act 2005* (RTI Act) was enacted in June 2005.¹ The right to information promises a new era of open governance in India and an opportunity for ordinary people to more effectively engage with the officials and institutions who are supposed to promote their welfare and rights.

The usefulness of the Act for the citizens of India is directly dependent on the effectiveness of governments' implementation efforts. Not only new institutions – most notably Information Commissions – but also new systems, processes and bureaucratic cultures need to be developed and entrenched.

This publication is a contribution to the developing body of literature directed at interpreting the new RTI Act. The paper is one in a series of Guidance Notes created by the Commonwealth Human Rights Initiative to assist officials as they tackle some of the complexities of the new law.

This Guidance Note seeks to clarify the different rights, responsibilities and practical operations of the new Information Commissions, which the RTI Act requires are set up at central and state levels, drawing on best practice experiences in India and abroad. The new Commissions, which are headed by newly selected Information Commissioners, have a number of key roles to play to ensure the Act becomes an effective tool in assisting the public to access information. Specifically, Information Commissions are responsible for:

- **Handling complaints and appeals** (see Chapter V of the Act);
- **Monitoring implementation** (see Chapter VI, section 25 of the Act);
- **Promoting the Act**, amongst the public and officials (see the Government's obligations under section 26, which the Information Commissions could support).

This Guidance Note does not seek to examine the more complex questions surrounding many of the provisions the Information Commissions will be called on to interpret – most notably the exemptions (s.8(1)) and the public interest override (s.8(2)). These will be addressed in other Guidance Notes. This Guidance Note intends merely to capture some of the initial issues the Information Commissions will have to deal with as they begin to establish themselves and handle their new responsibilities.

¹ The RTI Act was passed by the Lok Sabha (Lower House) on 11 May 2005, by the Raj Sabha (Upper House) on 12 May 2005 and received Presidential assent on 15 June 2005. Parts of the Act came into force upon Presidential assent, but the Act came fully into force on 12 October 2005, 120 days after Presidential assent.

Part 1: Coordination

The new Act comprises a single piece of legislation which is to be implemented by the Central and State Governments of India throughout the entire country at all levels of government. The fact that the same law will be supported by different sets of Rules in each jurisdiction and will not be coordinated by a single nodal Ministry could lead to complications. As such, coordination will be an important issue which Information Commissions, as champions of openness under the Act, will need to constantly facilitate and promote as implementation and application of the law progresses.

With nodal agencies

In each jurisdiction – centrally and in each of the states and territories of India – it has been necessary to identify a nodal agency which will take the lead on guiding implementation. At the national level, the Department of Personnel and Training, which also took the bureaucratic lead on drafting the Act, is the nodal agency responsible for ensuring the Act is properly operationalised. At state level, the Ministry for Information, General Administrative Department or the Public Relations Department have most commonly been appointed as nodal agencies. This means that they are responsible for notifying the Rules under the Act, sending out circulars to public authorities explaining the new duties on public authorities under the Act and setting out timelines for action. Furthermore, nodal agencies have been engaged in developing training curricula, considering records management issues and developing processing systems. They will also have an ongoing monitoring role.

Information Commissions are a natural partner of nodal agencies, reinforcing and complementing many of their duties in terms of “championing” openness. As such, it is essential that Information Commissions and nodal agencies closely coordinate to maximise the impact of their efforts. For example, guidance materials and training resources could be produced collaboratively, so that clear messages are sent to implementing officials regarding how to apply the law. Conversely, it would be very confusing if conflicting interpretations of the law were issued separately by Commissions and nodal agencies. An example of this was when the Central Government Department of Personnel and Training advised on its website that file notings were not covered by the Act, but the Central Information Commission later stated that file notings were indeed covered.

In practical terms, consideration could be given to conducting regular coordination meetings between the nodal agency and the Information Commission. These meetings could be used to exchange information about planned activities and publications and to coordinate how to work together to produce joint outputs. Consideration could also be given to supporting short staff secondments so that officials within each organisation more fully understand the mandate and activities of the other and can develop stronger ongoing working relationships which will promote more fluid and effective coordination.

Between Information Commissions

The Act envisages the establishment of one Central Information Commission and 27 State Information Commissions,² with up to ten Information Commissioners being appointed for each Commission. As the new independent bodies responsible for handling appeals and complaints under the Act, Information Commissions play a central role in setting the parameters of the new Act. Interpretations of the law by Information Commissions will be the most important directives on how to apply the new Act, until cases are heard by the Supreme Court and binding judgments are handed down.

It would be useful therefore if some type of coordination mechanism is developed between India's Information Commissions to promote a consistent approach to interpretations of the law. On an ongoing basis, Information Commissioners may want to develop e-based systems whereby a discussion group could be set up on-line for Commissioners who could then quickly send questions around to their peers and receive ideas and input. A similar model has been developed for civil society groups in India and abroad, whereby right to information activists have set up on-line discussion groups to share comparative experience and advice.³ Considering the number of Information Commissioners appointed under the law, it may also be an idea to hold an annual meeting of Commissioners, where Commissioners throughout the country could come together to discuss common challenges and develop agreed strategies for dealing with them.

² The State of Jammu & Kashmir is not covered by the RTI Act, such that there is no requirement that the State Government set up an Information Commission. It also appears that the RTI Act does not envisage that Union Territories will set up their own Information Commissions.

³ See the International FOI Advocates network at <http://www.foiadvocates.net/>; HumJanenge, a Maharashtra-based RTI discussion group at <http://www.mahadhikar.org> or email HumJanenge-subscribe@yahoogroups.co.in to subscribe; and KRIA Katte, a Karnataka-based RTI discussion group at <http://groups.yahoo.com/group/kria/> or email kria-owner@yahoogroups.com.

International Coordination: Annual International Information Commissioners' Conference

Since 2003, Information Commissioners from jurisdictions throughout the world have met annually to discuss common challenges, innovative strategies and to exchange information on how the right to information is practically implemented in different local contexts. The International Conference of Information Commissioners is held in a different place each year, with Conferences being run in South Africa, Mexico and in 2006, the United Kingdom. The Conferences provide an excellent opportunity for Commissioners to discuss technical questions of law, practical implementation problems and to share ideas for how the right to information can be strengthened.

Capturing precedents

Information Commissions sit at the crossroads between the rights of the public and the duties of officials. As such, it is essential that their judgements are consistent, well justified and can stand up to scrutiny - by the courts, the public and officials. To promote consistency, it is important that Information Commissions set in place systems to capture decision precedents, for the benefit of Commissioners, their staff and officials applying the law. Otherwise, Commissions could end up interpreting the same provisions very differently in relation to exactly the same types of information. This may undermine the credibility of Commissions and diminish public support for the law. It also undermines the notion of the right to information being a fundamental right to be enjoyed by all Indians *equally*.

At a minimum, all decision notices need to be collected internally into a central database, so that Commissioners and staff can easily refer back to previous decisions. Decisions need to be collected and filed even if they are issued summarily as a short order, as well as when they involve complex legal points and take the form of a more detailed judgement. Written decisions could also be circulated between State and Central Information Commissions (and officials) via monthly updates circulars/newsletters/legal services. This will be particularly useful for PIOs and Appellate Authorities, who need to be kept informed of how Commissions are interpreting the law so their own decisions can be moderated accordingly. Decisions could also be uploaded on to the Information Commissions' websites. In some jurisdictions Information Commissions routinely upload their judgments on their websites. Some Information Commissions have even annotated each provision of their Act to provide links to relevant judgments (see below as an example).⁴

⁴ See the Queensland Information Commission at <http://www.infocomm.qld.gov.au/?p=28> and the Canadian Information Commission at http://www.infocom.gc.ca/acts/view_article-e.asp?intArticleId=29#16,1 (scroll down).

Part 2: Requests For Information About Human Rights Allegations

Section 24(1) of the RTI Act states that the Act will not apply to certain “intelligence and security agencies” established by the Central Government which are listed in the Second Schedule to the Act nor to any information that those organisations supply to other public authorities. At the time the law was passed, 18 organisations were listed in the Second Schedule. Section 24(4) applies similarly at State level, empowering State Governments to nominate intelligence and security agencies which they have established which will be exempt from the Act.

However, both sections 24(1) and 24(4) provide an exception, requiring that information pertaining to allegations of corruption or human rights violations will not be excluded. Importantly, both sections go further and require that where information is sought in respect of human rights allegations, the information shall only be provided with the approval of the relevant Information Commission. Commissions are given 45 days to decide on the request, as opposed to the standard 30 days which Public Information Officers have to deal with ordinary requests.

As yet, it appears that there have been no cases of sections 24(1) or 24(4) being used. Nonetheless, it would be useful for Information Commissions to publish guidelines for the benefit of the public about how they intend to approach their duties under these sections.

The Commissions have been given a very important duty. Allegations of human rights violations against government bodies are extremely serious and need to be handled with sensitivity and with due care. The Commissions have been placed in the role of human rights protectors - and will therefore need to be clear on the parameters of what constitutes a human rights violation. In this respect, it may be advisable for Commissioners and their staff who do not have a human rights background to be given training on human rights law, in particular, the rights contained in the Indian Constitution. Where Commissions are faced with cases which fall under sections 24(1) or 24(4), it may also be an idea to retain legal counsel to provide expert legal advice.

Part 3: Appeals & Complaints Handling

One of the Information Commissions' most important roles is to handle appeals and complaints made under the Act. While an internal appeals mechanism is available as an inexpensive first opportunity under s.19(1), oversight by Information Commissions which are independent of government is one of the most important safeguards included in the Act to ensure compliance with the law. By setting strong precedents in favour of openness, the Information Commissions will also operate to tackle entrenched cultures of secrecy that may continue to impact on openness under the Act.

Complaints and Appeals – What is the difference?

Section 19 sets out an appeals process which envisages that requesters who are aggrieved by a decision of a Public Information Officer (PIO) will first appeal to a Departmental Appellate Authority – who will be an officer senior in rank to the PIO but in the same public authority. If the requester is still unhappy with the decision made by the Departmental Appellate Authority, s.19(4) explicitly allows a requester to appeal to the relevant Information Commission within 90 days from receiving an order (or from the date an order should have been made). Even if a requester appeals after this time has expired, the Commission has the discretion to admit the appeal. Additionally, s.18(1) of the Act envisages that requesters can directly complain to an Information Commission on a wide variety of grounds, including where they are aggrieved by a PIO's decision (see below for details). Notably, a complaint can be made to the Information Commission even if the requester has not first appealed to the Departmental Appellate Authority.

Scope of the Commissions' review power

While s.19(4) allows Information Commissions to hear appeals from decisions of Departmental Appellate Authorities, s.18(1) broadens the scope of Information Commissions' review power by providing a lengthy list of cases which Information Commissions can hear. Section 18(1) provides for Commissions to examine complaints where any person:

- Has been refused access to any information requested under the Act (for example, where the person believes that one of the exemptions in s.8(1) of the Act has been wrongly applied or invoked or there has been a refusal to give reasons for a decision or unjustified or incomplete reasoning or a failure to properly consider the public interest override under s.8(2));

- Has been unable to submit a request or appeal to a Central or State Public Information Officer or Assistant Public Information Officer;
- Has not been given a response to a request for information within the time limit specified under the Act;
- Has been required to pay a fee which he/she considers unreasonable;
- Believes that he/she has been given incomplete, misleading or false information;
- In respect of any other matter relating to requesting or obtaining access to records under the Act.

Power to review any matter at all

Section 18(1) ends with a catch-all clause included at s.18(1)(f) which broadly gives the Commissions power to handle a complaint *“in respect of any other matter relating to requesting or obtaining access to records under this Act”*. This means that Commissions have the power to inquire into any matter at all, even if it is not specifically mentioned in s.18(1). For example, where a public authority has failed to meet its obligations to proactively publish information in accordance with s.4 of the Act or where a public authority has failed to appoint PIOs, a person could bring a complaint to the Information Commission demanding that the public authority be ordered to comply with the law.

Managing cases

When handling cases, it is important that Information Commissions keep in mind the law’s objective of promoting open government via maximum disclosure of information. In this context, it is important to recognise that the passage of the RTI Act symbolises the Government’s recognition that information disclosure is in the public interest – and is something that the Government therefore encourages and supports.

Section 19(10) of the Act specifically requires that Information Commissions shall decide cases in accordance with such procedures as may be prescribed. In practice, this means that Information Commissions, and/or the Government nodal agencies responsible for administering the Act, will need to develop Rules which provide more detail on how an appeal will be made and processed. Some jurisdictions have already promulgated appeal rules.⁵ However, these are quite basic and only state the minimum requirements for appeal applications, investigations and notices.

⁵ See the CHRI India RTI webpage to find the relevant National Rules at <http://www.humanrightsinitiative.org/programs/ai/rti/india/national.htm> and for the States at <http://www.humanrightsinitiative.org/programs/ai/rti/india/states/default.htm>.

Central Information Commission approach to developing appeal procedures

The Central Government has produced and published the *Central Information Commission (Appeal Procedure) Rules 2005*, which include provisions regarding how an appeal will be handled. However, the provisions are extremely basic and provide little additional detail for requesters or officials regarding the Commission's day-to-day approach to processing cases.

Consequently, in January 2006 the Central Information Commission agreed to request the Department of Personnel and Training (the nodal agency responsible for promulgating the Rules) to amend the Rules to empower the Chief Information Commissioner to "exercise all such powers and do all such acts and things for setting up the procedures for hearing the appeals, the complaints received and for internal functioning of the Commission".⁶ This is an exemplary approach because Information Commissions themselves should have the power to regulate their own proceedings.

The Commission has since published minutes of an internal meeting of Commissioners which agreed on some case handling procedures. For example, each Commissioner will be primarily responsible for handling cases relating to certain Ministries, but will make their initial decision in conjunction with a second Commissioner. If the two Commissioners do not agree on a decision, they will then refer the case to a bigger group of 3 or 5 (all) Commissioners. At the time of writing, all hearings are being held in Delhi, but the Chief Information Commissioner has flagged the possibility that Commissioners will travel for hearings, as necessary.

Ideally, appeal rules will be supported by detailed procedural guidelines which clarify the internal procedures which Commissions will follow when handling cases (see Appendix 1 for an example of Canadian appeal procedures). These guidelines will address issues such as:

- How cases will be allocated between Information Commissioners – for example, will Commissioners be randomly allocated cases or will they handle all cases relating to a particular ministry?
- How hearings will be run – for example, can lawyers be involved? Can hearings be held by teleconference? What happens if a third party is involved?
- How cases will be decided – for example, will Commissioners decide cases on their own or will they decide cases in pairs or at a sitting of the entire Commission?

⁶ See the Central Information Commission website at <http://www.cic.gov.in/>, click on "Minutes of CIC" on the left-hand frame and click on Minutes for 3 January 2006.

- What role Commission staff will play in supporting Commissioners – will staff handle initial research and investigation? (It may be that Commission staff can be delegated basic investigation and/or research tasks, in order to free up the Commissioners to spend more time considering their decisions. Throughout the world, many Information Commissioners delegate a substantial portion of their workload to their staff, subject to final sign-off on decisions and clear supervision channels.)

All Commissions need to publish their guidelines – so that the public and officials know what to expect during the appeals process, but also so that Commissions throughout the country can compare and contrast their different approaches and learn from one another's good practice.

Different procedures for different types of cases

Section 18(1) gives Information Commissions a very broad review remit to consider issues not only regarding disclosure, but regarding the calculation of fees, forms of access, imposing penalties and awarding compensation. Section 24(1) also gives Information Commissions a role in determining when information should be released by intelligence or security agencies exempted under s.24(1) where it is claimed that the information sought “is in respect of allegations of violations of human rights”. As a consequence of the breadth of the oversight remit of Information Commissions, internal procedural guidelines also need to address the different challenges that will be thrown up by the different types of cases the Commissions will handle. For example, when the Information Commissions are considering cases about whether proactive disclosure obligations have been complied with, whether intelligence agencies should be required to release information or whether fees have been miscalculated, Commissions may adopt different investigation and hearing procedures.

Investigations

Section 18(3) sets out the Central and State Information Commissions' powers of investigation. Information Commissions have been given the same powers as a civil court trying a suit under the *Code of Civil Procedure 1908*. Specifically, they have the power to:

- Summon and enforce the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;
- Require the discovery and inspection of documents;
- Receive evidence on affidavit;
- Requisition any public record or copies thereof from any court or office;
- Issue summons for examination of witnesses or documents; and
- Undertake any other matter which may be prescribed.

In any appeal, the first step for an Information Commissioner handling the case will be to requisition the information which is being disputed so that he/she can examine it and make a preliminary decision as to whether the PIO and/or Departmental Appellate Authority was correct in rejecting the requester's application.

Importantly, s.18(4) of the Act specifically states that Information Commissions have the right to look at every piece of information subject to an appeal – whether or not an exemption has been claimed. This makes it clear that Commissioners have the right – and in fact, the duty – to look at all the information requested and to then reconsider from first principles whether the correct decision was made. Equally, those officials in possession of the information in dispute are under a legal duty to provide it ALL to the Information Commission. If officials do not provide information to Information Commissions when requested, they could leave themselves liable to a penalty under s.20(1) for “obstructing in any manner the furnishing of information”.

In reality, once the Information Commission has been given all the information which is the subject of the complaint, some appeals may be dealt with summarily because it will be clear on reading the documents that the PIO and/or Departmental Appellate Authority has simply misapplied the law and should have released the information.

Preliminary discussion / mediation

If the Commission does not decide to release the information immediately, the next step will be to contact the PIO to talk to them about why they decided not to disclose the documents. The Information Commission can invite the PIO to submit an explanation in writing, if the original order denying the application is insufficient and/or may interview the PIO in person. This approach recognises that the appeals process does not have to be overly formal; it is not a court proceeding. The PIO will need to explain the legal grounds for withholding the information and will need to be able to justify their decision by pointing to one of the permissible exceptions contained in the Act.

Priority should be given to promoting non-adversarial approaches to handling cases, which aim to provide as much disclosure as possible. The assumption that an adversarial approach will be the standard – where officials resist disclosure and the public demands it – needs to be curbed early on. Commissions need to be on guard to resist the bureaucratic tendency to formalise procedures into court-like processes which can intimidate ordinary folk who are seeking assistance in getting information from habitually closed systems. Instead, Commissions need to strive to entrench procedures which promote openness as a positive, natural activity, rather than one which needs to be forced upon officials.

International Information Commissions commonly use mediation

Many Information Commissions across the world use mediation as a key element of the appeals process (see Appendix 1 for an example of Canadian appeal procedures). They encourage mediation and strongly discourage the use of lawyers because they are keen to keep the process simple, cheap and accessible. Before proceeding to a possible hearing, Information Commission staff first talk to the various parties to see if a compromise can be reached on disclosure. A more formal hearing is only conducted where mediated agreement cannot be reached. Mediation has been seen to make officials feel less defensive, while nonetheless promoting the requester's right to access information quickly, cheaply and simply.

Using mediation strategies means that Information Commissions do not always need to assume that a formal hearing between both parties will need to take place, where both parties are arguing against each other and the Commission acts as an umpire. Information Commissioners could first talk to the parties to see if a compromise could be reached on disclosure, because there may be some middle ground that would satisfy both parties. Of course, if the requester requests a hearing, then the Commission must still organise one accordingly.

The value of negotiation and mediation can be seen where, for example, an exemption COULD be applied, but nonetheless there is no reason for the PIO to withhold the information. Alternatively, where a large number of records are requested, mediation could be used to see if there is any way that the requester could tighten their search – perhaps they actually want something specific but were not sure how to narrow their request appropriately. In other cases, mediation may result in partial disclosure, where some sections of a record can be provided to the requester, but sensitive information covered by an exemption in s.8(1) or s.9 of the Act will still be withheld.

Well-trained Commission staff able to talk with both parties and negotiate between conflicting standpoints can be key to ensuring that Information Commissions do not fall prey to huge backlogs. It may still be necessary to conduct more detailed investigations and undertake research, interviews and take formal statements where mediated agreements cannot be reached or where Commissions are presented with complex cases. Nonetheless, mediation may help resolve simpler or less sensitive cases and can be a boon in terms of time-saving and building up support for openness within the bureaucracy.

Hearings

If, after interviewing the PIO, the Information Commission believes that a good legal argument has been made in favour of non-disclosure, then the Commission must contact the requester and give them a chance to be heard too. Fairness demands that the requester be given an opportunity to explain why they believe it is wrong to keep the information secret. This can be done in writing or through personal appearance in front of the Commission.

Burden of Proof

Section 19(5) of the Act specifically places the burden of proving that withholding information was justified onto the official who denied the request.

In practice, this means that a requester only needs to interact with the Commission after the official withholding the information has first been questioned, because the burden is on the official to show the Commission that they were not wrong. If a hearing is then organised, the PIO needs to be called on to make their case first, because it is their responsibility to make the case in favour of secrecy, while the requester needs to rebut their arguments. A requester will only need to make their case if the Commission thinks the official has a point worth considering. At that stage, the requester will then need to argue in favour of disclosure.

Hearing procedures need to give particular consideration to the needs of illiterate and/or poor members of the public and those who are outside urban centres. For example, Information Commissions may need to consider conducting roaming tours whereby Commissioners or their staff visit different localities to interview requesters and/or conduct hearings on a periodic basis. Once it is clear how many cases need to be dealt with, consideration may also be given to setting up regional Information Commission offices or paying for the attendance costs of requesters. Options for telephone or videoconference hearings and/or using web-based facilities may also need to be explored.

The Central Information Commissioner has already stated that his Commission will consider visits outside of Delhi, if necessary, when they get a few appeals from a particular area. In an innovative step, the Central Information Commission has also decided that one Assistant Public Information Officer (APIO) will be nominated within each State Information Commission to receive all appeals addressed to the Central Information Commission and forward them to the Commission. Once a hearing has been held, the same APIO will then also be responsible for informing the requester of the outcome.⁷

⁷ Vinita Deshmukh (2006) "Interview with Central Chief Information Commissioner at Pune", *The Indian Express*, Pune Newline, 1 March: http://cities.expressindia.com/fullstory.php?newsid=_1870.

The *Central Information Commission (Appeal Procedure) Rules 2005* specifically recognise that the requester has a right to attend a hearing and must be informed of the date of the hearing at least seven days in advance. The Appeal Rules even permit a requester to send a “duly authorised person” to their hearing. This recognises that there may be considerable cost in time and money involved for requesters making personal appearances. Information Commissions need to be sure to evolve processes which allow appeals to be effectively pursued by requesters without undue burden.

Third party involvement in Information Commission hearings

Section 19(4) specifically requires that where an appeal relates to information of a third party, the third party should be given a “reasonable opportunity of being heard”. Under s.19(2), third parties themselves may also submit appeals against a decision of a PIO. Notably, while a third party has a right to be heard however, the Information Commission retains the ultimate right to decide on disclosure. A refusal of a third party to consent to disclosure does not, in the absence of anything else, mean that information should be withheld. Even if a third party claims confidentiality, the information cannot be withheld unless it clearly comes within a stated exemption and it is in the public interest to withhold the information.

- See CHRI’s separate *Guidance Note on “Dealing With Third Parties: Applications & Appeals”* “ for a more detailed discussion on this topic.

It is essential to ensure that the Information Commission remains user-friendly and does not turn into another overly legal forum which is dominated by lawyers. Although the Commission does have the powers of a civil court under s.18(3) of the Act, nonetheless, the Commission is not expected to operate like a court. The main goal of setting up the Commissions was to provide an alternative to the courts which was cheap and easy to use for ordinary people.

This approach has been recognised in many other jurisdictions too, where Information Commissions avoid formalistic modes of functioning and discourage the use of lawyers because they are keen to promote accessibility by keeping their procedures as simple as possible. It is important that Information Commissions can be easily utilised by any member of the public, not just those who can afford sophisticated legal representation. Information Commissions will therefore need to make it clear early on that there will be no advantage in bringing a lawyer to proceedings.

Applying the Public Interest Override

Section 8(2) of the Act makes all of the exemptions contained in section 8(1) of the Act subject to a “Public Interest Override”. The notion of the ‘public interest’ is the unifying principle in the RTI Act. Government information is not the property of the organisation that holds it. It is not ‘owned’ by any department or by the government of the day. Information is generated for public purposes and is held for the community. Information can only be retained if it can be shown to be in the greater interest of the community to withhold the information.

In practice, this means that even where requested information is clearly covered by an exemption, an official – and the Information Commission when considering an appeal – should still order disclosure if the public interest in the specific case supports release of the information.

The term “public interest” is not defined anywhere in the Act. This makes sense because what is in the public interest will change over time and will also depend on the particular circumstances of each case. Because of this, public authorities – more specifically, PIOs and Departmental Appellate Authorities – as well as Information Commissioners will need to consider each case on its individual merits, taking into account the specific facts. They need to decide whether any exemption applies and if so, whether it is overridden by more important public interest considerations, such as the need to promote public accountability, the imperative to protect human rights or the fact that disclosure will expose an environmental or health and safety risk.

- See CHRI’s separate *Guidance Note on “Weighing up the Public Interest”* for a more detailed discussion on this topic.

In the event that officials engage legal counsel, the Information Commission, as an openness champion, needs to be proactive in ensuring that arguments in favour of disclosure are not overlooked simply because the requester is not present or has not used a lawyer. Information Commission staff could also be trained to support Commissioners to fill in any deficiencies in a case resulting from a lack of legal representation. Information Commissions may also decide to recruit specialist legal staff to assist at hearings, so as to ensure that all pro-disclosure arguments are properly researched and considered. This approach focuses on ensuring that the fundamental constitutional right to information is properly enforced – rather than simply turning hearings into a competition as to which party has the resources and skills to make a better argument.

Decisions

Section 19(8) of the Act gives the Information Commissions very broad ranging decision-making powers. The Commission can:

- (a) Require a public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including:
 - (i) By providing access to information, if so requested, in a particular form;
 - (ii) By appointing a Central or State Public Information Officer;
 - (iii) By publishing certain information or categories of information;
 - (iv) By making necessary changes to its practices in relation to the maintenance, management and destruction of records;
 - (v) By enhancing the provision of training on the right to information for its officials;
 - (vi) By providing the Commission with an annual report;
- (b) Require the public authority to compensate the complainant for any loss/detriment suffered;
- (c) Impose any of the penalties provided under the Act; or
- (d) Reject the application.

Most importantly, s.19(8) includes a catch all phrase which enables Information Commissions to *“require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act”*. This clause, when combined with s.19(7) – which makes it explicit that the decisions of the Central and State Commissions are binding – makes it clear that Commissions have the statutory clout to be strong champions of openness and accountability, if they choose to exercise their decision-making powers keeping in view the objectives and spirit of the law.

Time Limits for Decisions

It is a matter of concern that the Act currently contains no time limit for the disposal of appeals by the Information Commission, whereas section 19(6) requires Departmental Appellate Authority to dispose of appeals within 30-45 days.

However, Commissions could still be active in drafting Appeal Rules or procedural guidelines to include a time limit for their own disposal of cases. Ideally, the same time limit of 30-45 days which is given to Departmental Appellate Authorities under s.19(6), should be adopted by Information Commissions.

Throughout the Act, it is a clear requirement that all decisions must be notified to all parties concerned, along with clear reasons for arriving at that decision. Section 19(9) specifically requires that Information Commissions give notice of their decisions, including any right of appeal, to the complainant and the public authority. In keeping with the minimum requirements for decision notices (which are set out at s.7(8) and s.10(2) of the Act), notices should be in writing and explain the reasons for the decision, including the exemption relied upon and any findings on any material question of fact.

International best practice supports the establishment of a legal unit, or at least the employment of a legal expert, which will vet all decisions before they are issued, to ensure that they accord with the Act and common law generally. For example, the Act contains exemptions for information available to a person in his “fiduciary relationship”, disclosures which would constitute a “contempt of court”, and “trade secrets and intellectual property” – all of which are terms which have agreed legal meanings. It is important that Commissions take account of how these terms have already been interpreted by courts.

Imposing penalties

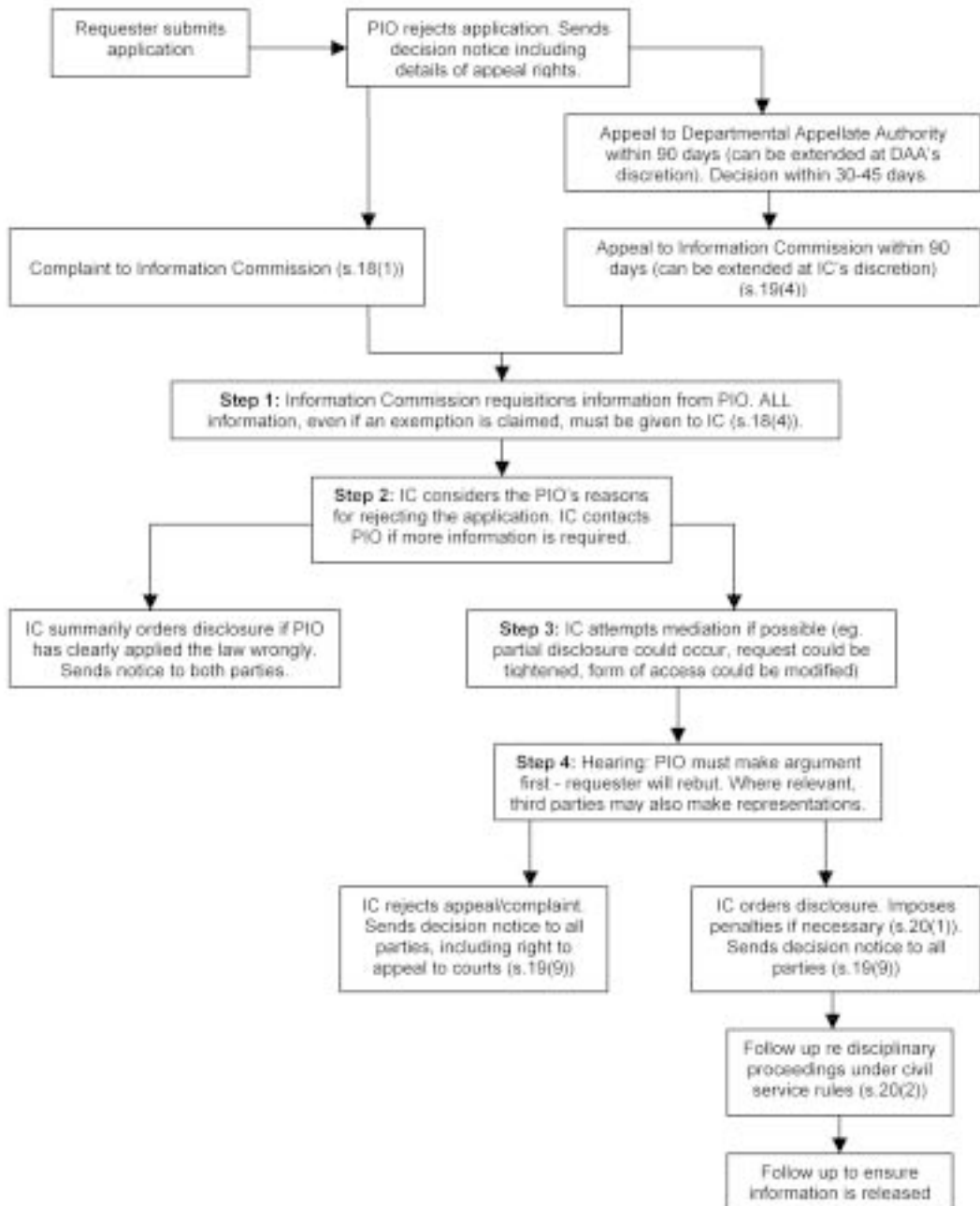
Section 20 of the Act specifically gives Information Commissions the power to recommend disciplinary action, as well as impose monetary penalties on PIOs (and officials they have asked for assistance) of Rs 250 per day up to a maximum of Rs 25,000 on officials who are found – without reasonable case – to have:

- refused to receive an application or failed to furnish information within time limits;
- malafidely denied a request for information;
- knowingly given incorrect, incomplete or misleading information;
- destroyed information which was the subject of a request; or
- obstructed in any manner the furnishing of information.

Before a penalty is imposed, an official must be given a reasonable opportunity of being heard. He/she is responsible for proving he/she acted reasonable and diligently. Already, a PIO has been fined the maximum amount of Rs 25,000 by the Central Information Commission for failing to provide information within the time limits of the Act, without a reasonable excuse.

The power to impose penalties lies only with Information Commissions. Appellate Authorities are not given the power to impose penalties under s.20. However, it appears that Commissions could still be approached to impose a penalty – either through a reference from an Appellate Authority or a direct complaint from a requester – under s.18(1)(f) which empowers Commissions to handle any complaint “*in respect of any other matter relating to requesting or obtaining access to records under this Act*”.

Flowchart: Handling Appeals and Complaints



Part 4: Monitoring implementation

It is increasingly common to include provisions in access laws mandating a body – commonly an Information Commission – to monitor and promote implementation of the Act, as well as raise public awareness about using the law. Monitoring is important – to evaluate how effectively public bodies are discharging their obligations and to gather information which can be used to support calls for improvements to the law and implementation activities. Ongoing monitoring and evaluation will enable implementation efforts to be continuously assessed, reviewed and strengthened, so that best practice can be distilled and copied, and areas still requiring more work can be identified and addressed.

Ongoing monitoring

The Central and State Information Commissions have been given specific responsibilities to monitor the Act via s.25 which makes the Commissions responsible for producing annual reports. The power for Information Commissions under s.19(8) to require public authorities to take action to comply with *any part of the Act* and under s.25(3)(g) to make recommendations for reform also clearly demonstrate that the Information Commissions need to be constantly monitoring implementation to ensure that they can make well-informed recommendations and decisions.

Right to Information Councils

Drawing on experience under previous State right to information regimes, Right to Information Councils (RTI Councils) which include representatives from the public, may be an additional monitoring mechanism that Governments and Information Commissions may wish to consider introducing via Rules. The Delhi, Goa and the Maharashtra right to information laws all required the establishment of RTI Councils – which had to include some civil society representatives as well as senior government officials – to oversee implementation. Maharashtra's RTI Council was quite active, holding monthly meetings. Circulars were often issued to address implementation problems identified by the public.

Even if Governments do not set up such Councils via Rules, Information Commissions could still consider establishing some form of civil society monitoring or advisory group on implementation, with a view to drawing on civil society knowledge to find out where implementation is facing problems on the ground and then placing that information in front of governments for action, via compliance notices and annual reports. For any such monitoring body to be effective however, it will require strong official commitment.

Developing appropriate monitoring systems

The most simple systems are paper-based, whereby all PIOs and Departmental Appellate Authorities would maintain paper files and notes of how they handle cases which would then be collated annually – although this would be very time-consuming. Some organisations and jurisdictions are already investigating setting up computer-based systems, whereby application and appeals data would be inputted directly into a database which could then easily be used to provide monitoring reports and statistics. Already, some individual public authorities have developed on-line application and processing systems, which will promote better monitoring.⁸

Recognising the different levels at which PIOs, APIOs and Appellate Authorities are stationed and the limited access to computers in some areas, some combined form of paper-based cum e-based monitoring system may be the most appropriate model. For example, lower level officers could perhaps collect paper-based statistics which could then be collated and computerised at the district level and then fed into a broader departmental monitoring system. Information Commissions could then easily interrogate these databases to analyse implementation effectiveness and to produce their annual reports.

Collecting statistics

In order to ensure that Information Commissions have sufficient information to report meaningfully on whether implementation is proceeding properly, it is essential that all public authorities immediately put in place proper monitoring systems to ensure regular collection of the necessary statistics. In this context, s.25(1) specifically requires that every Ministry or Department is under a duty to provide the Information Commission with whatever information they need to produce their annual reports. In practical terms, all public authorities will need to set in place monitoring systems to collect statistical information about the processing of applications and appeals. Ideally, the nodal agency responsible for implementation will develop such a monitoring system, in collaboration with Information Commissions who will be utilising the statistics collected in their Annual Reports. Guidance on how to collect and manage statistics also needs to be issued to all PIOs, APIOs and Departmental Appellate Authorities as a priority, setting out the minimum requirements for all public bodies regarding ongoing collection and collation of statistics.

⁸ See the website of NALCO, a Central Government public authority at http://www.nalcoindia.com/nalco_RTI/default.asp?status=applyonline; and see the United Kingdom computer-based monitoring database which can be modified for India, at www.gad.gov.uk/Publications/FOI.htm.

At a minimum, basic processing statistics should be collected from APIOs, PIOs and Appellate Authorities each month and collated and then sent to the nodal agency responsible for overall implementation of the Act. Information Commissions need to be proactive in encouraging public authorities to publish statistics on implementation every month on a government website, so that the public can have ongoing information on how effectively the Act is being implemented. Alternatively, Information Commissions themselves could regularly publish such information.

Annual reporting

Section 25(3) specifically requires that Information Commissions produce annual reports which will include, at a minimum, information on:

- (a) The number of requests made to each public authority;
- (b) The number of decisions where applicants were not entitled to access to the documents pursuant to the requests, the provisions of this Act under which the decisions were made and the number of times such provisions were invoked;
- (c) The number of appeals referred to the Information Commission for review, the nature of the appeals and the outcome of the appeals;
- (d) Particulars of any disciplinary action taken against any officer in respect of the administration of this Act; and
- (e) The amount of charges collected by each public authority under this Act;
- (f) Any facts which indicate an effort by public authorities to implement the spirit/intention of the Act;
- (g) Recommendations for reform, including recommendations in respect of particular public authorities, for the development, improvement, modernisation, reform or amendment to the Act, other legislation or the common law, or any other matter relevant for operationalising the right to access information.

Through their Annual Reports, Information Commissions can provide a holistic picture of the status of compliance with the Act. They can highlight areas of good and bad practice, lessons learned and innovations which could be replicated. They can also pinpoint areas for reform. In other jurisdictions, annual reports have often been used to focus on specific topics of concern – for example, records management, more effective use of information technology or the need for ongoing training – or to highlight well or poor performing public authorities. Annual reports provide an important opportunity to draw attention to right to information implementation issues, which can be particularly important after the Act has been in operation for a few years and the early excitement has died down.

Using annual reports to innovatively assess individual public authorities

In Canada, successive Information Commissioners struggled to battle the endemic problem of bureaucratic delays in responding to requests. To address the problem, the Information Commissioner instituted a system of 'report cards' to measure the performance of specific departments, identify specific causes of delay, make suggestions for change and track action taken. In each Annual Report produced by the Commissioner, he randomly selects a number of public authorities and then issues them a "grade" from A to F, which depends on the percentage of access requests received that were not answered within the statutory deadlines.

The grading practice has forced public authorities to explain their poor performance to their Ministers – and even to parliamentarians, as the Canadian Information Commissioner's Annual Report is not only tabled in Parliament but is also reviewed by the House Committee on Access to Information. This puts pressure on poor performing departments and ministries to review their performance and mend their ways. The grade is also an innovative performance standard which draws media interest because it can be easily understood by the public.

The statistics collected in the Annual Report can be an important monitoring tool for heads of public authorities, nodal agencies and the Information Commissions to regularly assess whether authorities are meeting their obligations under the Act. They can also be used to identify any public authorities which perhaps require additional training or systems support – for example, because statistics show that they are regularly missing deadlines for disposing of applications or appeals. Failure to improve over time could also increase the frequency and severity of penalties on that department.

Recommendations for reform

Section 25(3)(g) of the Act specifically requires that Annual Reports include recommendations for reform, including *"recommendations in respect of particular public authorities, for the development, improvement, modernisation, reform or amendment to the Act, other legislation or the common law, or any other matter relevant for operationalising the right to access information"*. Section 25(f) of the Act also enables Information Commissions to make recommendations to public authorities to improve their performance, where monitoring shows that the public authority's practices do not conform with the provisions or spirit of the Act.

The power to make recommendations can be used by Information Commissions to actively address implementation problems, at a whole-of-government level and at the level of an individual public authority. These provisions strongly empower Information Commissions to act as real champions of openness within the bureaucracy, giving them a broad mandate to take up issues with key stakeholders with a view to strengthening the access regime.

In the early days of implementation, when it will be so important to set good precedents and champion transparency, Information Commissions can be bold in using their s.25 recommendations powers. For example, Commissions could investigate patterns of non-compliance, either across government or within a department and produce reports and recommendations for general improvements rather than in response to specific individual complaints. Commissions across the world have demonstrated the utility of such an approach, which could be particularly useful in India in terms of enabling the Information Commission to take public authorities to task for persistent non-compliance with the law.

Publication & tabling in Parliament

Section 25(4) requires that all Annual Reports are tabled in Parliament and/or the State Legislature. This is an important mechanism for ensuring that Annual Reports do not simply sit on bureaucrats shelves gathering dust but are actually seriously considered by the policy-makers – and responsible Ministers – who should then take action to address implementation problems identified in the Annual Reports. In keeping with international best practice, Information Commissions could encourage Parliaments to refer their Annual Reports to a Parliamentary Committee for more detailed consideration and reporting back to Parliament.

The Central Information Commission has advised that it will be publishing its Annual Report every March, at the end of the Government financial year. At the time the Annual Report is tabled in Parliament, Information Commissions could issue a press release summarising the highlights and setbacks in terms of implementation which are discussed in the Report. Publicity will be an important means of encouraging Governments to take action to address implementation deficiencies. To this end, all Annual Reports also need to be uploaded onto Information Commissions' websites and the websites of the nodal agencies responsible for implementation, as well as being available in hard copy. In keeping with the strong proactive disclosure requirements in the Act at s.4, Annual Reports should also be available for inspection at every office of every public authority, so that all members of the public can easily find out how well the Act is being implemented.

Part 5: Promoting the Act

Although s.26 of the Act, which deals with promotion of the right to information, places the primary duties for public awareness raising and bureaucratic training on Governments, nonetheless, Information Commissions – as champions of openness – have the power to undertake activities that will ensure compliance and improve implementation. Whether alone or collaboratively, Information Commissions could be proactive in carving out a role for themselves to ensure that promotional and training activities are undertaken in the proper spirit of open government and maximum disclosure.

Information Commissions could take a proactive role in pushing Governments to discharge their s.26 obligations in a timely and effective manner. The obligations in the provisions are all made subject to *“the availability of financial and other resources”*, such that an offer of support and assistance from Information Commissions in undertaking these activities is likely to be welcomed by Governments, not least because they will value the expertise that Commissions will bring to this work.

Even if Information Commissions do not get involved in the training and awareness raising programmes which are mandated by the Act, nonetheless, Commissions have the power under s.19(8) to require any public authority to take any such steps necessary to secure compliance with the Act, which includes the power to order training to be undertaken in accordance with s.26. Commissions will need to be alert to monitor whether Governments are meeting their training and public education obligations under the Act and they can be proactive in issuing orders to address non-compliance.

Training for officials

Section 26(1)(d) of the Act specifically places an obligation on all Governments to provide training to public officials. Throughout the world, Information Commissions are usually active in supporting – if not leading – training of officials. It is usually well-recognised within government circles that Information Commissions are a hub of expertise, which should be tapped to the benefit of officials. Information Commissions could consider setting up specific training units to liaise with Governments and assist with developing legally sound training modules and curricula. At a minimum, it would be positive if Commissioners attempted to make time to attend key government training activities.

Promoting training using performance incentives

To make training 'stick' more with officials, ideally any training programme will be positioned as part of a broader openness drive within public bodies. To demonstrate to officials the importance of the new transparency duties under the law, best practice supports making attendance at training a performance criteria which will be built into officials' employment contracts. Performance incentives can be a very effective mechanism for ensuring that officials prioritise their new responsibilities. At a minimum, Information Officers and Departmental Appellate Authorities need their new duties reflected in their employment contracts so that they can be rewarded for good performance and can feel confident to dedicate work time to fulfilling their obligations under the Act.

To maximise scarce resources, even if Information Commissions cannot send personnel to support Government training activities, they could nonetheless assist Governments to develop detailed guidance notes for PIOs and Departmental Appellate Authorities which explain their obligations under the Act, including specific guidelines regarding applying the exemptions in s.8(1). Ideally, a master set of guidance notes could be produced by the Central Government in collaboration with the Central Information Commission, to ensure consistent interpretation of the exemptions across the country. Throughout the world, Information Commissions have been very active in producing such guidance notes for public officials. This has often happened even where another government nodal agency has been leading implementation, because implementers have recognised the special expertise of Information Commissions in terms of publishing guidelines on interpreting and applying the law.

Public education

Section 26(1)(a) of the Central Act requires that all Governments develop and organise public education programmes. The provision explicitly requires that such programmes be developed, in particular, for disadvantaged groups. Section 26(2) of the Act also requires that all Governments produce a User's Guide for the public in all official languages. Although Information Commissions are not specifically required to be involved in such activities, engagement with public education strategies could be a key means of publicising the new role of the Commissions in the early days. Information Commissions could also be proactive in assisting with drafting, or at least reviewing, the User's Guides produced by Governments, to make sure that they properly explain people's rights under the Act. If members of the public complain that User's Guides are not produced on time, Information

Commissions can also use their power under s.19(8)(a) to sanction Governments for failing to comply with the obligations under the Act as well as ordering them to address the problem as a matter of priority.

It is important that all awareness raising and implementation strategies take account of the local needs of communities, as this will make it more likely that the public will feel “ownership” of the new law and will recognise its relevance to their daily lives. In this context, experience has shown that strategies which promote government-community implementation partnerships can be particularly useful. Right to Information Councils are one mechanism for promoting more community engagement with the Act (see the Box above for more). In other jurisdictions, Information Commissions have also set up Government-Civil Society Advisory Committees, drawing together representatives from civil society, the private sector and the media with officials and Commission staff to make recommendations for improvements and identify gaps in implementation and access in practice. This can also be a useful means of catalysing civil society organisations to undertake their own public awareness activities, as they will feel that they have a more direct stake in ensuring that implementation efforts are effective. In India, civil society groups have already been extremely active throughout the country in raising awareness of the Act, and their efforts could usefully be supported and endorsed by Information Commissions.

Annex 1: Relevant provisions from the RTI Act 2005

Section	Provision
Chapter III - The Central Information Commission	
12 (1)	The Central Government shall, by notification in the Official Gazette, constitute a body to be known as the Central Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.
(2)	The Central Information Commission shall consist of — (a) the Chief Information Commissioner; and (b) such number of Central Information Commissioners, not exceeding ten, as may be deemed necessary.
(3)	The Chief Information Commissioner and Information Commissioners shall be appointed by the President on the recommendation of a committee consisting of — (i) the Prime Minister, who shall be the Chairperson of the committee; (ii) the Leader of Opposition in the Lok Sabha; and (iii) a Union Cabinet Minister to be nominated by the Prime Minister. <i>Explanation.—For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the House of the People has not been recognised as such, the Leader of the single largest group in opposition of the Government in the House of the People shall be deemed to be the Leader of Opposition.</i>
(4)	The general superintendence, direction and management of the affairs of the Central Information Commission shall vest in the Chief Information Commissioner who shall be assisted by the Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the Central Information Commission autonomously without being subjected to directions by any other authority under this Act.
(5)	The Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.
(6)	The Chief Information Commissioner or an Information Commissioner shall not be a Member of Parliament or Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

Section	Provision
(7)	The headquarters of the Central Information Commission shall be at Delhi and the Central Information Commission may, with the previous approval of the Central Government, establish offices at other places in India.
13 (1)	The Chief Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment: Provided that no Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years. (2) Every Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such Information Commissioner: Provided that every Information Commissioner shall, on vacating his office under this sub-section be eligible for appointment as the Chief Information Commissioner in the manner specified in sub-section (3) of section 12: Provided further that where the Information Commissioner is appointed as the Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the Information Commissioner and the Chief Information Commissioner. (3) The Chief Information Commissioner or an Information Commissioner shall before he enters upon his office make and subscribe before the President or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule. (4) The Chief Information Commissioner or an Information Commissioner may, at any time, by writing under his hand addressed to the President, resign from his office: Provided that the Chief Information Commissioner or an Information Commissioner may be removed in the manner specified under section 14. (5) The salaries and allowances payable to and other terms and conditions of service of — (a) the Chief Information Commissioner shall be the same as that of the Chief Election Commissioner; (b) an Information Commissioner shall be the same as that of an Election Commissioner: Provided that if the Chief Information Commissioner or an Information Commissioner, at the time of his appointment is, in receipt of a pension, other than a disability or wound pension, in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the Chief Information Commissioner or an Information Commissioner shall be reduced

Section	Provision
(6)	by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity: Provided further that if the Chief Information Commissioner or an Information Commissioner if, at the time of his appointment is, in receipt of retirement benefits in respect of any previous service rendered in a Corporation established by or under any Central Act or State Act or a Government company owned or controlled by the Central Government or the State Government, his salary in respect of the service as the Chief Information Commissioner or an Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits: Provided also that the salaries, allowances and other conditions of service of the Chief Information Commissioner and the Information Commissioners shall not be varied to their disadvantage after their appointment. The Central Government shall provide the Chief Information Commissioner and the Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.
14 (1)	Subject to the provisions of sub-section (3), the Chief Information Commissioner or any Information Commissioner shall be removed from his office only by order of the President on the ground of proved misbehaviour or incapacity after the Supreme Court, on a reference made to it by the President, has, on inquiry, reported that the Chief Information Commissioner or any Information Commissioner, as the case may be, ought on such ground be removed. (2) The President may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the Chief Information Commissioner or Information Commissioner in respect of whom a reference has been made to the Supreme Court under sub-section (1) until the President has passed orders on receipt of the report of the Supreme Court on such reference. (3) Notwithstanding anything contained in sub-section (1), the President may by order remove from office the Chief Information Commissioner or any Information Commissioner if the Chief Information Commissioner or a Information Commissioner, as the case may be,— (a) is adjudged an insolvent; or (b) has been convicted of an offence which, in the opinion of the President, involves moral turpitude; or (c) Engages during his term of office in any paid employment outside the duties of his office; or

Section	Provision
(4)	(d) is, in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body; or (e) has acquired such financial or other interest as is likely to affect prejudicially his functions as the Chief Information Commissioner or a Information Commissioner. If the Chief Information Commissioner or a Information Commissioner in any way, concerned or interested in any contract or agreement made by or on behalf of the Government of India or participates in any way in the profit thereof or in any benefit or emolument arising there from otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehavior.
Chapter IV: The State Information Commissions	
Chapter IV is virtually the same as Chapter III, with references to the “Chief Information Commission” replaced by references to “State Information Commissions”. Note: The selection of Information Commissioners is done by a committee comprising the Chief Minister, Opposition Leader and Cabinet Minister. The rank and salary provisions are also slightly different.	
Chapter V: Powers and functions of the Information Commissions, appeal and penalties	
18 (1)	Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission, as the case may be, to receive and inquire into a complaint from any person,— (a) who has been unable to submit a request to a Central Public Information Officer or State Public Information Officer, as the case may be, either by reason that no such officer has been appointed under this Act, or because the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, has refused to accept his or her application for information or appeal under this Act for forwarding the same to the Central Public Information Officer or State Public Information Officer or senior officer specified in sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be; (b) who has been refused access to any information requested under this Act; (c) who has not been given a response to a request for information or access to information within the time limit specified under this Act; (d) who has been required to pay an amount of fee which he or she considers unreasonable; (e) who believes that he or she has been given incomplete, misleading or false information under this Act; and (f) in respect of any other matter relating to requesting or obtaining access to records under this Act.

Section	Provision
(2)	Where the Central Information Commission or State Information Commission, as the case may be, is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.
(3)	The Central Information Commission or State Information Commission, as the case may be, shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:— (a) 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; (b) requiring the discovery and inspection of documents; (c) receiving evidence on affidavit; (d) requisitioning any public record or copies thereof from any court or office; (e) issuing summons for examination of witnesses or documents; and (f) any other matter which may be prescribed.
(4)	Notwithstanding anything inconsistent contained in any other Act of Parliament or State Legislature, as the case may be, the Central Information Commission or the State Information Commission, as the case may be, may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds.
19 (1)	Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority: Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.
(2)	Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.
(3)	A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission:

Section	Provision
	Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. (4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party. (5) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request. (6) An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing. (7) The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding. (8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to— (a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including— (i) by providing access to information, if so requested, in a particular form; (ii) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be; (iii) by publishing certain information or categories of information; (iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records; (v) by enhancing the provision of training on the right to information for its officials; (vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4; (b) require the public authority to compensate the complainant for any loss or other detriment suffered; (c) impose any of the penalties provided under this Act; (d) reject the application.

Section	Provision
(9)	The Central Information Commission or State Information Commission, as the case may be, shall give notice of its decision, including any right of appeal, to the complainant and the public authority.
(10)	The Central Information Commission or State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed.
20 (1)	Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees: Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him: Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.
(2)	Where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer or the State Public Information Officer, as the case may be, under the service rules applicable to him.
	Chapter VI: Miscellaneous
24 (1)	Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that

Section	Provision
(4)	Government: Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section: Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in section 7, such information shall be provided within forty-five days from the date of the receipt of request. Nothing contained in this Act shall apply to such intelligence and security organisation being organisations established by the State Government, as that Government may, from time to time, by notification in the Official Gazette, specify: Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section: Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the State Information Commission and, notwithstanding anything contained in section 7, such information shall be provided within forty-five days from the date of the receipt of request.
25 (1)	The Central Information Commission or State Information Commission, as the case may be, shall, as soon as practicable after the end of each year, prepare a report on the implementation of the provisions of this Act during that year and forward a copy thereof to the appropriate Government. (2) Each Ministry or Department shall, in relation to the public authorities within their jurisdiction, collect and provide such information to the Central Information Commission or State Information Commission, as the case may be, as is required to prepare the report under this section and comply with the requirements concerning the furnishing of that information and keeping of records for the purposes of this section. (3) Each report shall state in respect of the year to which the report relates,— (a) the number of requests made to each public authority; (b) the number of decisions where applicants were not entitled to access to the documents pursuant to the requests, the provisions of this Act under which these decisions were made and the number of times such provisions were invoked; (c) the number of appeals referred to the Central Information Commission or State Information Commission, as the case may be, for review, the nature of the appeals and the outcome of the appeals; (d) particulars of any disciplinary action taken against any officer in respect of the administration of this Act; (e) the amount of charges collected by each public authority under this Act;

Section	Provision
	(f) any facts which indicate an effort by the public authorities to administer and implement the spirit and intention of this Act; (g) recommendations for reform, including recommendations in respect of the particular public authorities, for the development, improvement, modernisation, reform or amendment to this Act or other legislation or common law or any other matter relevant for operationalising the right to access information. (4) The Central Government or the State Government, as the case may be, may, as soon as practicable after the end of each year, cause a copy of the report of the Central Information Commission or the State Information Commission, as the case may be, referred to in sub-section (1) to be laid before each House of Parliament or, as the case may be, before each House of the State Legislature, where there are two Houses, and where there is one House of the State Legislature before that House. (5) If it appears to the Central Information Commission or State Information Commission, as the case may be, that the practice of a public authority in relation to the exercise of its functions under this Act does not conform with the provisions or spirit of this Act, it may give to the authority a recommendation specifying the steps which ought in its opinion to be taken for promoting such conformity.
26 (1)	The appropriate Government may, to the extent of availability of financial and other resources,— (a) develop and organise educational programmes to advance the understanding of the public, in particular of disadvantaged communities as to how to exercise the rights contemplated under this Act; (b) encourage public authorities to participate in the development and organisation of programmes referred to in clause (a) and to undertake such programmes themselves; (c) promote timely and effective dissemination of accurate information by public authorities about their activities; and (d) train Central Public Information Officers or State Public Information Officers, as the case may be, of public authorities and produce relevant training materials for use by the public authorities themselves. (2) The appropriate Government shall, within eighteen months from the commencement of this Act, compile in its official language a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right specified in this Act.

Annex 3: Canadian Law: Processing A Complaint

Step	Action	Details
1	Establish Validity	♦ Is it in writing? ♦ Is it within one year of original request? ♦ Is complaint about matters within Commissioner's jurisdiction?
2	Open the investigation	♦ Create a file ♦ Assign an investigator ♦ Acknowledge the complaint by letter to applicant
3	Clarify complaint, if necessary	
4	Create and send Summary of Complaint to government institution	
5	Determine mode of investigation	♦ Formal or informal?
6	Create investigation plan	♦ Tasks ♦ Information required ♦ Time frame
7	Engage in representations	♦ Ongoing process of meeting with parties, hearing statements, providing feedback to confirm statements Use good listening skills to earn trust ♦ Maintain confidentiality; disclose only what is necessary to ground findings
8	Draw conclusions	♦ Check with all parties, including complainant, to ensure accuracy of conclusions

Step	Action	Details
9	Make Report of Findings	♦ If no breach of Act found, file closed marked 'not substantiated' ♦ If breach of Act resolved, file closed marked 'resolved' ♦ If breach of Act found and unresolved, recommend method to resolve complaint and deadline to implement method before Commissioner takes court action
10	Respond to government institution's response	♦ Report to complainant ♦ Send final letter to institution's Access to Information Coordinator evaluating strengths and weaknesses encountered in investigation and solutions reached, reference to Report of Findings, arrangements for returning institution's documents
11	Go to court, if necessary	Must have consent of complainant

Annex 3: Canadian Law: Investigating a Complaint

This Annex is an excerpt from 2002-03 Annual Report of the Information Commissioner of Canada (pp.51-54).

Demystifying the Investigative Process

The *Access to Information Act* confers upon the Information Commissioner broad discretion to select the procedures by which investigations are conducted. This discretion recognizes the need for a body charged with conducting investigations of complaints against government institutions to have flexibility in its choice of investigative methods, styles and approaches. Investigative flexibility is required to respond effectively to variations in:

- Types of complaints;
- Complexity of the factual or legal issues;
- Potential negative impact on individuals;
- Likelihood of related court proceedings;
- Level of cooperation from government institutions, witnesses and complainants; and
- Availability of resources.

While recognizing the need for such flexibility, the Information Commissioner also recognizes the importance of assisting all parties involved in investigations to better understand what procedural options are open to the commissioner and the circumstances in which they are likely to be used.

Informal Process

The investigative method of choice for fact-finding (used in well over 90 percent of investigative activities) is the informal interview conducted by an investigator delegated for the purpose by the commissioner. Informal interviews are pre-arranged at mutually convenient times, face-to-face or by telephone, at venues usually chosen by the interviewees. Such interviews are not conducted under oath. Informal interviews are rarely recorded and never without the knowledge of the interviewee.

In the informal interview process, investigators take care to ensure that interviewees are interviewed in private and out of the presence of others (including co-workers, supervisors and legal representatives of the employer). Only if an interviewee asks to be accompanied by others, and only if the investigator is convinced that the others will assist the investigation and not impede the candor of the interviewee, will others be permitted to be present during an informal interview.

The informal investigative method of choice for obtaining representations from complainants and government institutions is a combination of interviews (face-to-face or telephone) and exchanges of

letters. With respect to obtaining the representations from heads of government institutions, investigators deal directly with the official delegated by the head of the institution to provide representations to the commissioner.

Guidelines for Formal Investigations

When the Information Commissioner is of the view that evidence or representations should be offered “on the record”, the investigative process may become more formal. Situations which may trigger a more formal process include:

- (1) Lack of cooperation by a witness/departmental official with the informal process (i.e. failure to agree to an interview time; failure to appear for interview; refusal to answer a question; insistence on a formal, on-the-record process; refusal to provide records; inappropriate behaviour);
- (2) Presence of circumstances (such as, for example, allegations of wrongful destruction of records) which may give rise to a finding, comment or recommendation which is adverse to an individual;
- (3) The existence of conflicting evidence and issues of credibility;
- (4) Potential that judicial proceedings may ensue;
- (5) Insistence by a witness that he or she be accompanied by counsel; and
- (6) The need to ensure that a witness fully understands the nature, quality and gravity of the evidence which they have offered informally.

In the formal process, evidence is taken during a proceeding conducted by a presiding officer delegated for the purpose by the Information Commissioner. Formal proceedings are arranged by invitation, at a mutually convenient time. Only if it is not possible to secure the witnesses’ participation voluntarily will a subpoena be issued to compel attendance. Usually, formal proceedings are conducted on the premises of the Information Commissioner. The formal proceeding is recorded (usually audio only, although audio-visual recording may be made to facilitate investigative training) and witnesses swear an oath to be truthful and complete in their evidence. Witnesses may be accompanied by counsel but not by coworkers, supervisors or representatives of the witness’s employer. Evidence may be received from more than one witness during a proceeding if the presiding officer is satisfied that a panel of witnesses would assist the investigation and all witnesses agree to be interviewed in the presence of the others.

The presiding officer conducts all aspects of the proceeding including the conduct of the questioning and ruling on procedural and evidentiary issues. The presiding officer may be assisted by counsel and investigative staff during the proceeding. The presiding officer is not constrained by the rules of evidence applicable to the courts and, hence, may require evidence on any matter he or she considers relevant to the full investigation and consideration of the complaint(s).

(i) Role of Counsel

Lawyers have no greater role or rights during a formal proceeding than would counsel for a witness in a civil judicial proceeding or a proceeding before a commission of inquiry. During the formal proceeding, witnesses and their counsel are asked to communicate only with the presiding officer and not with each other. Should either the witness or counsel wish to communicate with each other, the presiding officer will ordinarily agree to such a request and will adjourn for the purpose of permitting the witness and counsel to have a private communication.

It is not the role of counsel to examine his or her witness. However, at the end of the questioning by the presiding officer, counsel may ask the presiding officer for permission to put questions to the client—a request which, ordinarily, will be granted. Counsel will not be permitted to represent a witness if the counsel also represents other witnesses or the witness’s employer, unless it is reasonably possible—by means of confidentiality orders and undertakings—to ensure that the witness has an opportunity to offer evidence “in private” and that the private nature and integrity of the investigation is preserved.

(ii) Confidentiality Orders

The requirement of law that the commissioner’s investigations be conducted “in private” entails obligations on all parties involved to maintain confidentiality. From time to time, however, the presiding officer will reinforce the obligation with specific confidentiality orders addressed to the witness, the counsel or both. Such orders may be issued in the following circumstances:

- (1) A witness is accompanied by Crown counsel or by a counsel who also represents other witnesses or the witness’s employer. (dealt with above under Role of Counsel)
- (2) The evidence of one witness in a prior proceeding is likely to be disclosed by the presiding officer during questions to another witness.
- (3) The integrity of the investigation is served by limiting disclosure of evidence amongst potential witnesses.

It is also as a result of the “in private” requirement for investigations that copies of the tapes or transcripts of 53 formal proceedings are not given to witnesses. Witnesses (or their counsel) may consult the tapes or transcripts of their own evidence but only on a supervised basis at the premises of the Information Commissioner.

(iii) Potential Adverse Comment

During either the formal or informal process, evidence may be presented or discovered which raises the possibility that the Information Commissioner may make comments or recommendations (in his reports to the complainant, the government institution or Parliament) which are negative or adverse

towards identifiable individuals. In such cases, any such individual will be (1) notified in writing of the potential of an adverse comment or recommendation; (2) informed of the evidentiary basis for the potential adverse comment or recommendation; and (3) afforded a fair and reasonable opportunity to offer evidence and make representations in response to the notice of potential adverse comment or recommendation.

In no case will the Information Commissioner make findings of criminal or civil wrongdoing against an individual (except in the context of contempt proceedings).

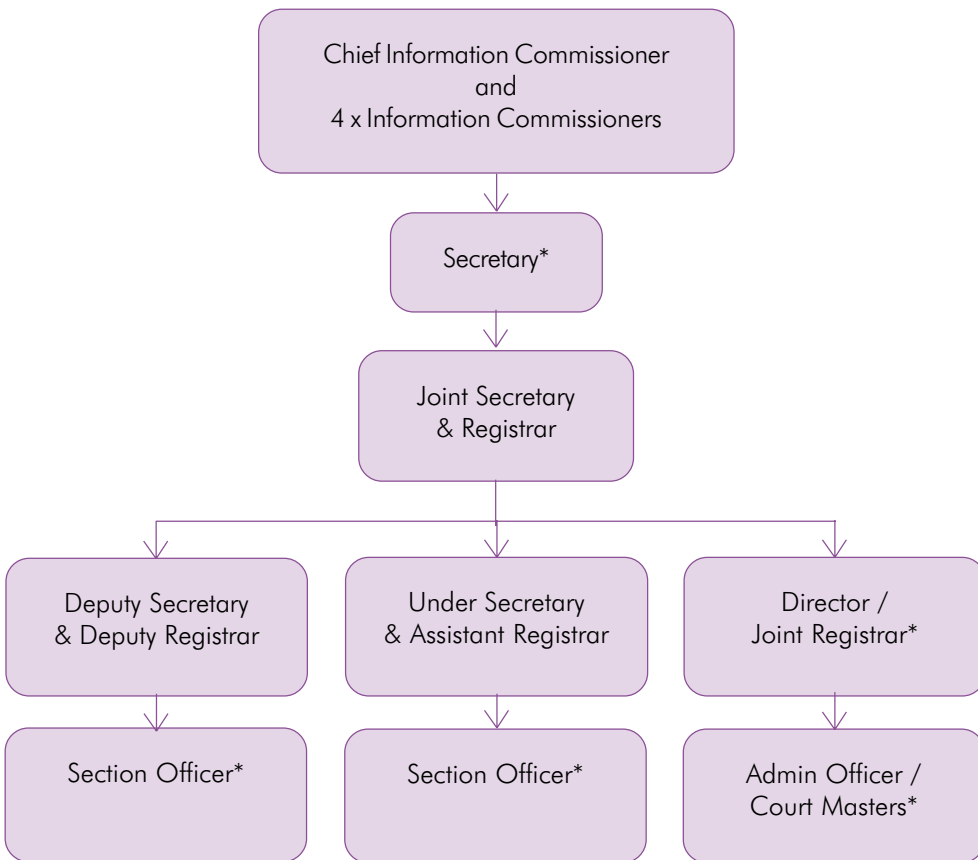
Should the commissioner come into possession of evidence suggesting that a federal or provincial offence has been committed, he is authorized to disclose such evidence to the Attorney General of Canada. If the possible offence is that of perjury, or if it arises under the *Access to Information Act*, the commissioner may refer the matter to the RCMP for criminal investigation. Last year, the commissioner invoked his powers to order the appearance of witnesses and production of records, on 7 occasions. This year, 9 orders were issued, as follows:

- 3 compelled the appearance of witnesses and the production of records
- 2 compelled the appearance of witnesses
- 4 compelled the production of records.

In accordance with standard practice, all witnesses who received subpoenas were first invited to cooperate voluntarily. No witness who received a subpoena challenged its legality.

Annex 4: Organisational chart and staffing structure of the Central Information Commission*

The Act enjoins upon the Central Government to provide the Chief Information Commissioner and the Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed. Seventy Nine posts have been sanctioned by the Government (including 10 Information Commissioners). So far, the Government has filled 21 posts. A list of posts filled as at 1 March 2006 is in the table below:



* Excerpted from the details of the Central Information Commission for publication under Section 4 of the *Right to Information Act 2005*.

Staffing breakdown at Central Information Commission

No.	Designation of Posts	Pay Scale in Rs.	No of posts sanctioned	No of posts filled
1.	Chief Information Commissioner	30,000/- (fixed)	1	1
2.	Information Commissioner	30,000/- (fixed)	10	4
3.	Secretary	26,000/- (fixed)	1	0
4.	Joint Secretary & Registrar	18400-22400/-	1	1
5.	Director & Joint Registrar Deputy Secretary	14300-18300/-	2	1
6.	Sr. PPS	12000-16500/-	5	0
7.	Under Secretary	10000-15200/-	2	1
8.	PPS	10000-15200/-	11	5
9.	Administrative Officer	8000-13500/-	1	0
10.	Court Master	8000-13500/-	2	0
11.	Section Officer	6500-10500/-	2	0
12.	PS	6500-10500/-	2	1* (on loan)
13.	Assistant	5500-9000/-	4	3
14.	Personal Assistant	5500-9000/-	13	2 (1* On loan basis from DOPT)
15.	Translator	5500-9000/-	2	0
16.	Cashier	4000-6000/-	1	0
17.	UDCLDC	4000-6000/-	5	1* (on loan)
18.	Driver	3050-4590/-	5	2 (1* on loan)
19.	Sr. Peon	2610-4000/-	1	0
20.	Peon	2550-3200/-	8	1* (on loan basis from DOPT)
TOTAL			79	23 (*5 on loan basis)
Outsourcing from M/s Sai			13 (8 peons + 5 Office Assistants)	

CHRI Programmes

CHRI's work is based on the belief that for human rights, genuine democracy and development to become a reality in people's lives, there must be high standards and functional mechanisms for accountability and participation within the Commonwealth and its member countries. Accordingly, as well as a broad human rights advocacy programme, CHRI advocates access to information and access to justice. It does this through research, publications, workshops, information dissemination and advocacy.

Human Rights Advocacy: CHRI makes regular submissions to official Commonwealth bodies and member governments. From time to time CHRI conducts fact finding missions and since 1995, has sent missions to Nigeria, Zambia, Fiji Islands and Sierra Leone. CHRI also coordinates the Commonwealth Human Rights Network, which brings together diverse groups to build their collective power to advocate for human rights. CHRI's Media Unit also ensures that human rights issues are in the public consciousness.

ACCESS TO INFORMATION

Right to Information: CHRI catalyses civil society and governments to take action, acts as a hub of technical expertise in support of strong legislation, and assists partners with implementation of good practice. CHRI works collaboratively with local groups and officials, building government and civil society capacity as well as advocating with policy makers. CHRI is active in South Asia, most recently supporting the successful campaign for a national law in India; provides legal drafting support and inputs in Africa; and in the Pacific, works with regional and national organisations to catalyse interest in access legislation.

Constitutionalism: CHRI believes that constitutions must be made and owned by the people and has developed guidelines for the making and review of constitutions through a consultative process. CHRI also promotes knowledge of constitutional rights and values through public education and has developed web-based human rights modules for the Commonwealth Parliamentary Association. In the run up to elections, CHRI has created networks of citizen's groups that monitor elections, protest the fielding of criminal candidates, conduct voter education and monitor the performance of representatives.

ACCESS TO JUSTICE

Police Reforms: In too many countries the police are seen as oppressive instruments of state rather than as protectors of citizens' rights, leading to widespread rights violations and denial of justice. CHRI promotes systemic reform so that police act as upholders of the rule of law rather than as instruments of the current regime. In India, CHRI's programme aims at mobilising public support for police reform. In East Africa and Ghana, CHRI is examining police accountability issues and political interference.

Prison Reforms: The closed nature of prisons makes them prime centres of violations. CHRI aims to open up prisons to public scrutiny by ensuring that the near defunct lay visiting system is revived.

Judicial Colloquia: In collaboration with INTERIGHTS, CHRI has held a series of colloquia for judges in South Asia on issues related to access to justice, particularly for the most marginalised sections of the community.

If you want to access more resources on the right to information - in India and internationally, please visit CHRI's website.

For more information about the right in India, log on to CHRI's website at <http://www.humanrightsinitiative.org/programs/ai/rti/india/india.htm>.

- The India - National section of the website (<http://www.humanrightsinitiative.org/programs/ai/rti/india/national.htm>) provides a comprehensive background to the campaign, details of national activities and advocacy, government and civil society resources and contact details of various organisations working at the national level.
- The India - States section of the website (<http://www.humanrightsinitiative.org/programs/ai/rti/india/states/default.htm>) has separate web pages for the 28 States and 7 Union Territories, where you can access the rules, regulations, information on the latest implementation efforts of each State Government and contact details of organisations working on the right to information.

For more information about the right internationally, please log on to:

- The International Standards section of the website (http://www.humanrightsinitiative.org/programs/ai/rti/international/intl_standards.htm) for links to United Nations standards and regional standards.
- The Member States section of the website (<http://www.humanrightsinitiative.org/programs/ai/rti/india/national.htm>) for links to all Commonwealth right to information laws and resources.
- The Implementation section of the website (http://www.humanrightsinitiative.org/programs/ai/rti/implementation/preparing_for_implementation.htm) for links to international resources on preparing for implementation, applying exemptions, training officials and monitoring the law.



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