

# **Consultation on Proactive Disclosure under the Right to Information Act – Framing Guidelines for Digital Publication of Information**

*June 28, 2011; Bengaluru*

## **Background**

The Right to Information (RTI) has become a key instrument for democratisation in India, and is aiding the forces for positive social change in many ways. One of the most important elements of the RTI Act is its Section 4, which mandates pro-active disclosure of certain categories of information. Proactive disclosure has been called the future of the RTI, and digital publication is a key means of proactive disclosure. Effective implementation of this section of the Act can transform the leverage citizens have over public authorities in order to ensure their accountability. Regular publishing, including through the Internet of the most frequently sought information, will also mitigate the huge burden that is placed on public authorities to respond separately to the large number of specific queries about public information.

The Department of Personnel and Training of the Government of India has constituted **a Task Force for the effective implementation of Section 4 of the RTI Act**. As a part of this Task Force, IT for Change is facilitating a **sub group on 'Guidelines for Digital Publication under RTI supporting Proactive Disclosure of Information'**. As a part of the work of this sub-group a **one-day consultation** was held on the said subject i.e. 'Formulating guidelines for digital publication under RTI supporting proactive disclosure of information' **in Bengaluru**, which was attended by the following organisations/ individuals.

Swami Vivekananda Youth Movement,  
E-Governments Foundation,  
Citizens Voluntary Initiative for the City,  
Society for Voluntary Action Revitalisation and Justice,  
Karuna Trust,  
MAYA- LabourNet,  
HIVOS,  
Janastu,  
Consumer Rights Education and Awareness Trust,  
Karuna Trust,  
People's Union for Civil Liberties,  
Centre for Internet and Society,  
Human Rights Law Network,  
National Law School,  
Kria Katte,  
Mahiti Hakku Adhyayana Kendra,  
IT for Change,  
Karnataka State Information Commissioner Mr. Virupakshaiah,  
Department of e-Governance, Government of Karnataka.

## Summary of Recommendations

Some of the main recommendations that emerged during the Consultation point to the need for putting extensive information on the websites at all levels of government, especially that which concerns citizens. It should also be ensured that the information is presented in a form legible to peoples, and through open technical standards and in reusable forms. Proactive disclosure also requires proactive monitoring whereby the websites of all levels of governments should be proactively monitored vis-à-vis agreed disclosure norms. For this purpose, appropriate indicators and benchmarks should be developed. It was also felt that the monitoring and enforcement functions should take place from the Information Commissioner's office though there were some differences of opinion regarding this. It was also considered necessary that the head of the department and not just the Public Information Officer is held responsible for the non-compliance of proactive disclosure requirements. Each department should frame an information policy which should be subject to public scrutiny and periodic review and be drawn up in consultation with the concerned Information Commission. It was also found important that simultaneously all efforts should be made to ensure that information kiosks are set up in or close to all communities so that they can use digitally published public information. Other important issues like the information audit of government websites and monitoring of proactive disclosure by district, block and village level information committees, also came up.

## Recommendations in Detail

### What information should be mandatory to be digitally published?

- Section 4. 1. b, especially read along with 4.1.a , covers almost all public information. All information should be pro-actively disclosed unless there is a compelling and legal justification to the contrary. Section 4.1.b lists categories of information that should have been pro-actively disclosed within 120 days of the publication of the RTI Act, and is not exhaustive vide sub-section xvii which reads to cover “such other information as may be prescribed.” In any case, 4.1.a calls for cataloguing and computerising all records, that are appropriate to be computerised, and facilitating access to all such records. This covers the entire gamut of government information other than that which is specifically excluded.
- In general, every information needed to lead a life of security and dignity should be pro-actively disclosed. This is the basic duty of a democratic state. Information related to the problems of people should be prioritised. All effort should be continually made to assess and address people's need for information.
- Proposed policies and programmes should be made public before taking final decisions on them. All policies must be mandatory to be subject to public consultations. Drafts of public legislation, and information/ documents based on which the information is prepared, and also the justification for decisions taken, should be pro-actively shared. All inputs received as a part of the consultations along with the responses thereto and action taken, should be shared. Often major changes take place in the last phase just before a bill is presented. All major changes should be subject to open consultative processes, especially those made at late stages.
- MoUs, agreements and contracts with international banks and institutions, corporates and NGOs should be published. Such information is often refused on the pretext that the interests of outside agencies may be compromised. The need to disclose all or maximum information should be a part of all contracts with outside agencies. Information about

tenders is often not disclosed as sensitive information. This should not be so, and people have a right to comment on information related to tender before they are issued.

- Some of the most useful information is dynamic, and must be updated on a quarterly basis. Proper standards and records for such regular updation should be maintained.
- Service delivery standards and performance indicators are generally not published and they should be. Penalties for non-compliance to standards of service delivery should be prominently published.
- Each department should develop an information policy (or RTI policy or pro-active disclosure policy) interpreting the intention of the Act in terms of the specific mandate and activities of the department, with respect to all levels of the department's activity and presence.
- Such a policy should describe in detail the record scheme (all issues vis-a-vis compliance with section 4.1.a) apart from mentioning what information is being pro-actively made available and how, what is not made available and why, and steps taken for compliance with 4.1.c and 4.1.d.
- Departmental information policies should be prepared in consultation with, and to the satisfaction of, the concerned Information Commission. These policies should also be put up as drafts for public consultations, public inputs taken and reasoned responses provided. Such policies have to be updated every year. Preparing and publishing such a policy must be made obligatory citing the provisions of section 25.2. All such departmental information policies should be part of the annual report of the Information Commissions under section 25.1 and widely publicized.

### **In what form should this information be published ?**

- It is important to demystify information and it should be presented in a form in which it can be used easily by people. (However, the original formats of information should continue to be made available.) Information should be available in a manner that takes into account citizens' needs and points of view. Regular needs assessments should be done for this purpose.
- Templates for digital publication should be designed for each public authority.
- Information should be made available in a reusable form, using open data standards and open technical compatibility standards. Access should be provided at the raw data level. Outside agencies should be able to use such data to present it in different forms, which could be more useful and relevant in different contexts and to different groups.
- Information should be presented, as per widely accepted accessibility standards, in a form that visually impaired people and those with other disabilities are able to access it.
- Although often information is available department-wise for the whole state, it is difficult to access it locally, community-wise, cutting across the mandate and activities of the different departments. All information should be made available at the *panchayat* or ward wise. All public information must be republished at the *panchayat*/ward level in a community-centric manner using multiple sources of information to give a complete local picture. Human

Development Indicators at the ward level should be captured and should act as the basis for planning.

- Frequently asked questions and frequently occurring problems should be listed. A glossary of frequently used terms should be displayed.
- Often the best form of presenting information is not the text format, but it could be through photographs (the example of a NREGA work-site was given), or audio or video formats. Information should be given in a format which it is most relevant and useful to people.
- Public authorities should learn how to visualise information, and provide it in appropriate forms whereby it will be most useful to people.
- A portal should be designed for proactive disclosure which can be at the departmental level or across the government (For example, Mexico). Individuals/organisations should be able to register to receive alerts when documents are added in specific categories that they have registered for. Andhra Pradesh's state government portal was mentioned as a good practice in this regard. Documents, information and comments should be pro-actively circulated on civil society e-lists dedicated to the concerned subject matter, and those who have a general interest in policy matters.
- Efforts at making all information available digitally in the public domain in conveniently accessible forms should be complemented by developing information kiosks at village/ ward levels where everyone can access digitally available information directly, or in an assisted manner.
- Focus on digital publishing does not mean that governments stop or de-prioritise publications through other means, like booklets, pamphlets, notice boards, walls, etc. Broadcast media should also be used effectively. A good mix of all means and possibilities should be employed. The RTI Act and its different provisions require a lot of publicity and promotion through every possible means. All important information with different public authorities, especially that which is most relevant to people, should be publicised using all possible means.

### **How to ensure proper record keeping?**

- The required level of proactive disclosure is not possible without appropriate record keeping, and this aspect needs focused attention. There are detailed rules for record keeping and they should be strictly followed and the scheme for it should be published. Record keeping practises may have to be reviewed from the point of view of comprehensive proactive disclosure requirements, especially through digital means.
- Section 4.1.a is very clear about the need for proper record keeping, inducing in digital and networked form. Funds should be earmarked for digitising records. Complete details of all records that are maintained and available digitally, and about those which are not, with due justification thereof, should be published. Annual reports on compliance with section 4.1.a should be sought by the Information Commissions.
- The costs involved in digitising resources and maintaining networked computer based record-keeping and information systems is often cited as a major deterrent. It was felt that it is no longer a major issue. India is at par or better in terms of IT issues than many developed countries that maintain high standards of digital publishing of public information.

The real cost is in terms human resources, including skills, and these are easily available at all levels in India today.

- An example was given about how a government office in Bangalore was able to scan all its documents at a very low cost. Another example that was discussed was of 'Bhoomi' project in Karnataka, whereby, it was contended that, if open public access to such complex spatial data as the land records of the entire state can be ensured, how can giving access to all textual documents of an office or department be any more difficult.

### **How should the proactive disclosure be monitored and enforced?**

- It was stressed that the most important area to work on is effective monitoring and enforcement. Unless monitoring and enforcement is effective, no amount of guidelines on proactive disclosure will be useful. In fact, the current list under 4.1.b of areas requiring proactive disclosure is quite clear but has very little compliance. The real issue is that there is no penalty for non-compliance and Information Commissions have not used the proactive action possibilities that are there in the Act.
- Monitoring and enforcement has to be outside the executive branch of the government system, because within the executive branch there is a tendency not to ruffle feathers because of shared 'location' and interests.
- While digital means enable easy proactive disclosures, they also facilitate proactive monitoring and enforcement since compliance can be monitored remotely on a continuous basis. This opportunity should be capitalised upon.
- The Information Commissions should be responsible for monitoring and enforcement. If they become truly active, enforcement of proactive disclosure is possible. Though not often exercised, it was felt by most that Information Commissions have clear *suo moto* powers and responsibilities under the Act. (For instance, under section 25.5.) The Act requires Information Commissioners to pro-actively ensure the implementation of the letter and spirit of the Act.
- It will be required for the above purpose to issue clear guidelines to the Commissions, and improving the staff strength and other resources available with the Commissions.
- Active monitoring of compliance with section 4 should be done vis-a-vis the declared information policy of the concerned department, which *inter alia* will have templates for disclosure.
- It is required to develop appropriate indicators for monitoring such compliance, which should be done by the Information Commission in consultation with the concerned departments.
- Since compliance with proactive disclosure requirements is an across-the-department systemic requirement, and not a one-off act as in case of furnishing information against request, it should be the responsibility of the concerned Head of the Department to ensure compliance and not merely of the Public Information Officer.
- Ensuring proper digital record keeping and full proactive disclosure as per the letter and spirit of the RTI Act is a departmental system-wide and regular activity. This requires

dedicated staff and dedicated nodal officer, at least at the departmental level, with appropriate authority and responsibility, for specifically ensuring the required level of proactive disclosure.

- Although it can be done remotely, monitoring and enforcing compliance on proactive disclosure requires a good amount of continuous dedicated effort. It may be useful to make one of the information commissioners exclusively responsible for this role. The commissioner made responsible for digital publication of information must be given adequate staff for remotely monitoring compliance and preparing reports on it.
- The annual report of the Commission should include the results of such proactive monitoring, along with the earlier mentioned report on compliance from the department.
- Non-compliance should attract adverse notice and the concerned public authority should be given appropriate directions. Good performances should be given star ranking to reward and incentivise compliance.
- The concept of information audits should be promoted, which should specifically look into how information is processed and stored in an office (record keeping) and how it is made available pro-actively, including through digital means. This can be done as a part of regular audits or as a separate specialised process anchored by the Information Commissions.
- A major problem about making Information Commissions responsible for monitoring proactive disclosure is that this can happen effectively only at the central and state levels. However, the most important information for most people may lie with the lower levels of government. Nodal officers at the block level reporting to the Information Commissions with respect to the activity of monitoring proactive disclosures should be explored as an option.
- Since proactive disclosures can be monitored remotely by anyone, civil society organisations should also be encouraged to monitor compliance and submit their reports, supported by adequate data.
- It is important that community monitoring of proactive disclosure also takes place. For this purpose, state, district, block and *panchayat* level public information committees should be set up.
- The attitude to and compliance of RTI provisions, especially regarding proactive disclosure, should be a part of annual performance reports of all officials.

## General

Two key initiatives of the Government of India are noteworthy in assessing the future of proactive disclosures through digital means. These are: the Electronic Delivery of Services Bill being finalised by the Department of Information Technology, which seeks to make it mandatory to deliver all services through online channels; and the National Data Sharing and Accessibility Policy being framed by the Department of Science and Technology, which requires that all public data held by all public agencies should progressively be made available on a common portal in an open data format. The fact that these policies are on the anvil points to the practicality of systemic change and compliance with full proactive disclosure norms by public authorities in India as discussed at the consultations.