

# Day 5

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## Module II

### *Implementation of RTI Regime – Roles and Responsibilities of Key Actors*

## Chapter 5

### *Public Authorities, Public Information Officers, Assistant Public Information Officers and First Appellate Authorities*

# Chapter Scheme

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- ☐ List of Abbreviations / Acronyms.
- ☐ What is a Public Authority (PA)?
- ☐ Obligations of a PA under the 'RTI Act, 2005'.
- ☐ Who is a Public Information Officer (PIO)?
- ☐ Who is an Assistant Public Information Officer (APIO)?
- ☐ Functions of a PIO and an APIO.
- ☐ Who is a First Appellate Authority (FAA)?
- ☐ Functions of an FAA.
- ☐ Functions of Other Officers.
- ☐ Some Related Frequently Asked Questions (FAQs).
- ☐ References.
- ☐ Cases.

# List of Abbreviations / Acronyms

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|                |                                         |               |                                |
|----------------|-----------------------------------------|---------------|--------------------------------|
| <i>APIO(s)</i> | Assistant Public Information Officer(s) | <i>PAs</i>    | Public Authority / Authorities |
| <i>AG(s)</i>   | Appropriate Government(s)               | <i>PIO(s)</i> | Public Information Officer(s)  |
| <i>FAA(s)</i>  | First Appellate Authority / Authorities | <i>RTI</i>    | Right to Information           |
| <i>IC(s)</i>   | Information Commission(s)               | <i>S(s)</i>   | Section(s)                     |
| <i>NGO(s)</i>  | Non Government Organisation(s)          | -             | --                             |

# What is a Public Authority (PA)?

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- Any authority / body / institution of self-government established or constituted by:
  - or under the Constitution (of India)
  - any other law made by Parliament
  - any other law made by State Legislature
  - notification issued or order made by the appropriate government

*S. 2(h)(a)-(d).*

**Note:** *PAs under Central Government are referred to as Central PAs and those under State Governments as referred to as State PAs.*

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# What is a PA?.....II

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- Any –
  - body owned, controlled or substantially financed;
  - non-Government organisation substantially financed,  
directly or indirectly by funds provided by the  
Appropriate Government (AG)

*S. 2(h)(d)(i)&(ii)*

# Obligations of PAs...

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- ❑ Maintain all records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act
- ❑ Ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerised and connected through a network all over the country on different systems so that access to such records is facilitated

*S.4 (1)(a)*

# Obligations of PAs.....II

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- ❑ Proactively disclose information – **[as required by S.4 (1)(b)]** – within 120 days of enactment of the Act (i.e. before 12<sup>th</sup> October, 2005) – under 17 heads as follows:
  - i. Particulars of its organisation, its functions and duties.
  - ii. Powers and duties of its officers and employees.
  - iii. Procedure followed in decision making including channels of supervision and accountability.

# Obligations of PAs.....II

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- iv. Norms set by it for discharge of its functions.
- v. Rules, Regulations, Instructions, Manuals and records under its control / used by employees while discharging functions.
- vi. Categories of documents held by the authority or which are under its control.
- vii. Arrangement for consultation with or representation by the members of the public in relation to the formulation of policy or implementation thereof.

# Obligations of PAs .....III

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- viii Boards, Councils, Committees and other bodies constituted as part of the public authority.
- ix. Directory of Officers and employees.
- x Monthly remuneration received by officers and employees including system of compensation.
- xi Budget allocated to each agency including all plans, proposed expenditure and reports on disbursements made etc.
- xii Manner of execution of subsidy programmes.
- xiii. Particulars of recipients of concessions, permits or authorisation granted by the public authority.

# Obligations of PAs .....IV

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- xiv. Information available or held by it, reduced in an electronic form.
- xv. Particulars of facilities available to citizens for obtaining information.
- xvi. Names, designations & other particulars of PIOs.
- xvii. Any other information as may be prescribed and thereafter update these publications every year.

**Note:** Proactive disclosure is believed to be at the heart of the RTI implementation regime. The more efficient, effective a PA is in complying with S. 4(1)(b), the less will be the need for the citizen to apply for information.

# Obligations of PAs .....v

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- ❑ Certain other provisions of the Act for reinforcing a PA's compliance with S. 4(1)(b) require it to:
  - S.4(1)(c): Publish all relevant facts while formulating important policies or announcing the decisions which affect public
  - S.4(1)(d): Provide reasons for its administrative or quasi-judicial decisions to affected persons
  - S.4(2): Provide the above information at regular intervals through various means of communication including the internet...

# Obligations of PAs .....VI

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□ widely disseminate every information and in a form and manner easily accessible to the public like

- notice boards,
- newspapers,
- public announcements,
- media broadcasts,
- internet,
- any other means including inspection of offices

# Obligations of PAs .....VII

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- make information available in the local language and in a cost effective manner, using the most effective method of communication in a local area along with making information accessible, to the extent possible,
  - in electronic format
  - free of cost or
  - at the cost of the medium or
  - prescribed print cost price

**[S. 4(4)]**

# Obligations of PAs .....VIII

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- ❑ Designation of Public Information Officers (PIOs) [S. 5(1)] / Assistant Public Information Officers (APIOs) [S. 5(2)]:
  - Designation of (an adequate number of) PIOs was mandatory for a PA within 100 days of enactment of the Act. This was to be done in all administrative units /offices under it – as may be necessary to provide information to those requesting for it under the Act.  
**Note:** As with PAs, PIOs would, accordingly, either be Central / State PIOs
  - An APIO was to be designated (also within 100 days) at the sub-divisional or other sub-district level as Central / State APIO.

# Obligations of PAs – Guidelines from DoPT .....IX

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## Creation of a Central Point for Receiving RTI Applications

The Act mandates PAs to designate as many PIOs as necessary to provide information under the Act.

Where a PA has designated more than one PIO to receive applications..., all PAs are required to create a central point within the organisation to receive all RTI applications and appeals addressed to the First Appellate Authorities (FAAs).

An officer should be made responsible to ensure that all the RTI applications/appeals received at the central point are sent to the concerned PIOs / FAAs on the same day.

# Obligations of PAs – Guideline from DoPT .....X

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The Receipt and Issue Section / Central Registry Section of the Ministry / Department / Organisation / Agency etc may be converted as the central point to receive applications and be distributed to the concerned PIOs / FAAs.

The R&I / CR Section may maintain a separate register for the purpose.

The Officer-in-Charge / Branch Officer of the Section may ensure that the applications / appeals are distributed the same day.

**[OM No.1/32/2007-IR Dated 14<sup>th</sup> November issued by DoPT]**

# Who is a Public Information Officer (PIO)?

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- A PIO is an officer (to be) designated by the PA (**within 100 days of the Act's enactment**):
  - in any of its administrative units
  - to provide information to persons requesting for information under the Right to Information Act, 2005

Note: The Act does not prescribe any number or levels for designating PIOs. It has been left to a PA's judgment to determine an adequate number. Accordingly, PAs have designated more than one PIO – sometimes by even designating PIOs for particular function(s) of the PA.

# Who is a Public Information Officer (PIO)?

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- An (Central / State – as the case may be –) APIO (under the RTI Act, 2005) is an official to be designated by a PA (within 100 days of the Act's enactment) at:
  - Each sub-divisional level; or
  - Other sub-district level

to receive information applications / appeals under this Act

For forwarding them to the C / S PIO or C / S First Appellate Authority / C / S Information Commission concerned

...for which 5 days get added to the time-limit for responding to an application... An APIO is, however, expected to do all forwarding as expeditiously as possible...

# How to know who is PIO / APIO?

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- ❑ In order to facilitate a citizen's "exercise (of) any right specified in this Act", an AG is required to, 'compile, within 18 months from the enactment of this Act, in its official language, a guide containing information as may be reasonably required' **[S. 26 (2)]**
- ❑ AG shall, if necessary, publish guidelines, at regular intervals (among other things) on the postal and street address, the phone and fax number and, if available, electronic mail address (as well) of the C/SPIOs of every PA... **[S. 26(3)(a)]**
- ❑ Names, designations and other particulars of PIOs are also required to be published suo motu **[S. 4(1)(b)(xvi)]**

# Functions of a PIO...

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Every PIO shall

- ❑ Accept and deal with requests from information seekers and render **reasonable assistance** to such persons. **[S.5(3)]**
- ❑ Provide information or reject a request (for valid reasons) as expeditiously as possible, subject to time limits as prescribed and, ordinarily, in the form in which it has been sought.  
**[S. 7(1) & (9) & S. 8(1)(a)–(j)]**
- ❑ Seek assistance of any other officer where necessary for the proper discharge of her / his duties **[S.5(4)]**
- ❑ Render **assistance to the requester making the request orally to reduce the same in writing**, where the request cannot be made in writing **[S.6(1)]**

# Functions of a PIO.....II

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- ❑ Provide persons with sensory disabilities, appropriate assistance to enable access to information and inspection, if necessary [S.7(4)]
- ❑ Transfer applications, where the information is held by another PA or the subject matter is more closely connected with the functions of another PA [S. 6(3)]
- ❑ Inform applicant immediately about the transfer[S. 6(3)]
- ❑ Send an intimation requesting deposition of further fees, where applicable for providing information – provide necessary information for the applicant to appeal [S. 7(3)(a) & (b)]

# Functions of a PIO.....III

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- ❑ Send a communication to the requester about the reasons for rejection – provide necessary information for the applicant to appeal including particulars of the appellate authority **[S. 8 (i), (ii) & (iii)]**
- ❑ Provide access to part of the record which can be reasonably severed from the part containing exempted information – giving reasons for partial rejection **[S. 10 (1)]**

# Functions of a PIO.....IV

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- ❑ Give a notice of the request to 3<sup>rd</sup> party and invite submission – where 3<sup>rd</sup> party information is requested. Give notice of decision to disclose third party information within 40 days after receipt of the request as also information about being entitled to prefer an appeal **[S.s 7(7), 11 (1), (2), (3) & (4)]**.
- ❑ Duly apply the “Public Interest test” in rejecting a request partially or fully as per exemptions in 8(1)(a)-(j) **[S. 8(2)]**
- ❑ Carry the burden (through the appeal process) of proving that that he / she acted reasonably and diligently **[S. 20(1)]**

# Reporting on RTI .....I

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- ❑ Under S. 25 of the RTI Act, 2005, an Information Commission (IC) has been entrusted with the responsibility of preparing a report on the implementation of the provisions of this Act during (a given) year and forward a copy thereof to the Central / State Government – as applicable
- ❑ Each Ministry or Department in relation to PAs within their jurisdiction are expected to collect and provide such information to the IC concerned.

## Reporting on RTI.....II

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The report in respect of the year should provide, among others, information on certain implementation aspects.

It implies that ,a PIO should maintain records pertaining matters, which the ICs report should contain’.

This information should be submitted to the head of the department periodically. This information should pertain:

1. Number of requests received by each PA

# Reporting on RTI.....III

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2. Number of decisions where applications were not entitled to access the documents pursuant to the requests the provisions of the Act under which these decisions were made and the number of times such provisions were invoked
3. Number of appeals referred to the IC for review, the nature of appeals and the outcome of appeals
4. Details of disciplinary action taken against any officer in respect of administration of this Act
5. Amount of charges collected by each PA under this Act

# Who is an Assistant Public Information Officer (APIO)?

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- ❑ An APIO is an officer designated by a Central / State PA under S. 5(2) – *as mentioned earlier*

Note: The Act does not prescribe any number for designating APIOs. It has been left to a PA's judgment to determine an adequate number.

In many cases, governments have issued their own guidelines about the levels at which PAs / PIOs / APIOs would be designated.

Guidelines applicable may differ depending upon whether you are requesting information from a Central / State PA.

# Functions of an APIO...

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- ❑ Receive applications for information or appeals at the sub-divisional or sub-district level **[Ss. 5(2) & 6(1)]**
- ❑ Forward them forthwith to the PIO or appellate officer, as the case may be. Applications should be forwarded to the PIO at the earliest, not exceeding five days. **[S. 5(2)]**
- ❑ Render assistance akin to PIO to the citizens at the time of filling applications or appeals **[Ss. 2(c) & (m), 5(1) & (2) & 6(1)(a) & (b)]**
- ❑ In keeping with the PIO's reporting responsibilities, APIOs will also have to report on the said matters.

# Who is the First Appellate Authority (FAA)?

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An officer senior in rank to PIOs in each PA to receive appeals against the decision of a PIO:

- preferred by the requesters – within 30 days from the receipt of the decision or within 30 days from the expiry of period specified in S. 7(1) or S. 7(3)(a), if no such decision was communicated. **[S. 19(1)]**
- preferred by third parties **as per S. 11(4)** – within 30 days from the date of the order **as per S. 11(3)**. **No discretion for accepting appeals after 30 days is available to the FAA in this case. [S. 19(2)]**

# Functions of an FAA...

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- ❑ Exercise discretion to accept appeals after 30 days if he / she is satisfied that the appellant was prevented by a sufficient cause from filing the appeal in time
- ❑ Dispose off appeals within 30 days of their receipt
- ❑ Record reasons if an additional period of 15 days as permitted by the Act is availed of
- ❑ Provide an opportunity of being heard to, both, the appellant and the PIO
- ❑ Adhere to the principles of natural justice while deciding 1<sup>st</sup> appeals

# Functions of Other Officers...

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Any 'other officer' in a public authority whose assistance – necessary for proper discharge of duties' of a PIO – has been sought:

- is expected to 'render all assistance' to the PIO **[S. 5(5)]**
- should provide the information under his/her control 'as expeditiously as possible' **[S. 7(1)]**
- carry the burden (through the appeal process) of proving that he / she acted reasonably and diligently **[S. 20(1)]**

# Summary: Who Receives Applications / First Appeals...

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| Who?                                        | What?                                                 | Level                                                            |
|---------------------------------------------|-------------------------------------------------------|------------------------------------------------------------------|
| <b>First Appellate Authority</b>            | <b>Only hears first appeals</b>                       | <b>Officer, senior in rank to the Public Information Officer</b> |
| <b>Public Information Officer</b>           | <b>Receives applications and provides information</b> | <b>In all administrative units or offices</b>                    |
| <b>Assistant Public Information Officer</b> | <b>Only receives applications</b>                     | <b>At every sub-divisional or other sub-district level</b>       |

# Some Related Frequently Asked Questions (FAQ)s...

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Q. Should section 4(1)(b) disclosures be made at all levels of a department?

A. Yes. Every PA notified within every department from secretariat to district levels should make disclosures under Section 4(1)(b) of the Act.

## Some Related FAQs.....II

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Q. Is it not burdensome to publish 17 manuals of information under section 4(1)(b)?

A. In fact, publication of information under section 4(1)(b) will reduce the work load on the PIOs in terms of receiving requests from citizens under the Act.

As far as compiling of information is concerned, information may already be available in a scattered manner with PAs.

Simply collect and collate the information. Once information is put together, updation will be easier.

## Some Related FAQs.....III

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Q. Is the APIO an assistant to the PIO?

A. No, he is not an (assistant as commonly understood). An APIO must be designated at the sub-district or sub-divisional levels. An APIOs responsibility is to forward applications and the appeals received by her / him to the right officer / authority.

Incidentally, where a Central PA does not have an office or administrative unit at the sub-district / sub-divisional level, the CAPIOs of Department of Posts will also act as CAPIOs for other Central Government PAs.

## Some Related FAQs.....IV

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Q. If the information requested by the citizen is in the possession of the APIO, can he provide the same to the applicant?

A. No, the APIO's obligation is only forwarding the request to the PIO concerned, as fast as possible, but within 5 days.

## Some Related FAQs.....v

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Q. If a PIO has touring duties and cannot be physically present in the office, will it amount to refusal to accept information request?

A. The solution here is for the PA concerned to designate another official from within the PA to act as PIO. This will ensure that the citizen's applications are always received and prompt action is taken on the same.

Where multiple PIOs are designated in a PA, no PIO can refuse to accept an application on the ground that it does not belong to his / her jurisdiction. He / she must collect the information from the concerned PIO and pass it on to the applicant.

## Some Related FAQs.....VI

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Q. If the applicant does not pay the additional fees for accessing information within 30 days, will the PIO be penalised?

A. No, the PIO will not be penalised. The 30 day clock stops ticking from the date of dispatch of the intimation for further fees by the PIO and restarts from the date the applicant pays the additional fees.

If the applicant chooses to seek a review of the additional fee from the appellate authority, the period taken by such authority to make a decision will also NOT be included in the 30 day limit.

## Some Related FAQs.....VII

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Q. If the applicant does not respond to the intimation letter of the PIO for payment of further fees, is the PIO duty-bound to provide information to the applicant?

A. No, the PIO is not duty bound to provide information to the applicant in such cases. The Act clearly states that the PIO will provide access to information only upon payment of further fee – as determined.

## Some Related FAQs.....VIII

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Q. How can the PIO reconcile his duties under the RTI Act with the secrecy required to be taken under the Official Secrets Act, 1923 taken at the time of joining service?

A. The RTI Act overrides the provisions of the Official Secrets Act, 1923 to the extent the latter are inconsistent with the former.

The 'oath of secrecy' taken by Government employees therefore applies only to those provisions of the Act which have been provided as exemptions under the Act eg. matters pertaining to national security, sovereignty and integrity of the country.

## Case I...

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A request has been received for inspection of records. It was granted and the requester was invited to the office on a certain date. When the requester visited, the requested records were placed before him for inspection. But he complained that he could not understand the records which were in English!

The petitioner confined to a request that the PIO should permit inspection of the concerned records, with the assistance of the counsel or someone conversant in English.

# Case I

II

The High Court of Delhi in Suresh Chand Gupta v Deputy Commissioner of Police and Anr.[W.P.(c) 8228/2007. Dt. 16<sup>th</sup> November, 2007] insisted that assistance should be provided when the requester can not understand the records which are in English.

It was held that “Section 7,... strengthens the petitioner’s claim to be provided the facility of assistance of counsel and someone conversant in English. The object of the Act is to provide access to information in the custody of the executive agencies.

## Case I.....III

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If the petitioner, for some reasons, felt inhibited due to his not being fluent in English, denial of appropriate assistance in fact would have resulted in withholding access to information. Surely, that is not the object of the Act or even the order.

In these circumstances, the respondents should grant the petitioner's request. Accordingly, the respondent is directed to permit inspection of the concerned record by the petitioner, who can be accompanied by his counsel or an authorized representative"

## Case II...

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Can a PIO intercept the first appeal and decide it himself?

No. In cases where a decision on an appeal to the FAA was communicated, to the requester, under the PIO's signature, CIC condemned the PIO's action and stated: "PIO putting himself in the shoes of Appellate authority is against the letter and spirit of the Act."

[CIC/OK/A/2006/00073-19 May, 2006]

# References

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- 'Right to Information Act', 2005 – Bare Act. [A soft copy is available on this website. It is downloadable.](#)
- [www.rti.gov.in](http://www.rti.gov.in)
- [www.cic.gov.in](http://www.cic.gov.in)

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## **End of Chapter 5**

You must take the Quiz for this Chapter before proceeding to the next Chapter!