

Day 10

Module IV

Exemptions and Other Miscellaneous Provisions

Chapter 10

Exempted Information

Chapter Scheme

- ☐ List of Abbreviations / Acronyms.
 - ☐ Exemption from Disclosure of Information.
 - ☐ Exceptions to Exemptions.
 - ☐ Severability.
 - ☐ Case.
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List of Abbreviations / Acronyms

<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>PAs</i>	Public Authority / Authorities	<i>S.-s.</i>	Sub-section
<i>PIO(s)</i>	Public Information Officer(s)	<i>u. S.</i>	under Section

Exemption from Disclosure of Information...

- ❑ As per **s. 8(1)**, notwithstanding anything contained in this Act, there shall be **no obligation to give** any citizen –
 - (a) **information**, disclosure of which would **prejudicially** affect the **sovereignty** and **integrity** of India, the **security**, **strategic**, **scientific** or **economic** interests of the State, relation with foreign State or lead to incitement of an offence.
 - (b) **information** which has been **expressly** forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court.

Exemption from Disclosure of Information.....II

- (c) information... which would cause a breach of privilege of Parliament or the State Legislature.
- (d) information including commercial confidence, trade secrets or intellectual property... which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
- (e) information available to a person in his fiduciary relationship unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information

Exemption from Disclosure of Information.....III

- (f) information received in confidence from foreign Government
- (g) information... which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes
- (h) information which would impede the process of investigation or apprehension or prosecution of offenders

Exemption from Disclosure of Information.....IV

- (i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers

Note: But the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken **shall** be made public after the decision has been taken, and the matter is complete, or over.

Exemption from Disclosure of Information.....v

(j) information which relates to **personal information... which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy** of the individual unless the PIO is satisfied that the larger public interest justifies the disclosure of such information...

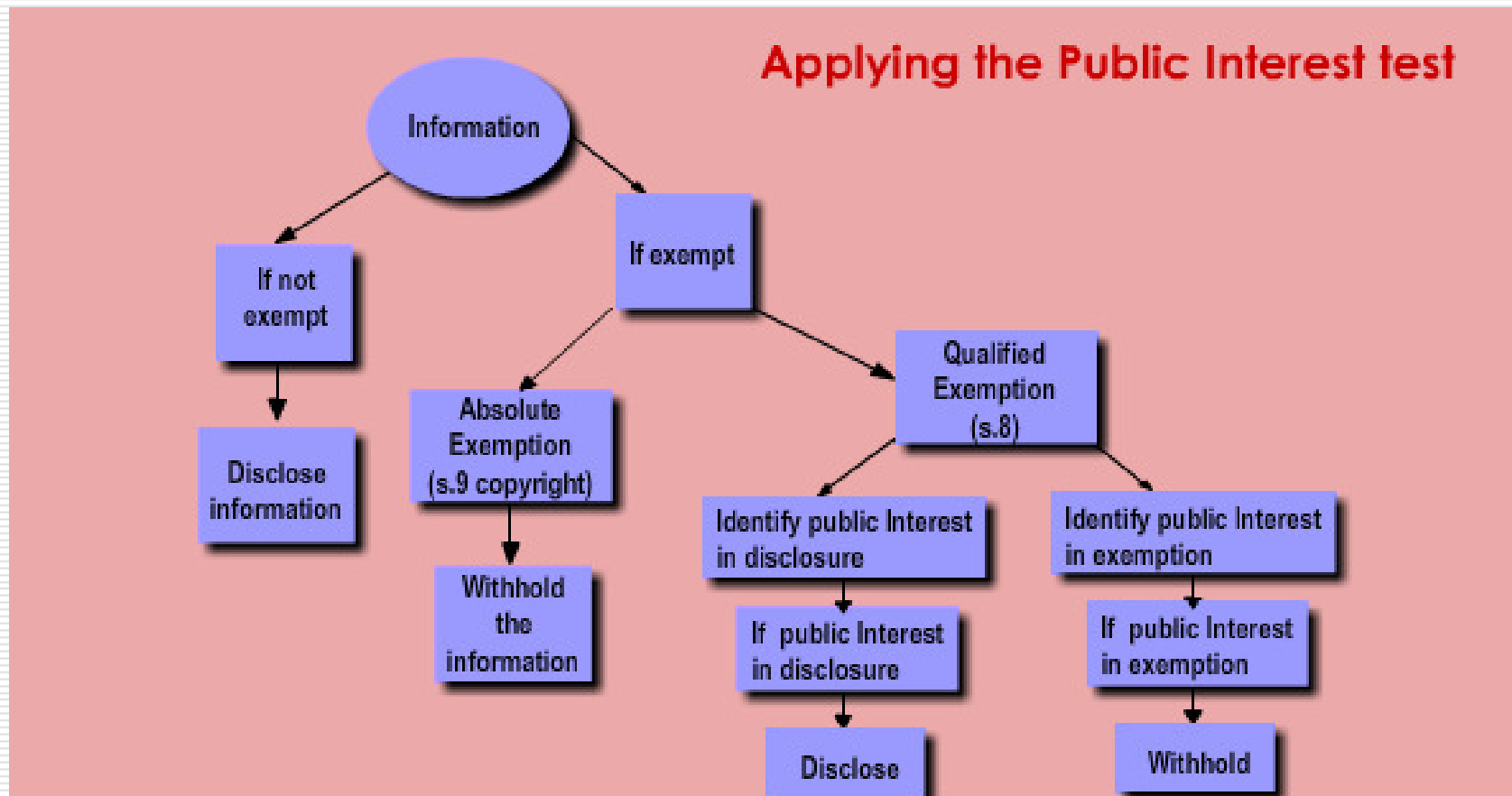
Note: Where applicable, a PIO will have to keep in mind “third party information” related considerations stated in Chapter 7, Module III.

Exceptions to Exemptions...

- ❑ The information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person. **S. 8(1)**
- ❑ Notwithstanding anything in the Official Secrets Act, 1923 nor any of the exemptions permissible in accordance with S. 8(1), a PA may allow access to information, **if public interest in disclosure outweighs the harm to the protected interests.** **S. 8(2)**

Note: Public interest as such has NOT been defined in the 'RTI Act, 2005'. It may have to be decided on a case-by-case basis.

Illustrating...



Exceptions to Exemptions.....II

Subject to S .8(1)(a), (c) & (i), any information relating to any occurrence, event or matter

which has taken place, occurred or happened 20 years before the date on which any request is made shall be provided to the requester

Decision of the Central Government shall be final on questions as to the date from which the said period of 20 years has to be computed subject to the usual appeals.

S. 8(3)

Exceptions to Exemptions.....III

The RTI Act, 2005 also provides for a case which becomes a ground for exemption saying in **s. 9** that

*Without prejudice to provisions of S. 8, a Central / State PIO **may reject a request** for information where such a request **for providing access would involve an infringement of copyright subsisting in a person other than the State.***

Note: Where applicable, otherwise, and in deciding about disclosing “third party information” a PIO will have to apply the public-interest-test – as stated in Chapter 7, Module III.

Severability...

- The RTI Act, 2005 says that where requested information is being rejected for being exempted, yet
 - access may be provided to a part of the record which does not contain any information which is exempt from disclosure under this Act and which can reasonably be severed from any part that contains exempt information. **[S.10(1)]**
 - **[S.10(2)]** says that where part access would be granted, the Central / State PIO shall give a notice to the applicant informing...

SeverabilityII

...

- (a) that only part of the record requested, after severance of the record containing information which is exempt from disclosure, is being provided
- (b) the reasons for the decision, including any findings on any material question of fact, referring to the material on which those findings were based
- (c) the name and designation of the person giving the decision

SeverabilityIII

- (d) the details of the fees calculated by him or her and the amount of fee which the applicant is required to deposit and
 - (e) his or her rights with respect to review of the decision regarding non-disclosure of part of the information, the amount of fee charged or the form of access provided,
- including the FAA u. S. 19(1) or the Central / State IC, as the case may be, time limit, process and any other form of access.

Case...

A request for information related to a third party has been received by a PIO, who decides not to disclose information, applying certain exemption.

Does the PIO still need to send a notice to the third party as required by the S. 11(1)?

In an interesting Decision CIC advised that 'it was better to send a notice to the third party, because the third party, to your surprise, might be favouring disclosure of the required information'.

CaseII

CIC observed...

`It is possible that the PIO and the FAA didn't consider invoking the provision of S. 7(7) because they had, in any case, reached a decision not to disclose the information requested by the appellant; and S. 11(1) which S. 7(7) refers, is to be invoked only when a PIO "intends" to disclose any confidential information or record supplied by a third party, and not otherwise.

This approach excludes the other possibility that the ...

Case

III

- ... third party may have no objection to the disclosure of the information, in which case disclosure can be authorized even when an information is prima-facie a personal information, and if it does not attract any other exemption.
- ... S.s 7(7), 11 & 7(1) have to be read together. The combined reading of these Sections leaves a clear impression, that when the information sought by an applicant have had a third party link, then “before taking any decision”... “either provide the information or ...reject the request”, the PIO will need to consult / hear the third party.

Case

IV

... Section 11(1) adds another dimension to the protection of third party interest, viz. giving a hearing to the third party if the PIO intends to disclose any information entrusted to the PA by the third party and “which has been treated as confidential” it.

The requirement of hearing the representation of the third party in respect of an ordinary as well as a confidential information relating to it, is a common thread linking these S.s and S-s., and should therefore be construed as an invariant procedural as well as a substantive requirement of the RTI Act.

“CIC/AT/A/2006/00306-16.10.2006

References

- ❑ 'Right to Information Act', 2005 – Bare Act. **A soft copy is available on this website. It is downloadable.**
- ❑ www.rti.gov.in
- ❑ www.cic.gov.in

End of Chapter 10

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