

LAW

in-depth: Proposed draft (Abridged)

Right to Information Act

THE purpose of the proposed Act is to create a mandatory requirement of furnishing information by various government and non-government institutions which are involved in providing service to the public. The definition of information includes any material which may be preserved by a Public Authority as defined in the proposed Act.

The salient features of the proposed Act is that every Public Authority would be required to publish or make available for public an annual publication providing the details information regarding the institution itself including the financial information on the employees and budgetary allocation.

The proposed Act further provides for supplying information to any citizen upon payment of prescribed fees. It is expected that flow of information would prevent corruption and bribery in public sector. In the event a public authority fails to provide the desired information to an application, the officers responsible for failure shall be punished with fine and imprisonment.

It has been proposed that in order to secure proper compliance with the provisions of the proposed Act a Commission shall be established consisting of persons of standing, who shall be responsible for the enforcement of the provisions of the proposed Act.

The proposed Act adequately protects the dissemination of information involving state security and public interest.

Salient features of the draft Right to Information Act is as follows:

PREAMBLE

- WHEREAS in a democratic society access to information is recognised as a part of the fundamental rights to freedom of expression;
- AND WHEREAS without access to information it is not possible to prevent corruption and lack of accountability in the administration of public authorities;
- AND WHEREAS protection of certain classes of information under the control of the Government is necessary for the public interest;
- AND WHEREAS it is necessary to provide for a balance between the two competing interests;
- NOW THEREFORE it is expedient to harmonise the laws restricting access to information and the need for accountability and transparency by allowing access to information under the control of public authorities.

BE IT THEREFORE ENACTED by the Parliament of the People's Republic of Bangladesh, as follows:

CHAPTER I

1. Short title, extent and commencement:

(1) This Act may be called the Right to Information Act, 200__.

2. Definitions:

Under this section the definition of various expressions has been provided. The most important definitions determining the scope and extent of obligation are as follows:

"Information" means any material be it in any form, including any advice, circular, contracts, data, documents, e-mails, file noting, log books, materials, models, memos, opinions, orders, papers, press releases, records, reports, samples, works held in any electronic form, any correspondence, memorandum, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microfilm, sound recording, video tape, machine readable record, and any other documentary material regardless of physical form or characteristics, and any copy thereof and any information relating to any private body which can be accessed by a public authority under any other law for the time being in force.

"Public Authority" means any authority or body or institution established or constituted:

- (i) by or under the Constitution;
- (ii) by any other law made by Parliament;
- (iii) by notification issued or order made by the Government or any other body having the authority to issue such notification including any body owned, controlled or substantially financed directly or indirectly by the Government; and shall include any Non-government Organisation and political party having allocation of a symbol by the Election Commission; and
- (v) bodies that undertake public functions on behalf of the Government and/or under a contract with a Government body in relation to that contract; and
- (vi) private bodies where the information is necessary for the

exercise or protection of a human right

"Right to information" means the right of access to information and includes inspection, taking notes, and extracts, and obtaining photo copy or certified copies of documents or records, taking certified samples of materials, obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or any other device of any Public Authority.

CHAPTER II

3. Right to information:

Under this section, Public Authorities are required to make certain information available to the general public and also recognizes a citizen's right to seek information from Public Authority.

Every Public Authority shall maintain all its records in a manner and form which facilitates the right to information under this Act and to make available to any citizen requesting information from it and shall not withhold any information or limit its availability.

The Information Commission shall develop guidelines on proper record keeping and management which must be followed by all bodies subject to the Act

4. Publication of Information by Public Authority:

This Section provides for the publication of information by Public Authority. The duties of Public Authority in respect of publication of information include:

- (1) Every Public Authority shall cause to be published, not more than six months after the Act comes into force and thereafter on a periodic basis, not less than once every two years, publication(s) containing:
 - (a) particulars of its organization, functions and duties; the powers and responsibilities of its officers and employees; description of its decision making process and responsibilities, including channels of supervision and accountability; the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;
 - (b) statement of the classes and categories of documents and records in its possession;
 - (c) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;
 - (d) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;
 - (e) statement about the conditions upon which citizens can acquire from it any license, permit, grant, allotment, consent, approval or other benefits of any nature or upon which transactions or contracts of any category can be entered with it;
 - (f) a directory of its officers and employees;
 - (g) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
 - (h) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
 - (i) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;
 - (j) particulars of recipients of concessions, permits or authorisations granted by it;
 - (k) statement about the facilities provided for access to information, including the working hours of a library or reading room, if maintained for public use; and the name, designation and location of the Public Information Officer to whom requests for information may be addressed, as well as about appellate/review authorities;
 - (l) all relevant facts in the formulation of important policy decisions and announcing decisions that affect the public;
 - (m) information on any new project, policy, scheme, programme or enactment of law that may be undertaken by it that may affect people generally or sections of people particularly and which the people concerned must know for the sake of natural justice and promotion of democratic principles;
 - (n) information relating to contracts entered into by them, including

Dear Readers,

The Bangladesh Law Commission in 2002 prepared a working paper proposing a draft law on Right to Information (RTI). However, since then there has been a little progress either in raising awareness on the RTI or legislation of the Act. A core group for drafting a revised Right to Information Act on the basis of the Law Commission working paper was facilitated by Manusher Jonno Foundation. This core group went through a series of consultation meetings in Khulna, Rangpur, Chittagang and Dhaka while preparing this draft. Former Advisor to the Caretaker Government Advocate Sultana Kamal, Advocate Shadeen Malik, Dr. Shamshul Bari, Advocate Alina Khan, Professor Asif Nazrul and Barrister Tanjib Ul Alam have taken the lead in drafting this proposed RTI Law.

Recently this draft of Law on RTI has been submitted to the Law Advisor, Barrister Mainul Hussain. Here is the abridged version of the draft law. The Law Desk invites your comments on it which will be published subsequently.

– Law Desk.

Highlights:

- Access to information is recognised as a part of the fundamental rights to freedom of expression;
- Without access to information it is not possible to prevent corruption and lack of accountability in the administration of public authorities;
- Information means any material including any advice, circular, contracts, data, documents, e-mails, file noting, log books, materials, models, memos, opinions, orders, papers, press releases, records, reports etc;
- Public Authority means any authority or body or institution established or constituted that undertake public functions on behalf of the Government and/or under a contract with a Government body in relation to that contract; where the information is necessary for the exercise or protection of a human right;
- The information sought for concerns the life or liberty of a person, the same shall be provided as early as possible and not later than within twenty four hours of the receipt of the request;
- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or any instrument having effect by virtue of any law other than this Act;

the objectives of the contract, the expected outcomes, benefits to accrue to the public, goods acquired or rented, the amount of money involved, the name of the contractor(s) or individuals to whom the contract has been awarded and the periods within which the contract is to be completed.

(o) details in respect of the information, available to or held by it, reduced in an electronic form;

(p) the names, designations and other particulars of the Public Information Officers;

(q) such other information as may be prescribed by the Commission.

5. Duties of Information Officers

In order to secure supply of information every Public Authority is required to designate one of its employees as the Information Officer with certain duties, which are as follows:

(1) Every Information Officer shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information.

(2) The Information Officer may seek the assistance of any other officer as he or she considers it necessary for the proper discharge of his or her duties.

6. Procedure for Access to Information:

The proposed law provides specific procedure to be followed by a citizen in order to obtain information, which is as follows:

(1) A citizen desiring to obtain any information from a Public Authority under this Act shall make a request in writing or in any other form including electronic means in English, Bangla or the local language of the area where the request is being made, to the Information Office specifying the particulars of the information, document or record and the mode of access, i.e. inspection, copying or taking note of, sought.

Provided that where such request cannot be made in writing, the Information Officer shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

(2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.

(3) The Information Officer receiving a request for information will be required to provide a prompt and written acknowledgement of receipt of the request, including the date it was received, the name and contact details of the Information Officer and a receipt for any fees paid.

7. Procedure for providing information:

After receipt of a request in accordance with Section 6 above, the

Public Authority is required to provide the information in the following manner:

(1) The Information Officer, on receipt of a request shall, as expeditiously as possible, and in any event within not more than 30 days of the receipt of the request, either provide the information on receipt of such fees as may be prescribed or reject the request for any of the reasons specified in sections 8.

Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided as early as possible and not later than within twenty four hours of the receipt of the request.

(2) If the Information Officer fails to give decision on the request for information within the period specified under sub-section (1), the Information Officer deemed to have refused the request.

(7) Where a request has been rejected under sub-section (1), Information Officer shall

(a) communicate to the person making the request,

(i) the reasons for such rejection, including the section of the Act relied upon to reject the application and any findings on any material question of fact, referring to the material on which those findings were based;

(ii) the period within which an appeal against such rejection may be preferred; and

(iii) the person's rights with respect to review of the decision regarding non-disclosure of the information, amount of fee charged or the form of access provided, including the particulars of the appellate authority, time limit, process and any forms that might be required;

(b) Refund any fee that might have been paid by the person

CHAPTER III

8. Exemptions from disclosure of information:

As it is an established principle of law that public interest would prevail over the individual rights, certain exceptions have been provided under which a Public Authority may refuse to provide information. The grounds on which a Public Authority can refuse to disclose information is as under:

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any person, _

(a) information, disclosure of which may prejudicially affect the sovereignty and integrity of Bangladesh, the security, strategic, scientific or economic interests of the state, or relations with a 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;

(c) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

(d) 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;

(e) information received in confidence from a foreign Government;

(f) information, the disclosure of 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;

(g) information which would impede the process of investigation or apprehension or prosecution of offenders;

(h) cabinet papers including records of deliberations of the Cabinet, Secretaries and other officers;

Provided that the decisions of Cabinet, 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:

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;

(i) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the third party has effectively consented to the disclosure of the information or the Information Officer is satisfied that the larger public interest justifies the disclosure of such information,

Provided that the information which cannot be denied to the Parliament shall not be denied to any person.

(j) disclosure of the information would be contrary to the public interest by reason that the disclosure would be reasonably likely to impair the ability of the Public Authority to obtain similar information in the future for the purpose of administration of a law or the administration of matters administered by the Public Authority.

(k) the person seeking the information is not a citizen of Bangladesh or the company, organization or institution not incorporated in Bangladesh.

11. Public Interest Disclosure

Even if particular information

falls within the category of exempted information under Section 8 above, if disclosure of such information is in the public interest, then the relevant Public Authority shall be under an obligation to provide such information:

Notwithstanding the provisions of this Act and any law of Bangladesh to the contrary, a Public Authority shall give access to an exempt document where, in taking account of all the circumstances of the case, to do so is in the public interest, having regard to both any benefit and to any damage that may arise from doing so in matters such as, but not limited to:

- (a) abuse of authority or neglect in the performance of official duty;
- (b) injustice to an individual;
- (c) danger to the health or safety of an individual or of the public; or
- (d) unauthorized use of public funds.

CHAPTER IV

The Information Commission

In order to carry out the purposes of the Act an independent Commission is required. It has been seen in other countries that in the absence of a dedicated authority to secure compliance with the obligations imposed under the proposed law, the enforcement of right to information remain elusive. At the same time, if the enforcing agency is not given sufficient status over the Public Authority, implementation of the right to information law would be seriously affected. It has been suggested that the Commission shall be at par with other statutory Commissions currently in operation.

12. Information Commission : (1) The Government shall, by notification in the Official Gazette, constitute a body to be known as the Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.

(2) The Information Commission shall consist of

(a) the Chief Information Commissioner; and

(b) such number of Information Commissioners, not exceeding five, 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

(a) a Judge of the Appellate Division, nominated by the Chief Justice, who shall be the Chairperson of the Committee;

(b) the Chairman, Public Service Commission; and

(c) the Chairman, University Grant Commission.

(4) The general superintendence, direction and management of the affairs of the 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 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 and the appointment committee shall strive to achieve a mix of individuals with diverse professional experiences in the composition of the Information Commission as a whole

(6) The Chief Information Commissioner or an Information Commissioner shall not be a Member of Parliament or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

(7) The headquarters of the Information Commission shall be at Dhaka and the Information Commission may, with the previous approval of the Government, establish offices at other places in Bangladesh.

CHAPTER V

Powers and functions of the Information Commissions and appeal

The proposed law provides for the power and functions of the Information Commission.

17. Powers and functions of the Information Commission: (1) Subject to the provisions of this Act, it shall be the duty of the Information Commission to receive, inquire into

and dispose of a complaint from any person,

(a) who has been unable to submit a request to a Information Officer either by reason that no such officer has been appointed under this Act, or because the Public Authority has refused to accept his or her application for information;

(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.

(2) Where the Information Commission is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.

(3) The Information Commission shall have the power to initiate of its own accord complaints and inquiries, as appropriate, against any public authority or Information Officer; the Information Commission's powers of complaint and investigation will extend to individual cases as well as patterns of non-compliance by any public authority or Information Officer.

CHAPTER VI

Refusal to provide information may result in criminal liability which would include imprisonment.

20. Penalty: (1) Where the Information Commission, at the time of deciding any complaint or appeal is of the opinion that the Information Officer has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section... 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 taka two hundred and fifty taka each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand taka:

Provided that the Information Officer 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 Information Officer.

(2) Where the Information Commission, at the time of deciding any complaint or appeal is of the opinion that the Information Officer 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 6 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 Information Officer under the service rules applicable to him.

Since the core value of the proposed law lies in providing information, the Commission itself is required to ensure transparency of its own operation. Therefore, the Commission is required to publish its annual report.

25. Primacy of this Act: The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or any instrument having effect by virtue of any law other than this Act.

27. Annual Report by the Commission: (1) The Information Commission 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 Government and make this report available for public perusal through appropriate means, including through its website, if such a website exists

(2) Each Ministry or Department shall, in relation to the public author-

ities within their jurisdiction, collect

and provide such information to the Information Commission, 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 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;

(e) the amount of charges collected by each public authority under this Act;

(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.

(h) 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.

(i) The government may, as soon as practicable after the end of each year, cause a copy of the report of the Information Commission referred to in sub-section (1) to be laid before the Parliament.

(j) If it appears to the Information Commission 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.

We have published the above abridged version to solicit comments from the public. For a fuller understanding of this draft law, it is necessary to read the full text.

Editor.