

RIGHT TO INFORMATION ACT: AN OVERVIEW

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1. Introduction

Right to information became a legally accepted fundamental right by virtue of 14(a) of the Constitution which was newly introduced by the 19th Amendment to the Constitution¹. Under the said Article 14(a) the right of every citizen to access information has been established, subject to certain conditions. In line with this amendment, Sri Lanka has taken a liberal step forward when the Right to Information Act No.12 of 2016 was passed by the Parliament of Sri Lanka on 04th August 2016, legal provisions were laid down by this legislature for the access to information required for the exercise or defending of the right of a citizen, and for the use of information in a transparent manner. The primary purpose of the Right to Information Act is to provide for the right of access to information, to specify grounds on which access to information may be denied, to establish the right to information commission, to appoint information officers, to set out the procedure for obtaining information and to provide for matters connected therewith or incidental thereto².

The Act prescribes that its provisions shall prevail over any other written law, and that in the event of any inconsistency or conflict between the provisions of this Act and any other written law, the provisions of this Act shall prevail³.

2. Access to information under the Right to Information Act

Subject to the limitations set out in the Act, every citizen shall have a right of access to information which is in the possession, custody or control of a public authority⁴. The term

¹ 19th Amendment to the Constitution, Article 2

² Right to Information Act No.12 of 2016, Preamble

³ Right to Information Act No.12 of 2016, s 4

⁴ Right to Information Act No.12 of 2016, s 3A

“citizen” includes a body either incorporated or unincorporated, if not less than three-fourths of the members of such body are citizens. The term “Information” has also been given a wider interpretation. Generally a “public authority” may include all Ministries, departments, public corporation, companies in which the State or a public corporation hold 25 percent or more of the shares, local authorities, private entities linked with the government, institutions connected to Provincial Councils, non-governmental organizations that are connected to the government, private universities, institutions offering vocational training and institutions offering technical education having some form of connection to the state or in some way funded by the state, courts and tribunals⁵.

For the purpose of giving effect to the provisions of this Act, every public authority shall appoint, within three months of the date of coming into operation of the Act, one or more officers as information officers and a designated officer to hear appeals⁶. The primary duty of these officers is to ensure providing information to citizens, as such citizens may request, subject to the provisions.

2.1. Procedure to obtain information

Any citizen who expects to receive information under the Right to Information Act should make a request in writing using the application form published as ‘Form 01’ under the regulations pertaining to the Act which have been published on the Government Gazette dated 03.02.2017. However, where such application could not be made in writing, such citizen shall have the right to make the request verbally as well. The Act has also made provisions to make information requests by e-mail , from any public authority⁷.

Any such citizen requesting for information should ensure that the information officer is provided with sufficient details to identify the required information.

A decision has to be made either to provide the information requested for, subject to the payment of any fee, or to reject the request on any one or more of the grounds referred to in section 5 of the Act, and such decision shall forthwith be communicated to the citizen who made the request within 14 working days. Where a decision is made to provide the information, it should be provided within 14 days of arriving at such decision. Where the

⁵ Right to Information Act No.12 of 2016, s 43

⁶ Right to Information Act No.12 of 2016, s 23

⁷ Right to Information Act No.12 of 2016, s 26 (6) read with Regulation 4(4) of the Gazette Notification dated 03.02.2017

request for information concerns the life and personal liberty of any citizen, the response to such request should be made within 48 hours of the receipt of the request⁸.

The period may be extended for a further period up to 21 days where the request is for a large number of records and if the relevant information does not exist at the office of the information officer but at some other distant location, and therefore it is difficult for the Information officer to collect such information within 14 days, and such extension should be communicated to the relevant citizen.

In providing information, such information should be provided using Form 04 published in the said Gazette, and if the Information Officer is of the view that using the said Form is prejudicial to the safety or security of particulars, such information may be provided in any other appropriate manner.

Where information requested by any citizen relates to, or has been supplied by a third party, subject to the time period prescribed in Section 29(1), the third party must be inquired if they are willing or unwilling to disclose such information⁹. The information Officer should give due consideration to the opinion of such third party, in making a decision regarding provision of the requested information.

2.2. Denial of access to information

The Information officers are permitted to reject any application for information by a citizen, in following circumstances¹⁰.

- (i) Where the requested information is personal information, and disclosure of the same would cause unwarranted invasion of the privacy of the individual, and where such disclosure does not promote public interest,
- (ii) Where such disclosure would undermine the national security or territorial integrity or defense of the state,
- (iii) Where such disclosure may be prejudicial to international relations,

⁸ Right to Information Act No.12 of 2016, s 25

⁹ Right to Information Act No.12 of 2016, s 29

¹⁰ Right to Information Act No.12 of 2016, s 5

- (iv) Where the disclosure of the relevant information would cause serious prejudice to the economy by disclosing government economic or financial policies relating to exchange rates or the control of overseas exchange transactions, regulation of banking or credit, taxation, maintenance of stability of prices of goods and services, and entering into of overseas trade agreements
- (v) If the information relates to trade secrets or intellectual property, and the disclosure of the same would harm the competitive position of a third party,
- (vi) If the information could lead to the disclosure of any medical records relating to any person, when he/she has not consented to such disclosure,
- (vii) Where the information is required to be kept confidential due to existence of a fiduciary relationship
- (viii) Where the disclosure of such information would cause prejudice to the detection of any crime or the apprehension of offenders; interrupt enforcement of law, or cause contempt of court, or breach parliamentary privileges, or if it is pertaining to revelation of an information of an examination which needs to be kept confidential, or pertaining to an information of an election which needs to be kept confidential, or pertaining to a cabinet memorandum in relation to which a decision has not been taken.

The fact that should be emphasised here is, that authorities should ensure not to refuse disclosure of information on any of above reasons, where the public interest in disclosing the information outweighs the harm that would result from its disclosure.

Where a request for information is refused on any of the grounds referred to above, access could nevertheless be given to the citizen who made the request, to any part of information contained that does not fall under those reasons, and which can be severed from the information record¹¹.

Where a request for information is refused by an information officer, such officer should notify to the relevant citizen who made the request, using the Form 05 published in the Gazette, the grounds on which such request is refused and the person to whom an appeal should be made.

¹¹ Right to Information Act No.12 of 2016, s 6

2.3. Appeals

2.3.1. Appeals to the Designated Officer

If the citizen who made request for information is not satisfied with the response of the information officer, an appeal may be made to the Designated Officer within 14 days of the response. The designated officer should issue a notice of the acceptance of the appeal, to the citizen making the appeal within 3 working days of receipt of the appeal, and the decision of the appeal should be made within a period of 3 weeks from the date of receipt of the appeal.

2.3.2. Appeals to the Right to Information Commission

The Right to Information Commission is the main supervisory and enforcement institution established in terms of Section 11 of the Right to Information Act No.12 of 2016¹². It is an independent statutory body, and it is vested with powers to conduct inquiries into denials of information, recommending disciplinary action against officers with wrongful conduct, and to institute criminal prosecutions under the Act.

Any citizen who is not satisfied with a response received on an appeal made to a Designated Officer, may prefer an appeal to the Commission within two months of receipt of such response. The procedure of making inquiries on appeals made to the Commission are set out under Regulations 13-31 of the Right to Information Act, as approved by the Minister in charge of the subject under Section 42(2) of the Act.

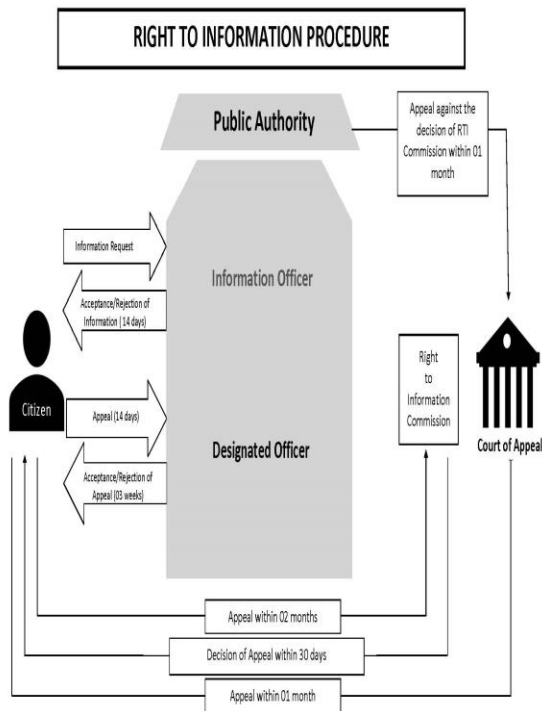
2.3.3. Appeals to the Court of Appeal

A citizen or a public authority aggrieved by the decision made by the Commission may appeal against such decision to the Court of Appeal within one month from the date on which such decision was communicated to the citizen or public authority¹³.

¹²http://www.rticommission.lk/web/index.php?option=com_content&view=article&id=11&Itemid=142&lang=en (accessed on 17.09.2019)

¹³ Right to Information Act No.12 of 2016, s 34(1)

The procedure of receiving information is simply illustrated by the following chart.



3. Criticisms on the Act

When this Act is studied in depth as a whole, it is evident that the Act is more favorable to the citizen who seek to receive information. Some experts state that rights of persons could be at risk due to the right to receive information. This means that disclosure of some information in the possession of a public authority may lead to breach of rights of certain persons. But the Act provides the opportunity not to disclose information if there is a likelihood of unwarranted invasion of the privacy of an individual, in disclosing any information¹⁴. Therefore, the argument that rights of individuals may be threatened by the Right to Information Act could be abandoned to a certain extent.

It appears that there is still a lack of awareness among the general public about this Act and about the scope of the Right to Information Commission which was established under the said Act. If proper steps are not followed to make the general public aware of the importance of this Act and of the ability of receiving information as a right, it would be difficult to

¹⁴ Right to Information Act No.12 of 2016, s (1) (a)

achieve the expected goals of this legislature. On the other hand, it appears that the public authorities have an indifferent attitude towards this Act. That is because, the Act entrusts them with an additional task of collection of information and to provide the same, and as it causes certain difficulties for them to attend in such duties with limited resources while attending day-to-day duties. If they are made aware of the importance of the Act and of the benefits that they also could receive as citizens, staff members of public authorities may perhaps attend to activities pertaining to this Act with a more positive view.

Some laws and regulations have prevented disclosure of information even for the interest of the public. For example, the Establishment Code has prohibited the public servants to disclose information pertaining to state policy and administrative decisions¹⁵. Sri Lanka Press Council Law has prohibited to disclose sources of information in reporting news¹⁶. According to provisions of the Banking Act No.30 of 1988, banks have a legal duty to protect and not to disclose information of their clients¹⁷. Further, when it comes to state banks, there is a conflict between this limitation and the provisions of the Right to Information Act. In these circumstances, there are occasions where government servants face difficulties in deciding as to what law they should comply with. But according to Section 4 of the Right to Information Act, the provisions of the Right to Information Act shall prevail over any other written law. Therefore, it is necessary to make arrangements to thoroughly make aware the staff members of public authorities.

Some formal actions are required to be initiated without any delay, in order to raise public awareness of the importance of the Right to Information Act, and as to how to get it enforced as a fundamental right. This could be implemented at an institutional level for public authorities, and the general public could be addressed by workshops and awareness programmes conducted through Divisional Secretariat offices.

Awareness programmes must be conducted for staff members of public authorities to encourage them to implement provisions of the said Act with a more positive attitude, instead of the existing indifferent attitudes. Information officers and designated officers should especially be made aware of the legal process of disclosing information/ denial of information as set out in the Act, and of the rules and regulations introduced under the said Act as well.

¹⁵ Establishment Code, Chapter 31, s 3,

¹⁶ Sri Lanka Press Council Law s 32(1)

¹⁷ Banking Act No 30 of 1988, s 77,

Steps should be taken to include lessons on Fundamental Rights including the Right to Information in school curriculum, and thereby the society may become aware of this right and its importance.

There are loopholes in procedures of collecting and maintaining information in public institutions. This has been a result due to the inadequacy of infrastructure. It appears that it has been difficult to provide information within the time-frame imposed by the Act, especially because information is not computerised. In this context, government intervention is required to provide necessary resources, trained workers, new technology and infrastructure to public authorities in order to collect information in various institutions and to store them in such a way to enable easy retrieval of such information when necessary. It is also required, as a long-term measure, to introduce to the country a common public database with state intervention, as it exists in countries like Singapore and Malaysia, and thereby the general public shall be able to access the data base and to receive required information without any difficulty. The public authorities could upload to the said common state database where all such information could generally be disclosed and then the public authorities may not have to face difficulties that would arise in implementation of provisions of the Act.

Under the provisions of the Right to Information Act, no civil or criminal liability shall be imposed on an information officer or any public authority, for any disclosure of information which is done in good faith by such information officers¹⁸.

However, the Commission has the power to take legal actions against a person who commits an offence under the Act, before a Magistrates Court¹⁹. If found guilty in such a prosecution, the offender may be subject to a fine not exceeding Rs. 50,000/= or an imprisonment up to two years or both. In addition, there is a possibility for the appropriate disciplinary authority to take disciplinary actions against the offender. Accordingly, the Act includes provisions that contains the capacity to take steps against those who avoid implementation of the provisions of the Act. The possibility of reaching expected results of this Act could be increased by properly enforcing the said provisions when necessary.

4 Summary

The right to search for and receive information beyond borders and impartially as guaranteed by the Universal Declaration of Human Rights (1948) and Article 19 of the International

¹⁸ Right to Information Act No.12 of 2016, s 30

¹⁹ Right to Information Act No.12 of 2016, s 39

Covenant on Civil and Political Rights (1966) of the United Nations has been legally enforced locally by Parliamentary legislations of 19 countries in Asia presently. India, Pakistan, Bangladesh and Nepal are among these countries; the Indian Right to Information Act which was introduced in 2005 is being actively utilized. Following this trend, Sri Lanka has also established a wide legal framework for receiving information by the Right to Information Act No. 12 of 2016. The Right to Information Commission was also established under the said Act in order to supervise and to enforce disclosure of information.

Every citizen has a responsibility in achieving the expected results from this Act by proper implementation of the said legal framework, and it is the responsibility of the State to engage in carrying out necessary awareness programmes required for making an attitude change in society to realise this responsibility, and to provide required infrastructure.

In brief, there would be a mammoth impact on inefficiency, bureaucracy and arbitrary political activities in public sector, by legal enforcement of the right to information and that would eventually provide a great support for establishment of democracy, media freedom and economic development and to achieve sustainable development.

