

# Our RTI Law

## The good, the bad and the ugly

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# Right to Information Law

- Which was adopted on June 24, 2016 will take effect six months from certification: most likely in February 2017
- Contrary to its stated objectives, even the floor amendments are not yet public
- Knowledge about this law, which has the potential to transform the conduct of government, is inadequate

The GOOD: Addresses  
information asymmetry between  
government & citizen

# Operative clause

- *S3. Subject to the provisions of section 5 of this Act, every citizen shall have a right of access to information which is in the possession, custody or control of a public authority.*
- Actual meaning depends on definition of terms such as “public authority”

# “Citizen” includes incorporated & unincorporated bodies; “Information” broadly defined

- *“citizen” includes a body whether incorporated or unincorporated, if not less than three-fourths of the members of such body are citizens;*
- *“information” includes any material which is recorded in in any form including records, documents, memos, emails, opinions, advices, press releases, circulars, orders, log books, contracts, reports, papers, samples, models, correspondence, memorandum, draft legislation, book, plan, map, drawing, diagram, pictorial or graphic work, photograph, film, microfilm, sound recording, video tape, machine readable record, computer records and other documentary material, regardless of its physical form or character and any copy thereof;*

Section 43

# “Public authority” is not limited to government (sec. 43)

- “public authority” means –
- (a) a Ministry of the Government;
- (b) any body or office created or established by or under the Constitution, any written law, other than the Companies Act No. 7 of 2007, except to the extent specified in paragraph (e), or a statute of a Provincial Council;
- (c) a Government Department;
- (d) a public corporation;
- (e) a company incorporated under the Companies Act, No. 7 of 2007, in which the State, or a public corporation or the State and a public corporation together hold twenty five per centum or more of the shares;
- (f) a local authority;
- **(g) a private entity or organization which is carrying out a statutory or public function or service, under a contract, a partnership, an agreement or a license from the government or its agencies or from a local body, but only to the extent of activities covered by that statutory or public function or service;**
- (h) any department or other authority or institution established or created by a Provincial Council;
- **(i) non-governmental organisations that are substantially funded by the government or any department or other authority established or created by a Provincial Council or by a foreign government or international organisation, rendering a service to the public in so far as the information sought relates to the service that is rendered to the public;**
- (j) higher educational institutions including private universities and professional institutions;
- (k) private educational institutions including institutions offering vocational or technical education;
- (l) all courts, tribunals and institutions created and established for the administration of justice;

# Underlying rationale for RTI legislation

- Agency problems arise when the agent's incentives and those of the principal are not perfectly aligned and conflicts of interest exist (which is always)
- Why can the agent get away with not acting in the best interest of the principal?
  - A first possible explanation is that the cost to the principal of removing or punishing the agent is too high relative to the benefit
  - A second, more widely applicable, explanation is the presence of information asymmetry. Information asymmetry arises when one party (the agent) is better informed than the other (the principal). Information asymmetry makes it difficult or even impossible for principals to know whether the agent acts in their best interest, especially if crucial variables (such as the agent's effort or competence) are unobservable

# Government is the agent; citizens are the principals

- The incentives of citizens and their agents (government officials and politicians) are not perfectly aligned
- Even though the people can turf out politicians at periodic elections, that is harder to do re officials
- In the case of both officials and politicians, the information asymmetry is vast → RTI seeks to reduce the information asymmetry
- It follows that RTI should apply to entities that are agents of the people
  - Government (all levels)
  - Agents of government

# All who do business with government must understand when they fall within scope of RTI

- *(g) a private entity or organization which is carrying out a statutory or public function or service, under a contract, a partnership, an agreement or a license from the government or its agencies or from a local body, **but only to the extent of activities covered by that statutory or public function or service;***
- *(i) non-governmental organisations that are **substantially funded** by the government or any department or other authority established or created by a Provincial Council or by a foreign government or international organisation, **rendering a service to the public** in so far as the information sought relates to the service that is rendered to the public;*

The BAD: Ignores cost of compliance

# Illustrative duties of “Public authorities”: Retain in retrievable form

- *S7(1) It shall be the duty of every public authority to maintain all its records in such manner and in such form as is consistent with its operational requirements, duly catalogued and indexed.*
- *S7(2) All records being maintained by every public authority shall be preserved—*
- *in the case of those records already in existence on the date of the coming into operation of this Act, for a period of not less than ten years from the date of the coming into operation of this Act.*
- *in the case of new records **which are created** after the coming into operation of this Act, for a period of not less than twelve years from the date on which such record is created*
- *S7(4) Notwithstanding the provisions of subsection (2), every public authority shall endeavor to preserve all its records in electronic format within a reasonable time subject to the availability of resources.*

# Duties of “Public authorities”: Submit reports

- **S10.** *Every public authority shall submit annual reports to the Commission which shall be made available to the public in its office, furnishing information such as-*
- *(a) the total number of requests received during the year and information provided and rejected;*
- *(b) the amount of fees collected during the year;*
- *(c) the number of requests rejected under section 5;*
- *(d) the number of times information was provided at the direction of the Commission; and*
- *(e) any suggestions for improving the effectiveness of the regime of transparency.*

# Duties of “Public authorities”: Appoint information officer(s)

- *S. 23(1) Every public authority shall for the purpose of giving effect to the provisions of this Act, appoint, within three months of the coming into operation of this Act, one or more officers as Information Officers of such public authority and an officer designated to hear appeals :*
  - *Provided that until such time that an Information Officer is appointed under this subsection, the Head or Chief Executive Officer of a public authority shall be deemed to be the Information Officer of such public authority, for the purposes of this Act.*

# Duties of “Public authorities”: Display notice

- **S26. (1)** *Every public authority shall display in a conspicuous place within the official premises a notice specifying–*
  - *(a) contact details of the Commission and the members of the Commission;*
  - *(b) contact details of the information officer;*
  - *(c) contact details of the designated officer;*
  - *(d) fees to be charged for obtaining any information from such public Authority*

# Is it reasonable to impose identical duties on large and small?

- Government has in excess of 1.4 million employees and no hard budget constraints
  - RTI requirements can lead to improvement of government operations
- But can non-government “public authorities,” especially small ones, bear the costs of compliance?
  - Is a one-person “firm” undertaking translation work for the government capable of complying with all obligations imposed by the Act?

The UGLY: Government seeks to recruit 8,000 fresh graduates to implement RTI

# Largest single intake of graduates proposed

- Who would be suited to serve as Information Officers: fresh graduates or long-serving officers with tacit knowledge & authority?
- What is implied by *“Provided that until such time that an Information Officer is appointed under this subsection, the Head or Chief Executive Officer of a public authority shall be deemed to be the Information Officer of such public authority, for the purposes of this Act”*?



Lankadeepa, 30 June 2016, p. 1 & p. 14