

Guidelines for Consideration For Departmental Appellate Authorities

The Three Level Regime for Accessing Information

At the first level of the regime, every public authority has designated officers for receiving applications (also called 'information requests') from citizens.

At the second level, every public authority has designated senior officers to look into those cases where citizens' requests for information have been refused. If citizens do not get the requested information or are unsatisfied with the information they have received, under this law, they have the right to send an appeal to the Departmental Appellate Authority (DAA) designated within the concerned public authority.

At the third level, an independent State Information Commission (SIC) has been set up to look into those cases where citizens are unsatisfied with the decision of the DAA. The SIC also has the powers and responsibility to monitor compliance of public authorities to this Act and submit an annual report to the State Legislature.

One of the guiding principles of the RTI Act is – **“information which cannot be denied to Parliament or a State Legislature shall not be denied to any person”**

Duties and Powers of the Departmental Appellate Authorities

The RTI Act creates an appeal mechanism within every public authority to deal with grievances of citizens who are unhappy with the decision of the PIO. The State Government is required to designate Departmental Appellate Authorities (DAA) within each public authority that will look into the grievances of applicants. This is the first of the two-level appeals mechanism. The State Information Commission (SIC) represents the second level of appeal. Despite being appeal bodies there are significant differences between the powers and functions of the DAA and the SIC.

Please remember –

- under the RTI Act the State Information Commission has administrative powers to ensure and monitor compliance with the law apart from quasi-judicial powers to dispose appeals. Such powers are not given to the DAA. For example, based on a complaint, the SIC has the power to appoint a PIO in a public authority where none exists. Second, the SIC has the power to make a public authority provide access to information in the form requested by the applicant. Third, the SIC has the power to get the public authority to make changes to its maintenance, management and destruction of records to facilitate better implementation of this law. Fourth, the SIC has the power to seek a compliance report from the public authority annually. Fifth, the SIC has the power to seek an annual report from every public authority giving details of its compliance with the proactive- disclosure provision under Sec. 4. None of these powers are given to the DAA.
- The SIC has been given the powers of a civil court to enable it to effectively perform its role as the second appeals body under the RTI Act. This allows the SIC to even requisition records relevant to a particular case even if they are exempt under Sec. 8. These powers are not available to the DAA. (But being senior level officers within the public authority, the DAA can requisition records and documents internally while deciding upon appeals.)
- In a number of instances the aggrieved applicant can bypass the DAA and approach the SIC directly for violation his/her rights guaranteed under this law. For example, the SIC can look into complaints where PIOs have simply refused to accept information requests or where SAPIOS have refused to forward applications to the PIOs or appeals to the DAA. The DAA does not have the power to look into such complaints. Nor can the SIC refuse to look into a complaint simply because the appellant had not approached the DAA first.
- The SIC has the power to penalise the SAPIO and the SPIO with monetary fines ranging from Rs. 250/- per day to a maximum of Rs. 25,000/- The SIC may also recommend to the public authority disciplinary action against the erring SAPIO/SPIO. The DAA does not have the power to impose penalties on PIOs.
- The SIC has the power to order a public authority to pay compensation for any loss or detriment suffered by a citizen who sends a complaint. This power is not available to the DAA.

The DAA therefore has a limited set of duties and powers while dealing with appeals from citizens. But the role of the DAA is an important one as they have the power to resolve disputes between the aggrieved applicant and the PIO internally and thereby save PIOs from paying penalties or facing disciplinary proceedings.

Instances where appeals may arise

The DAA is likely to receive appeals from aggrieved citizens in the following cases –

- where the PIO fails to provide the requested information within thirty days in ordinary cases;
- where the PIO fails to provide the requested information within 48 hours where the requested information relates to the life and liberty of a person;
- where the citizen believes that the additional fee charged by the PIO for supplying the requested information is unreasonable (not to be confused with application fees) ;
- where the citizen believes the rejection order issued by the PIO in response to his/her information request is unjustifiable;
- where the citizen believes the decision of the PIO granting partial access to records is unjustifiable;
- where the citizen believes the PIO has knowingly provided incorrect, incomplete or misleading information;

In all such cases the burden of proof lies on the PIO to justify his/her decision. The RTI Act makes it crystal clear that the applicant is not required to give reasons for requesting information at any stage. [see Sec. 6(2) & 19(5)]

Appeals from Third Parties

The RTI Act provides the right of appeal to third parties aggrieved by the decision of a PIO. A third party may be anybody other than the applicant and the public authority to which the information request has been sent. This includes any individual, private body and any other public authority.

If the information requested by the citizen was in fact given to the public authority by a third party treating it as confidential, the PIO is required to serve a written notice to that third party inviting submissions whether such information may be disclosed to the applicant. The PIO is required to serve this notice within five days of receiving the application and the third party is required to make its submissions orally or in writing within ten days of receiving such notice. Nevertheless if the PIO decides to disclose the information the third party has the right to appeal against such decision before the DAA and if necessary with the SIC.

Manner of Receipt of Appeals

Aggrieved citizens may file appeals directly by handing them over in person or send them by post/courier. Additionally they may send the appeal letter to the SAPIO. The SAPIO is duty bound to forward such appeals to the concerned DAA.

Please remember –

- there are no fees for filing appeals. Appeals must be received, processed and disposed of without imposing any financial burden on the appellant.
- however forms for filing appeals may be prescribed [Sec. 7(3)(b) mentions forms for filing an appeal against the intimation order of PIO requiring payment of additional fee].
- Nevertheless keeping in mind the convenience of the common person living in remote areas who may not have easy access to such forms it is best to allow appeals made on plain paper as long as they contain the following details and enclosures –
 - o name of the appellant
 - o name of the father/husband (as the case may be) of the appellant
 - o contact details of the appellant including complete postal address, telephone numbers and email address (if any)
 - o authority to which appeal is being sent (whether DAA or the SIC)
 - o details of the authority against whose decision the appeal is being made (whether PIO or DAA)
 - o nature and details of the information requested originally
 - o copy of the information request submitted to the PIO/appeal letter sent to the DAA (whichever is applicable)
 - o rejection letter issued by the PIO against the appellant's information request (if any) or
 - o copy of the order of the PIO/information disclosed which is being contested including order of partial access (if any) or
 - o copy of the letter issued by the PIO intimating additional fee to be paid towards cost of providing information which is being contested by the appellant (if any)

- o copy of the order issued by the DAA which is being contested (if any)
- o date on which appeal is being submitted.

Time limit for filing appeals

The RTI Act allows the following time limit for filing appeals –

- if the citizen does not receive any decision on his/her application from the PIO –within thirty days of the expiry of the time period (usually thirty days or 40 days if a third party’s submissions have been invited).
- If the citizen is not satisfied with the information provided by the PIO or is aggrieved by the decision of the PIO where partial access has been provided - within thirty days from the receipt of such decision

(Please note – the time limit mentioned immediately above does not begin from the date of the issue of the PIO’s order. It starts with the date on which the applicant receives the order).

- If the DAA is satisfied that there was sufficient cause that prevented the appellant from filing the appeal within the time limit he/she may admit the appeal after the expiry of the deadline.
- If a third party is aggrieved by the order of the PIO – within thirty days from the date of such order.

Time limit for deciding appeals

Ordinarily the DAA is required to give its decision within 30 days of the receipt of the appeal. This time limit is extendable but in no case should it exceed 15 days. If additional time is taken over and above the thirty-day limit the DAA is required to record its reasons for the same in writing while issuing the order on the appeal.

Please remember –

- the appellant has the right to file a second appeal with the SIC within ninety days of the expiry of the time limit prescribed for the DAA whether or not a decision has been received.

The Procedure to be Followed while deciding appeals

The RTI Act empowers the State Government to make rules relating to the procedure that will be followed by the State Information Commission while deciding on appeals. However there is no reference to the procedure that needs to be adopted by the DAA while looking into appeals cases. It is advisable for the State Government to lay down the procedure for the DAAs as well in order to ensure clarity of process and uniformity of treatment of appeals across the public authorities in the State.

It is also advisable that the procedure for deciding on appeals be made as less cumbersome to the appellant as possible. Appeals under the RTI Act do not require procedures that are adversarial in nature as the appellant is not required to give reasons for seeking information or filing an appeal under the Act. The burden of proving that rejection of the application for information was justified lies on the SPIO concerned. It is not necessary to summon the appellant in every case. The DAA can and should apply its mind to the case to decide whether the decision of the PIO was reasonable or not. The presence of the appellant is not always required to such an exercise. However if the appellant’s presence is required in order to seek some clarification in his/her information request in such cases the appellant may be summoned.

Interpreting Exemptions and Determining Public Interest

It is worth mentioning here that a significant number of appeals will be filed by citizens against rejection orders of PIOs where Sec. 8 exemption/s have been invoked. The DAA will be called upon to interpret these exemptions in light of the public interest that may be upheld in disclosing such information. The State Government will have to draw up detailed guidelines for interpreting every category of exempt information as well as good practices to determine the primacy of public interest. If these practical guidelines are made available to the PIOs in the form of a practice manual there may be a significant decline in the number of appeals filed by citizens.