

THE JAMMU & KASHMIR GOVERNMENT GAZETTE

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Separate paging is given to this part in order that it may be filed as a separate compilation.

Part III

Laws, Regulations and Rules passed thereunder.

GOVERNMENT OF JAMMU AND KASHMIR CIVIL SECRETARIAT – LAW DEPARTMENT

Jammu, the 7th January, 2004

The following Act as passed by the Jammu and Kashmir State Legislature received the assent of the Governor on 5th January, 2004 and is hereby published for general information :-

THE JAMMU AND KASHMIR RIGHT TO INFORMATION

ACT, 2004

Act No. I of 2004

[5th January, 2004]

An Act to make provision for securing right to information and

Be it enacted by the Jammu and Kashmir State Legislature in the Fifty-fourth Year of the Republic of India as follows :

1. Short Title, Extent and Commencement

(1) This Act may be called the Jammu and

Kashmir Right to Information Act, 2004.

2) It shall extend to the whole of the State of Jammu and Kashmir.

3) It shall come into force on such date as the Government may, by notification in the Government Gazette, appoint.

2. Definitions

In this Act, unless the context otherwise requires,

- a. **“Controlling Officer”** means the immediate superior officer above the incharge of office, who supervises and controls the work of incharge of office or such officer as may from time to time, be specified as such by the Government for the purposes of this Act ;
- b. **“Department”** means any department or office of the Government ;
- c. **“Government”** means the Government of Jammu and Kashmir ;
- d. **“Incharge of the Office”** means an Officer/functionary of a department of the Government or a public body, who is in actual control of any office of the Government or public body, as the case may be, or such officer / functionary as may, from time to time, be specified as such by the Government for the purposes of this Act;
- e. **“Information”** means any document or information relating to the affairs of the State or a public body;
- f. **“Public body”** shall include,
- (i) offices of all local bodies and other authorities constituted under any law for the time being in force ; or
 - (ii) any other statutory authority constituted by the Government under any law for the time being in force ; or
 - (iii) a Government Company/Corporation incorporated under the Companies Act, 1956 (Central Act No. 1 of 1956) in which not less than fifty one percent of the paid up share capital, is held by the Government or a trust established by the Government under any law for the time being in force and controlled by it; or
 - (iv) a Society or a Co-operative Society or any other organization established under any law for the time being in force, by the Government and directly controlled or funded by it ; or
 - (v) any other body, which may be receiving substantial financial assistance from the Government, as may be specified by notification, in the Government Gazette for the purposes of this Act ;
- g. **“Right to information”** means right to obtain information relating to the affairs of the State or Public bodies by means of,
- (i) obtaining certified copies of documents or records ; or

- (ii) inspection of accessible records and taking notes and extracts ; or
- (iii) inspection of public works ; or
- (iv) taking of samples of material from public works ; and
- (v) diskettes, floppies or in any other electronic mode or through print outs where such information is stored in a computer or in any other device.

3. Obligation of Departments and Public Bodies

Every Department and public body

shall, -

- (a) maintain all its records, in such manner and form as is consistent with its operational requirements duly catalogued and indexed ;
- (b) publish at such intervals as may be prescribed by the Government, -
 - (i) the particulars of its organization, functions and duties ;
 - (ii) the powers and duties of its officers and employees and the procedure followed by them in the decision making process ;
 - (iii) the norms set by the public authority for the discharge of its functions ;
 - (iv) rules, regulations, instructions, manuals and other categories of records under its control used by its employees for discharging its functions;
 - (v) the details of facilities available to citizens for obtaining information ; and
 - (vi) the name, designation and other particulars of the in charge of the office and of the Controlling Officer ;
- (c) publish all relevant facts concerning important decisions and policies that affect the public while announcing such decisions and policies ;
- (d) give reasons for its decisions, whether administrative or quasi-judicial to those affected by such decisions ;
- (e) before initiating any project, publish or communicate to the public generally or to the persons affected or likely to be affected by the project in particular, the facts available to it or to which it has reasonable access which in its opinion should be known to them in the best interests of maintenance of democratic principles.

4. Right to Information

Subject to the provisions of this Act, every citizen shall have right to obtain information from the In charge of office and such incharge shall be liable to provide information under and in accordance with the provisions of this Act.

5. Procedure for Supply of Information

Any person seeking information shall make an application to the incharge of the office giving particulars of the matter relating to which information is sought,

a) if the incharge of the office is in possession of the information requested and the information does not fall in any one or more categories mentioned in section 6, the incharge of the office shall supply the information to the applicant as far as may be practical within a period of thirty working days from the receipt of the application ;

b) if the incharge of the office is in possession of the information requested but, the information sought falls in any one or more categories mentioned in section 6, the incharge of the office shall reject the request and communicate the reasons for the rejection to the applicant as early as possible ;

c) if the incharge of the office is dealing with the subject matter but the information cannot be compiled without considerable financial expenditure or without considerable extra work, the incharge of the office may after recording the reasons in writing, send a regret reply to the applicant. The incharge of the office shall, however, supply any related information readily available.

d) the incharge of the office may seek the assistance of any other officer as he may consider necessary for the proper discharge of his duties;

e) any officer whose assistance has been sought under clause (d) shall render all assistance to the incharge of the office seeking his assistance.

6. Restriction of Right to Information

(1) Notwithstanding anything hereinbefore contained, the following information shall be exempted from disclosure, namely :-

a) information, the disclosure of which would prejudicially affect the sovereignty and integrity of India, security of the State, or conduct of international relations ;

- b) information, the disclosure of which would prejudicially affect public safety and order, detection and investigation of an offence, or which may lead to an incitement to commit an offence;
- c) information, the disclosure of which would prejudicially affect the conduct of Centre State relations, including information exchanged in confidence between the Central and State Government or any of their authorities/agencies ;
- d) Cabinet papers including record of deliberations of the Council of Ministers;
- e) minutes of records of advice including legal advice, opinions of recommendations made by any officer of a public authority during the decision making process prior to the executive decision or policy formulation;
- f) information, the disclosure of which may result in the breach of privileges of Parliament or the Legislature of the State, or contravention of a lawful order of a court;
- g) information held in consequence of having been supplied in confidence by a person who –
 - (i) gave the information under a guarantee that its confidentiality would be protected; or
 - (ii) was not under any legal obligation, whether actual or implied, to supply, and has not consented to its disclosure.
- (2) The incharge of the office may, for reasons to be recorded in writing, withhold –
 - (a) information, the disclosure of which, -
 - i. would prejudicially affect the enforcement of any law including detection, prevention, investigation or suppression of crime or contravention of any law or the apprehending of offenders and the operations of any intelligence organizations ;
 - ii. 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;
 - iii. would prejudicially affect fair trial or adjudication of a pending case or the proceedings of any tribunal, public inquiry ;
 - iv. would reveal the existence or identity of a confidential record or would prejudice future supply of information relating to violation or contravention of any law ;
 - v. may help or facilitate escape of any person from legal custody or affect his present security ;
 - (b) information the disclosure of which would prejudicially affect the Government's ability to manage the economy or the legitimate economic and commercial interests of a public authority ; or would cause unfair gain or loss to any individual or organization ; these would include trade and commercial secrets protected by law;

(c) personal information, the disclosure of which has no relationship to any public activity or which would cause unwarranted invasion of the privacy of an individual ;

(d) the record and information referred to in sections 123 and 124 of the Evidence Act, Samvat 1977 and claimed privileged ;

(e) information on the following grounds also –

(i) that the request is too general or is of such nature that, having regard to the volume of information required to be retrieved or processes for fulfilling it, it would involve disproportionate diversion of the resources of a public authority or would adversely interfere with the functioning of such authority :

Provided that, where access is being refused on the ground that the request is too general, it would be duty of the incharge of office concerned to render help, as far as possible, to the persons seeking information to reframe his request in such a manner as may facilitate supply of information ;

(ii) that the request relates to information that is required by law or convention to be published at a particular time ;

(iii) that the request relates to information that is contained in published material for sale.

7. Third Party Information

Where an incharge of office intends to disclose information on a request made by a party which relates to or has been supplied by a third party and has been treated as confidential by that party, the incharge of office shall by notice to that third party invite representation against such proposed disclosure.

8. Act not to Apply to Certain Organizations

Nothing contained in this Act shall apply to intelligence and security organizations by whatever name called, discharging their functions as such under the Government.

9. Appeals

(1) Any person aggrieved by the order of the incharge of the office or any person who has not received required information within the time stipulated under section 5, may appeal to the controlling officer, within thirty days of the decision rejecting his request for information or the expiry of period stipulated under section 5 for furnishing such information:

Provided that the controlling officer may entertain appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal.

(2) A second appeal against the decision under sub-section (1) shall lie within 30 days of such decision to the Government :

Provided that the Government may entertain appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal.

(3) The appeals preferred under sub -sections (1) and (2) shall be heard and decided expeditiously and by all means be disposed of within thirty days of presentation of appeal:

Provided that no order adversely affecting the person making the appeal shall be passed unless an opportunity of being heard is afforded to him.

(4) The appeal shall be accompanied with the proof of fee deposited or tendered in the manner provided in accordance with section 10.

10. Fee

(1) The request for seeking information under this Act shall be accompanied by a proof of payment of such fee as may be prescribed for furnishing of information.

(2) If requisite fee as prescribed under sub -section (1) is not paid for the required information, the information sought under section 5 may not be made available.

(3) The appeal shall be accompanied with such fee, and be deposited and tendered in such manner, as may be prescribed.

11. Obligation of the Incharge of Office

(1) Every incharge of the office shall have a duty to maintain all records in accordance with the procedure laid down under relevant law or Departmental manuals.

(2) While maintaining the records proper indexing, listing, numbering and paging of records shall be done and the same may be kept ready for access to information, subject to the provisions of this Act, to any citizen requesting for such access.

(3) Any person responsible for providing any information under this Act shall be personally liable for furnishing information within the period specified under this Act.

12. Penalties

– Where any person responsible for making available information under this Act, fails without any reasonable cause to furnish information sought by any citizen under the provisions of this Act within the time specified or furnishes any information which is false with regard to any material particulars and which he knows and has reasonable cause to believe it to be false or does not believe it to be true, he shall be liable, after such inquiry as may be required under rules pertaining to disciplinary action applicable to him, for imposition of such penalty as may be determined by the disciplinary authority under such rules.

13. Protection of Action Taken in Good Faith

No suit, prosecution or legal proceedings shall lie against any person for anything done or intended to be done in good faith in pursuance to the provisions of this Act or rules made thereunder.

14. Bar to the Legal Proceedings

No court shall entertain any suit, application or other proceedings in respect of any order made under this Act and no such order shall be called in question otherwise, than by way of appeal under this Act.

15. Power to Make Rules

The Government may make rules for carrying out the purposes of this Act.

(2) All rules under this Act shall be laid, as soon as may be after they are made, before the two Houses of the State Legislature. If the State Legislature makes any modification in such rules, or resolves that any such rule should not be made, such rules thereafter have effect only in such modified form or be of no effect as the case may be:

Provided that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder.

(Signed.)

R.K. Koul,

Deputy Legal Remembrance

Law Department