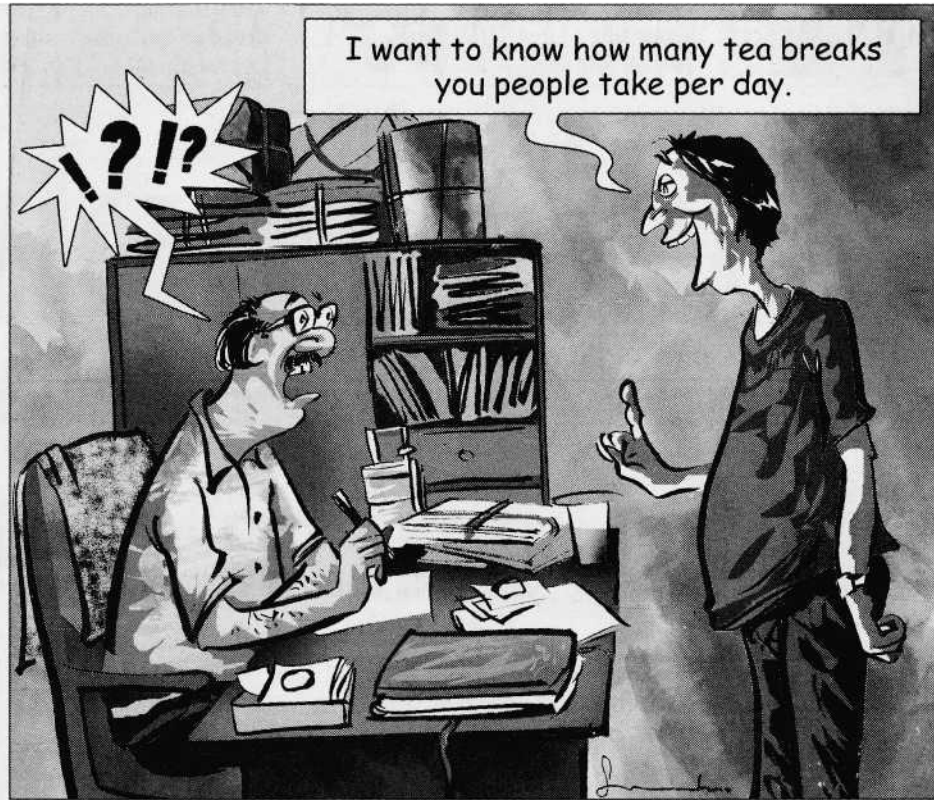


The Telegraph, Calcutta, 01 Oct 2008

An employee of the New India Assurance Company who had been suspended for insubordination and misconduct flooded the public sector firm with 26 applications for information of various kinds. Some of the queries required the company to collect information from 30 branches in Jaipur and 600 employees.

A Delhi resident asked the Press Information Bureau (PIB) for the annual income of all freelance journalists accredited to it, requiring the PIB to write to nearly 200 freelancers.

Both requests had been filed under the Right to Information (RTI) Act, 2005, an iconic piece of legislation which strips the veil of secrecy over even the most mundane of government tasks. The RTI Act was meant to be a powerful tool for the public to demand information from the government and make



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Trivial pursuit

babudom accountable. No longer would people remain clueless about why the drain outside their homes was not being cleaned or a road was not being repaired. People could also demand copies of contracts and specifications of engineering works and samples of construction material used.

That, perhaps, has made the Act liable to abuse, with public information officers (PIO) — the nodal official in each government ministry/department/local body who handles RTI requests — being flooded with apparently inane queries. For instance, a Fisheries Survey of India employee invoked the RTI to seek the definition of “through proper channel” in connection with a representation to be made to a head of the department. He also sought copies of circulars, rules, notification and docu-

The Right to Information Act is often being invoked to seek information on frivolous issues. But the number of such queries may decline if government bodies update their systems and put more information in the public domain, says **Seetha**

ments and information on the number of petitions/representations sent directly to the headquarters between 2001 and 2006. Even the Central Information Commission, the apex body for hearing RTI-related complaints, has commented on the “frivolous and vexatious” nature of many of the requests.

Yet chief information commissioner Wajahat Habibullah doesn't think the number is large enough to

worry about.

So does the Act encourage such requests? On the face of it, yes. Anyone can seek information, without having to explain why. That could prompt business rivals to try and get information on competitors, or, as happened in one case, squabbling couples to try and get each other's income tax details.

However, the Act has enough provisions to deal with such issues. The Preamble, for example, acknowl-

edges that revealing information could “conflict with other public interests, including efficient operations of the governments, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information.” The use of RTI, says Madhumita Mitra, a legal consultant who has worked extensively on RTI, has to be harmonised with these constraints. Accordingly, Section 8 lists certain kinds of information that are exempted

from disclosure. These include information that could affect the country's sovereignty and security, its strategic, scientific or economic interests, information which may constitute contempt of court, or invite breach of privilege of Parliament or state legislature; and commercial information which could affect the competitiveness of third parties.

In addition, under Section 11, information relating to a third party cannot be divulged without that person's consent. "Many of these queries don't have to take up the time of PIOs," notes Shekhar Singh of the National Campaign for People's Right to Information.

These exemptions are not unlimited; if the larger public interest requires such information to be made public, it will have to be. RTI activist Shailesh Gandhi, who is now a central information commissioner, won the right to examine the medical records

of a former minister of Maharashtra during his stay at Mumbai's J.J. Hospital when he was supposed to be serving a jail term.

Section 7 can also help deal with exasperating queries. Clause 9 of the section says information shall ordinarily be provided in the form in which it is sought "unless it would disproportionately divert the resources of the public authority or would be detrimental to the safety or preservation of the record." So a PIO can refuse to provide information in the five-column format the Fisheries Survey of India employee requested. The 'resources', Mitra points out, need not be monetary but can also relate to personnel, if a department is understaffed.

Many requests appear vexatious, says Habibullah, because public authorities are largely ignoring two pro-

visions in Section 4. The first requires records to be catalogued, indexed and computerised in a manner that makes them easy to access. Currently, government records are maintained according to an antiquated filing system that makes it extremely difficult to trace information. The second says that the authorities must put as much information as possible in the public domain, which people can access without resorting to the RTI Act. If both these are done, the authorities won't be inundated with RTI requests, says Habibullah.

Singh charges that the PIOs take shelter behind all these provisions to deny information. When Singh sought a list of applications under RTI — a record PIOs are supposed to keep and provide to the CIC — he was refused on the ground that it would disproportionately divert resources.

The first report of the Veerappa Moily Committee on Administrative Reforms, which dealt with RTI, suggested that a clause be introduced in the Act, allowing PIOs to refuse information if the request is manifestly frivolous and vexatious. Both the British and South African laws have such a provision. Habibullah, however, is not in favour of this. Apart from the problem of defining 'frivolous' and 'vexatious,' such a provision, he notes, can be misused as in the UK where it is common for public authorities to invoke the clause to deny information.

Irksome requests could also be the result of the novelty of the RTI Act. In other countries, notes Singh, the implementation of RTI laws follows a bell curve. There is an initial surge in applications, which tapers off as the charm wears off.

There were, admits Habibullah, frivolous complaints in the early days but that was due to the fact that overenthusiastic people were not entirely familiar with the Act or RTI etiquette. "As a body of case law gets built up, there will be fewer vexatious requests," says Singh. Government departments will certainly be hoping that happens soon.