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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 20th March, 2009.

The following Act as passed by the Jammu and Kashmir State Legislature received the assent of the Governor on 20th March, 2009 and is hereby published for general information :—

THE JAMMU AND KASHMIR RIGHT TO INFORMATION ACT, 2009.

(Act No. VIII of 2009)

[20th March, 2009.]

An Act to provide for setting out the regime of right to information for the people of the State to secure access to information under the

control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a State Information Commission and for matters connected therewith or incidental thereto.

Whereas, the Constitution of India has established democratic Republic ; and

Whereas, democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Government and its instrumentalities accountable to the governed ; and

Whereas, revelation of information in actual practice is likely to conflict with other public interests including efficient operations of the Government, optimum use of limited fiscal resources and the preservation of confidentiality of sensitive information ; and

Whereas, it is necessary to harmonize these conflicting interests while preserving the paramountcy of the democratic ideal ; and

Whereas, it is expedient to provide for furnishing certain information to citizens who desire to have it.

Be it enacted by the Jammu and Kashmir State Legislature in the Sixtieth Year of the Republic of India as follows :—

CHAPTER I

Preliminary

1. *Short title, extent and commencement.*—(1) This Act may be called the Jammu and Kashmir Right to Information Act, 2009.

(2) It extends to the whole of the State.

(3) It shall come into force at once.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) "Act" means the Jammu and Kashmir Right to Information Act, 2009 ;

(b) "competent authority" means—

(i) the Speaker in the case of the Legislative Assembly of the State and the Chairman in the case of the Legislative Council of the State ;

(ii) the Chief Justice of the High Court in the case of the High Court ;

(iii) the Governor in the case of other authorities established or constituted by or under the Constitution of India or the Constitution of Jammu and Kashmir ;

(c) "Government" means the Government of Jammu and Kashmir ;

(d) "information" means any material in any form including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force ;

(e) "prescribed" means prescribed by rules made under the Act by the Government or the competent authority, as the case may be ;

(f) "public authority" means any authority or body or institution of self-government established or constituted—

(i) by or under the Constitution of India or the Constitution of Jammu and Kashmir ;

(ii) by any other law made by Parliament ;

(iii) by any other law made by the State Legislature ;

(iv) by notification issued or order made by the Government, and includes any—

(A) body owned, controlled or substantially financed ;

(B) non-Government organization substantially financed, directly or indirectly by funds provided by the Government ;

(g) "Public Information Officer" means the Public Information Officer designated under sub-section (1) and includes a Assistant Public Information Officer designated as such under sub-section (2) of section 5 ;

(h) "record" includes—

(i) any document, manuscript and file ;

(ii) any microfilm, microfiche and facsimile copy of a document ;

(iii) any reproduction of image or images embodied in such microfilm (whether enlarged or not) ; and

(iv) any other material produced by a computer or any other device ;

(i) "right to information" means the right to information accessible under the Act which is held by or under the control of any public authority and includes the right to—

(i) inspection of work, documents, records ;

(ii) taking notes, extracts or certified copies of documents or records ;

(iii) taking certified samples of material ;

(iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device ;

(j) "State Information Commission" means the State Information Commission constituted under sub-section (1) of section 12 ;

(k) "State Chief Information Commissioner" and "State Information Commissioner" means the State Chief Information Commissioner and the State Information Commissioner appointed under sub-section (3) of section 12 ;

(l) "third party" means a person other than the citizen making a request for information and includes a public authority.

CHAPTER II

Right to Information and Obligations of Public Authorities

3. *Right to information.*—Subject to the provisions of the Act, every person residing in the State shall have the right to information.

4. *Obligations of public authorities.*—(1) Every public authority shall—

(a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under the Act and ensure that all records that are appropriate to be computerized are, within a reasonable time and subject to availability of resources, computerized and connected through a network all over the State on different systems so that access to such records is facilitated ;

(b) publish within one hundred and twenty days from the commencement of the Act,—

(i) the particulars of its organization, functions and duties ;

(ii) the powers and duties of its officers and employees ;

(iii) the procedure followed in the decision making process, including channels of supervision and accountability ;

(iv) the norms set by it for the discharge of its functions ;

(v) the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions ;

(vi) a statement of the categories of documents that are held by it or under its control ;

(vii) the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof ;

(viii) a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public ;

(ix) a directory of its officers and employees ;

(x) the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations ;

(xi) the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made ;

(xii) the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes ;

(xiii) particulars of recipients of concessions, permits or authorizations granted by it ;

(xiv) details in respect of the information, available to or held by it, reduced in an electronic form ;

(xv) the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use ;

(xvi) the names, designations and other particulars of the Public Information Officers ;

(xvii) such other information as may be prescribed ; and thereafter update these publications every year ;

(c) publish all relevant facts while formulating important policies or announcing the decisions which affect public ;

(d) provide reasons for its administrative or quasi-judicial decisions to affected persons.

(2) It shall be a constant endeavour of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of the Act to obtain information.

(3) For the purposes of sub-section (1), every information shall be disseminated widely and in such form and manner which is easily accessible to the public.

(4) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Public Information Officer available free or at such cost of the medium or the print cost price as may be prescribed.

Explanation :—For the purposes of sub-sections (3) and (4), "disseminated" means making known or communicated the information to the public through notice boards, newspapers, public announcements, media broadcasts, the internet or any other means, including inspection of offices of any public authority.

5. *Designation of Public Information Officers.*—(1) Every public authority shall, within one hundred days of the commencement of the Act, designate as many officers as the Public Information Officers in all administrative units or offices under it as may be necessary to provide information to persons requesting for the information under the Act.

(2) Without prejudice to the provisions of sub-section (1), every public authority shall designate an officer, within one hundred days of the commencement of the Act, at each sub-divisional level or other sub-district level as an Assistant Public Information Officer to receive the applications for information or appeals under the Act for forwarding the same forthwith to the Public Information Officer or senior officer specified under sub-section (1) of section 16 or the State Information Commission, as the case may be :

Provided that where an application for information or appeal is given to a Assistant Public Information Officer a period of five days shall be added in computing the period for response specified under sub-section (1) of section 7.

(3) Every Public Information Officer shall deal with requests from persons seeking information and render reasonable assistance to the persons seeking such information.

(4) The Public Information Officer may seek the assistance of any other officer as he or she considers it necessary for the proper discharge of his or her duties.

(5) Any officer, whose assistance has been sought under sub-section (4), shall render all assistance to the Public Information Officer seeking his or her assistance and for the purposes of any contravention

of the provisions of the Act, such other officer shall be treated as a Public Information Officer.

6. *Request for obtaining information.*—(1) A person, who desires to obtain any information under the Act, shall make a request in writing or through electronic means in English, Urdu or Hindi accompanying such fee as may be prescribed, to—

(a) the Public Information Officer of the concerned public authority ;

(b) the Assistant Public Information Officer,

specifying the particulars of the information sought by him or her :

Provided that where such request cannot be made in writing, the Public Information Officer shall render all reasonable assistance to the person making the request orally to reduce the same in writing.

(2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.

(3) Where an application is made to a public authority requesting for an information,—

(a) which is held by another public authority ; or

(b) the subject matter of which is more closely connected with the functions of another public authority,

the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer :

Provided that the transfer of an application pursuant to this sub-section shall be made as soon as practicable but in no case later than five days from the date of receipt of the application.

7. *Disposal of request.*—(1) Subject to the proviso to sub-section (2) of section 5 or the proviso to sub-section (3) of section 6, the Public Information Officer on receipt of a request under section 6 shall, as expeditiously as possible, and in any case within thirty days of the receipt of the request, either provide the information on payment of such fee as may be prescribed or reject the request for any of the reasons specified in sections 8 and 9 :

Provided that where the information sought for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.

(2) If the Public Information Officer fails to give decision on the request for information within the period specified under sub-section (1), the Public Information Officer shall be deemed to have refused the request.

(3) Where a decision is taken to provide the information on payment of any further fee representing the cost of providing the information, the Public Information Officer shall send an intimation to the person making the request, giving—

(a) the details of further fees representing the cost of providing the information as determined by him, together with the calculations made to arrive at the amount in accordance with fee prescribed under sub-section (1), requesting him to deposit that fees, and the period intervening between the despatch of the said intimation and payment of fees shall be excluded for the purpose of calculating the period of thirty days referred to in that sub-section ;

(b) information concerning his or her right with respect to review the decision as to the amount of fees charged or the form of access provided, including the particulars of the appellate authority, time limit, process and any other forms.

(4) Where access to the record or a part thereof is required to be provided under the Act and the person to whom access is to be

provided is sensorily disabled, the Public Information Officer shall provide assistance to enable access to the information, including providing such assistance as may be appropriate for the inspection.

(5) Where access to information is to be provided in the printed or in any electronic format, the applicant shall, subject to the provisions of sub-section (6), pay such fee as may be prescribed :

Provided that the fee prescribed under sub-section (1) of section 6 and sub-sections (1) and (5) of section 7 shall be reasonable and no such fee shall be charged from the persons who are of below poverty line as may be determined by the Government.

(6) Notwithstanding anything contained in sub-section (5), the person making request for the information shall be provided the information free of charge where a public authority fails to comply with the time limits specified in sub-section (1).

(7) Before taking any decision under sub-section (1), the Public Information Officer shall take into consideration the representation made by a third party under section 11.

(8) Where a request has been rejected under sub-section (1), the Public Information Officer shall communicate to the person making the request,—

(a) the reasons for such rejection ;

(b) the period within which an appeal against such rejection may be preferred ; and

(c) the particulars of the appellate authority.

(9) An 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 in question.

8. *Exemption from disclosure of information.*— (1) Notwithstanding anything contained in the Act, there shall be no obligation to give any citizen,—

(a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State or lead to incitement of an offence ;

(b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court ;

(c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature ;

(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information ;

(e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information ;

(f) information, the disclosure of which 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 ;

(g) information which would impede the process of investigation or apprehension or prosecution of offenders ;

(h) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers :

Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the

decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over :

Provided further that those matters which come under the exemptions specified in this section shall not be disclosed ;

(i) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information :

Provided that the information which cannot be denied to the Parliament or the State Legislature shall not be denied to any person.

(2) Notwithstanding anything in the State Official Secrets Act, Samvat 1977 or any of the exemptions permissible in accordance with sub-section (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(3) Subject to the provisions of clauses (a), (c) and (h) of sub-section (1), any information relating to any occurrence, event or matter which has taken place, occurred or happened twenty years before the date on which any request is made under section 6 shall be provided to any person making a request under that section:

Provided that where any question arises as to the date from which the said period of twenty years has to be computed, the decision of the Government shall be final, subject to the usual appeals provided for in the Act.

9. *Grounds for rejection to access in certain cases.*—Without prejudice to the provisions of section 8, a Public Information Officer may reject a request for information where such a request for providing access would involve an infringement of copyright subsisting in a person other than the State.

10. *Severability.*—(1) Where a request for access to information is rejected on the ground that it is in relation to information which is exempt from disclosure, then, notwithstanding anything contained in the Act, access may be provided to that part of the record which does not contain any information which is exempt from disclosure under the Act and which can reasonably be severed from any part that contains exempt information.

(2) Where access is granted to a part of the record under sub-section (1), the Public Information Officer shall give a notice to the applicant, informing—

(a) that only part of the record requested, after severance of the record containing information which is exempt from disclosure, is being provided ;

(b) the reasons for the decision, including any findings on any material question of fact, referring to the material on which those findings were based ;

(c) the name and designation of the person giving the decision ;

(d) the details of the fees calculated by him or her and the amount of fee which the applicant is required to deposit ; and

(e) his or her rights with respect to review of the decision regarding non-disclosure of part of the information, the amount of fee charged or the form of access provided, including the particulars of the senior officer specified under sub-section (1) of section 16 or the State Information Commission, as the case may be, time limit, process and any other form of access.

11. *Third party information.*—(1) Where a Public Information Officer intends to disclose any information or record, or part thereof on a request made under the Act, which relates to or has been supplied by a third party and has been treated as confidential by that third party, the Public Information Officer shall, within five days from the receipt of the request, give a written notice to such third party of the request

and of the fact that the Public Information Officer intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information :

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such third party.

(2) Where a notice is served by the Public Information Officer under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.

(3) Notwithstanding anything contained in section 7, the Public Information Officer shall, within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2), make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.

(4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 16 against the decision.

CHAPTER III

The State Information Commission

12. *Constitution of State Information Commission.*—(1) The Government shall, by notification in the Government Gazette, constitute a body to be known as the Jammu and Kashmir State Information Commission to exercise the powers conferred on, and to perform the functions assigned to, it under the Act.

(2) The State Information Commission shall consist of—

(a) the State Chief Information Commissioner ; and

(b) two State Information Commissioners.

(3) The State Chief Information Commissioner and the State Information Commissioners shall be appointed by the Governor on the recommendation of a committee consisting of—

(a) the Chief Minister, who shall be the Chairperson of the committee ;

(b) the Leader of Opposition in the Legislative Assembly ; and

(c) a Cabinet Minister to be nominated by the Chief Minister.

Explanation :—For the purposes of removal of doubts, it is hereby declared that where the Leader of Opposition in the Legislative Assembly has not been recognized as such, the Leader of the single largest group in opposition of the Government in the Legislative Assembly shall be deemed to be the Leader of Opposition.

(4) The general superintendence, direction and management of the affairs of the State Information Commission shall vest in the State Chief Information Commissioner who shall be assisted by the State Information Commissioners and may exercise all such powers and do all such acts and things which may be exercised or done by the State Information Commission autonomously without being subjected to directions by any other authority under the Act.

(5) The State Chief Information Commissioner and the State Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

(6) The State Chief Information Commissioner or a State Information Commissioner shall not be a Member of Parliament or

Member of the Legislature of any State or Union territory, as the case may be, or hold any other office of profit or connected with any political party or carrying on any business or pursuing any profession.

(7) The headquarters of the State Information Commission shall be at such place in the State as the Government may, by notification in the Government Gazette, specify.

13. *Term of office and conditions of service.*—(1) The State Chief Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment :

Provided that the State Chief Information Commissioner shall not hold office as such after he has attained the age of sixty-five years.

(2) Every State Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such State Information Commissioner :

Provided that every State Information Commissioner shall, on vacating his office under this sub-section, be eligible for appointment as the State Chief Information Commissioner in the manner specified in sub-section (3) of section 12 :

Provided further that where the State Information Commissioner is appointed as the State Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the State Information Commissioner and the State Chief Information Commissioner.

(3) The State Chief Information Commissioner or a State Information Commissioner shall before he enters upon his office make and subscribe before the Governor or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the Schedule.

(4) The State Chief Information Commissioner or a State Information Commissioner may, at any time, by writing under his hand addressed to the Governor, resign from his office :

Provided that the State Chief Information Commissioner or a State Information Commissioner may be removed in the manner specified under section 14.

(5) The salaries and allowances payable to and other terms and conditions of service of—

(a) the State Chief Information Commissioner shall be the same as that of an Election Commissioner ;

(b) the State Information Commissioner shall be the same as that of the Chief Secretary to the State Government :

Provided that if the State Chief Information Commissioner or a State Information Commissioner, at the time of his appointment is, in receipt of a pension, other than a disability or wound pension, in respect of any previous service under the Government of India or under the Government of the State, his salary in respect of the service as the State Chief Information Commissioner or a State Information Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity :

Provided further that where the State Chief Information Commissioner or a State Information Commissioner is, at the time of his appointment, in receipt of retirement benefits in respect of any previous service rendered in a Corporation established by or under any Central Act or State Act or a Government company owned or controlled by the Central Government or the State Government, his salary in respect of the service as the State Chief Information Commissioner or the State Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits :

Provided also that the salaries, allowances and other conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall not be varied to their disadvantage after their appointment.

(6) The Government shall provide the State Chief Information Commissioner and the State Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under the Act, and the salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed for the purpose of the Act shall be such as may be prescribed.

14. *Removal of State Chief Information Commissioner or State Information Commissioner.*—(1) Subject to the provisions of sub-section (3), the State Chief Information Commissioner or a State Information Commissioner shall be removed from his office only by order of the Governor on the ground of proved misbehaviour or incapacity after the High Court, on a reference made to it by the Governor, has on inquiry, reported that the State Chief Information Commissioner or a State Information Commissioner, as the case may be, ought on such ground be removed.

(2) The Governor may suspend from office, and if deem necessary prohibit also from attending the office during inquiry, the State Chief Information Commissioner or a State Information Commissioner in respect of whom a reference has been made to the High Court under sub-section (1) until the Governor has passed orders on receipt of the report of the High Court on such reference.

(3) Notwithstanding anything contained in sub-section (1), the Governor may by order remove from office the State Chief Information Commissioner or a State Information Commissioner if a State Chief Information Commissioner or a State Information Commissioner, as the case may be,—

(a) is adjudged an insolvent ; or

(b) has been convicted of an offence which, in the opinion of the Governor, involves moral turpitude ; or

(c) engages during his term of office in any paid employment outside the duties of his office ; or

(d) is, in the opinion of the Governor, unfit to continue in office by reason of infirmity of mind or body ; or

(e) has acquired such financial or other interest as is likely to affect prejudicially his functions as the State Chief Information Commissioner or a State Information Commissioner.

(4) If the State Chief Information Commissioner or a State Information Commissioner is in any way, concerned or interested in any contract or agreement made by or on behalf of the Government or participates in any way in the profit thereof or in any benefit or emoluments arising therefrom otherwise than as a member and in common with the other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.

CHAPTER IV

Powers and Functions of the Information Commission, Appeal and Penalties

15. *Powers and functions of Information Commission.*— (1) Subject to the provisions of the Act, it shall be the duty of the State Information Commission to receive and inquire into a complaint from any person,—

(a) who has been unable to submit a request to the Public Information Officer either by reason that no such officer has been designated under the Act, or because the Assistant Public Information Officer has refused to accept his or her application for information or appeal under the Act for forwarding the same to the Public Information Officer or senior officer specified in sub-section (1) of section 16 or the State Information Commission, as the case may be ;

(b) who has been refused access to any information requested under the Act ;

(c) who has not been given a response to a request for information or access to information within the time limit specified under the Act ;

(d) who has been required to pay an amount of fee which he or she considers unreasonable ;

(e) who believes that he or she has been given incomplete, misleading or false information under the Act ; and

(f) in respect of any other matter relating to requesting or obtaining access to records under the Act.

(2) Where the State Information Commission is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.

(3) The State Information Commission shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, Samvat 1977, in respect of the following matters, namely :—

(a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things ;

(b) requiring the discovery and inspection of documents ;

(c) receiving evidence on affidavit ;

(d) requisitioning any public record or copies thereof from any court or office ;

(e) issuing summons for examination of witnesses or documents ; and

(f) any other matter which may be prescribed.

(4) Notwithstanding anything inconsistent contained in any other Act of the State Legislature, the State Information Commission may, during the inquiry of any complaint under the Act, examine any record to which the Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds.

16. *Appeal.*—(1) Any person who, does not receive a decision within the time specified in sub-section (1) or clause (a) of sub-section (3) of section 7, or is aggrieved by a decision of the Public Information Officer, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Public Information Officer, in each public authority :

Provided that such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) Where an appeal is preferred against an order made by a Public Information Officer under section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

(3) Where any Officer, at the time of deciding an appeal under sub-section (1) is of the opinion that the public Information Officer has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified or malafidely denied the request for information or has knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information he or she shall make a reference to that effect to the State Information Commission.

(4) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the State Information Commission :

Provided that the State Information Commission may admit the appeal after the expiry of the period of ninety days if it is satisfied that

the appellant was prevented by sufficient cause from filing the appeal in time.

(5) If the decision of the State Public Information Officer against which an appeal is preferred relates to information of a third party, the Information Commission shall give a reasonable opportunity of being heard to that third party.

(6) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Public Information Officer who denied the request.

(7) An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for reasons to be recorded in writing.

(8) The decision of the State Information Commission shall be binding.

(9) In its decision, the State Information Commission has the power to—

(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of the Act, including—

(i) by providing access to information, if so requested, in a particular form ;

(ii) by appointing a Public Information Officer ;

(iii) by publishing certain information or categories of information ;

(iv) by making necessary changes to its practices in relation to the maintenance, management and destruction of records ;

(v) by enhancing the provision of training on the right to information for its officials ;

(vi) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4 ;

(b) require the public authority to compensate the complainant for any loss or other detriment suffered ;

(c) impose any of the penalties provided under the Act ;

(d) reject the application.

(10) The State Information Commission shall give notice of its decision, including any right of appeal, to the complainant and the public authority.

(11) The State Information Commission shall within sixty days from the receipt of appeal decide the appeal in accordance with such procedure as may be prescribed :

Provided that the State Information Commission may decide an appeal within such extended period, not exceeding one hundred and twenty days from the date of filing thereof, as the case may be, for reasons to be recorded in writing. ~~extend.~~

17. *Penalties.*—(1) Where the State Information Commission at the time of deciding any complaint, appeal or reference is of the opinion that the Public Information Officer has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees :

Provided that the Public Information Officer shall be given a reasonable opportunity of being heard before any penalty is imposed on him :

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Public Information Officer.

(2) Where the State Information Commission, at the time of deciding any complaint, appeal or reference is of the opinion that the Public Information Officer has, without any reasonable cause and persistently, failed to receive an application for information or has not furnished information within the time specified under sub-section (1) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Public Information Officer under the service rules applicable to him.

CHAPTER V

Miscellaneous

18. *Protection of action taken in good faith.*—No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under the Act or any rule made thereunder.

19. *Act to have overriding effect.*—The provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in the State Official Secrets Act, Samvat 1977, and any other law for the time being in force or in any instrument having effect by virtue of any law other than the Act.

20. *Bar of jurisdiction of courts.*—No court shall entertain any suit, application or other proceeding in respect of any order made under the Act and no such order shall be called in question otherwise than by way of an appeal under the Act.

21. *Act not to apply to certain organizations.*—(1) Nothing contained in the Act, shall apply to such intelligence and security organizations being organizations established by the Government, as the

Government may, from time to time, by notification in the Government Gazette, specify :

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section :

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the State Information Commission and, notwithstanding anything contained in section 7, such information shall be provided within forty-five days from the date of the receipt of request.

(2) Every notification issued under sub-section (1) shall be laid before each House of the State Legislature.

22. *Monitoring and reporting.*—(1) The State Information Commission shall, as soon as practicable after the end of each year, prepare a report on the implementation of the provisions of the Act during that year and forward a copy thereof to the Government.

(2) Each Department shall, in relation to the public authorities within their jurisdiction, collect and provide such information to the State Information Commission as is required to prepare the report under this section and comply with the requirements concerning the furnishing of that information and keeping of records for the purposes of this section.

(3) Each report shall state in respect of the year to which the report relates,—

(a) the number of requests made to each public authority ;

(b) the number of decisions where applicants were not entitled to access to the documents pursuant to the requests, the provisions of the Act under which these decisions were made and the number of times such provisions were invoked ;

(c) the number of appeals referred to the State Information Commission for review, the nature of the appeals and the outcome of the appeals ;

(d) particulars of any disciplinary action taken against any officer in respect of the administration of the Act ;

(e) the amount of charges collected by each public authority under the Act ;

(f) any facts which indicate an effort by the public authorities to administer and implement the spirit and intention of the Act ;

(g) recommendations for reform, including recommendations in respect of the particular public authorities, for the development, improvement, modernization, reform or amendment to the Act or other legislation or common law or any other matter relevant for operationalising the right to access information.

(4) The Government may, as soon as practicable after the end of each year, cause a copy of the report of the State Information Commission, referred to in sub-section (1) to be laid before each House of the State Legislature.

(5) If it appears to the State Information Commission that the practice of a public authority in relation to the exercise of its functions under the Act does not conform with the provisions or spirit of the Act, it may give to the authority a recommendation specifying the steps which ought in its opinion to be taken for promoting such conformity.

23. *Government to prepare programmes.*—(1) The Government may, to the extent of availability of financial and other resources,—

(a) develop and organize educational programmes to advance the understanding of the public, in particular of disadvantaged communities as to how to exercise the rights contemplated under the Act ;

(b) encourage public authorities to participate in the development and organization of programmes referred to in clause (a) and to undertake such programmes themselves ;

(c) promote timely and effective dissemination of accurate information by public authorities about their activities ; and

(d) train Public Information Officers of public authorities and produce relevant training materials for use by the public authorities themselves.

(2) The Government shall, within eighteen months from the commencement of the Act, compile in the official language of the State a guide containing such information, in an easily comprehensible form and manner, as may reasonably be required by a person who wishes to exercise any right specified in the Act.

(3) The Government shall, if necessary, update and publish the guidelines referred to in sub-section (2) at regular intervals which shall, in particular and without prejudice to the generality of sub-section (2), include—

(a) the objects of the Act ;

(b) the postal and street address, the phone and fax number and, if available, electronic mail address of the Public Information Officer of every public authority appointed under sub-section (1) of section 5 ;

(c) the manner and the form in which request for access to an information shall be made to a Public Information Officer ;

(d) the assistance available from and the duties of the Public Information Officer of a public authority under the Act ;

(e) the assistance available from the State Information Commission ;

(f) all remedies in law available regarding an act or failure to act in respect of a right or duty conferred or imposed by the Act including the manner of filing an appeal to the Commission ;

(g) the provisions providing for the voluntary disclosure of categories of records in accordance with section 4 ;

(h) the notices regarding fees to be paid in relation to requests for access to an information ; and

(i) any additional regulations or circulars made or issued in relation to obtaining access to an information in accordance with the Act.

(4) The Government must, if necessary, update and publish the guidelines at regular intervals.

24. *Power to make rules by Government.*—(1) The Government may, by notification in the Government Gazette, make rules to carry out the provisions of the Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(a) the cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4 ;

(b) the fee payable under sub-section (1) of section 6 ;

(c) the fee payable under sub-sections (1) and (5) of section 7 ;

(d) the salaries and allowances payable to and the terms and conditions of service of the officers and other employees under sub-section (6) of section 13 ;

(e) the procedure to be adopted by the State Information Commission in deciding the appeals under sub-section (11) of section 16 ; and

(f) any other matter which is required to be, or may be, prescribed.

25. *Power to make rules by competent authority.*—(1) Subject to the provisions of section 24, the competent authority may, by notification in the Government Gazette, make rules to carry out the provisions of the Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :—

(a) the cost of the medium or print cost price of the materials to be disseminated under sub-section (4) of section 4 ;

(b) the fee payable under sub-section (1) of section 6 :

(c) the fee payable under sub-section (1) of section 7 ; and

(d) any other matter which is required to be, or may be, prescribed.

26. *Laying of rules.*—Every rule made by the Government under the Act shall be laid, as soon as may be after it is made, before each House of the State Legislature, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be ; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

27. *Power to remove difficulties.*—(1) If any difficulty arises in giving effect to the provisions of the Act, the Government may, by order published in the Government Gazette, make such provisions not

inconsistent with the provisions of the Act as appear to it to be necessary or expedient for removal of the difficulty :

Provided that no such order shall be made after the expiry of a period of two years from the date of the commencement of the Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of the State Legislature.

28. *Repeal and saving.*—(1) The Jammu and Kashmir Right to Information Act, 2004 and the Jammu and Kashmir Right to Information (Amendment) Act, 2008 are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken or any order made before such repeal shall be deemed to have been done, taken or made, as the case may be, under the corresponding provisions of this Act.

SCHEDULE

[*See section 13 (3)*]

FORM OF OATH OR AFFIRMATION TO BE MADE BY THE STATE CHIEF INFORMATION COMMISSIONER/THE STATE INFORMATION COMMISSIONER

"I, _____having been appointed State Chief Information Commissioner/State Information Commissioner Swear in the name of God that I will bear true faith and allegiance Solemnly affirm

to the Constitution of the State as by law established, that I will uphold the sovereignty and integrity of India, that I will duly and faithfully and to the best of my ability, knowledge and judgement perform the duties of my office without fear or favour, affection or ill-will and that I will uphold the Constitution and the laws"."

(Sd.) MOHD ASHRAF,

Additional Secretary to Government,
Law Department.