



## Right to Information with Private Business

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## **I. Introduction**

In the last decades there has been a lot of movement regarding Governments disclosure and access to official information. Governments started to recognize the importance of access to information for enhancing democratic engagement, building confidence in government institutions and strengthening their credibility and effectiveness.

Since 1766, when Sweden's Freedom of the Press Act passed, over 85 countries around the world have implemented some form of freedom of information legislation. One of them is India that passed the Right of Information Act in 2005 after some years of pressure and work on it. While most of those acts regard rules that guarantee access to data held by the state, lately it has increased the need to get access to information held by private business.

Private business, through globalization of the markets and privatization, are gaining more and more power and some of the sovereign functions have been transferred to them, enabling them to strongly impact social, cultural and environmental rights of people and communities. Apart from asking to business to be more social responsible, through the movement of CSR, there is now also a need to empower people and communities with the power of information in order to make them able to protect their rights and prevent discrimination. What corporations put in place should be amenable to public control, not merely control by shareholders, because all civil society could be affected, not just shareholders.

A recent survey<sup>1</sup> showed that 86 per cent of about 4,000 people aged 15 or older in Europe, expressed a preference for purchasing a product from a company 'engaged in activities to improve society' (Fleishman Hilliard, 'Consumers Demand Companies with a Conscience', London). In the UK, the Co-operative Bank report on ethical consumerism recently found that consumers expect more, as citizens, from business corporations.

In Indian context, the starkest conflicts involving corporations and people are being played out amidst communities that are seeking to retain community control over resources (land, water, forests and minerals). Guhagar, Kashipur, Kalinganagar, Singur, Nandigram, Chengara, Bhopal, Raigad, Mettur, Jadugoda, Plachimada, Narmada valley, Niyamagiri are some of the places where many people have died violent deaths as a result of their conflicts with the State or the corporate sector, or both for keeping their land. When a corporation or the government makes a bid for the land used by indigenous peoples, peasants, landless agricultural laborers, forest-dwellers or cattle-herders, the latter are not given a chance to reject the proposal. With the providing to the community with information regarding those takeovers would empower them to fight to their rights not on filed but on Courts.

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<sup>1</sup> Fleishman Hilliard. (1999). Consumers demand companies with a conscience. Fleishman Hilliard, Europe, London.

Indeed, in the instance of Tata's Singur car factory, the Calcutta High Court ruled that the peasants could not refuse to yield their land because the land was being acquired for a "public purpose". Tata Motors' Nano factory had been transformed into a national project.

## **II. The Right to Information**

Right to information is a fundamental right for every society that claims to be truly free. Information empower people giving them the knowledge to demand their governments and others institutions political, economical and social rights. Right to information is not only about providing simple entitlements but it secures democratic space especially to marginalized communities which are the ones that mostly suffer from an unjust system. (Sihag & Sihag, 2009)

It is founded on the idea that public bodies hold information not for themselves but on behalf of the public and should use that information to improve public life.

Evidence suggests that there is a strong correlation between a country having a law guaranteeing access to information to the people and their perception of the levels of corruption in government (Burgman, Gage, Cronin, & Mitra, 2007). Access to information is antithetic to corruption, inefficiency and kryptocracy and its proper utilization is known to have had the effect of deepening democracy, fuelling equitable and shared growth, checking corruption and inefficiency, restoring faith in the bodies and making them open and accountable.

Nowadays, the State is withdrawing from the public arena giving more space to companies, trusts, societies and associations enabling them with the power to affect the lives of the citizens. Information from business and their accountability is more than an issue right now. An example of this need could be the Bhopal gas tragedy of 1984, which killed thousands of innocent people.

Right to information with customer and civil society is an issue also from a business point of view. Business to stakeholder relationship is one of the important tasks that a company has to follow. For a company to establish and develop good stakeholders relationship it have to provide good information in order to be trusted. According to Edelman trust barometer<sup>2</sup>, which is Edelman firm study of trust and credibility, there are no doubts that there are tangible consequences for businesses that gain—or lack—the trust of their stakeholders. Trust influences consumer spending, corporate reputation, and a company's ability to navigate the regulatory environment. Trust hits the bottom line. Over a 12-month period, 91% of the interviewed said they had bought a product or service from a company

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<sup>2</sup> The 2009 Edelman Trust Barometer is the firm's 10th study of trust and credibility. A 30-minute telephone survey was conducted among 4,475 people in 20 countries on five continents between November 5 and December 14, 2008. For the first time, the survey sampled two different age groups concurrently in every country (1,075 people ages 25 to 34 and 3,400 people ages 35 to 64) and added Australia and Indonesia to the list of countries surveyed.

they trusted, while 77% had refused to buy a product or service from a distrusted company. Always according to this study, being able to trust a company and the company transparency are the most important factors in determining a company's reputation (Edelman, 2009).

To work effectively the right to information should be promoted and realized through the enactment of a domestic law. The first country to legally guarantee its people the right to access information held by its government was Sweden in 1766. Over the last 10 years right to information movements spread all over the world for three main reasons: an increased attention from multilateral organization and bilateral donors that are more and more concerned about government corruption; the emergence of new democracies coming from the collapse of authoritarian regimes and an increased attention posed by media and civil society organization to the acts made by governments both locally and internationally (UNDP, 2004).

Most of the Right to information act developed does not explicitly cover the issue of information with private business, leaving this topic to be covered by others legislation (or not covered at all). But there are cases, like the Promotion of Access to Information Act (South Africa) and the more recent Right to Information Act in Bangladesh that do include this issue.

South Africa Promotion of Access to Information Act is a really interesting example and it has been taken as a study case for two main reasons: first it is based on a specific constitutional right of access to information, secondly the right and consequently the Act is applicable not only to information held by governments but also to information in hand of private sector (Currie, 2003).

Inside Indian Right to Information Act there is some space of interpretation that might enable the inclusion of private business in the provision of the Act but the issue needs to be developed and this is the purpose of the article.

### **III. Right to Information with Private Business**

As previously stated private business are expanding their business and are replacing the State in some of its activities. Doing so private business have a deeper impact on civil society and human rights and are more free to operate because most of the time nobody is checking on their behavior and they have no public issue constrains. Private businesses usually do not have to serve the public purpose as governments and be accountable for that. The only thing private companies are accountable for, to their shareholders, is maintaining their mission and make profit.

This is the old business in society view. Now civil society is gaining more power, thanks also to NGOs work for it, and it asks to business not only to pursue their mission and make profits but to do so in a way that would do no harm to human rights and the environment. Business impacts human rights in very different way and should be accountable for that.

Companies which perform public functions or whose activities may affect the public interest or particular communities are understood to face positive disclosure obligations regarding the potential

risks and impacts on human rights. Indeed, secrecy regarding potential impacts of company activity undermines the public's right to freedom of information, which in turn limits the public's ability to hold government officials and company employees accountable to human rights standards.

### **Business and Human rights**

A study made by the International Network for Economic, Social and Cultural Rights (ESCR-Net) shown that business impacts on human rights are widespread and not limited to certain countries. Business enterprises have had significant negative impacts upon the enjoyment of all types of human rights, in different political systems, around the world and across industries.

Human rights is a broad issue, specifically business can affect: the rights to life, liberty, and security of person, freedom from torture, arbitrary detention and disappearances, rights to livelihood, health, water, food, and a clean and healthy environment, rights to housing and security of tenure, indigenous rights, including rights to self-determination, free, prior and informed consent, participation in decision-making, and the use, management, and conservation of natural resources on their lands, cultural rights, freedom from forced labor, child labor, gender and race discrimination in the workplace, rights to work, adequate remuneration, and a safe working environment, freedom of association and rights to form trade unions and to collective bargaining, freedom of expression, the right to seek, receive and impart information, and to participate in public life, and the right to an effective remedy including timely investigations, fair trials, enforcement of judgments and compensation.

They can do it directly or engaging business with third parties that are involved in those activities.

There have been many cases where it happened and the serious lack of effective redress and accountability mechanism for people suffering from business related abuses lead to no actions to restore their dignity and hold perpetrators to account. Business enterprises also reportedly interfere with the right to information and human rights protection by refusing to provide complete or accurate information on potential hazards posed by their operations.

Here are now presented some cases of business interfering in human rights issues.

#### **\_\_\_Tata Steel Case**

Focusing on indigenous rights, to make an example, they can be affected in different ways especially when business activities cause environmental destruction, degradation or pollution to sensitive areas on which indigenous people depends. Those activities could threat indigenous right to life, food, water and livelihood preventing indigenous access to essential resources. Moreover, usually, States take little care about those people and have a tendency to put the claim of "public interest" of economic development at the top issue and fail to meaningfully consult with indigenous people over the concession of the lands to private business. This is what happened in Singur Hooghly during the

acquisition by **Tata Steel** of land. The indigenous were given little information regarding the take-over and concession on indigenous land is rarely subject to judicial review in domestic courts and rarely taken to seek access to national justice. Bengal reports that the government there unleashed a series of abusive actions, including surveillance and assaults of villagers for over a period of seven months in response to their resistance against displacement due to land acquisition by Tata Steel.

Furthermore, currently, Tata Steel with several smaller companies operates chromites mines in the Sukhinda Valley. According to Choudhry, Tata's presence in Sukhinda testifies to the company's contribution to the local economy and its tribal-friendly credentials. Sukhinda, though, was singled out as a highly polluted area by the comptroller auditor general. The Domsala River and 30 streams that run through the valley are contaminated with dangerous levels of hexavalent chromium leaching from overburden dumps. One study funded by the Norwegian Government under the Orissa Environment Program found that almost 25 percent of people living less than 1 km from the sites suffered pollution-induced diseases<sup>3</sup>.

What it is asked to business now is to be more accountable, to start more core business related CSR policies and to give access to its information.

### **\_\_\_CSR and green washing activities**

Sometimes it is taken as a fact that a company that is doing CSR activities is an “acting for good” company. But it is not always like that. Most of the time companies are undertaking social and philanthropic activities just for the purpose of enhance their image but those activities are unrelated with the its core business and are not in fact preventing the company to behave irresponsibly towards society.

In January 2004, in Johannesburg, there has been a UN Submit on UN's Global Compact, Corporate Accountability and the Greenwashing. There it has been developed a proposal for a Framework Convention on Corporate containing different innovative elements including the need to enhance the rights of redress for citizens, as well as access for affected people anywhere in the world to pursue litigation where corporations are listed, a provision for legal challenge to company decisions by stakeholders, and a legal aid mechanism to provide public funds to support such challenges; the community **rights to resources**, including indigenous people's rights over common property such as forest, fisheries and minerals, veto rights over development projects and against displacement and a right to compensation for resources expropriated by corporations and sanctions against companies breaching these duties, for example suspending stock exchange listing, fines and (in extreme cases) de-chartering or withdrawal of limited liability status.

### **\_\_\_Dow chemical company's Global Water initiative**

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<sup>3</sup> <http://www.corpwatch.org/article.php?id=13620>

On the night of December 2-3, 1984, Union Carbide's pesticide factory (part of Dow Group from 2001) in Bhopal, India, leaked a deadly cloud of methyl iso-cyanate gas that floated out into the surrounding area. 8,000 people lost their lives in the immediate aftermath of that terrifying night. According to Bhopal Medical Appeal, at least 25,000 people have died in total as a result of the tragedy. Now, 25 years after the disaster, Dow Chemical has jet to clean up the contaminated site so the poisons continue to pollute the groundwater that more than 30,000 people rely on for drinking water.

Dow Chemicals, clearly not relating this new activity and its core business and duties, launched the Global Water Initiative affirming that "Dow will lead the charge in helping to address the global water crisis by setting the standard for sustainable water use and management. (...)Dow will develop innovative technologies and business models that lower the cost of water purification, set new levels for efficient water use at Dow's manufacturing facilities, and use creative partnerships to increase the global sense of urgency to solve this problem." These activity could sound good to customers but it also show the weakness of the company that is unable to take its responsibility about the disaster and clean Bhopal site as a top issue and only after that undertake new activities and strategies for sustainable water use and management.

### **\_\_\_Satyam's scandal and CSR**

Satyam System, one of the most important Indian IT Company, has been involved in fraudulent financial activities in January 2009 when its chairman Ramalinga Raju confessed that Satyam's accounts had been falsified. However, if you go on the company web site now, there are some news items about the recent unsavory envelopments in the company and there is hardly a hint of self-criticism. It shows, instead, that the corporation has bagged every conceivable award including awards for "providing complete, accurate and timely investor relations information (providing *anti-money laundering solution* of all things!)" and for being the "most admired knowledge enterprise". If so, how the scandal could happen?

### **Being Accountable, reputation and transparency**

One of the biggest challenges for business is accountability: the extent to which companies are transparent and accountable not only to their shareholders but also to their diverse and demanding global stakeholders. For business, accountability and sustainability are concepts that connect to the core of management discipline and strategic vision; they can safeguard brand reputation and shareholder value and become the basis of new business opportunities, markets and customers. (Freeman, 2006)

The corporate governance scandals and accounting failures starting in late 2001, from Enron to the Lehman Brothers to Satyam scandals, have substantially damaged trust in many companies, especially in their communications and reports. Civil society, to give back trust to business, is asking the companies to be more transparent supplying them with the information they need.

What does transparency means? Transparency is a relative term that can refer to different issues according to the subject. It can be referred to the: *availability of information*, meaning that a company or government agency has invested in acquiring a piece of information (for example, the toxic elements in drinking water); *accessibility*, meaning that a company or individual can purchase information available from another source, or a taxpayer can request information in the government domain through a Freedom of Information Act request; *visibility*, meaning that the information is widely distributed and easily understandable( for example through a news broadcast, or interactive map available on Google Earth) or the *ability to take action*, meaning to file a petition, engage in a protest, or compile a viral Internet campaign .

True transparency involves communicating management actions, intentions and assumptions with regard to strategy, operations management and market trends. Being transparent does not mean one has to reveal confidential information or give away company secrets. Rather, it can entail explaining an organization's motives, responsibly alerting customers to potential product risks or setting expectations with employees.<sup>4</sup>

Transparency is one of the tool in order to build and mantain a strong corporate *reputation*. In a study made by Mazzola, Ravasi and Gabbioneta reported by Eccles, Grant and Riel, it has been found that there are three key elements for building and maintaining a company's reputation and transparency: the first is knowledgeable, respected and committed leadership, starting with the personal reputation of the CEO; the second key element is the importance of transparency in the company's strategic plans and the third element regards the quality of a company's internal control systems in terms of their effectiveness, credibility and independence from being compromised by management. Moreover the authors emphasize the importance of going beyond legal requirements for disclosures to provide the market with information that will convince it that management is getting the right balance between strategic risk-taking and accountability. A central argument is that the market will reward companies for greater transparency. Disclosure policies those are consistently transparent, especially about forward-looking information on non-financial performance that is a leading indicator of future financial results, can result in a more stable shareholder base and thus a lower cost of capital (Gietzmann).

Company reputation is a really important issue in the business world right now. In the 2010 Edelman Global Trust Barometer, for the first time, trust and transparency rank as important to corporate reputation as the quality of products and services. In fact, in the U.S. and in much of Western Europe, those two attributes rank higher than product quality—and far outrank financial returns.<sup>5</sup> For any company, promoting a positive image to the outside world is a factor that will help it to recruit and retain the best staff, increase sales and build successful strategic relationships. For listed

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<sup>4</sup> <http://socialendeavorsblog.com/2010/02/17/why-transparency-matters-impacting-reputation/>

<sup>5</sup> <http://www.socialmediatoday.com/SMC/169742>

companies, this is even more important as it will also impact on the way that the financial community grades, rates and invests in them.

### **A. South Africa Right to Information Act and Business**

South Africa has one of the most progressive freedoms of information laws in the world; it is no doubt a reflection of the profound mistrust the apartheid era instilled in people regarding government. Many years of apartheid characterized by the minority government suppressed information in order to immobilize the opposition and repress the population, made the need and right to information became the key to the liberation movement both within the country and for its supporters outside of South Africa. The PAIA (Promotion of Access to Information) has been seen as one of the important elements of transition from apartheid and was both radical and broad-ranging in its scope.

Quoting section 32 of the South African Constitution of 1996 states:

“Everyone has the right of access to – (a) any information held by the state, and; (b) any information that is held by another person and that is required for the exercise or protection of any rights; National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.”

Coming from this quotation, the Promotion of Access to Information Act (PAIA) was approved by South Africa Parliament in February 2000 and went into effect in March 2001. Under the Act, any person can demand records from government bodies without showing a reason. State bodies currently have 30 days to respond. What is unique regarding the Act is the fact that it also includes a provision (as required in the Constitution) that allows individuals and government bodies to access records held by private bodies when it is necessary to enforce people's rights. Public and private organizations must publish manuals describing their structure, functions, contact information, access guide, services and description of the categories of records held by the body. Government bodies must also publish a list of categories of information that is published without requiring an access request.

The functioning of the Act is monitored by the South Africa Human Rights Commission .It is required under the law to issue a guide on the Act and submit reports to Parliament. It can also promote the Act, make recommendations, and monitor its implementation.

South African Human Rights Commission is a national institution responsible for protecting, promoting and monitoring the enjoyment of human rights and so SAHRC is obliged to assist where reasonably possible any person who wishes to exercise a right in terms of PAIA. The functions and obligations of SAHRC are: to produce and make a copy of the Guide to PAIA available to the public; to develop and conduct educational programmes to enhance the understanding of PAIA by the public, especially concerning disadvantaged communities, teaching them how to use it and how to

exercise their rights and encourage both public and private bodies to participate in these programmes and undertake their own; to train information officers and deputy information officers of public bodies; to consult with and receive reports from public and private bodies on the problems they have encountered in complying with PAIA; to compile and submit a report to Parliament annually on the implementation and the results of the right to access to information in SA.

PAIA, as said, give access to information held both from private and form public bodies. For the purpose of this paper, we will now focus on PART III of the Act, which regards private bodies: what is asked to them by the Act and how to access to their information according to it. The information provided are from “The Guide on how to use the Promotion of Access to Information Act - Act 2 of 2000” published by SAHRC.

### **\_\_\_PAIA and Private Bodies**

Under the Act, "**private body**" is defined as: (a) a natural person who carries or has carried on any trade, business or profession, but only in such capacity; (b) a partnership which carries or has carried on any trade, business or profession; or (c) any former or existing juristic person, but excludes a public body.

Another useful definition coming from section one of the Act is the definition of **record** which is “any recorded information, regardless of form or medium, which is in the possession of that body, whether or not it was created by that body”. But, however every public body is required to appoint an information officer to render the public body more accessible, there is no mention of this request to a private body.

According to the SA Human Rights Commission, it is a legal requirement that all public and private bodies prepare and submit information manuals - called **Promotion of Access to Information Act (PAIA) manuals** - to the Commission. Failure to submit the manuals to the Commission may constitute a criminal offence under the South African Human Rights Commission Act No 54 of 1994, and the Commission reserves the rights to subpoena and refer any public or private body to the relevant authority in order to institute criminal proceedings against such a body”.<sup>6</sup>

### **PAIA Information Manuals**

The manuals are books or documents in any form which are produced by all public bodies as well as private bodies. The manuals contain information on how to use PAIA to access the records of the body that made it. All private bodies in the Republic of South Africa are required to compile a manual in terms of **section 51** of PAIA. Immediately after a manual has been compiled by a private body, the head of a private body must make a copy of the manual available to the South African Human Rights Commission, to the controlling body of which that private body is a member, if applicable; must make the manual available on the website, if any, of the private body and the head

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<sup>6</sup> [http://www.southafrica.info/public\\_services/citizens/your\\_rights/paia.htm](http://www.southafrica.info/public_services/citizens/your_rights/paia.htm)

of a private body may publish the manual in the Government Gazette<sup>7</sup>. The aim of the various distribution centers is to enable easier to any person to obtain access to the manual made by the body.

In the information manual should be found the following information:

- The postal and street address, phone and fax number and, if available, electronic mail address of the head of the private body;
- A description of the PAIA Guide compiled by the South African Human Rights Commission and how to access it;
- The latest notice, if any, regarding the categories of records of the private body which are available without a person having to request access in terms of PAIA;
- A description of the records which the private body keeps in compliance with any other legislation;
- Enough information to assist any citizen in making a request for access to a record held by a private body;
- A description of the subjects on which the private body holds records, and the categories of records held on each subject;

Moreover, for security, administrative or financial reasons, the Minister may, on request and by notice in the Government Gazette exempt any private body or category of private bodies from compiling a manual for such period that the Minister thinks fit.

The head of a private body may, on a voluntary and periodic basis, develop a list of information that is automatically available from the private body without having to make a formal request. This list is called a **section 52 notice** or voluntary disclosure notice. After compiling the notice, the head of a private body may forward it to the Minister of Justice and Constitutional Development who would decide whether to publish it in the Government Gazette or not.

The voluntary disclosure notice assists members of the public to differentiate between records or information that is automatically available, and records that should be requested formally. The notice serve to minimize unnecessary request, making some information already disclosed and known. While this kind of disclosure is mandatory for public bodies, for private bodies as said is voluntary.

The categories of records that are automatically available must include a description of those records that are available: for inspection in terms of legislation other than PAIA; for purchase or copying from the public body; and from the public body free of charge.

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<sup>7</sup> Government Notice: No. R. 1244

The head of a private body may delete any part of a record which on a request for access, may or must be refused in terms of the grounds for refusal of access to records. He/she must describe how to access such records that are voluntarily disclosed and automatically available.

If appropriate, the Minister must on a periodic basis and, by notice in the Government Gazette publish any description of the records so submitted and update any such description. The only fee payable, if any, for access to a record that is voluntarily disclosed and automatically available is a prescribed fee for reproduction.

#### **Annex 1: Manual standard form**

- Request information: To request information, the requester has to fill a form, called Form C. The request form must be completed and submitted to the head of the private body from which access to a record is sought at his address, fax number or electronic mail address.
- In the request form, the requester is required to provide the following information:
- Sufficient particulars to enable the head of the private body to identify the requester;
- Sufficient particulars to enable the head of the private body to identify the record, including the reference number, if that is known to the requester.
- Clearly indicate the form of access or nature of the record in which the record should be provided;
- The postal address or fax number of the requester in the Republic;
- State the manner in which the requester would like to be informed about the decision on the request;
- If the request is made on behalf on another person, to submit proof of the capacity in which the requester is making the request;
- The requester must state the right that is to be exercised or protected and why the record requested is required for the exercise or protection of such right.

The head of the private body to which the request is made will notify the requester in writing to pay the prescribed request fee, if any, before processing the request. If the requester requires access to records of his/her personal information, he/she does not have to pay a request fee.

If the access to the information requested is denied by the head of the private body, or by a decision taken in terms of section 54 relating to fees payable for and in connection with access to records of the private body, section 57(1) relating to the extension to deal with the request, or section 60 relating to the form of access, the requester or a third party may within 30 days, through an application, apply

to court (Magistrates' Court)<sup>8</sup> in order to receive appropriate relief. The court will then review the request and decide whether in fact the head of the private body should give you the information you requested or not.

When a private body can refuse access? Here is a summary of the main ground for refusal<sup>9</sup>:

- Mandatory protection of privacy of a third party who is a natural person. However the private body has to give access if: the individual has given a written permit for disclosure of such information; the private body previously inform the individual or if the information is about an individual who is or was an official of a private body, and the information relates to the position or functions of the individual.
- Mandatory protection of commercial information of a third party. Information that could be on: trade secrets of a third party; Financial, commercial, scientific or technical information of a third party, other than trade secrets, where the disclosure thereof would be likely to cause harm to the commercial or financial interests of that third party; Information supplied to the third party in confidence, and if disclosed would place the third party at a disadvantage in contractual or other negotiations, or prejudice the third party in commercial competition.
- Mandatory protection of certain confidential information of a third party;
- Mandatory protection of safety of individuals, and protection of property;
- Mandatory protection of records privileged from production in legal proceedings;
- To protect its commercial information like trade secrets of the body; financial, commercial, scientific or technical information, other than trade secrets, and the disclosure thereof would likely cause harm to the commercial or financial interests of that body; contains information, the disclosure of which could reasonably be expected to put the private body at a disadvantage in contractual or other negotiations; or prejudice the body in commercial competition; or to protect a computer programme as defined in the Copyright Act, No. 98 of 1978, which is owned by the private body, unless it is required to give access to a record in terms of PAIA. However, a record may not be refused if it consists of information about the results of any product or environmental testing or investigation(excluding the results of preliminary testing or investigations conducted for developing methods of testing), carried out by or for the public body, and the disclosure thereof would reveal a serious public safety or environmental risk.
- Mandatory protection of research information of a third party, and protection of research information of a private body

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<sup>8</sup> Section 79 of PAIA

<sup>9</sup> Part 3, Chapter 4 of PAIA

Despite the above listed grounds for refusal, the head of a private body must grant a request for access to a record of that body if, the disclosure thereof would reveal evidence of:

- A substantial contravention of, or failure to comply with the law; or
- An imminent and serious public safety or environmental risk; and the public interest in the disclosure of the record, outweighs the harm contemplated under the ground for refusal.

### **\_\_\_South Africa Standard Bank PAIA**

Standard Bank Group (SASB) is South Africa's largest bank and it can be distinguished by its extensive operations in 17 African countries. Outside the African continent, Standard Bank Group operations span to 16 countries, with an emerging market focus. Standard Bank Group is a universal bank and full-service financial group offering transactional banking, saving, borrowing, lending, investment, insurance, risk management, wealth management and advisory services.

The group had total assets of over R1 345 billion (approximately \$182 billion) at 31 December 2009 and employed more than 50 000 (including Liberty) people worldwide. Standard Bank's market capitalization at 31 December 2009 was R159 billion (approximately \$22 billion). The SASB has played a central role in the development of the Southern African economy for more than 140 years. It has done this by constantly aligning its presence in the market place with the evolving needs of the region's economies, and delivering relevant banking and financial services. In recent years, Standard Bank has concluded a number of key acquisitions in Argentina, Kenya, Nigeria and Turkey to consolidate our position in targeted geographic markets.

On Standard Bank South Africa web site there is a section dedicated to the Promotion of Access to Information Act under the section "Banking Regulation". First there is a quick overview of the Act in general then there are provided links to:

- Information for Standard Bank customers :in this section it is said that all Standard Bank customers are allowed access to their own information without having to use the request for access to information procedure as set out in the Act, including: bank/financial statements, account information, personal records and voice recordings, just contacting the relevant Standard Bank department.
- The procedure that must be followed when making a request for access to information. It consists in the description of the different steps that the requester has to follow to get the information he/she wants and the description of the Information Office work. First the requester must complete the prescribed form and must deposit a request fee of R50 to ensure that processing takes place (the account number is provided). Then, completed request form and proof of deposit must be sent to the Standard Bank Group Information Officer. Upon receipt of the request form and proof of deposit the Group Information Officer shall: assess the request form to ensure completeness and then process it. If a third party is involved, notify it, and then the Information Office has to decide whether to grant or deny the request

and let the requester know of the decision and notify him/her about the payable access fee if the request is granted or repay the R50 request fee to the requester if the request is refused.

- The contact person at Standard Bank
- Request Form ( Annex 2)
- The Standard Bank Information Manual (Annex 3). The manual has been written in accordance with the Section 51 of the Act. It provides a short introduction about the Act and SAHRC, the availability of the manual and information office contact details. Then there is a list of the records held by the Bank divided by topics: internal records, employee records, work related records and other parties. In this part the Bank states that even the Bank is holding the record, it does not mean that the access to it will be granted; any request will be evaluated. The next section of the manual regards the step that the requester should consider before submitting the request. The aim of this section is to avoid unnecessary requests. The steps are: make sure that the requester is entitled to use the Act to request access; check if the information request exist in the form of a record and if it possessed or under control of the Bank. Section 6 describes how to submit the request focusing on: how to compile the request form; the inclusion of the description of the right that the requester is seeking to protect or enforce; the role of representatives is any; the case of illiteracy of disability (in this case the request can be done orally) and the prescribed fee. To the prescribed fee is dedicated all section7. There are two kinds of fees: the request fee which is standard and the access fee which must be calculated by taking into account reproduction costs, search and preparation time and cost. In section 8 and 9 there are described the mayor case when the request will be refused and the remedy in the hand of the requester: take the issue to court.

### **\_\_\_MTN South Africa Case**

MTN is one of the two (the other one is Sasol) South African Companies listed in the “2009 World’s Best Companies” (MTN scored the seventh place) a research made by a management consulting firm A.T. Kearney. In the research there had been highlighted those companies that were able to expand their business and perform well despite the financial crisis and succeeded in generating nearly 15% value growth in the last 5 years. Most of those companies rely on technology, innovation, customer intimacy and trust as a fuel to organic growth than on mega-acquisitions. (ref)

Started in 1994, MNT is now the leader in the mobile telephone sector in Africa and Middle East and has been named by Ask Africa Orange Index Survey the leading customer service provider in the telecommunications industry. One of its factors of success has been its ability to be sensitive to different economic and social conditions and regulatory requirement across the regions, like the implantation of PAIA (ref).

Even though 10 years had passed since the PAIA was made into force, many private companies still haven't accomplished the requirement from the Act. Most of South Africa companies provide lot of information on their web site and have a customer service clearly stated but they don't provide their Paia manual even if it is mandatory by law.

A better implementation of PAIA requirements can be seen on the web site of public utilities companies or partly public companies.

Moreover the SAHRC web site does not provide any information or support regarding its work for PAIA.

## **B. Bangladesh**

Right to information act come to force in Bangladesh in 2009 as a culmination of a long process started in 1983. The RTI Act gives the citizen the right to ask for information from the government, non-government and other institutions, while it also creates the opportunity for those in positions of power to devolve it through sharing of information.

With the RTI Act the Bangladesh government is trying to ensure that transparency and accountability in all public, autonomous and statutory organizations and in private organizations run on government or foreign funding shall increase, corruption shall decrease and good governance shall be established.

## **C. Indian Right to Information Act and Business**

The Right to Information Act in India, has been enacted by Indian Parliament in 2005 after many years of public debate and after freedom of information laws had been passed in a number of Indian States (first in Tamil Nadu (1997) then Goa (1997), Rajasthan (2000), Karnataka (2000), Delhi (2001), Maharashtra (2002), Madhya Pradesh (2003), Assam (2002) and Jammu and Kashmir (2004)). RTI Act has its foundations from art 19(a) (Right to expression) and art 21 (Right to life and liberty) of Indian Constitution.

The scope of the act is "to provide for setting out the practical regime of right to information for citizens"<sup>10</sup>. Under the provisions of the Act, any Indian citizen has been given the right to obtain information from all public authorities that mean the right to: inspect works, documents and records; take notes, extracts or certified copies of documents/records/samples; obtain information in printed or electronic form. However, there are two conditions that must be satisfied for obtaining any information under the Act by a citizen: firstly, the information should be held by the public authority or should be under the control of a public authority, and secondly, the information must not be exempt from disclosure as per the RTI Act. (PRIA, 2007)

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<sup>10</sup> <http://cic.gov.in/rti-act.htm>

The Act also requires every public authority to computerize their records for wide dissemination and to proactively publish certain categories of information so that the citizens need minimum recourse to request for information formally. In each Public Authority there must be designated a Public Information Office (PIO) and an Assistant PIOs at sub-divisional levels if needed. The duties of PIOs are: accept requests and give information within time limit; give information in the format requested as far as possible; if partial access is granted they have to give reasons why and the materials on the basis of which this decision was taken. Requests must be made in writing, although where individuals have difficulties with this, the Public Information Officer is required to provide "all reasonable assistance" to them.

The Department of Personnel and Training (DoPT) is in charge of implementing the Act.

The Act<sup>11</sup> also state that Central Information Commission (CIC) or State Information Commission (SIC) should be settled and their duty is to receive and inquire into a complaint from any person: who has been unable to submit a request to a PIO, either by reason that no such officer has been appointed under this Act, or has refused to accept his or her application for information; who has been refused access to any information requested under this Act; who has not been given a response to a request for information or access to information within the time limit specified under this Act; who has been required to pay an amount of fee which he or she considers unreasonable; who believes that he or she has been given incomplete, misleading or false information under this Act; and in respect of any other matter relating to requesting or obtaining access to records under this Act.

The Central Information Commission or State Information Commission while inquiring into any matter under its duties, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters: 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; requiring the discovery and inspection of documents; receiving evidence on affidavit; requisitioning any public record or copies thereof from any court or office; issuing summons for examination of witnesses or documents; and any other matter which may be prescribed.<sup>12</sup>

## **Request information**

A citizen to obtain information has to submit the application to the PIO or the assistant PIO of the public authority under whose jurisdiction the subject matter of the application falls. If the application is submitted to a public authority for information, but it is held by another public authority, then the public authority to which the application has been made is under duty to transfer the application to the public authority, which has the information. The application can be made on a plain paper, and there is no prescribed form or format for writing on it. The applicant is not required to give any

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<sup>11</sup> <http://www.cic.gov.in/>

<sup>12</sup> <http://www.cic.gov.in/>

reasons for requesting the information; he is only required to give his contact details/addresses, so that the information sought can be sent to him by the PIO (PRIA, 2007).

The procedure of securing information is very simple and it is described in section 6 of the Act. A citizen has to merely make a request to the concerned PIO specifying the information sought by him. The fee payable should be reasonable and information is to be provided free of cost to citizens living below the poverty line.

In order to assure a fixed time period, section 7 of the Act states that it is mandatory for the PIO to provide the information within 30 days. Moreover, if the information requested concerns the life or liberty of a person, it has been mandatory to provide it within 48 hours since the receipt of the request.

The Act set *penalties* in case of failure to provide information in time, or for refusing to accept application for information, or for giving incorrect, incomplete or misleading information, or destroying information and so on. In addition, the Information Commission has also been empowered to recommend disciplinary action against the government servants.

Only individual Indian citizen can file a petition under the RTI Act. An organization wishes to apply for information has to do it through a citizen, otherwise the information sought can be refused. Also, if a person who is a part of an organization applies, it is assumed that he/she applying in his/her private capacity (Habibullah).

## **Appeals and CIC**

A two-tier mechanism for appeal has been established in the Act. The first appeal lies to an officer within the organization who is senior in rank to PIO. The second appeal lies in the Information Commission. The jurisdiction of the lower court is barred under section 20 of the Act. The categories of information exempted from disclosure in this Act are kept to a bare minimum. Even the exemptions are not absolute if disclosure of the information outweighs the harm to the public authorities. (Ansari, 2008)

The Central/State Information Commission is vested with the power of a Court, under Section 20 of the Act, which means that the Commission may impose penalty on the concerned officials for denial of information and recommend disciplinary action against the errant officials, who do not comply with the requirements of the Act. Moreover the Commission may also advise the appropriate Government in the matters of maintenance and preservation of records and the norms for disclosure of information with a view to enabling the people to observe and scrutinize the decision making process<sup>13</sup>.

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<sup>13</sup> Section 25(5) of the Act

It is the president of India or the Governor of the state who has the power to appoint Information Commissioner and give them the powers that enable them to ensure an effective implementation of the Act. So The Commission has the mandate, *inter-alia*, to impose penalty and/or to recommend disciplinary action against the information providers, if held responsible for obstructing the free flow of information. A large number of PIOs have already been fined for violation of the provisions of the Act, which has, in effect, created conditions for providing information to a requester. (Ansari, 2008)

### **Exemptions of disclosure of information**

In Section 8 of the Act there is a description of the themes where access to information can be denied. Those are:

- Information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
- 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;
- Information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
- 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;
- 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;
- Information received in confidence from foreign Government;
- 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;
- Information which would impede the process of investigation or apprehension or prosecution of offenders;
- 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;

- 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 Central Public Information Officer or the Other 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 a Other Legislature shall not be denied to any person.

Notwithstanding anything in the Official Secrets Act, 1923 not any of the exemptions permissible in a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

Without prejudice to the provisions a Central Public Information Officer as the case may be, 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.

### **Finding on RTI**

RTI Act has been used to fight corruption and mismanagement of government funds and is meeting fruitful results, involving more and more people in the implementation and monitoring of development works. Due to its perceived benefit of transparency and accountability, RTI applications have increased annually by 8 to 10 times (Ansari, 2008). Moreover, lastly, less than 5 per cent of the application for information has been denied (Ansari, 2008). While the awareness of the importance of transparency has increased, infrastructure needs to be built around it to allow it to work better.

Under a study made by the NGO 19 it has been highlighted that one of the most serious problem with the Act is that it fails to provide for independent review of refusals to disclose information, either by an independent administrative body or by the courts. This means that decisions on whether or not to release information rest entirely within government. This influences the percept enforcement of the Act and its credibility. Laura Neuman has observed in a World Bank report, that "if there is a widespread belief that the access to information law will not be enforced, the right to information becomes meaningless". A 2007 PRIA survey of civil society organizations working on RTI found a broadly shared view that the senior officers who dealt with first appeals are "largely sympathetic to PIOs and tend to go along with them" (Society for Participatory Research in Asia 2007, 21).

Various groups and individuals are using the Act across India in many innovative ways. It is very encouraging to see how very common people who would not have otherwise any access to government officials and machinery in ordinary circumstances are forcing government to respond.

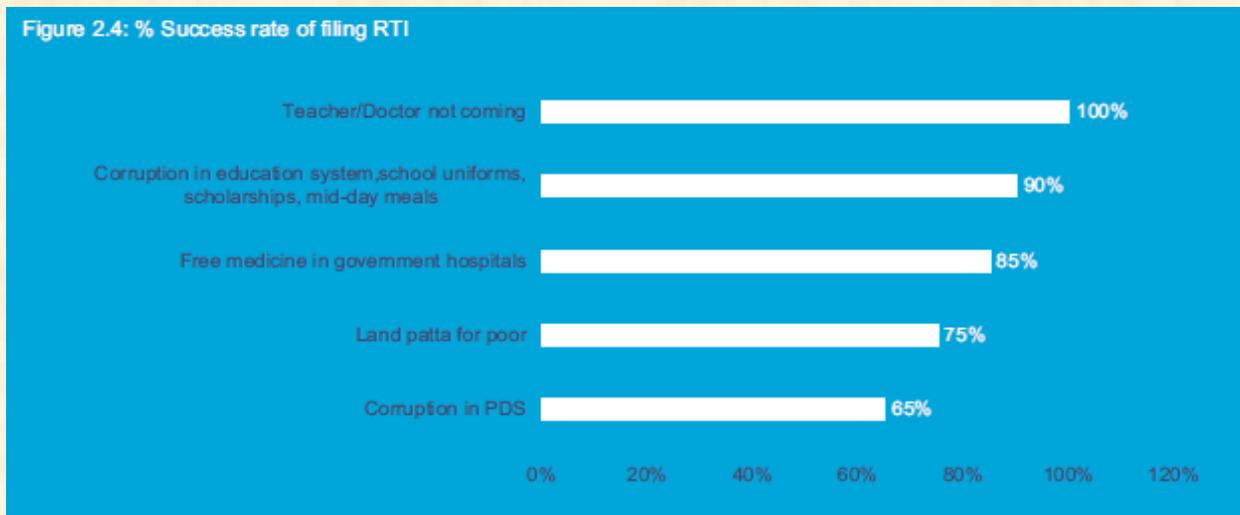


Figure 1 from "Final understanding the key issues and constrains in implementing the rti act" 2009

It is estimated that only about half of all public agencies have made the proactive disclosures of basic information, like salaries and regulations, required under the law. PIOs, typically junior administrators, are poorly trained or are hidden from the public in anonymous offices. Reports persist of citizens being harassed when they attempt to file RTI requests. According to PWC's survey, most citizens complained about the "non-friendly attitude" of PIOs, with half saying that the PIO provided no assistance in drafting and filing their requests (PriceWaterhouseCoopers 2009, 43). Some authorities have imposed additional restrictions, such as an obligation to provide proof of identity, limits on the length or scope of requests, or requirements that application fees be paid only in banker's checks or postal orders rather than cash (Society for Participatory Research in Asia 2008, 8, 36-37) (PriceWaterhouseCoopers 2009, 41, 148, 158).

**Example from success stories:**

**\_\_\_Exposing corruption in medicine procurement at Public Sector Unit**

During the months of February – April 2006, three applicants, from Anuppur, Madhya Pradesh and Korla district of Chhattisgarh, filed RTI applications with the PIO of South Eastern Coal Fields Ltd (SECL) situated at its head office in Bilaspur. They aimed to seek the following Information: 1) Names of all medicines procured by SECL for distribution through its primary health centers and its OPD clinics in the Hasdev coal mines area during the financial year 2005-06. (They cater exclusively to the employees of SECL and their families); 2) Quantity of medicines procured during the same period; 3) Supply price of each item; 4) Copies of all purchase orders issued by SECL for these medicines; 5) Name and contact details of suppliers who bagged the purchase order. All three applicants received the requested information within the 30 day deadline stipulated in the RTI Act. Armed with these documents, applicants worked for several weeks crosschecking the data along with

a team of about 25 committed volunteers. Based on the research it was found out that fictitious companies were shown as suppliers of luxury items in the name of procurement of medical supplies. Next, the volunteers cross checked the rates at which the medicines had been supplied only to find that the retail outlets sold the same items a lot cheaper. These details were published in local magazine popular in the coal mining belt of Madhya Pradesh and Chhattisgarh. Thereafter, the Vigilance unit instituted a formal investigation and action against the concerned officials was initiated<sup>14</sup> (PriceWatersHouseCoopers, 2009).

### **\_\_\_CIC orders publication of PDS details<sup>15</sup>**

Indian Government provide the its citizens living below the poverty line a form of sustenance trough BPL card that would give them acces to 35 Kgs. of wheat or rice per card per month, issued @Rs. 4.50 and Rs.6.02 per Kg respectively 16 through the governmentals Public Distribution System (PDS). For obtaining a Below Poverty Line ration card ,the applicant is required to submit application form duly attested by the Municipal Councillor or Village Sarpanch, two passport size group family photographs and an affidavit duly specified. But, in reality, getting and keeping the cards is quite difficult.

To help complaints from people of many Delhi resettlement colonies - Bawana, New Seemapuri, Sundernagari to name a few – Pardarshita, a non-profit organization, filed a complaint under Section 18 of RTI Act to the Central Information Commission that the Delhi Food & Supply Department is not following Section 4 of the RTI Act, which mandates government departments must sou moto disclose information about their work. Pardarshita ask to be provided with the list of people whose BPL card applications were cancelled, as well as the reasons for their rejection. Additionally, a list of beneficiaries of PDS system was also asked for. Central Information Commission member Shailesh Gandhi notified the Food Secretary, and held a hearing on 21 December. The meeting was followed by an order the following day, directing all concerned to display the following information online and outside 70 ration shops/circles of Delhi, before 31 January. A complaince report detailing how much of this order has been carried out, has also been demanded by CIC, to be provided by 5 February 2010. The information to be published includes:

- Entitlement of essential commodities for all type of Ration Cards.
- Scale of issue of each essential commodity for all types of ration cards.
- Retail price of each essential commodity for all types of ration cards.
- Working hours of Fair Price Shops.
- Stock of essential items received during the month.

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<sup>14</sup> Source: <http://cic.gov.in/bestpractices.htm>

<sup>15</sup> <http://www.indiatogether.org/2010/jan/pov-pds.htm>

<sup>16</sup> <http://india.gov.in/outerwin.php?id=http://chdfood.gov.in/BPL.aspx>

- Opening and closing stock of essential commodities.
- Name, designation and contact numbers of officials for redressal of grievances with respect to quality and quantity of essential commodities.
- Daily updating of stock position information.
- Information about inspection of records by any citizen on every Saturday except for second Saturday as per the PDS Control Order 15/06/06.
- Display of samples of food grains being supplied through Fair Price Shops.

Soon after these directions by the Commission, its impact can already be seen, at least on the Government of India's Food & Supply Department website, which now provides some information on the above-mentioned lines. According to the order, such information is also to be provided at the points-of-delivery of the rations (i.e. the fair price shops themselves), and that will be an even bigger boost to the transparent functioning of the distribution system.

### **RTI and private business**

The Right of Information Act has been one of the most empowering Indian legislation, breaking new ground of rights. Much more can be done in the areas covered by the legislation as well as in its implementation. One of such area is whether the legislation should be extended to bring private sector within its ambit.

This issue is already partially covered in some States RTI. For example, in the **Goa Right to Information Act** information is defined in such a way as to expand the scope of the act and include - apart from State government departments, local bodies, government controlled and owned organizations – any other organization executing any public work or service on behalf of, or authorized by, the government. So this would also include private bodies engaged in public work, especially Public Sector Undertaking.

Public sector undertaking (PSU) is a term used for a government-owned corporation (company in the public sector) that are companies in which the government (either the Union Government or state or territorial governments, or both) owned a majority (51 percent or more) of the company equity. Since 1991 Indian Government started a policy of disinvestment in non strategic sectors and this give a need for new rules about PSU information disclosure. PSU companies even if not anymore majority owned by the government, are still performing work with strong impact on civil society and so should be kept under the provision of the Act.

Moreover, Subhash Chandra Agrawal, a famous community activist on the Act, stated in an article about the implementation of RTI: "Considering dominating-role of private-sector in public-life through banking, communications and others, India should follow South Africa in extending RTI Act to private sector for firms with some stipulated turn-over fixed separately in respect of goods and services."

## \_\_\_Private business already into the Act

The Right to Information Act covers individuals/firms/organizations which directly do not fall within the scope of the Act but they have submitted some of their information related to contracts, business deals or financial details to government agencies (public authorities). Such information can be accessed under the Right to Information Act by the citizens. These individuals/firms/organizations are covered under the definition of third-party under the RTI Act.

The Act<sup>17</sup> defines **information** as “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”<sup>18</sup>. Even if the definition given is quite broad in terms of the type of information, it limits the scope of the Act to information relating the official work of the public authority in question. This mean that information is not accessible directly from the company but from the government department to whom the report has been sent.

In the Press Council-NIRD draft, “**public authority**” is defined as including the Government and Parliament of India and the Government and Legislature of each of the States and local or other authorities within the territory of India or under the control of the Government of India; and the Administrative Offices if the Courts; and a company, corporation, trust, firm, society, a co-operative society, or association whether owned or controlled by the Government or by private individuals and institutions; and any other person information from whom is required for the exercise or protection of any right. Moreover, organizations that were set up by a legislature Act or by a government notification and in the future were privatized should come under the Act<sup>19</sup>. An example of this is the power distribution company in Delhi (see below) (Habibullah).

Even if private entities are not included in the definition of public authorities, we can affirm that they are summoning for in the definition of “information”. This means that, at the present time, an Indian citizen can apply for information regarding a private company but he/she had to submit the application to **the Regulatory Agency** the private company is registered to.

With this, the RTI list also includes: Private Banks (via RBI), Stock Exchange Listed companies (via SEBI), telecom companies (via TRAI), Electricity companies (via CERC/MERC/State Commission) and Insurance companies (via IRDA) (Kumar, 2007). Under this interpretation companies do not have to appoint an information officer because applicants will route their request through the relevant agency (Kumar, 2007).

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<sup>17</sup> Section 2(f) of the Act

<sup>18</sup> <http://cic.gov.in/rti-act.htm>

<sup>19</sup> CIC decision of 30/11/2006: 'Sarbjit Roy versus DERC'

Despite access to information through the private company Regulatory Agency could be a starting point is definitely not enough. Information held by those Agencies regarding private business is fixed because is defined by the law and mainly regards only some regulatory issues, which means that most of the information that could be interesting for a citizen is not in their hand. Through a Regulatory Agency a citizen can find information regarding some financial statements, statutory functions or the application of the Company Act requirements but can't have access to the private company information like acquisition plans or the company's expenditure for , for example, medical research.

### **\_\_\_The Power Company Case, December 2006<sup>20</sup>.**

In a deliberation in December 2006, CIC declared power companies, since they provide a public service, to be “public authorities” and so within the RTI Act they should appoint a PIO and disclosure some kind of information on their website. Straight after this declaration the discoms say they would rather provide information through the DERC and not be brought under the RTI while the DERC says the discoms are “taking recourse to technicalities to get away from the RTI”. The reasons why the discoms would prefer not to be under the RTI are many, and the one they adduce more is that it would ask them to appoint new staff creating a new bureaucratic structure.

This lead to an argument between power companies and DERC that didn't want to “act as a box of information” they said. In a recent case CIC still stated that power companies are “public authorities” but also that DERC is also liable to provide information if it is sought by the public.

### **\_\_\_CIC Deliberations in 2007 regarding private business information**

Here are presented two CIC decision of interest regarding the matter of information from and to private business.

**Private Organization can't apply for information under the Act.** On February 2007, in the case of D.C. Dhareva & Co. vs. Institute of Chartered Accountants of India , the corporate body (company), had applied for information from a public authority and sought certain documents relating to a another firm which had submitted this information to the public authority as per the legal requirements of furnishing such information. Judgment of CIC was a denial. It was held by the Commission in this case that since the appellant organization is a corporate body and not an individual it is not eligible to seek information under Section 3 of the RTI Act. It was also decided by the Commission that the information asked could not be supplied as it was a third-party confidential information exempted under Section 8(1) (d) of the RTI Act.

**Information from a non-public authority can be obtained indirectly<sup>21</sup>.** This state had been confirmed in the case of Jarnail Singh vs. Registrar, Cooperative Societies Delhi (dated 9/4/2007).

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<sup>20</sup> file:///E:/PAIRVI/Right%20to%20Information/RTI/fullstory.php.htm

The applicant had sought some information from the Registrar, Cooperative Societies (RCS) regarding the alleged irregularities in the allotment of a house to him by a cooperative group housing society. However, the information pertaining to these issues was available with the management of the cooperative society, which could not be treated as a public authority in terms of the definition of public authority under the RTI Act. The Commission held that a cooperative society is not a public authority, but because the information sought by the applicant/appellant is available to the Registrar under the Delhi Cooperative Societies Act, such information can be provided to the applicant, under Sections 2(f) and 2(g) of the RTI Act. It was also ordered by the Commission that the applicant will be provided the required information from the office records of the cooperative society under the supervision of a competent officer of the RCS.

### **\_\_\_Bourses under RTI 2007**

The Central Information Commission (CIC) in 2007 ruled that the various stock exchanges in the country are in fact public entities, and that citizens could seek information from the bourses under the RTI Act. The CIC has based its view on the fact that "all stock exchanges are created by orders of SEBI. In passing the orders of registering the stock exchanges, it is exercising the authority of the government". This is the reason why the CIC thinks stock exchanges are included under the purview of the RTI Act. The Securities and Exchange Board of India (SEBI), the regulatory authority overseeing the functioning of the stock exchanges has concurred with the Central Information Commission.

However, the stock exchanges challenged the CIC directive in high courts (the Bombay Stock Exchange in the Bombay High Court, and the National Stock Exchange in the Delhi High Court). The bourses argued that every public limited company needs some form of a license to carry out its business activities, and that alone does not automatically make it a public entity. In their interim orders the courts have issued a stay on the CIC directive that would have brought the stock exchanges under the purview of the RTI Act. The debate is still open.

### **\_\_\_CIC Judgment December 2009**

A CIC judgment in December 2009 changed the scenario allowing "private corporate information" to be obtained via RTI if successfully proved that the information pertains to **larger interest or benefit of the public**.

Private corporate are registered under the Companies Act and can be seen as: Corporate Hospitals; Corporate Business; Corporate Law Firms, Malls, Corporate Schools and Colleges; Public Trust and Private Trust, Private Finance Companies; Brokerage Companies, Private Banks, Realty Firms and any other corporate registered under any Statutory Laws.

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<sup>21</sup> Secs. 2(f) and 2(j) of the RTI Act

Under this interpretation, now Corporate have to appoint an in-house Information Office and also an in-house Appellate Authority. Moreover this means that corporate have to display all the in-house information which could be in public interest on their website and keep it ready in their office record for Public Inspection.

Even after this judgment private business is far away to be considered clearly under RTI Act, there are still lots of refusal request during CIC appeals. Moreover there is no finding on the web of any private Indian company that had developed or is developing an RTI section on its web site in order to increase information disclosure and access.

An exception can be found on Indian Oil Corporation web site, which has a RTI section. The company is a PSU, considered being under the Act and so the development of the section was mandatory; however it can be taken as an example because IOCL is one of the few that have done so.

### **\_\_\_IOCL RTI**

On IOCL web site, under the section Interface>Statutory Notice is displaced a page dedicated to RTI. There you can find a link to the RTI manual and a table where are listed the contacts of the company's CPIOs, APIOs and Appellant Authority.

The IOLC RTI Manual, according to Section 4(1) (b) of the Act, is composed by sixteen chapters presenting information regarding:

- The organization, its functions and duties;
- The powers and duties of its workmen;
- The procedures that has to be followed in decision making process, including channels of supervision and accountability;
- The norms set for discharge of functions;
- The rules, regulations, instructions, manuals and records held by the Company or under its control or used by its employees for discharge of functions;
- The statement of categories of documents that are held by the Company or under its control;
- Particulars arrangement for consultation with the members of the public in relation to the formulation of policy or implementation;
- The statement on the Board & Sub Committees of the Board and other Committees;
- The directory of officers and workmen;
- The statement of monthly remuneration of officers and workmen including the system of compensation;
- The budget allocation and expenditure;

- The manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;
- Particulars of recipients of concessions, permits or authorizations granted by the Company;
- Details of information available or held in electronic form;
- Particulars of facilities available to citizens for obtaining information;
- Names, Designation and other Particulars of Central Public Information Officers.

Indian Oil is the only PSU that has found a place of pride in the recently declared India's 25 best employers. An exclusive Outlook Business-Hewitt Associates study has listed Best Employers after a stringent evaluation process from 230 companies that took part in the study

### **\_\_\_Jayshree Nagar vs Torrent Power<sup>22</sup>**

The applicant, Jayshree Nagar, sought information to Torrent Power on power failures, shutdowns and interruptions at Rajnagar complex, Narayan Nagar and Paldi areas between January and November 2009. Torrent Power has refused to furnish certain information sought in an application under the Right to Information (RTI) Act, saying the Act is "not applicable" to the company as they are not a public authority as mentioned in Section 2 (h) of the Act. The applicant, instead affirmed that if public utility companies, like Torrent Power, can enjoy privileges of a public sector undertaking, including permission to dig up roads, disrupt traffic and seek police help, why can't they share information under RTI. Reacting to this, the Chief Information Commissioner, Government of India, Wajahat Habibullah, told The Indian Express: "As far as I am concerned, yes, they (Torrent Power) have to be under the ambit of RTI Act. But it depends on a lot of things, including investment by the government, whether the government has any stake or not."

The issue concerning the investment made by the government and whether the government has any stake in the company is a controversial issue emerged in many different cases, especially in consideration of PSU. One example is the CIC decision 30/11/06 Er Sarbajit Roy vs DISCOM where DISCOM refused to provide information either through DERC nor directly (as asked) affirming that it is not a public authority because it have not been constituted by any law made by the State Legislature or by Notification issued or order made by the Appropriate Government and that it is not financed or controlled by Government that owns, now, only 10% of it. The CIC decision provided evidence that DISCOM was established by the Government that owned the first 51% and that it still have significant control over DISCOM.

### **\_\_\_Lerning from Bhilai Steel Plant**

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<sup>22</sup> <http://www.indianexpress.com/news/torrentpowerrefusestoprovideinformationunderrtiact/592918/>

Bhilai Steel Plant is a unit of the Steel Authority India Ltd, the 18<sup>th</sup> larger steel producer in the world. Its commitment to the issue of Corporate Social Responsibility has always been great, creating infrastructure for the society and contributing to the area development, education and health advancement. During the summer of 2006 the Officer's Association of Bhilai Steel Plant decided to participate in the nation-wide RTI Campaign and created the Bhilai RTI Assistance Centre where volunteers were facilitating RTI application with the concerned PIOs. RTI was brought inside the company's CSR activities, seeing in it the opportunity of increasing its responsibility and transparency towards society. Ramaraju, Managing Director of Bhilai Steel Plant affirmed that RTI Act has become one of the compelling factors, which will drive organizations especially the management of public sector undertakings towards good ethical practices.

PSUs fall within the category of public authorities. Even if the law constituting a PSU does not allow disclosure of certain categories of information, the RTI Act, 2005 overrides any such law in existence. Hence the designated PIO for the organization under question has to provide the information.

However, if an applicant seeks information, that includes commercial confidence, trade secrets or Intellectual Property Rights (IPRs) etc. the disclosure of which will affect the competitive position of that PSU, such information may not be given unless there is a larger public interest involved<sup>23</sup>.

### **\_\_\_Tata Steel Rural Development Society (TSRDS) in Orissa<sup>24</sup>:**

Tata Steel new community commitment in 2009

In October 2009 Tata Steel Rural Development Society (TSRDS) has begun a new initiative aiming to empower the communities through awareness on the Right to Information Act (RTI) at the grass root level under the direct guidance of Orissa Information Commission. The State Information Commissioner, Jagadanand on said, "This initiative of creating RTI awareness at the village level by TSRDS will take the highest principles of Corporate Social Responsibility to the next level and stand as both example and inspiration for the Corporate Sector in India".

Mr Jagadanand was launching this RTI awareness campaign in a Mega Health Camp organized by TSRDS in Rangamatia village in Sukinda block of Jajpur district of Orissa. The first phase the campaign will focus in the villages of Jajpur and Keonjhar district and will include RTI awareness through its community initiatives, inclusion on RTI training in its training programs, multimedia campaigns through TV, radio and facilitate for development and dissemination of IEC (Information, education and Communication) materials to support Citizen's initiative on RTI. These initiatives will be audited jointly by TSRDS and Information Commission to plan for more focused and spread out approach during end of 2009-10.

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<sup>23</sup> <http://dimapur.nic.in/RTI.htm#q34>

<sup>24</sup> <http://economictimes.indiatimes.com/news/politics/nation/Tata-Steel-teams-up-with-Orissa-Information-Commission-on-RTI-awareness/articleshow/5087127.cms>

On that occasion, Tata Steel vice president (Orissa Project), B K Singh said, “This initiative of RTI awareness at the ground level under the guidance of Orissa Information Commission will facilitate in creating more knowledgeable and empowered community for sustainable development”.

## **IV. Conclusions and recommendations**

It is not only States which fail in their obligation to disclose information regarding their work and potentially harmful business activities. Business enterprises also reportedly interfere with the right to information by refusing to provide complete or accurate information on potential hazards posed by their operations. This is one of the reasons why the Right to Information should be extended also to private business. The other main reason is that private bodies are taking over the place of public bodies in some part of the citizens’ everyday life. More and more services are now provided by the private sector because it is considered to be more efficient but in the same time it can miss the public purpose mission butting instead first the profit mission.

In this paper we have presented two different Right to Information Laws, South African PAIA and Indian RTI, focusing on their attitude towards information with private business. With their comparison, there can be found some useful suggestion to extend Indian RTI to private business in a more effective way.

The main difference between PAIA and RTI is, clearly, the direct inclusion in PAIA of the access to private company information while in RTI this access is not directly provided. As presented there are recent interpretations of the Act that would enable access to information from private business but these are clearly stated and always provided. It has been said that citizens can access to information if: the information needed is in possession of a Public Authority and so the access is provided through it; the private company has been established by an Act and then afterwards privatized or if it received substantial public funding.

There is a need for a clear state of access to information from private business because the previously presented are not enough especially looking at the future when more and more the public will retire its direct activities and ask the private to provide them.

PAIA provides access to information from private bodies to citizens just if they can prove that they need that information to protect their right. There is no such a disposition in RTI, citizen can ask information to public authorities without giving reason. If the Act will be expanded also to private business in might need to close the range of the issue to the protection of a right or, as affirmed by CIC in December 2009, if information is seek for a wider or public interest.

RTI should also ask private bodies to publish, as it is supposed to be under PAIA, to publish on their web site and provide CIC a RTI Manual (like the one presented on IOCL web site), where it will describe its mission and values, disclose some information, describe how it is following the RTI, how to fill a request for information and provide the company contacts. CIC deliberation affirmed that

private bodies should design also a PIO, this instance might be too much for companies that are usually reluctant towards RTI (they think it is only bureaucratic and additional costs). At the present time, could be enough the designation of a contact person/office, as it is in PAIA.

Even if private companies will come under RTI, regulatory authorities should keep their function of information provider, giving citizens an additional choice on where to look for information. Regulatory authorities are in possession of only certain kind of information.

Right to access to information is at the bottom base of Human Rights and private companies should take seriously this issue and start to act. Not simply preventing harmful action in their business but mainly empowering people and enhance their rights.

## Bibliography

- 19, A. (2000). Memorandum on The Indian Freedom of Information Bill, 2000. London.
- Ansari, M. M. (2008). Impact of Right to Information on Development: A Perspective on India's Recent Experiences. New Delhi: Central Information Commission.
- Burgman, C., Gage, C., Cronin, C., & Mitra, R. (2007). *Our Rights, Our Information*. Commonwealth Human Right Initiative.
- Currie, I. (2003). South Africa's Promotion to Access to Information Act. *European Public Law* , 59-72.
- Das Gupta, A. (2007). Social responsibility in India towards global compact approach. *Internationa Journal of Social Economics* , 637-663.
- Edelman. (2009). Edelman Trust Barometer. FSC.
- Habibullah, W. (s.d.). Right to Information and Private Business.
- Hess, D. (2008). The three pillars of corporate social reporting as governance regulation: disclosure, dialogue and development. *Business Ethics Quarterly* , 447-482.
- Kumar, N. (2007, February). Companies, banks under purview of the govt have honour RTI request, clarifies information commission. Tratto da [www.livemint.com](http://www.livemint.com)
- PRIA. (2007). Analysis of Judgments of teh Central Information Commission on the Right to Information Act, 2005. New Delhi: PRIA.
- PriceWatersHouseCoopers. (2009). Understanding the "Key Issues and Constrains" in implementing RTI Act. PriceWatersHouseCoopers.
- SAHRC. (2000). The Guide on how to use the Promotion of Access to Information Act - Act 2 of 2000.
- Sihag, S., & Sihag, S. (2009). Destroying the culture of secrecy: empowerment and dignity through right of information: a case study of MKSS in Rajasthan. *Oxford University Press and Community Development Journal* , 382-392.
- UNDP. (2004). *Right to information. Practical guidance*. UNDP – Bureau for Development Policy – Democratic Governance Group.

## **ANNEX 1:**

### **Pro Forma Layout of a Section 51 Manual**

SECTION 51 MANUAL FOR [Name of private body]

Recommendations by the SAHRC for these three sections:

When submitting copies of the manual to the SAHRC and the Gazette please **exclude the contents page and the forms and the fee structure for a saving on costs.**

For the sake of convenience and accessibility, the forms and fee structure should be posted on the relevant bodies website. If such a private body does not have a website then mention must be made to a link to either the SAHRC's website ([www.sahrc.org.za](http://www.sahrc.org.za)) or the Department of Justice and Constitutional Development ([www.doj.gov.za](http://www.doj.gov.za)) (under "regulations") which will contain the forms and the fee structure.

You may include the contents page in your manual if you wish - it is a matter of choice and you will not be penalized if you do not include it.

#### A. CONTENTS

#### B. PARTICULARS IN TERMS OF THE SECTION 51 MANUAL

1. Contact details [Section 51(1)(a)]
2. The section 10 Guide on how to use the Act [*Section 51(1)(b)*]
3. Records available in terms of any other legislation [*Section 51(1)(d)*]
4. Access to the records held by the private body in question [*Sections 51(1)(c) and 51(1)(e)*]
  - 4.i. The latest notice regarding the categories of records of the body, which are available without a person having to request access in terms of this Act in terms of section 52(2) [*Section 51(1)(c)*]
  - 4.ii. Records that may be requested [*Section 51(1)(e)*]
  - 4.iii. The request procedures
5. Other information as may be prescribed [*Section 51(1)(f)*]
6. Availability of the manual [*Section 51(3)*]

Introduction to ... [private body name]

(In this optional paragraph a very brief description can be given of the core business in order to provide a quick reference source.)

PARTICULARS IN TERMS OF THE SECTION 51 MANUAL

1. Contact details [Section 51(1)(a)]

Details required in terms of section 51(1)(a)

Name of Body \_\_\_\_\_

Head of the Body \_\_\_\_\_

Postal Address \_\_\_\_\_

Street address \_\_\_\_\_

Phone Number \_\_\_\_\_

Facsimile number \_\_\_\_\_

If available,

Electronic mail address of  
the head of the body \_\_\_\_\_

2. The section 10 Guide on how to use the Act [Section 51(1)(b)]

The Guide will be available from the South African Human Rights Commission by not later than August 2003. Please direct any queries to:

The South African Human Rights Commission: PAIA Unit

The Research and Documentation Department

Postal address: Private Bag 2700

Houghton, 2041

Telephone: +27 11 484-8300

Fax: +27 11 484-0582

Website: [www.sahrc.org.za](http://www.sahrc.org.za)

E-mail: [PAIA@sahrc.org.za](mailto:PAIA@sahrc.org.za)

3. Records available in terms of any other legislation [Section 51(1)(d)]

\* See list of legislation for the Acts that may apply to your private body. Delete those that are not applicable.

Administration of Estates Act, No. 66 of 1965 Arbitration Act No. 42 of 1965 Basic Conditions of Employment No. 75 of 1997
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Companies Act No. 61 of 1973  
Compensation for Occupational Injuries and Health Diseases Act No.130 of 1993  
Consumer Affairs (Unfair Business Practices) Act No. 71 of 1988  
Copyright Act No. 98 of 1978  
Credit Agreements Act No. 75 of 1980  
Currency and Exchanges Act No. 9 of 1933  
Debtor Collectors Act No. 114 of 1998  
Employment Equity Act No. 55 of 1998  
Finance Act No. 35 of 2000  
Financial Services Board Act No. 97 of 1990  
Financial Relations Act No. 65 of 1976  
Harmful Business Practices Act No. 23 of 1999  
Income Tax Act No. 95 of 1967  
Insolvency Act No. 24 of 1936  
Insurance Act No 27 of 1943  
Intellectual Property Laws Amendments Act No. 38 of 1997  
Labour Relations Act No. 66 of 1995  
Long Term Insurance Act No. 52 of 1998  
Medical Schemes Act No. 131 of 1998  
Occupational Health & Safety Act No. 85 of 1993  
Pension Funds Act No. 24 of 1956  
Post Office Act No. 44 of 1958  
Protection of Businesses Act No. 99 of 1978  
Regional Services Councils Act No. 109 of 1985  
SA Reserve Bank Act No. 90 of 1989  
Short Term Insurance Act No. 53 of 1998  
Skills Development Levies Act No. 9 of 1999  
Skills Development Act No. 97 of 1998  
Stamp Duties Act No. 77 of 1968  
Stock Exchange Control Act No. 1 of 1985  
Tax on Retirement Funds Act No. 38 of 1996  
Trade Marks Act No. 194 of 1993  
Unemployment Contributions Act No. 4 of 2002  
Unemployment Insurance Act No. 63 of 2001  
Usury Act No 73 of 1968  
Value Added Tax Act No. 89 of 1991

4. Access to the records held by the private body in question [*Sections 51(1)(c) and 51(1)(e)*]
- 4.i. The latest notice regarding the categories of records of the body, which are available without a person having to request access in terms of this Act in terms of section 52(2) [*Section 51(1)(c)*]

All you need to put in here is IF your private body has got any pamphlets or annual reports that a person could obtain without having to go through all the request procedures as contained in the Act. You want to list items here so that you do not have to deal with unnecessary requests for records that are actually easily available. If your private body does not have anything to put here you can just say "Not applicable"

Title	Contents	
Product Guide	List of products	Available from
	Applications Advantages Dimensions Physical properties	Contact addresses and on Website: <a href="http://www.sonae-novobord.co.za">www.sonae-novobord.co.za</a>
Financial Statements	Annual Reports	
Marketing Material	Pamphlets Product Guides Website Privacy Statement	

The abovementioned information is available from the Head of the Body and on the Company's website.

OR

Not applicable

OR

No Notice in terms of Section 52(2) of the Act has been published. Certain records are however freely available on \_\_\_\_\_ website [http://www.\\_\\_\\_\\_\\_](http://www._____) .

4.ii. Records that may be requested. A description of the subjects of the records held by the body and the categories in which these subjects are classed [Section 51(1)(e)]

This is a very general example and not exhaustive in its content. It might not always apply to specific private bodies, as they are all so different in their operations. Thus please try and use this as an example and rework it to suit your own particular private body, there is no wrong or right way as each body is so individual and the amount of detail will also vary. Some subjects can even be incorporated into others if the private body is very small. What you want to do here is classify where a record is located within

your private body, you do not need to include the contents of the record. It does not mean however, that a person will have access to a record listed, access will be determined according to the procedures in the Act and once a request has been given on the correct form and then a decision will be made by the head of the private body.

EXAMPLE OF CLASSIFICATION OF RECORDS:

Category	Records	
Administration	Licences (categories) Minutes of management meetings Minutes of staff meetings Correspondence Etc.	
Human Resources:	Staff recruitment policies Employment contracts Remuneration records and policies Salary Surveys. Conditions of Service. Industrial/Labour relations. Pension fund. Remuneration & Benefits. Provident Fund. Skills requirements. Training. Etc.	
Operations:	Sales records Production records Name specific types of work done by the private body and records related to it. Clients registry (if applicable) Etc.	
Finances:	Financial statements Annual financial statements Vouchers Stock records Assets inventory Etc.	
Other:		

Another example of layout		
The company keeps information on		
Personnel related issues:	Employee records, conditions of employment and company policy, address lists, etc.	
Clients:	Contact information, product subscriptions, contractual agreements, usage statistics, account information, and general communication.	
Suppliers:	Contact information, contractual agreements, accounting information and general communication.	
Technical product information.		

The above-mentioned records are of a confidential nature and only accessible to authorised people.

4.iii. The request procedures.

For the sake of convenience and accessibility, the forms and fee structure should be posted on the relevant bodies website. If such a private body does not have a website then mention must be made to a link to either the SAHRC's website ([www.sahrc.org.za](http://www.sahrc.org.za)) or the Department of Justice and Constitutional Development ([www.doj.gov.za](http://www.doj.gov.za)) (under "regulations") which will contain the forms and the fee structure.

Form of request:

The requester must use the prescribed form to make the request for access to a record. This must be made to the head of the private body. This request must be made to the address, fax number or electronic mail address of the body concerned [s 53(1)].

The requester must provide sufficient detail on the request form to enable the head of the private body to identify the record and the requester. The requester should also indicate which form of access is required. The requester should also indicate if any other manner is to be used to inform the requester and state the necessary particulars to be so informed [s 53(2)(a) and (b) and (c)].

The requester must identify the right that is sought to be exercised or to be protected and provide an explanation of why the requested record is required for the exercise or protection of that right [s 53(2)(d)].

If a request is made on behalf of a another person, the requester must then submit proof of the capacity in which the requester is making the request to the satisfaction of the head of the private body [s 53(2)(f)].

Fees:

A requester who seeks access to a record containing personal information about that requester is not required to pay the request fee. Every other requester, who is not a personal requester, must pay the required request fee:

The head of the private body must notify the requester (other than a personal requester) by notice, requiring the requester to pay the prescribed fee (if any) before further processing the request [s 54(1)].

The fee that the requester must pay to a private body is R50. The requester may lodge an application to the court against the tender or payment of the request fee [s 54(3)(b)].

After the head of the private body has made a decision on the request, the requester must be notified in the required form.

If the request is granted then a further access fee must be paid for the search, reproduction, preparation and for any time that has exceeded the prescribed hours to search and prepare the record for disclosure [s 54(6)].

5. Other information as may be prescribed [Section 51(1)(f)]

The Minister of Justice and Constitutional Development has not made any regulations in this regard.

6. Availability of the manual [Section 51(3)]

You can just mention very briefly that the manual is also available for inspection at the offices of the relevant private body free of charge; and copies are available with the SAHRC, in the Gazette and on the private body's website (if any).

The Manual is also available for inspection from

The Offices of \_\_\_\_\_ located at

The South African Human Rights Commission

In the Government Gazette

On the following website:- [http://www.\\_\\_\\_\\_\\_](http://www._____)

**ANNEX 2:**

**REQUEST FOR ACCESS TO RECORDS OF PRIVATE BODY**

**A. Particulars of Standard Bank Group Ltd**

The Standard Bank Group Information Officer

Mr. Surendra Naidoo

5 Simmonds Street

Johannesburg

Fax: +27 11 636 4812

E-mail: Surendra.Naidoo@standardbank.co.za

**B. Particulars of person requesting access to the record**

- (a) The particulars of the person who requests access to the record must be given below.
- (b) The address and/or fax number in the Republic to which the information is to be sent must be given.
- (c) If the request is made by a third party, proof of the capacity in which the request is made must be attached.

Full names and surname:

\_\_\_\_\_

Identity number: \_\_\_\_\_

Postal address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Fax number: \_\_\_\_\_

Telephone number: \_\_\_\_\_

E-mail address: \_\_\_\_\_

Capacity in which the request is made, when made on behalf of another person:

\_\_\_\_\_

Proof of capacity attached:

<b>Y</b>	<b>N</b>
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**ANNEX 3:**

**STANDARD BANK OF SOUTH  
AFRICA LIMITED**

**INFORMATION MANUAL**

Published in terms of Section 51  
of the Promotion of Access To Information Act, 2 of 2000