# *Right to Information in USA*

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The USA has possessed a Freedom of Information Act (FOIA) since 1966. Previous statutes had only allowed public access to government documents if "need to know" was established, and they allowed agencies to withhold information for 'good cause'. All agencies in the executive branch of the Federal Government, including administrative regulatory agencies, are subject to FOIA. Excluded from the operation of the Act are the judicial and legislative branches of government. So too are members of Presidents immediate personal staff, whose sole functions is to give advice and assistance to the President. State government and local and city government are not included in this legislation.

The aim of the Act as amended in 1974 is to provide public access to an agency's records if it is covered by the Act. An applicant does not have to demonstrate a specific interest in a matter to view relevant documents – an idle curiosity suffices.[2]

The FOIA entitles any one to have access to any identifiable document as it casts a positive duty on the government to supply information as it states unequivocally that public access to most documents is to be the general rule and no document is to be withheld unless it falls under any of the exempted categories. As stated by the Attorney-General the policies under lying the Act are as follows.

- That disclosure be the general rule, not the exception;
- That all individuals have equal rights of access;
- That the burden be on the government to justify the withholding of a document, not on the person who requests it;
- That individuals improperly denied access to documents, have a right to seek injunctive relief in the courts;
- That there be a change in government policy and attitude. The whole purpose of the Act was to reverse the self-protective attitude of the agencies.

The Exempted Categories are documents:

1. Specifically authorized under criteria established by an executive order to be kept secret in the interest of national defence or foreign policy and

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[2] Many States have their own FOI Laws.

2. Are in fact properly classified pursuant to such executive order;
3. Related solely to the internal personnel rules and practice of an agency;
4. Specifically exempted from disclosure by statute;
5. Trade secrets and commercial or financial information obtained from a person or confidential;
6. Interagency or inter-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;
7. Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;
8. Investigatory records compiled for low enforcement purposes, but only to the extent that disclosure would-harm any of the following specified interests :
   a) enforcement proceedings;
   b) fair trial or an impartial adjudication;
   c) personal privacy;
   d) confidentiality of investigative courses;
   e) technique, procedures and safety of law enforcement personnel;
9. Reports prepared by on behalf of or for the use of an agency responsible for the regulation or supervision or financial institutions; or
10. Geological and geophysical information and data, including maps, concerning wells.

Though the first exemption mentioned above gives power to the executive to specify documents that are to be kept secret in the interest of national defence or foreign policy, yet the exemption applies only when the documents are "in fact properly classified". This gives jurisdiction to the courts to determine de nova whether an invocation of executive privilege was justified. As Rowat says, a judge in the United States can examine "even classified documents to see if they were properly classified on whether excised parts were legitimately blanked out to protect national security or individuals. A department's fear that a decision to withhold information will be overturned by the courts is a very sobering corrective to over secretiveness. If a citizen appeals to the courts and wins his case, the judge can now pay all of the court costs.

The Act ensures access to governmental information and records in three broad ways:

1. Publication in the Federal Register;
2. Making available for inspection and copying certain specified information; and
3. Making available reasonably described records on request.

*Firstly*, each administrative agency is required to publish certain descriptive and explanatory information in the Federal Register for the

guidance to public. The information to be published in the Federal Register is:

1. Description of its central and field organisation and the established places at which the employees from whom, and the methods whereby, the public may obtain information, make submittals or requests or obtain decisions;
2. Statements of the general course and method ( including all formal and informal procedures available) by which its functions are channelled and determined;
3. Rules of procedure, description of forms available and instructions as to the scope and contents of all papers, reports, or examinations;
4. Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency.

*Secondly*, the following information is to be made available for public inspection and copying:

1. Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;
2. Those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and
3. Administrative staff manuals and instructions to staff that affect a member of the public.

Thirdly, and this is of paramount importance, each agency is to make promptly available to a person upon request for records which (a) reasonably describes such records, and (b) is made in accordance with published rules, stating the time, place, fees, (if any) and the procedures to be followed.

If the document falls under any of the above mentioned exempted categories, the public has no right to access. In substance, thus the agency is to promptly make available to any person identifiable records (the obligation of the individual is to describe these methods reasonably) on request for such records. If the records are not so made available, the individual can fill a complaint before a district court. This is an important safeguard against abuse of power by agencies. The federal district courts have jurisdiction to enjoin the agency from withholding records and to order the production of records improperly withheld from the complaint. Under the normal rule in a court action against actions of agencies, the presumption of validity is attached to agency acts, and the individual challenging any such action has the Onus to prove its invalidity, but under the FOIA the burden is on the agency to sustain its action in withholding information. All that the complaint has to say is that he made a request for identifiable records which the agency turned down the burden then shifts the concerned agency to justify its refusal. The agency can discharge this burden by showing that the document falls within the exempted categories. If the record in question does not

fall within the exceptions, the court must order its production.

The court determines the matter *de nova* whether the records come within any of the exceptions. The court has been expressly given power to examine the contents of such agency records in camera to determine whether such records or any part there of shall be withheld under any of the exemptions.

An example of the working of this Act can be seen in the case of *Consumers Union V. Veterans Administration.* The Consumers Union is the largest consumer organisation in the United States. It tests commercial products and reports its findings in its monthly magazine. In 1955, the Veterans Administration initiated a testing programme in order to evaluate hearing aids for procurement and distribution to veterans. The V.A.'s policy had been to limit access to information about the testing programme, disclosing test results to no one outside the government. Consumers Union brought the test score but the V.A. refused to divulge the records. The Consumer Union then brought action under the Freedom of Information Act. The Union started with the advantage that it did not have to overcome the presumption in favour of the correctness of the agency's action. The Act provides expressly that in an action to compel production of any agency records. "The court shall determine the matter de novo and the burden shall be upon the agency to sustain its action." According to the court, the whole purpose of the Act" was to reverse the protective attitude of the agencies, disclosure was made the general rule and only information specifically exempted by the Act may now be withheld. The exemptions did not include anything like the V.A.'s test and the court ordered production of the test records of Consumers Union.

An American citizen thus has a legal right to have access to a great deal of information which it would be a criminal offence to disclosure or receive in England or India.

In November 1982, a White House memorandum for the Heads of Executive Departments and Agencies stated that executive privilege could only be claimed in the most compelling of circumstances where after careful review and assertion of privilege was necessary. Brokerage between Congress and the White House would minimize the need for the invoking of executive privilege. Within a month, there was an explosive clash between the Environmental Protection Agency (EPA) and a Congressional Committee when the head of the EPA's hazardous waste programme was holding back information on toxic waste sites and their clean-up. She was cited for contempt of Congress. The Justice Department unsuccessfully sought judicial exoneration of the head as she was acting under the direction of the President in refusing to hand over information. The court pressed the parties for a friendly settlement without further judicial intervention. The Committee eventually obtained its information. Sauce was added to the fare when it was disclosed that the head of the EPA's hazardous waste programme had frequently met, informally and socially, with representatives of companies whose activities she was regulating, although similar opportunities were not offered to environmental lobby groups.

The working of the FOIA does give rise to certain problem and difficulties. The agencies receive a large number of requests from the public. Their compliance produces problems in terms of time, personnel and costs. Some agencies are not able to give replies within the time prescribed by the Act. The Act also give rise to an unforeseen problem, business corporations use it not only to get general information from the government which would be of value to them, but also to get information on their competitions. New business and law firms have sprung up which specialize in this activity, and which carry appeals to the courts. Now the competitions are fighting back with what are called 'reverse freedom of information case', in which they seek a court injunction forbidding the government to release requested documents, and the government is having greater difficulty in collecting sensitive information from business corporations.

On the whole, however, it appears that the American experience with the Freedom of Information Act has been happy. No longer does an individual seek information from an administrative agency as a mere suppliant. Rowat Concludes:

The general opinion in the United States is that the Freedom of Information Act as amended in 1974 and supplemented by the Privacy Act has been highly successful in meeting its objectives. Many of the difficulties that its enforcement has created are temporary problems of implementation and the others can be solved by further minor amendments to refine the law. Clearly, a strong Freedom of Information Act has not, as opponents, feared, seriously slowed the Wheels of government administration. Indeed, it appears to have been well accepted by most administrators, who are attempting to implement it in good faith. Many of them even admit that its effect on the administration has been salutary, and results in the preparation of better documents and reports. As Professor Anderson has noted, open records laws exert 'a pervasive preventive effect by virtue of the sobering influence of prospective public scrutiny.

It is high time that India, the biggest democracy in the World also emulates the example of the U.S.A. by enacting some legislation on the lines of the U.S. Freedom of Information Act.

## REFERENCES

1. Schwartz, Administrative Law 130 (1984) cited in Jain M. P. & Jian S. N.
2. 301 F Supp. 796 (S.D.N.Y.) (1969).
3. U.S. V. House of Representatives of the U.S.., 556 F. Supp. 150 (1983). See Congressional Quarterly, "EPA Document Agreement (1983) 26 March, P. 635.
4. Rowat, Laws on Access to Official Documents in T.N. Chaturvedi (ed.), Secrecy in Government at 15 – 16.