

# The Draft Right to Information Ordinance 2008

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## **Preamble:**

*The desire to know is people's natural drive. The eagerness to know information has gradually developed into the right to information.*

*Whereas the right to know is recognised in the constitution and the empowerment of the citizens of a democratic country is necessary to exercise right to information;*

*And whereas transparency and accountability of all public and private institution will be ensured if right to information is established;*

*And whereas some special types of information should be preserved under the control of the government;*

*And whereas it is necessary to enact this ordinance for ensuring peoples right to know by harmonising on the one hand security and secrecy of the state and public interest, and on the other hand the right to information of the public;*

Therefore, the President, unde the power provided by Article 93(1) of the Constitution, enact and publish the following Ordinance:

- (1) (a) Short title: This Ordinance will be called the Right to Information Ordinance, 2008.
- (b) Scope and effectiveness: It extends to the whole of Bangladesh; and it shall come into force within 120 days of notification in the gazette

(2) In this Ordinance, unless contrary to the subject or context—

(a) "information" means any material existing in any form, including advice, circulars, orders, contracts, statistics, e-mail, logbooks, materials, model, memos, opinion, papers, press releases, records, reports, samples, material held in any electronic form, correspondences, memorandums, books, plans, maps, drawings, diagrams, photographs, films, microfilms, sound recordings, VDO tapes, records readable in machine, any certified materials irrespective of its condition and nature, and its reproduction, and any information obtained under any law for the time being in force about any authority.

(b) "Information Officer" means any Officer designated under this ordinance or any officer or employee of public authority empowered to perform the functions and carry out the responsibilities described in this Ordinance, and in the absence of any designated offices or employee, the head of concerned public authority, any branch, directorate, wing, department, or its administrative unit shall be regarded as information officer.

(c) "Authority" means

- (i) any ministry or public or semi-public office, department, directorate, institution or local or other statutory bodies or offices, or or bodies constituted under public or private ownership or bodies administered with public finance which are established under any law, Ordinance or Notification.
- (ii) Any company, corporation, trust, firm, society, co-operative society, private body, association, organisation registered under any existent law of Bangladesh ;
- (iii) which conducts public work on behalf of the government or under contract with any body of the government;
- (iv) other authorities designated, from time to time, by gazette notification of the government;

(d) "right to information" means the right to obtain information from any public authority and it includes taking notes and obtaining photocopies or certified copy of any document or record, taking certified sample of any materials, obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

(e) "Third party" means any person who is not a citizen or any institution including any public authority who is interested to obtain information

**(3) Primacy of Ordinance:** After entry into force, the provisions of this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force

**(4) Right to Information:**

(a) Every citizen shall have the right to information and every citizen, through application or request, shall know any decision, written proceedings of or any work performed or proposed to be performed by any authority

(b) Every public authority shall have the responsibility to maintain all its records duly catalogued and indexed in an appropriate manner so as to facilitate the right to information from any authority under this ordinance or any other law for the time being in force; this right shall not delimit denial to furnish information or the availability of information [sic].

(c) The Information Commission shall prepare a guideline to be followed by all authorities in maintaining and managing information held by them.

**(5) Publication by authority:**

Every public authority must publish at least once in every two years a report containing the following information-

- (a) the particulars of its organisation, activities, duties of its officers and employees and the process of decision making
- (b) the categories of record held by the authority including list of laws, rules, regulations, instructions, manuals used by its employees
- (c) the description of conditions under which any citizen can obtain any licence, permit, grant, allocation, approval, or any other facilities, and the conditions which are required for any transaction or execution of any contract.
- (d) the particulars of facilities available for ensuring peoples' right to information
- (e) the names, designations and other particulars of the Information Officers to whom the application for information should be made.

**(6) The procedure of requesting and receiving information**

(a) A person, who desires to obtain any information under this Ordinance, shall make an application to the designated officer or to the Head of the Office describing the nature of the information sought and the procedure of obtaining information meaning inspection, copy or taking note etc.

(b) The application shall be made in the application form printed by the authority and with prescribed fee.

(c) The authority on receipt of an application under sub section (a) shall furnish the information applied for within 20 days of receipt of the application.

*Provided that the concerned authority shall fix additional fee depending on the actual cost of providing information.*

(d) if the concerned officer or the head of the office does not agree to provide the information, he shall inform the applicant the reasons thereof within 20 days of receiving the application.

**(7) The procedure of providing information:**

(a) Subject to the conditions set forth in section (8), the Information Officer, on receipt of an application under section 6(a) shall, as expeditiously as possible, and in any case within twenty days of the receipt of the application, either provide the information on payment of prescribed fee or reject the request for any of the reasons specified in sections 8.

*Provided that where the information sought for concerns the life-death or liberty of a person from jail, the information shall be provided on considering the importance of the information, within forty-eight hours of the receipt of the application.*

(b) If the Information Officer fails to provide information within the stipulated period mentioned in clause (a), he shall be deemed to have refused the request.

(c) Where access to the record or a part thereof is required to be provided under this Ordinance to a person who is sensorily disabled, the Information Officer shall provide assistance to enable access to the information, including providing such assistance as may be appropriate for the inspection.

(d) if the information is provided in print or in any electronic format, the applicant shall, without prejudice to subsection (?), pay the fixed fee.

*Provided the fees determined under section 6(a) and 7(a) and (e) shall be reasonable and it shall not exceed the actual cost of the photocopies and the highest amount of fees shall be determined according to rules.*

(e) the information shall be generally provided in the format it is requested.

### **(8) Exemptions from publication of information**

Application for access to information under this law may be rejected if :-

- (a) there is apprehension that disclosure of information would prejudicially affect the sovereignty, honour, foreign policy, defence or relation with foreign State or organisations, or
- (b) information connected with commercial, trade or strategic scientific interests of the authority and disclosure of which would harm such interests, or
- (c) the disclosure of Information is likely to disturb the economic management of the government or likely to benefit or harm any particular person or organisation financially, or
- (d) the information relates to the income tax of any person or authority, custom tax and tariff or exchange rate of currencies, and interest rate or the monitoring and administration of economic organisations, or
- (e) information, the disclosure of which would impede the legal process or encourage crime, or would endanger the safety of any person or public at large, impede proper adjudication of any case under trial, the process of investigation or arrest of the accused, violate the secrecy of an information or influence or impede the decision making process or
- (f) the disclosure of the information would cause an unjustified breach of privacy of any person, or
- (g) information the disclosure of which shall be a violation of orders given by any appropriate court or special proceedings of the parliament, or
- (h) information which is already available for sale after its publication, or
- (i) information, disclosure of which is against public interests

**(9) publication of partial information:** partial information may be furnished to the applicant subject to the exceptions set forth in section 8

**(10) Disclosure in public interests:** Notwithstanding anything contrary in any other law or in any of the provisions in this Ordinance, the government/authority may disclose information in public interest.

**(11) Impunity:** No suit, prosecution, punitive measure or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule made thereunder.

### **Information Commission**

**(12) (a)** The Government shall, through Gazette Notifications, establish a body known as information commission to exercise the authority and perform the functions described in the Ordinance.

b) The commission shall be established comprising i) a Chief Information Commissioner and ii) maximum two other Information Commissioners

c) The Chief Information Commissioner and Information Commissioners shall be appointed by the President on recommendation of the following committee. But at least one of the commissioners shall be a female.

d) The members of the committee are as follows

- (i) A judge of Appellate Division nominated by the Chief Justice - Chairperson
- (ii) Chairman, Public Service Commission- Member
- (iii) Cabinet Secretary- Government of Bangladesh - Member
- (iv) Chairman, University Grant Commission

e) The Chief information commissioner, with cooperation from other information commissioner, shall perform the responsibilities of

general supervision, management and administration of the Commission as an autonomous body.

f) The chief information commissioner and other commissioners shall not be member of national parliament or political party or they shall not hold office of profit.

g) The Conditions of appointment of the Chief information commission and information commissioners

(1) The term of office of the Chief Information Commissioner and Information Commissioner shall be for 4 years or up to 65 years whichever is earlier, and no one of them can not be re-appointed in the respective position.

*Provided that every Information Commissioner shall, on vacancy of the office of chief information commission shall be eligible for appointment as the Chief Information Commissioner.*

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

(2) They shall have vast experience and expertise in the field of law, science, technology, information, social work, management or public administration.

### **(13) Resignation of Commissioners:**

The Chief Commissioner and Commissioners can resign from their respective positions by tendering resignation letter to the President. They may also be removed under the procedure described in section 16.

### **(14). Remuneration and allowances**

a) Remuneration and allowances for Chief Information Commissioner shall be equivalent to those of a judge of the Appellate Division of the Supreme Court

- b) Remuneration and allowances of the Information Commissioners shall be equivalent to those of a judge of the High Court Division.

**(15) Staffs of the Commission:**

In order to carry out the functions of this commission effectively, the government shall arrange those numbers of officers and employees as are necessary. The conditions of their service shall be determined by the government.

**(16) Removal from Office:**

- a) Subject to the provisions of sub-section (3?), the Chief Information Commissioner or any Information Commissioner shall be removed from his office by the President through the same procedure under Article 96 of the Constitution which the President may apply for removing any judge of the Supreme Court
- b) The President may suspend any commissioner from office in respect of whom a reference has been made to the Supreme Court under sub-section (a) until the President has passed orders on receipt of the report of the Supreme Court on such reference.
- c) Notwithstanding anything contained in sub-section (1), the President may by order remove from office the Chief Information Commissioner or any Information Commissioner if the Chief Information Commissioner or a Information Commissioner, as the case may be,—
  - (1) is adjudged an insolvent; or has been convicted of an offence which, in the opinion of the President, involves moral turpitude; or
  - (2) is unfit to continue in office by reason of infirmity of mind or body; or
  - (3) has been guilty of gross misconduct

**Powers and functions of the Information Commissions, appeal and penalties:**

**17 (a) Power and functions of the Information commission:**

Subject to the provisions of this Ordinance, it shall be the duty of the Information Commission to receive, inquire and dispose of a complaint if it is made by any person on the following grounds,—

- (1) he has been unable to submit a request to an application by reason that no designated officer has been appointed under this ordinance or Act, or he has failed to submit the application as the authority has refused to accept his or her application for information.
- (2) he has been refused access to any information requested under this Ordinance;
- (3) he has not been given a response to a request for information or access to information within the time limit specified under this Ordinance;
- (4) he has been required to pay an amount of fee which he considers unreasonable;
- (5) who believes that he has been given incomplete, misleading or false information under this Ordinance; or
- (6) in respect of any other matter relating to requesting or obtaining access to records under this Ordinance.

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

(c) If any complaint is lodged against any information officer or the authority, the Commission shall, in appropriate cases, enquire into the matter and it may also, if necessary, can initiate an enquiry suo moto.

(d) The Information Commission shall, while inquiring, have the powers as are vested in the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

- (1) 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;
- (2) requiring the discovery and inspection of documents;
- (3) receiving evidence on affidavit;
- (4) requisitioning any public record or copies thereof from any court or office;
- (5) issuing summons for examination of witnesses or documents; and
- (6) any other matter which may be prescribed by the Government.

(e) The Information Commission may, by official notification, make any necessary regulations for implementing the provisions of this Ordinance without affecting the generality of the above mentioned powers.

**(18). Examination of records:**

Notwithstanding anything inconsistent contained in any other law, the Information Commission may, during the inquiry of any complaint under this Act, examine any record held by any authority to which this Ordinance applies.

**(19) Appeal:**

**(a)** Any person who, does not receive a decision within the time specified in sub-section (a) of section 7, or is aggrieved by a decision of the Information Officer may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such senior officer who is acting as Head of the administrative unit in the authority:

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

*Provided that an appeal may be preferred directly to the information commission by a persons aggrieved by the decision of an information officer who himself is the head of administrative unit.*

As the appellate authority, the Head of the administrative unit shall, within 15 days of recieveing the appeal, instruct the information officer to provide the requested information or reject the appeal.

**(b)** A second appeal against the decision under sub-section (a) shall lie within sixty days from the date on which the decision should have been made or was actually received, with the information Commission.

*Provided that the Information Commission may admit the appeal after the expiry of the period of sixty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.*

**(c)** Where an appeal is preferred against an order made by a Information Officer which relates to a third party, the commission shall give an opportunity of being heard to that third party.

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

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

**(f)** The decision of the Information Commission shall be binding.

**(g)** In its decision, the Information Commission has the power to—

- (1) require the authority to take any such steps as may be necessary to secure compliance with the provisions of this Ordinance, including—
  - (i) by providing access to information, if so requested, in a particular form;
  - (ii) appointing a Information Officer
  - (iii) publishing certain information or categories of information;
  - (iv) making necessary changes to its practices in relation to the maintenance, management and destruction of records;
  - (v) enhancing the provision of training on the right to information for its officials;
  - (vi) providing it with an annual report in compliance with clause (b) of section 26;
  - (vii) require the public authority to compensate the complainant for any loss or other detriment suffered;
- (2) impose any fine provided under this Ordinance;
- (3) reject the application.

**(h)** The Information Commission shall give notice of its decision, (mentioning any right of appeal, if there is any) both to the complainant and the public authority.

**(i)** The Information Commission shall decide the appeal in accordance with such procedure as may be prescribed.

**(20) Representation during Appeal:**

In order to present their statements, the parties to the appeal shall appear in person or nominate lawyer or officer in their behalf. The commission shall, as far as possible, work like an enquiry committee in which in stead of unpleasant argument, preference shall be placed on revealing the truth.

**(21) Offences and penalty:**

(a) Where the Information Commission, at the time of deciding any complaint or appeal is of the opinion that the Information Officer has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified, or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or obstructed in any manner in furnishing the information, it shall impose a specified penalty for each day till application is received, so however, the total amount of such penalty shall not exceed twenty-five thousand takas.

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

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

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

**(22) The applications of the Limitation Act of 1908:** subject to the provisions of this Ordinance, the provisions of the Limitation Act of 1908 shall be applied, as far as possible, to an appeal preferred under this Ordinance.

**(23) Realisation of Fines:**

Any fine of compensation to be imposed under this ordinance shall be realized from the salary of the concerned officer or through the procedure through which outstanding land tax and revenue is collected under the Public demand recovery act of 1913.

**(24)** No court shall entertain any suit, application or other proceeding in respect of any order made under this Ordinance and no such order shall be called in question otherwise than by way of an appeal under this Ordinance.

**(25) Annual Budget:**

The information Commission shall prepare its own budget and shall submit it to the government for its presentation before the Parliament. The parliament shall allocate necessary budget to the information commission.

**(26) Annual Report:**

- a) The Information Commission shall, as soon as practicable after the end of each year, prepare a report within February on the implementation of the provisions of this Act during that year and forward a copy thereof to the Government and publish another copy for peoples access in various medium including in its website (if such website exists).
- b) Each Ministry or Department shall, in relation to the authorities within their jurisdiction, collect and provide such information to the Information Commission as is required to prepare the report under this section and comply with the requirements concerning the furnishing of that information and keeping of records for the purposes of this section.
- c) Each report shall state in respect of the year to which the report relates,—
  - (1) the number of requests made to each public authority;
  - (2) the number of decisions where applicants were not entitled to access to the documents pursuant to the requests, the provisions of this Act under which these decisions were made and the number of times such provisions were invoked;
  - (3) the number of appeals referred to the Information Commission for review, the nature of the appeals and the outcome of the appeals;

- (4) particulars of any disciplinary action taken against any officer in respect of the administration of this Act;
- (5) the amount of charges collected by each public authority under this Act;
- (6) any facts which indicate an effort by the public authorities to administer and implement the spirit and intention of this Act;
- (7) recommendations for reform, including recommendations in respect of the particular authorities, for the development, improvement, modernisation, reform or amendment to this Act or other legislation or common law or any other matter relevant for operationalising the right to access information.

(8) The Government may, as soon as practicable after the end of each year, instruct the information commission to submit its report mentioned in clause (1) on 1 march for causing it to be laid before the Parliament,

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

**(27)** The Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.