

**Government of India initiates discussion on privacy law - demand for amending  
the Indian RTI Act raised at its workshop  
August 14, 2010**

Dear all,

The Department of Personnel and Training (DOPT), Government of India has become the nodal agency for drafting a law on privacy and data protection in India. Recently suggestions were invited from people on what such a law should contain. It appears that few civil society organisations and fewer RTI users and activists responded to this advertisement. I must confess I also did not respond to it. Perhaps this is why the recent workshop on the subject hosted by the DoPT had barely 2-3 civil society representatives while a large majority of participants were from government departments and agencies. Senior officers of the RTI Unit of the DoPT were also present.

A summary of the proceedings of the Workshop on Legal Framework for Privacy, Data Protection and Security conducted by the DoPT is available at: <http://persmin.gov.in/WriteData/CircularNotification/ScanDocument/RTI/12AUGUST.pdf> (also attached)

The powerpoint presentations (PPTs) made by several participants are accessible at: <http://persmin.gov.in/writereaddata/AnnexureB-123.ppt>

The summary of the proceedings and the PPTs make for interesting reading. The absence of a clear and comprehensive legal framework for data protection and safeguarding privacy of individuals comes across as a major theme. This is recognised as an obstacle to overcome, in the era of growing digital databases containing information about individuals and their transactions, in the public and private sector.

At least two of the participants the Registrar General, Census of India and the Chief Legal Advisor Indian Banks Association (IBA) called for amendments to the RTI Act to protect data gathered while conducting sample surveys or banking operations. The Registrar General noted that the Central Information Commission was not allowing access to information about private individuals collected during the census operations. Nevertheless he was in favour of amending the RTI Act to immunise such data from disclosure. The IBA representative held that the existing laws governing secrecy of bank transactions were adequate and no separate law on privacy and data protection was necessary. However he demanded amendment of the RTI Act to protect banking secrecy.

The proceedings show that one person asked the big question: "Is the right to privacy a fundamental right?" (somebody has to do it some time if nobody does it at the beginning). But there is nothing in the proceeding to indicate whether this question was satisfactorily answered. There is no reference in the summary of the proceedings to any of the jurisprudence developed in India on the subject of the fundamental right to privacy. Perhaps this issue was not discussed at all and that is ample cause for concern. There are several cases where the Supreme Court has stated as to what constitutes the scope of the right to privacy. The kinds of information whose disclosure may be denied on grounds of privacy, when the claim of privacy does not apply (i.e. when the personal information is contained in public records) and the status of medical records and data regarding financial transactions have all been discussed by the Supreme Court and the High Courts in several cases. Some High Courts have even stated when the right to privacy must yield to the people's right to know in the era of the RTI Act. There at least two cases, one of them being the celebrated "Supreme Court Judges Assets case" (to access this decision click on: [http://www.humanrightsinitiative.org/programs/ai/rti/india/national/2009/email\\_alerts/cpio\\_supreme\\_court\\_vs\\_sc\\_agarwal\\_delhi\\_high\\_court\\_2009.pdf](http://www.humanrightsinitiative.org/programs/ai/rti/india/national/2009/email_alerts/cpio_supreme_court_vs_sc_agarwal_delhi_high_court_2009.pdf))

Perhaps the DoPT may elect to consult other experts on this important subject in future.

**Perhaps it is high time all RTI users and activists engaged with the DoPT to ensure that a sound law for protecting privacy and data is drafted without curtailing the RTI Act. I would be grateful for comments from readers as to what we should be doing in this regard.**

**In order to access our previous email alerts please click on:**

**[http://www.humanrightsinitiative.org/index.php?option=com\\_content&view=article&id=65&Itemid=84](http://www.humanrightsinitiative.org/index.php?option=com_content&view=article&id=65&Itemid=84) You will find the links at the top of this web page. If you do not wish to receive email alerts please send an email to this address indicating your refusal to receive email alerts.**

Thanks,

Venkatesh Nayak  
Programme Coordinator  
Access to Information Programme  
Commonwealth Human Rights Initiative  
B-117, I Floor, Sarvodaya Enclave  
New Delhi- 110 017  
tel: 91-11- 43180200/ 43180215  
fax: 91-11- 2686 4688  
website: [www.humanrightsinitiative.org](http://www.humanrightsinitiative.org)  
alternate email: [nayak.venkatesh@gmail.com](mailto:nayak.venkatesh@gmail.com)