



# Commonwealth Human Rights Initiative

New Delhi, India. London, UK. Accra, Ghana  
NGO in Special Consultative Status with the Economic & Social Council of the United Nations

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**To,**  
**Shri T Subbarami Reddy, MP**  
**Chairperson**  
**Department-related Parliamentary Standing Committee on**  
**Science Technology, Environment and Forests**  
**Rajya Sabha Secretariat, Room #5**  
**Ground Floor, Parliament House Annexe**  
**New Delhi- 110 001**

Dear sir,

I am writing to express my deepest concern over the twin amendments proposed to *The Right to Information Act, 2005* (RTI Act) in The Nuclear Safety Regulatory Authority Bill, 2011 (the Bill) which is currently under the consideration of your committee.

Part II of the Second Schedule attached to the Bill seeks to add a new exemption to Section 8(1) of the RTI Act as follows:

*“(ca) information referred to in clause (c) of sub-section (2) of section 20 of the Nuclear Safety Regulatory Authority Act, 2011”.*

We believe this additional exemption is wholly unnecessary as Sections 8(1)(a) and 8(1)(d) are broad enough to cover all legitimate interests of actors and agencies involved with nuclear and radiation safety issues. Under Section 8(1) any public authority may legitimately withhold any information, whose disclosure can prejudicially affect security, scientific and strategic interests or can be used to incite the commission of any offence. These multiple grounds are adequate for the purpose of protecting sensitive information about nuclear and radiation safety from becoming public as envisaged under Clause 20(2) of the Bill. Second, Section 8(1)(d) protects information in the nature of commercial confidence, intellectual property rights and trade secrets of third parties. This exemption is also adequate for protecting the commercially sensitive information of technology holders specified under Clause 20(2) of the Bill.

Further, the new exemption proposed by the Department of Atomic Energy goes against the basic principles underlying Section 8(1). Parliament inserted harm tests to these exemptions to ensure that they will not be invoked routinely to deny people access to information. The public authority has to justify why certain kinds of information will not be disclosed and what harm their disclosure will cause. However the new exemption proposed under the Bill keeps entire categories of information relating to nuclear and radiation safety out of public reach without a stringent harm test. This is wholly undesirable as it violates the basic philosophy of the RTI Act namely, narrowly drawn exemptions that contain objective harm tests to be administered for protecting public interests. The Department of Atomic Energy has not explained anywhere

in the Bill why such a class exemption is necessary and how the existing provisions of the RTI Act are insufficient to protect sensitive information. To the best of our knowledge no sensitive information relating to nuclear safety issues have been disclosed under the RTI Act. The proposed amendment to the RTI Act is therefore arbitrary in nature. **We request your committee to recommend deletion of this amendment proposal.** The second amendment proposal contained in Part II of the Bill seeks to exclude organisations pertaining to nuclear safety that may be established in future by the Central Government under Clause 25 by placing them under Schedule 2 (read with Section 24) of the RTI Act. This amendment is flawed for the following reasons:

- a) Section 24 of the RTI Act may be used to exclude only existing organisations. The organisations contemplated under Clause 25 of the Bill have not yet been established. This amounts to misuse of the strictly worded provision contained in Section 24.
- b) Section 24 permits the exclusion of only two kinds of organisations from ordinary obligations under the RTI Act, namely those who are involved in security or intelligence-related duties. The regulatory authorities envisaged under Clause 25 do not fall within either category. Intelligence gathering and providing security services are not the primary functions of such bodies. Therefore placing such bodies as yet unborn under Schedule 2 violates the very letter and spirit of the RTI Act.
- c) The proviso to Section 24 of the RTI Act permits the disclosure of information relating to allegations of corruption or human rights violation even from organisations listed under Schedule 2. Information about allegations of human rights violations can be disclosed only with the approval of the Central Information Commission. For this judgement to be made by the Commission, an organisation excluded under Section 24 is required to submit all records and information that are the subject of the request. However Clause 40 read with Clause 26 makes disclosure of information relating to special regulatory bodies established under Clause 25 punishable with a jail term and fine. Such bodies can legitimately deny information to the Central Information Commission by citing these penal provisions. So information about allegations of corruption and human rights violation will also be denied in this manner, defeating the intention of Parliament to ensure transparency in these matters even in excluded organisations.

It must be also pointed out that the Atomic Energy Regulatory Board (AERB) which will be replaced by the proposed Nuclear Safety Regulatory Authority has not complained about the negative impact of the transparency regime on its functioning. AERB was never exempted under Section 24 of the RTI Act. Therefore there is no reason why a new body intended to replace it should be excluded under from the purview of the RTI Act. **We believe these amendments negate the regime of transparency and accountability that Parliament sought to establish through the RTI Act and must be avoided.**

People's concern over the safety aspects of nuclear power facilities has only grown deeper, not receded, over the years. These concerns are better addressed by making information about nuclear power facilities public and not by keeping everything confidential. The global trend is to increase access to information about environmental and public health issues both of which are interminably linked to nuclear and radiation safety. India cannot become an exception to this trend. The Bill must have a strong emphasis on transparency and accountability rather than seek to undercut the regime of openness established by the RTI Act.

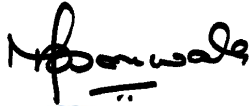
**We urge your committee to recommend deletion of both amendments to the RTI Act contained in Part II of the Bill. We also recommend amendment of Clause 26 in the following manner to enable the Central Information Commission to access information from regulatory bodies established under Clause 25 of the Bill:**

*“26. (1) Save as otherwise provided in this Act, the regulatory bodies referred to in sub-section (2) of section 25 shall not disclose to any person the information relating to the activities falling under their jurisdiction.*

*Provided that no information shall be withheld from the Central Information Commission when required for the purpose of proceedings instituted under Sections 18 or 19 or 20 of the Right to Information Act (No. 22 of 2005).”*

If you wish to discuss these matters further please feel free to contact me on the phone: 011-43180201 or email: [director@humanrightsinitiative.org](mailto:director@humanrightsinitiative.org) or my colleague Venkatesh Nayak on the phone: 9871050555 or email: [venkatesh@humanrightsinitiative.org](mailto:venkatesh@humanrightsinitiative.org)

Thanking you,  
Yours sincerely,



**Maja Daruwala**  
Director

