



“बेटी बचाओ, बेटी पढ़ाओ”

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Program- **7TH SEMESTER BA, BBA, BCOM LL.B**
Course Name – **Appeal under RTI Act**
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Introduction

You can file an appeal under the Right to Information Act whenever the PIO fails to respond to your application or when you are aggrieved by the response of the PIO. What this means is that whenever the PIO fails to give you a reply or charges unreasonable fees for giving copies of documents or fails to give a satisfactory reply or does not give a reply within the stipulated time frame etc., you have the power to file an appeal with the appropriate authority, as discussed below. Section 19 of the Right to Information Act lays down two stages of appeal, the First Appeal is to be made to the appellate authority and the Second Appeal lies with the Central Information Commission or the State Information Commission, as the case may be. The appeals process under the RTI Act is aimed at redressing any grievance suffered by the Applicants in a quicker and cheaper way rather than going to the courts.

First Appeal

When can the appeal be made?

You can make an appeal to the Appellate Authority if:

- 1. You are aggrieved by the decision made;**
- 2. If no decision was made within the proper time limits;**
- 3. You are a third party consulted during the application process, and you are unhappy with the decision made by the PIO.**

What is the time frame for making the First Appeal?

The Applicants who are aggrieved by a decision of a PIO can make an appeal to a departmental Appellate Authority within 30 days of receiving the reply from the PIO or at the expiry of the time period within which the information should have been provided by the PIO. However, if you miss that deadline and the Appellate Authority is convinced that you had justifiable cause for missing the deadline, he/she may allow you to submit an appeal even after the 30 days have expired.

Who can make the First Appeal?

Any person aggrieved by the order of the PIO can file the first appeal. You can also request your friend or an RTI Activist or any other person to file a complaint on your behalf provided he has a copy of all the relevant documents such as RTI Application, acknowledgment receipt, PIO reply, etc. The format of Authorization Letter enclosed.

Who should the First Appeal be made to?

In every public authority, an officer who is senior in rank to the PIO has been designated to hear appeals and is referred to as the First Appellate Authority (FAA). Every first appeal shall be referred to the FAA of the same public authority within which the RTI application was made. The original decision or rejection notice you receive from the PIO should include contact details for the relevant Appellate Authority so that you know who you can go to get the decision reviewed. If the notice is deficient, you may want to check the website of the public authority or contact the PIO directly and ask for the Appellate Authority's details.

How to draft your First Appeal?

Your appeal must be sent to the concerned Appellate Authority in writing. Usually, there is no fixed format for writing the first appeal. However, some State Governments have prescribed forms for filing appeals. You must check the Rules in your particular State to see what all is required for filing the appeal or you can check directly with the Appellate Authority.

The components of the First Appeal have been explained by way of the sample below:

How to file the First Appeal?

1. Directly by handing documents over in person
2. Send the set of appeal documents by speed post or RPAD to the FAA of the relevant public authority
3. Additionally, you can also send the appeal to the APIO in the relevant public authority who then has a duty to forward it to the relevant Appellate Authority.
4. Online Portal for Central Government public authorities only– <http://rtionline.gov.in>. For filing your appeal online, you will have to click on “Submit First Appeal” in the RTI Online Portal and fill up the form that will appear. Refer to the User Manual attached. The registration number and e-mail ID of the original application is required for filing the first appeal.

What is the prescribed fee for filing the First Appeal?

The Central Government has not prescribed any fee for filing an appeal with the Appellate Authority. Unfortunately, some State Governments, like Maharashtra and Madhya Pradesh, have prescribed Rules which impose an appeal fee. Challenges have been filed against such rules, stating that no appeal can be rejected or stalled on account of non-payment of fee towards an appeal. If your State Government has prescribed an appeal fee and you are unwilling or unable to pay it, you can either move the relevant State Information Commission or the State High Court to consider the issue of levy of fees.

Disposal of the First Appeal

The RTI Act does not provide for any procedure to be followed for deciding appeals. However, the Appellate Authority must offer you an opportunity to be heard before a decision on your appeal is reached. In any appeal, it is the PIO who needs to prove to the Appellate Authority that they made the right decision. Only if they make a defensible case, should you be asked to explain why you think they are wrong?

The Central Act requires that the internal Appellate Authority (FAA) dispose off your appeal within 30 days or 45 days if an extension is necessary.

Second Appeal

The Right to Information Act lays down provision for the second appeal in cases when you are unhappy and dissatisfied with the decision given by the First Appellate Authority. Information Commissions have been set up at the centre and states for hearing such appeals.

What is the time frame for making Second Appeal?

A second appeal against a decision of an Appellate Authority to the Information Commission must be made within 90 days from the date on which the decision should have been made or from the date a decision was actually received. However, the Information Commission has the discretion to allow appeals after this period has expired if there is sufficient cause for such delay.

Who can make the second Appeal?

Any person aggrieved by the order of the PIO can file the second appeal. You can also request your friend or an RTI Activist or any other person to file a complaint on your behalf provided he has a copy of all the relevant documents such as RTI Application, acknowledgment receipt, PIO reply, first appeal, the order of FAA etc. The format of Authorization Letter enclosed.

Who should the Second Appeal be made to?

The Central Information Commission and State Information Commission have been set up at the centre and state level respectively to hear complaints and second appeals. You need to send your appeal to the relevant Information Commission in writing. In matters relating to Central Government public authorities, you need to send your appeal to the Central Information Commission. For matters relating to State Government public authorities, you will need to send your appeal to the concerned State Information Commission. Appeals against Panchayats will be sent to the relevant State Information Commission.

How to prepare the Second Appeal

The Central Government and some State Governments have issued rules about what information needs to be included in an appeal to the Information Commissions. However, there is no standard format for filing the second appeal. In addition to basic information about your application and how it was processed, your appeal should attach supporting documents, including self-attested copies of the orders/decision notice against which the appeal is being made; and copies of any additional documents you are relying upon which are referred to in your appeal.

The Central Information Commission provides for a checklist before filing Second Appeal. <http://cic.gov.in/Checklist-ac.pdf>. Some public authorities at the state level have also published a form on their websites under the RTI tab. You must check out the website of the public authority before going ahead with the drafting exercise.

How to file the Second Appeal

1. directly by handing them over in person
2. Send them by speed post or RPAD to the respective Information Commission of the state or Central Information Commission.
3. Additionally, you can also send the appeal to the APIO in the relevant public authority that then has a duty to forward it to the relevant Information Commission.
4. Online Portal for second appeals pertaining to central government-related public authorities – rtionline.gov.in. For filing your second appeal online, visit http://rti.india.gov.in/rti_second_appeal_lodging.php

What is the prescribed fee for filing Second Appeal?

The Central Government has not prescribed any fee for filing a second appeal with the Information Commission. Unfortunately, some State Governments, like Maharashtra and Madhya Pradesh, have prescribed Rules which impose an appeal fee. Legally speaking, no appeal can be rejected or stalled on account of non-payment of fee towards an appeal. But if your State Government has prescribed an appeal fee, you can either move the relevant Information Commission or your High Court to consider the same.

Disposal of the Second Appeal

The RTI Act does not provide for any procedure to be followed for deciding appeals. However, the Information Commissions must offer you an opportunity to be heard before a decision on

your appeal is reached. In any appeal, it is the PIO who needs to prove to the Appellate Authority that they made the right decision. Only if they make a defensible case, should you be asked to explain why you think they are wrong.

The Central Act does not prescribe a time limit for the Information Commission to decide on an appeal and no time limit has yet been included in any of the Appeal Rules which have been Prescribed. [RULES ANNEXED] However, best practice would support a deadline of 30-45 days to dispose of any appeal just like the Appellate Authorities.

PROCEEDINGS BEFORE INFORMATION COMMISSIONS

Proceedings before the Information Commission are informal unlike court proceedings and you need not hire a lawyer to plead your case before the Information Commission. Any person can assist you during the course of the hearing and it is not necessary that such a person should be a legal practitioner. Usually, the appellant appears in person and argues his case. He also has the liberty to appear through his authorized representative or opt out of the course of hearings.

The burden of Proof: The burden of proof that the denial of a request was justified lies on the person who wants to keep the information secret – the PIO or a third party. In practice, this means that you should only need to interact with the Commission after the person who wants to withhold the information has first been questioned because they are the ones who have to show the Information Commission that they are right. If a hearing is then organized, the PIO or third party arguing for secrecy needs to be called on to make their case first. You will only need to make a case if the Commission thinks the PIO or third party has a point worth considering. At that stage, you then need to argue in favor of disclosure.

Decision:

If an Information Commission decides that your appeal was justified, he may pass an order:

(a) Asking the public authority to take concrete steps towards meeting its duties under the Act, for example, by providing access to the information you requested, by ordering information be provided in a different form or by reducing the amount of fees you need to pay;

(b) Ordering the public authority to compensate you for any loss you may have suffered in the process;

(c) Imposing penalties on the PIO or any other official who failed in their duties under the Act.

(d) If the Information Commission decides that your case is groundless, it will reject your appeal and give you a notice of its decision to you and the public authority, which should include any right of appeal.