

**IN THE HON'BLE HIGH COURT OF PANJAB & HARYANA  
AT CHANDIGARH**

C.W.P. No \_\_\_\_\_ of 2008

(Public Interest Litigation)

Hemant Goswami

...Petitioner

Versus

Union of India & Ors.

...Respondents

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Note:- No notice of caveat petition has been received by the petitioner.

Note:-1. The main law points involved in the writ petition are in para no. 26 at page nos. 18, 19 and 20 of the writ petition.

2. Relevant Rules and Statues:- Constitution of India  
Right to Information Act 2005  
Indian Evidence Act  
Indian Penal Code

3. Any Other Case:- Nil

Place:- Chandigarh

Date:- August 25, 2008

PETITIONER

**(In Person)**

**IN THE HON'BLE HIGH COURT OF PANJAB & HARYANA AT  
CHANDIGARH**

C.W.P. No \_\_\_\_\_ of 2008

(Public Interest Litigation)

Hemant Goswami

...Petitioner

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Application under section 151 C.P.C. for grant of exemption from filing the certified copies of Annexures P-1 and P-10.

RESPECTFULLY SHOWETH:-

1. That the above mentioned Civil Writ Petition is being filed in this Hon'ble High Court and is likely to succeed on the basis of grounds taken therein.
2. That the certified copies of Annexures P-1 to P-10 are not readily available with the petitioners. However, true copies of Annexures are being filed for the kind perusal of this Hon'ble Court. Hence, this application.

It is, therefore, respectfully prayed that this application may kindly be allowed and filing of the certified copies of Annexures P-1 to P-10 may kindly be dispensed with.

Note: No affidavit is necessary.

Chandigarh

Date:- August 25, 2008

Hemant Goswami  
Petitioner

IN THE HON'BLE HIGH COURT OF PANJAB & HARYANA AT  
CHANDIGARH

C.W.P. No \_\_\_\_\_ of 2008

(Public Interest Litigation)

Hemant Goswami ...Petitioner

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**LIST & DATES OF EVENTS**

June 15, 2005	Right to Information Act (RTI Act) enacted and comes into force
October 4, 2005	Administrator of Chandigarh Administrator makes rules for its office using the powers of Section 28 of the RTI Act.
February 7, 2008	The Administrator claims that there was no office of the "Administrator" and that the "Administrator" does not fall within the definition of "Public Authority" and so the office of the Administrator was not required to publish the proactive disclosure required under Section 4(1) of the RTI Act or to appoint a Central Public Information Officer as required under Section 5 of the RTI Act.
February 11, 2008	Administrator of Chandigarh Administrator makes new rules for its office using the powers of Section 28 of the RTI Act and extends the scope of the same to whole of Union Territory of Chandigarh, a central government controlled area.
February 15, 2008	The petitioner requested for a copy of the said

	<p>notification under the provisions of Section 76 of the Indian Evidence Act from Sh. Krishna Mohan, Home Secretary of Chandigarh Administration. No reply received till date despite a number of reminders and a notice.</p>
February 18, 2008	<p>The petitioner represents to the Chandigarh Administration through the Administrator, Home Secretary and the Advisor to the Administrator, pointing out the illegality in the said rules promulgated under Section 28 of the RTI Act.</p>
February 22, 2008	<p>The petitioner represents to the Union Government through the Prime Minister office regarding illegality in the rules made under Section 28 of the RTI Act and made applicable to the Union territory.</p>
March 14, 2008	<p>The petitioner serves a notice to the Administrator to satisfy the provisions of Article 361(4) of the Constitution of India for various illegalities and for wrongfully promulgating the RTI rules under Section 28 and making them applicable to whole of Chandigarh.</p>
May 13, 2008	<p>The Administrator represented by Joint Secretary – Home, Sh. Bhupinder Singh (HCS) argued before the Chief Information Commissioner that the office of the Administrator was a virtual office and that there was no need for the Administrator office to follow the RTI Act.</p>
2005 to till date	<p>The Chandigarh Administration bypasses the Central Government rules and claims that the law made by the Central Government shall not apply to the UT of Chandigarh. Officers under the control of Chandigarh</p>

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Administration continues to follow the rules made by the Administrator for his office under Section 28 of the RTI Act and denies information to many information seeker on the pretext that the request for information did not comply with the rules promulgated under Section 28 of the RTI Act by the Administrator of Chandigarh. One of such rejection of RTI request is annexed at Annexure P-9.

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Hence, this civil writ petition is being filed before this Hon'ble Court.

Chandigarh

Date:- August 25, 2008

Hemant Goswami  
Petitioner

IN THE HON'BLE HIGH COURT OF PANJAB &  
HARYANA AT CHANDIGARH

C.W.P. No \_\_\_\_\_ of 2008

(Public Interest Litigation)

Hemant Goswami, aged 37 years, S/o Sh B. M. Goswami,  
Chairperson, Burning Brain Society, #3, Glass office, Shivalikview  
Business Arcade, Sector 17-E, Chandigarh 160017

.....Petitioner

*Versus*

1. Union of India through Secretary – Ministry of Home Affairs,  
North Block, Central Secretariat, New Delhi - 110 001
2. Union of India through Secretary – Ministry of Personnel, Public  
Grievances and Pensions, Department of Personnel and  
Training, North Block, New Delhi – 110 001
3. Chandigarh Administration through Advisor to the Administrator,  
UT of Chandigarh, UT Secretariat, Sector 9, Chandigarh  
160009
4. Sh. S. F. Rodrigues, Punjab Raj Bhawan, Sector 5, Chandigarh  
160 009

..... Respondents

Civil Writ Petition under Articles 226/227 of  
Constitution of India for issuance of Writ or direction in  
the nature of **Writ of Certiorari** or any other  
appropriate Writ quashing “Union Territory,  
Chandigarh, Right to Information (Regulation of Fee and

Cost) Rules, 2005, (Notification No. 9/8/1-IH(1)-2005/18455 dated 04.10.2005)” and “Union Territory, Chandigarh, Right to Information (Regulation of Fee and Cost) (Amendment) Rules, 2008” bearing notification number 9/8/1-IH(1)-2008/2886 dated February 11, 2008, and all other related orders, instructions and notification issued as a result of the said notification and/or intended to carry out objectives and purpose similar to the said notification.

And

for issuance of **writ of Mandamus** for directing the respondents to follow the Right to Information Act 2005 and the Central Government rules made thereunder in its letter and spirit and in specific adhere to the principal of reasonableness of fee and cost of material to be disseminated as mandated under Section 4 and 7(5) of the Right to Information Act.

And

for issuance of **writ of Mandamus** directing the respondents to undertake necessary action to restore the faith of people in the rule of law, the supremacy of the parliament and thereafter also to refund the cost and damages to all people from whom the respondent number 3 and 4 have illegally charged a higher rate of fee to supply information

And

for issuance of **writ of Mandamus** directing the respondents to publicise the correct RTI rules



applicable to the Union Territory and about the various provisions of the RTI Act and do all the acts as prescribed and mandated under Section 26 of the RTI Act 2005

And

for issuance of **writ of Mandamus** directing the respondents 1 and 2 to initiate a detailed inquiry to ascertain the disobedience to the direction of law by officials of respondent number 3 and respondent number 4 which caused injury to the public in general and information seekers in specific; so as to fix responsibilities regarding illegality committed by the Administrator, Advisor to the Administrator, the Home Secretary and the Joint-Home Secretary of Chandigarh; and thereafter to take appropriate legal action under appropriate provisions of the law including the service rules, and also Section 166 and 124-A of the Indian Penal Code.

And

Writ, order or direction in the nature of **Quo Warranto** be issued, directing the Chandigarh Administration to produce all such notifications, order and/or any other lawful powers entrusted on the Chandigarh Administrator and Administration and exercised by Chandigarh Administration which empowers the Chandigarh Administration, the Administrator and/or any official so as to occupy such an office authorizing them to bypass the provisions of Section 29 of the

RTI Act 2005 and to promulgate a law parallel to that notified by the Union Government of India.

And

any other appropriate writ, order or direction this Hon'ble Court may deem fit and proper in the circumstances of this present peculiar case be also kindly be made to meet the ends of justice and ensure rule, supremacy of law.

MOST RESPECTFULLY SUBMITTED:

1. That the Petitioner is a social activist associated with many civil society organizations including many national and international organizations and actively engaged in public welfare. The petitioner is engaged in various social, public interest and civil rights activities concerning the youngsters and the public in general. Petitioner is also heading civil society organizations called "Burning Brain Society" and "Society for Prevention of Crime and Corruption." Many of the activities undertaken by the petitioner have produced positive results and have been widely recognized nationally and globally. The petitioner and the organization he represents have conducted many workshops on "Right to Information Act" and for the right of citizens to live in a corruption-free society. The circumstances of the present case entitles the petitioner to invoke the extraordinary jurisdiction of this Hon'ble Court by way of public interest litigation as the issue involved touches the lives of more than a million people.
2. That Right to Information Act 2005 (hereinafter referred as RTI Act for brevity) was passed by the Parliament and enacted by the Government of India to bring transparency and accountability in the

governance and to contain corruption and to hold Government(s) and their instrumentalities accountable to the governed.

3. That the preamble of the RTI Act 2005 itself calls for setting out a practical regime for free flow of information and the preamble itself mentions the purpose of the Act and reads the objective of the act as,

“..to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority.....”

The preamble of the act also lays down the need to contain corruption as one of the objectives of the RTI Act and further reads that,

“..democracy requires an informed citizenry and transparency of information which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed...”

#### **CAUSE OF ACTION**

4. That the Administrator of Chandigarh Administration acting through the Home Secretary of Chandigarh on ----- (Copy annexed as Annexure P-1) and February 11, 2008 (Copy annexed as Annexure P-2) promulgated new rules called “Union Territory, Chandigarh, Right to Information ( Regulation of Fee and Cost) Rules, 2005,” and “Union Territory, Chandigarh, Right to Information (Regulation of Fee and Cost) (Amendment) Rules, 2008” by way of notification using the provisions of Section 28 of the RTI Act for the office of “Administrator” appointed under Article 239 of the Constitution and

thereafter increased its scope so that the said rules may apply to the central government governed area of UT of Chandigarh.

5. That the said action of the “Administrator” and the supporting/aiding public servants has been done without any authority, is illegal and creates a parallel governance system, outside the purview of the law established by the Constitution and the Parliament, and that such an action is against the spirit of the constitution and the RTI Act. By deliberately extending his brief, the Administrator and the Home Secretary have clearly bypassed the provisions made by the Parliament and also bypassed the powers of the Parliament of India. The said action has the effect of reducing the faith of people in system of governance and attempts to excite disaffection towards the Government established by law in India.
6. Section 2(a) of the RTI Act provides for the definition of the “Appropriate Government” as

Section 2 (a) “appropriate Government” means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly -

- (i) by the Central Government or a Union territory administration, the Central Government;
- (ii) by the State Government, the State Government;

7. Section 2(e) of the RTI Act also provides the definition of the constitutional authorities, under the definition of “Competent Authorities” as

**Section 2 (e)** “competent authority” means

- (i) the Speaker in the case of the House of the People or the Legislative Assembly of a state or a Union territory having such

Assembly and the Chairman in the case of the Council of States or a Legislative Council of States”;

- (ii) The Chief Justice of India in the case of the Supreme Court;
- (iii) The Chief Justice of the High Court in the case of the High Court;
- (iv) the President or the Governor, as the case may be, in the case of other authorities established or constituted by or under the Constitution”;
- (v) the administrator appointed under article 239 of the Constitution;

8. That the RTI Act provides under Section 27 that appropriate Government may make rules for carrying out the objective of the RTI Act and for certain specified function/activities under the RTI Act 2005 and reads that,

Section 27. (1) The appropriate Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

9. That to maintain the independence of the constitutional authorities, the RTI Act provides under Section 28 that the competent authorities as mentioned under Section 2(e) may also prescribe rules for their individual office(s) for performing certain specified functions/activities under the RTI Act 2005 and reads that,

Section 28. (1) The competent authority may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

10. That there is a clear demarcation that when the authority falls under the definition of “Appropriate Government” rules are to be framed

under Section 27 (and not section 28) and when the authority holds a constitutional office and falls within the definition of "Competent Authority" the rules may be framed under Section 28 of the RTI Act limited to that particular constitutional office ("Competent Authority") and no further.

11. That Section 29 provides for the supremacy and superintendence of the Parliament, in case of the Central Government; and the Legislative Assembly, in the case of a State Government; and provides that every rule so made is laid before the Parliament or the Assembly for the scrutiny of any rules so made using the powers entrusted under Section 27 of the RTI Act 2005.

Section 29. (1) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(2) Every rule made under this Act by a State Government shall be laid, as soon as may be after it is notified, before the State Legislature.

12. That it is amply clear from the layout of the RTI Act as well as the manner and procedure laid out for making rules that the rules made by the "President of India," the "Governor of a State," the "Chief Justice of the Supreme Court and the High Court," the "Speaker" and the "Administrator appointed under Article 239" would apply only for the specified office of the "Competent Authority" and shall not be applicable for the rest of the government. For Example, rules made by the "President of India" using Section 28 of the RTI Act would be applicable to his own office and not to the whole of India. Any rules made for India by the Central Government has to be made under Section 27 and has to pass the procedure laid down in Section 29 of the RTI Act.

13. That Union Territory of Chandigarh comes within the definition of Department of the Union according to second schedule as item No. 9 in Part III of B under the Ministry of Home List and as read with Rule 2 and 3 of the "Government of India (Allocation of Business) Rules, 1961." Union Territory also comes within the definition of Central Government, as defined by, and for the purpose of, "Right to Information Act" thereby the Administrator is not competent to frame rules for Union Territory of Chandigarh by using the provisions of Section 27 or 28 and/or by bypassing the provision of Section 29 of the RTI Act. While defining appropriate government under Section 2 (a), appropriate government has been clearly defined as; "Section 2: In this Act, unless the context otherwise requires,— (a) "appropriate Government" means in relation to a public authority which is established, constituted, owned, controlled

or substantially financed by funds provided directly or indirectly— (i) by the Central Government **or the Union territory administration, the Central Government;**.....etc.” It is clear that the Act defines Union territory administration as the Central Government.

14. That it is a violation of Article 14 of Constitution of India and also otherwise illegal to frame two sets of rules for the same Central Government and for the people living under the same “Appropriate Government,” without following the due process of law as required.
  
15. That as a Competent Authority, under the RTI Act, the Administrator of Chandigarh could have made rules only for his office (if such an office actually existed) but not for the whole Union-Territory of Chandigarh. That on the one hand the Administrator of Chandigarh promulgated rules for his office using the powers of Section 28 of the RTI Act and illegally made them applicable on Central Government governed area that is the whole of Union Territory. However when it comes to implementing the RTI Act on his office as a “public authority” the Administrator and bureaucratic officials of Chandigarh Administration claimed that the office of the “Administrator” was only a virtual office and that it was not even an office of the “Public Authority” (Annexure P-7 and P-8). That these arguments were made by the Chandigarh Administration and the Administrator by way of ‘Press Notes” (Annexed as Annexure P-7) issued by the “Director – Public Relations” and also before the “Central Information Commission” in complaint case number CIC/WB/C/2008/00020 decided on May 13, 2008 (Copy annexed as Annexure P-8). The Chandigarh Administration had claimed that (Annexure P-7),



“...The Governor of Punjab has been appointed as Administrator, Union Territory, Chandigarh in addition to his duties as Governor of Punjab. No separate office has been set up by the U.T. Administration with the nomenclature - "Administrator's office". No post has been sanctioned **for the so called Administrator's office** and no staff is posted therein. The Administrator, U.T., Chandigarh is not drawing any salary from the U. T. Administration....”

The Chandigarh Administration further claims (Annexure P-7),

“...The files are submitted to the Administrator by the concerned departments/offices of the Administration for approval/decision. The files are received back with appropriate orders of the Administrator and maintained in the concerned offices only. No information/record is maintained **in the so called Administrator's office.** Therefore, there is no necessity to appoint a Public Information Officer. Similarly, since there is no information held/controlled, there is no necessity to publish the information under Section 4(1)(b)(c)(d). It is not possible even to publish the information under Section 4(1)(b)(c)(d), as no information exists in the so called Administrator's office.....”

16. That the very fact that the “Administrator” promulgated rules under Section 28 of the RTI Act through the Home Secretary but refused to follow the RTI Act and/or publish the necessary proactive

disclosure as mandated under the provisions of Section 4(1) of the RTI Act, casts enough suspicion on the real motives of promulgating rules under Section 28 and making them applicable on Central Government governed area that is the whole of Union Territory of Chandigarh, which otherwise comes within the definition of "Central Government."

17. That the failure of the respondents, including the "Administrator" office and the Chandigarh Administration to carry on activities as mandated under Section 26 of the RTI Act is also reflective of the intentions of the "Administrator" office and the Chandigarh Administration to defeat the purpose of the RTI Act.
18. That since it is claimed that no office of the Administrator exists (Annexure P-7 and P-8) by the Administrator and the Chandigarh Administration so under such circumstances promulgating rules under Section 28 for a non-existent office is also not tenable and justified.
19. That the rules promulgated by the "Administrator" increases the RTI fee by 500 percent and therefore also fails the test of "reasonableness." There is no justification to increase the fee by 500% specially when the Act even provides for free dissemination of information under the provisions of Section 4 and allows the poor to seek free information under Section 7(5) absolutely free-of-cost. In order to encourage free flow of information, as mentioned in the preamble of the RTI Act, and to facilitate the citizenry to exercise this right, Section 4 and 7(5) specifically provides for reasonable cost/fee for obtaining any information (which was notified by the Central Government after due deliberation) and in section 4 even

points out that such information may be provided free or at the cost of the medium or the print cost price. Section 7(5) reads,

“The fee prescribed under sub-section (1) of section 6 and sub-sections (1) and (5) of section 7 shall be reasonable and no such fee shall be charged from the persons who are of below poverty line.”

20. That creating unnecessary hurdles by framing separate rules for obtaining information and by increasing the fee to unreasonable limits is against the spirit of the RTI Act, the legislative intent and against the Parliament of India. Photocopying costs just 40 paisa per copy and the Central Government, by way of Central Government's "Right to Information (Fee and Cost) Rule 2005" (Annexed as P-10) has already incorporated an additional sum of Rs. 1.60 (which is four times or 400% of the actual photocopying charges) to compensate for all manpower used, storage charges, etc. It is improper and illegal to increase the charges to Rs. 10 per page.
21. That certain officials of the Chandigarh Administration along with the Administrator notified the rules for RTI Act illegally using the powers of Section 28 to prevent/deter and impose pseudo barriers for various public spirited citizen groups from seeking records providing evidence of corruption in various land-deals, in the operation of the governance in Chandigarh and specifically after a large section of citizens group undertook "Mission Zero Tolerance" to make Chandigarh bureaucracy accountable and corruption-free by ensuring that work in Administration is done by rules; by actively using the power of the RTI Act.

22. That the petitioner and many other persons and organization requested/represented in writing (Annexure P-4 and P-5) for revoking the illegal order and pointed out the illegality to Sh. Krishna Mohan, the then Home Secretary of Chandigarh, Mr. Pardip Mehra, the Advisor to the Administrator, Mr. Bhupinder Singh, Joint Home Secretary in Chandigarh Administration and the Administrator himself. Despite being made fully aware about the illegality, the above-mentioned officers continued to deny RTI applications lawfully sent to various department of Chandigarh Administration and on the contrary insured that the Central Government RTI rules were not followed. (One such refusal to accept is annexed as Annexure P-9).
23. That even the request for certified copies under the provisions of Section 76 of the Indian Evidence Act has been ignored and refused (Annexure P-3). The laws of the land and the parliamentary enactments have been deliberately undermined by the bureaucratic officers of Chandigarh.
24. That when all the efforts failed so the Administrator, also being the Governor of Punjab was sent a notice to satisfy the provisions of Article 361(4) and it was clearly brought to his notice that the said actions by him was illegal. (Annexed as P-6).
25. That the said action of promulgating parallel RTI Act so as to obstruct and impede the process of seeking information enabling citizens to ensure transparency and a corruption-free environment is also a violation of Article 21 of the Constitution; as the right to live in a corruption-free and transparent society appears to be a clear fundamental right subservient to "Right to Life" guaranteed under Article 21 of the Constitution; since corrupt operations/activities in

the government clearly affect the life and liberty of millions of people. Not only this but the "Right to life" also necessarily incorporate the right to live with dignity and the right to be ruled by unambiguous and clearly defined laws applicable universally in the State, enjoyed by any other fellow being.

**LAW POINTS**

26. That the law points involved in this Writ petition are as follows:-

- i. Whether rules made by a "competent authority" under Section 28 of the Right to Information Act 2005 can bypass and supersede the provisions contained and rules made under Section 27 of the RTI Act by the "appropriate government" and also that of Section 29 of the RTI Act.
- ii. Whether rules made under Section 28 of the Right to Information Act 2005 by the Administrator of Chandigarh Administration and made applicable to whole of Chandigarh was an illegal action.
- iii. Whether two different set of rules under the same legislation for the people living under the same government is a violation of Article 14 of the Constitution.
- iv. Whether creating barriers in obtaining information by way of pseudo rules is also a violation of Article 21 of the Constitution of India.
- v. Whether promulgating illegal and unnecessary orders beyond the scope of the Act and the Constitution of India and the continuing illegal action even after sufficient cause shown as to the illegality of the orders

reduces the faith of people in system of governance and attempts to excite disaffection towards the Government established by law in India.

- vi. Whether the Administrator, the Advisor to the Administrator and the Home Secretary of Chandigarh Administration failed to perform their duty and/or acted in a malafide manner and/or failed to follow the direction of law which attracts violation of Service Conduct Rules and also constitutes an offence of Section 166 and 124-A of the Indian Penal Code.
- vii. Whether the Administrator of a Union Territory has any power to perform an executive function independent of the Parliament and the Union Cabinet for items listed in the Seventh Schedule under Article 246 of the Constitution?
- viii. Whether an Administrator of a Union Territory, who is not an elected representative in any way and is not answerable to the Parliament and is also not under the Union Public Service Commission; has any power to perform an executive function without seeking approval of the Parliament, either directly, or indirectly through the Union Cabinet, and/or the Controlling Department i.e. the Ministry of Home Affairs.
- ix. Whether any revision of the fee under the RTI Act can be fixed which does not pass the test of reasonableness and which lacks proper assessment, evaluation and is not based on any actual cost assessment and/or on any scientific basis, but rather just on the whims and fancies of the Administrator and/or the bureaucratic arm of the government.

- x. Whether it was necessary to share all the relevant facts and reasons of any decision affecting the public, with the general public as mandated under Section 4(1)(c) and 4(1)(d) of the Right to Information Act 2005 and/or in the constitutional spirit of democracy and transparency.

27. That the petitioner has not filed any such Writ petition in this Hon'ble Court or Supreme Court of India.

28. That the matter is of vital general importance affecting the general public and requires intervention of this Hon'ble Court.

29. That there is no other alternative remedy of appeal or revision available to the petitioners except to approach this Hon'ble Court by way of filing the present writ petition.

**RELIEF SOUGHT**

30. It is, therefore, respectfully prayed;

- I. that an Order, Writ or direction in the nature of **Writ of Certiorari** or any other appropriate Writ quashing "Union Territory, Chandigarh, Right to Information (Regulation of Fee and Cost) Rules, 2005 (Notification No. 9/8/1-IH(1)-2005/18455 dated 04.10.2005)," and "Union Territory, Chandigarh, Right to Information (Regulation of Fee and Cost) (Amendment) Rules, 2008" bearing notification number 9/8/1-IH(1)-2008/2886 dated February 11, 2008, and all other related orders, instructions and notification issued as a result of the said notification and/or intended to carry out

objectives and purpose similar to the said notification.

- II. **Writ of Mandamus** be issued for directing the respondents to follow the Right to Information Act 2005 and the Central Government rules made there-under in its letter and spirit and in specific adhere to the principal of reasonableness of fee and cost of material to be disseminated as mandated under Section 4 and 7(5) of the Right to Information Act.
- III. **Writ of Mandamus** be issued directing the respondents to undertake necessary action to restore the faith of people in the rule of law, the supremacy of the parliament and thereafter also to refund the cost and damages to all people from whom the respondent number 3 and 4 have illegally charged a higher rate of fee to supply information
- IV. **Writ of Mandamus** be issued directing the respondents to publicise the correct RTI rules applicable to the Union Territory and about the various provisions of the RTI Act and do all the acts as prescribed and mandated under Section 26 of the RTI Act 2005
- V. **Writ of Mandamus** be issued directing the respondents 1 and 2 to initiate a detailed inquiry to ascertain the disobedience to the direction of law by officials of respondent number 3 and respondent number 4 for causing injury to the public in general and



information seekers in specific; so as to fix responsibilities regarding illegality committed by the Administrator, Advisor to the Administrator, the Home Secretary and the Joint-Home Secretary of Chandigarh; and thereafter to take appropriate legal action under appropriate provisions of the law including the service rules, and also Section 166 and 124-A of the Indian Penal Code.

VI. Writ, order or direction in the nature of **Quo Warranto** be issued, directing the Chandigarh Administration to produce all such notifications, order and/or any other lawful powers entrusted on the Chandigarh Administrator and Administration and exercised by Chandigarh Administration which empowers the Chandigarh Administration, the Administrator and/or any official so as to occupy such an office authorizing them to bypass the provisions of Section 29 of the RTI Act 2005 and to promulgate a law parallel to that notified by the Union Government of India.

VII. **Writ of Mandamus** be issued directing the respondents to pay the petitioner the cost of this writ, opportunity cost, damages suffered and all other related costs

VIII. any other appropriate writ, order or direction this Hon'ble Court may deem fit and proper in the circumstances of this present peculiar case be also kindly be made to meet

the ends of justice and ensure rule, supremacy of law.

IX. Filing of certified and fair typed copies of Annexures **P-1** to **P-10** may kindly be dispensed with, and permission to file true copy of the same be granted.

X. the present writ petition may kindly be allowed with costs.

Place: Chandigarh

Date:- August 25, 2008

PETITIONER

(Hemant Goswami)

VERIFICATION:-

Verified that the contents of paras No. 1 to 24 and para No. 26 to 29 are true and correct to my knowledge, whereas, contents in para 25 and 30 are legal points raised and the relief sought respectively and based on legal advice which I believe to be true and correct. No part of it is false and nothing has been concealed therein.

Place: Chandigarh

Date:- August 25, 2008

Hemant Goswami

PETITIONER

IN THE HON'BLE HIGH COURT OF PANJAB & HARYANA AT  
CHANDIGARH

C.W.P. No \_\_\_\_\_ of 2008

Hemant Goswami ...Petitioner

Versus

Union of India & Ors. ....Respondents

Affidavit of Hemant Goswami, aged 37 years,  
S/o Sh B. M. Goswami, Chairperson, Burning  
Brain Society, #3, Glass office, Shivalikview  
Business Arcade, Sector 17-E, Chandigarh  
160017.

I, the above named dependent do hereby solemnly affirm and declare as  
under:-

1. That the deponent is filing the accompanying civil writ petition in  
this Hon'ble High Court. The contents of the civil writ petition may be read  
as a part and parcel of this Affidavit. The civil writ petition has been drafted  
by the deponent himself. The deponent declares that the contents of this  
affidavit are true and correct to his knowledge and he is fully conversant  
with the facts of the present case.

Chandigarh

Date:- August 25, 2008

Hemant Goswami  
Deponent

VERIFICATION:-

Verified that the contents of my above stated affidavit comprising of  
one para are true and correct to my knowledge. No part of it is false and  
nothing has been concealed there from.

Chandigarh

Date:- August 25, 2008

Hemant Goswami  
Deponent

GOVERNMENT OF INDIA

## Chandigarh Administration Gazette

EXTRAORDINARY

Published by Authority

CHANDIGARH, TUESDAY, OCTOBER 4, 2005 (ASVINA 12, 1927 SAKA)

HOME DEPARTMENT

Notification

The 4th October, 2005

**No. 9/8/1-IH(1)-2005/18485**—In exercise of the powers conferred by clauses (i), (ii), (iii) and (iv) of sub-section (2) of Section 28 read with clause (e) of Section 2 of the Right to Information Act, 2005 (22 of 2005), and all other powers enabling him in this behalf, the Administrator, Union Territory, Chandigarh hereby makes the following rules, namely :—

**1. Short title and commencement.**—(1) These rules may be called the Union Territory, Chandigarh, Right to Information (Regulation of Fee and Cost) Rules, 2005

(2) They shall come into force on the date of their publication in tie Official Gazette.

**2. Definitions.**—In the rules, unless the context otherwise requires,—

(a) 'Act' means the Right to Information Act, 2005 ;

(b) 'Section' means Section of the Act;

(c) all other words and expressions used herein but not defined and defined in the Act shall have the meanings assigned to them in the Act

**3.** A request for obtaining information under sub-section (1) of Section 6, shall be accompanied by an application fee of rupees ten by way of cash

against proper receipt or by demand draft or bankers cheque payable to the Accounts Officer of the public authority. \

4. For providing the information under sub-section (1) of Section 7, the fee shall be charged by way of cash against proper receipt or by demand draft or bankers cheque payable to the Accounts Officer of the public authority at the following rates :—

- (a) rupees two for each page (in A-4 or A-3 size paper) created or copied ;
- (b) actual charge or cost price of a copy in larger size paper ;
- (c) actual cost or price for samples or models ; and
- (d) for inspection of records, no fee for the first hour ; and a fee of rupees five for each fifteen minutes (or fraction thereof) thereafter.

5. For providing the information under sub-section (5) of Section 7, the fee shall be charged by way of cash against proper receipt or by demand draft or bankers cheque payable to the Accounts Officer of the public authority at the following rates :—

- (a) for information provided in diskette or floppy rupees fifty per diskette or floppy ; and
- (b) for information provided in printed form at the price fixed for such publication or rupees two per page of photocopy for extracts from the publication.

KRISHNA MOHAN,  
Home Secretary,  
Chandigarh Administration

**CHANDIGARH ADMINISTRATION**

**HOME DEPARTMENT**

**Notification**

The 11.02.2008

No. 9/8/1 – IH(1) – 2008/2886 In exercise of the powers conferred by clauses (i),(ii), (iii) and (iv) of sub – section (2) of Section 28 read with clause (e) of Section 2 of the Right to Information Act, 2005 (22 of 2005), and all other powers enabling him in this behalf, the Administrator, Union Territory, Chandigarh, hereby makes the following rules further to amend the Union Territory, Chandigarh, Right to Information ( Regulation of Fee and Cost) Rules, 2005, namely:-

1. **Short title and commencement** - (i) These rules may be called the Union Territory, Chandigarh, Right to Information ( Regulation of Fee and Cost) (Amendment) Rules, 2008.

(ii) They shall come into force on the date of their publication in the Official Gazette.

2. In the Union Territory, Chandigarh, Right to Information (Regulation of Fee and Cost) Rules, 2005, (hereinafter referred to as rules), rule 3 shall be substituted as under:-

“Rule 3-A request for obtaining information under sub – section (1) Of Section 6, shall be accompanied by an application fee of rupees fifty by way of cash against proper receipt or by demand draft or bankers cheque or by Indian Postal Order (IPO) payable to the Accounts Officer of the public authority.”

3. In the said rules, rule 4 shall be substituted as under:-

"Rule 4 – For providing the information under sub – section (1) of Section 7, the fee shall be charged by way of cash against proper receipt or by demand draft or bankers cheque or by Indian Postal Order (IPO) payable to the Accounts Officer of the public authority at the following rates:-

- (a) Rupees Ten for each page created or copied;
- (b) Actual cost or price for samples or models; and
- (c) For inspection of record, Rs. 20/- per 15 minutes or a fraction thereof."

4. In the said rules, rule 5 shall be substituted as under:-

"Rule 5 – For providing the information under sub – section (5) of Section 7, the fee shall be charged by way of cash against proper receipt or by demand draft or bankers cheque or Indian Postal Order (IPO) payable to the Accounts Officer of the public authority at the following rates:-

- (a) For information provided in diskette or floppy; Rs. 100/- per floppy and Rs. 100/- per floppy and Rs. 200/- per CD; and
- (b) For information provided in printed form, at the price fixed for such publication or rupees ten per page of photocopy for extracts from the publication."

**KRISHAN MOHAN,**

Home Secretary,

Chandigarh Administration

HG/IEA/CA/01

February 15, 2008

Home Secretary, UT Secretariat,

Sector 9, Chandigarh

**SUPPLY OF COPY UNDER**  
**SECTION 76 OF THE INDIAN EVIDENCE ACT, 1872**

Sir,

The undersigned require duly certified and sealed copies under the provisions of Section 76 of the "Indian Evidence Act of 1872" of the following documents urgently, i.e today itself for legal purpose;

1. Orders notifying, Chandigarh, Right to Information (Regulation of Fee and Cost) Rules, 2005
2. Complete copy of the orders notifying, Union Territory, Chandigarh, Right of Information (Regulation of Fee and Cost) (Amendment) Rules, 2008

The required legal fee is affixed here along in the form of court fee stamp @ 65 paisa per copy.

Kindly provide the copy together with a certificate written at the foot of such copy that it is true copy of such document and such certificate be dated and subscribed by such officer with his name and his official title, and be sealed, by such officer who is authorized by law to make use of seal.

Thanking you,

Yours truly,

**Hemant Goswami**

(Applicant)

Address of the Applicant:

Hemant Goswami, Chairperson, Burning Brain Society, #3, Glass Office,

Business Arcade, Hotel Shivalikview, Sector 17-E, Chandigarh 160017



CV/Representation/0208/010

February 22, 2008

Sh. Manmohan Singh, Prime Minister of India

*Through* Mr. T. K. A. Nair, Principal Secretary to the PM,

South Block, Raisina Hill, New Delhi 110 011

**REPEALING OF RTI RULES NOTIFIED BY CHANDIGARH  
ADMINISTRATION**

Dear Sir,

The undersigned on behalf of various civil society groups would like to bring it to your kind notice that the Chandigarh Administration have notified a parallel set of rules under "Right to Information." Such rules notified by the Chandigarh Administration provide for increase in RTI fee by 500% and have been declared without authority of law and therefore are absolutely illegal and against the spirit of the RTI Act.

The general public believes that the said rules are not only bad in law but also misconceived and have not been promulgated with honest intentions. The Administration through any unelected representative and a few executives have no power to hijack the democracy and the Constitution and start doing things which only the Parliament of India is empowered to do.

Besides the basic fact that the Union Territory comes within the definition of Central Government, for the purpose of "Right to Information Act" and that it is not competent to frame its own rules; we would also like to bring the following facts to your notice;

**THE BASICS – ON LAW**

1. The Union Territory of Chandigarh comes within the definition of Central Government, for the purpose of "Right to Information Act" and that it is

not competent to frame its own rules. It may be noted that while defining appropriate government under Section 2 (a), appropriate government has been defined as; “*Section 2: In this Act, unless the context otherwise requires,— (a) "appropriate Government" means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly— (i) by the Central Government or the Union territory administration, the Central Government; ... etc.*” It is clear that the Act defines Union territory administration as the Central Government. So it was illegal to frame two sets of rules for the same Central Government and that too without following the due process of law as required.

2. The RTI rules promulgated by the Administrator is also illegal on the count that even in the recent Vasu Dev Singh vs. UOI case, it was held by the Supreme Court that the Administrator can not do the acts which require legislative action. Similar observation has been made by the Supreme Court in many other cases too. It has also been held that the Administrator acts as the Central Government. But all this does not empower him to act as a legislative assembly or by-pass the Parliament of India.
3. As a Competent Authority, under the RTI Act, the Administrator of Chandigarh could have made rules only for his office but not for the whole Union-Territory of Chandigarh

### **THE BASICS**

4. Intention of the “Right to Information Act” reflects in its preamble which indicates of a citizen’s movement which can make the government transparent and accountable to the governed. The preamble reads; “*(RTI Act is) An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority.*” The preamble of

*the RTI Act further reads, “AND WHEREAS **democracy requires an informed citizenry and transparency of information** which are vital to its functioning and also to **contain corruption and to hold Governments and their instrumentalities accountable to the governed.**”*

5. In order to encourage free flow of information and to facilitate the citizenry to exercise this right, Section 7(5) specifically provides for reasonable fee for obtaining any information (which was notified by the Central Government after due deliberation.) Section 7(5) reads, “*The fee prescribed under sub-section (1) of section 6 and sub-sections (1) and (5) of section 7 **shall be reasonable** and no such fee shall be charged from the persons who are of below poverty line.*”
6. It may also be noted that the earlier name of the legislation, referred as “Freedom of Information Act,” was scrapped and the phrase “Right of Information” was used instead. The basic purpose of this was to send the message across that obtaining information was a RIGHT of every citizen. The Supreme Court too has often held it to be a right under Article 19 of the Constitution.

Creating unnecessary hurdles by framing separate rules for obtaining information and by increasing the fee to unreasonable limits is against the spirit of the act, the legislative intent and against the Parliament of India.

#### **ON REASONABLENESS OF THE FEE**

The Fee for obtaining information prescribed by the Central Government has been done after due deliberation, keeping in view the intention of the Act and the parliament, the income level of people in this country, and also to contain corruption.

7. Photocopying costs just 40 paisa per copy and the Central government has already incorporated an additional sum of Rs. 1.60 (which is four times the copying charges) to compensate for all manpower used, storage charges, etc. It is improper to increase the charges to Rs. 10 per page.

8. There are already recommendations that there must not be any application fee for seeking information under the RTI Act. Even Section 76 of the Indian Evidence Act allows obtaining any public document without payment of any fee.
9. "Parliamentary Standing Committee on Public Grievances and Personnel" headed by Dr. E. M. Sudarasna Natchiappan, in January 2008 has clearly recommended scrapping of the application fee of making an RTI application. The standing committee felt that there was a need to introduce greater transparency in dealing with RTI applications, as the majority of concerned officials were hesitant to part with information. The CIC Wajahat Habibullah, had also welcomed the recommendation of the parliamentary committee on scrapping of the fee.

It is amply clear that the RTI fee, as prescribed by the centre is already reasonable, and if there is any need to recommend any change in the fee; there is enough scope and margin to reduce it and/or scrap it altogether. There is already a move to scrap the application fee (as recommended by the Natchiappan committee) and enough scope to reduce the documentation charges to Rs. 1/- per page. Besides, most of the information can also be provided free by way of the provisions enshrined under Section 4(1) of the RTI Act.

**FEE-HIKE WILL DEFEAT THE OBJECTIVE OF THE ACT AND INCREASE CORRUPTION**

10. The increased fee is not only against the provision of Section 7(5) but will also directly increase corruption within the bureaucracy and the government. Since the documentation photocopying charges are less than 40 paise so if the government starts charging Rs. 10/- per page, many people will prefer to pay few hundred in bribe to the officer and get the documents instead of paying the official RTI fee.
11. Logic also says that if the RTI Fee is increased then the provisions with regard to the penalty and compensation to the information seekers (who

are either not provided information and/or are given frivolous replies) be also increased. So if the RTI fee was increased by 500 percent then the penalty too should be increased to Rs. 1.5 lakh for not providing the information or for giving frivolous replies. Both the application fee clause and the penalty clause have to move in tandem.

12. The increased fee will in addition also divert the official manpower and resources (The copying is most likely to be still done by using official resources) and will additionally cause huge loss to the public exchequer. An increased RTI fee will cause not only cause direct loss on account of the RTI fee but also cause diversion of official resources. In addition it will add and reinforce the component of dishonesty and corruption in the government machinery. All this is against the spirit of the Act.

#### **CASE STUDIES – HIGH RTI FEE INCREASES CORRUPTION**

13. The known fact from studies across the world prove that its only the corrupt governments and the officials who create barriers in free flow of information and try to defeat any move to ensure accountability of action. [The present move by Chandigarh Administration to hike RTI fee came after citizens group undertook “Mission Zero Tolerance” to make Chandigarh corruption-free by actively using the power of the RTI Act. The Home Secretary was kept informed of all such initiatives and on the face of it; the move was appreciated by him.]
14. A move to increase the RTI fee would be going back to the pre-RTI era of corruption and secrecy. In the region we have two such examples. One is the functioning of RTI in Haryana and the other case which can be studied is that of “Punjab and Haryana High Court.” We are facing an acute problem of corruption in “Punjab and Haryana High Court” and the “Haryana” Government where due to high copying charge of Rs. 10 per page people prefer to bypass the RTI provisions and obtain copies of documents and files by bribing the clerks and officers. (An independent verification was done by volunteers in the Punjab and Haryana High Court

where lawyers confided that they prefer to get copies by indirect means because using RTI was not convenient in the High Court). Is Chandigarh administration too trying to promote and aid corruption like Haryana? On the contrary, the Government should try to ensure that the RTI fee is rolled back to normal in all such places where it is unreasonable. We have to remember that, "Injustice anywhere is a threat to Justice everywhere."

#### **RESPONSIBILITIES OF THE ADMINISTRATION**

15. It's the responsibility of the Chandigarh Administration to appoint CPIO in all public authorities. But unfortunately even on date the office of the Administrator does not have a CPIO or the necessary disclosures under the RTI Act. Even the highest office in Chandigarh Administration lacks transparency and accountability. Encouraged by this, many other UT Administration funded bodies also lack the accountability and transparency.
16. The necessary responsibility of the Administration under Section 4 and Section 26 of the RTI Act have also not been fulfilled by the Chandigarh Administration.
17. It was the responsibility of the Chandigarh Administration and the Government to ensure that all the provisions contained in the "Public Records Act of 1993," "Manual of Office Procedure Rules," provisions of Section 4 of "The Right to Information Act," and the necessary guidelines contained in the "Information Technology Act 2000" are fulfilled. However the Chandigarh Administration has failed miserably in adhering to the law and fulfilling its obligations. The problem faced by the Chandigarh Administration in providing information is on this count and is a clear result of its own inefficiency. If there are no proper record management and office procedure then retrieval of information is going to be a problem and a lot of resources are likely to be consumed in it.
18. The basic requirement of issuing a proper stamped receipt to all communication received by the offices of the Administration are also not

being followed. Even the office of the Home Secretary, Advisor and the dak office at the UT Secretariat do not provide proper stamped receipt to the general public (As provided in the Manual of office procedure). All this is needed for proper record management which is ultimately going to facilitate the citizens "Right to Information" and make the functioning of the government more efficient.

19. It is incorrect for the administration to punish the public (by raising the RTI fee) for the inefficiency by its bureaucracy and the senior officials. What is required is strict action against all civil servants whose departments do not have proper management and do not adhere to the directions of law. Because it is the highest official whose inefficiency percolates to the lower levels. Setting the top in order will definitely contain the rot in the system. Such an action will also make it easy for various departments to provide information to the public.

The undersigned on behalf of the Civil Society and the general public requests you to consider all the above facts and ensure that all the "Right to Information" rules notified by the Chandigarh Administration are repealed with immediate effect.

We are hopeful that you will support a corruption-free society and an era of transparency and accountability in the government.

In expectation, yours cordially;

Hemant Goswami

(Convenor)

**Citizens Voice**

(A group of NGO's and CSO)

C/o Burning Brain Society)

#3, Glass Office, Business Arcade, Shivalikview, Sector 17-E, Chandigarh

E-Mail: [info@burningbrain.org](mailto:info@burningbrain.org) Telephone: +91 9417868044, +91-172-5165555

CV/Representation/0208/001

February 18, 2008

Gen. S. F. Rodrigues, Administrator,  
O/o Administrator of Chandigarh C/o Punjab Raj Bhawan,  
Sector 5, Chandigarh

(Copies to: Home Secretary, Advisor to Administrator)

**REPEALING OF RTI RULES NOTIFIED BY CHANDIGARH  
ADMINISTRATION**

Dear Sir,

The undersigned on behalf of various civil society groups would like to bring it to your kind notice that the "Right to Information" rules notified by the Chandigarh Administration and the increase in fee by the Chandigarh Administration is absolutely illegal and against the spirit of the RTI Act.

The general public believes that the said rules are not only bad in law but also misconceived and have not been promulgated with honest intentions. The Administration through any unelected representative and a few executives have no power to hijack the democracy and the Constitution and start doing things which only the Parliament of India is empowered to do.

Besides the basic fact that the Union Territory comes within the definition of Central Government, for the purpose of "Right to Information Act" and that it is not competent to frame its own rules; we would also like to bring the following facts to your notice;

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1. The RTI rules promulgated by the Administrator is also illegal on the count that even in the recent Vasu Dev Singh vs. UOI case, it was held by the Supreme Court that the Administrator can not do the acts which require legislative action. Similar observation has been made by the Supreme Court in many other cases too. It has also been held that the Administrator acts as the Central Government. But all this does not empower him to act as a legislative assembly or by-pass the Parliament of India.

### **THE BASICS**

2. Intention of the “Right to Information Act” reflects in its preamble which indicates of a citizen’s movement which can make the government transparent and accountable to the governed. The preamble reads; “(RTI Act is) An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, **in order to promote transparency and accountability in the working of every public authority.**” The preamble of the RTI Act further reads, “AND WHEREAS **democracy requires an informed citizenry and transparency of information** which are vital to its functioning and also to contain corruption and to hold Governments and their instrumentalities accountable to the governed.”

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**FEE-HIKE WILL DEFEAT THE OBJECTIVE OF THE ACT AND  
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15. It was the responsibility of the Chandigarh Administration and the Government to ensure that all the provisions contained in the "Public Records Act of 1993," "Manual of Office Procedure Rules," provisions of Section 4 of "The Right to Information Act," and the necessary guidelines contained in the "Information Technology Act 2000" are fulfilled. However the Chandigarh Administration has failed miserably in adhering to the law and fulfilling its obligations. The problem faced by the Chandigarh Administration in providing information is on this count and is a clear result of its own inefficiency. If there are no proper record management and office procedure then retrieval of information is going to be a problem and a lot of resources are likely to be consumed in it.

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17. It is incorrect for the administration to punish the public (by raising the RTI fee) for the inefficiency by its bureaucracy and the senior officials. What is required is strict action against all civil servants whose departments do not have proper management and do not adhere to the directions of law. Because it is the highest official whose inefficiency percolates to the lower levels. Setting the top in order will definitely contain the rot in the system. Such an action will also make it easy for various departments to provide information to the public.

#### **CIVIL SOCIETY EXTENDS SUPPORT**

The civil society and the general public requests you to ensure that the illegal rules notified by the Chandigarh Administration are immediately scraped and it be agreed that the UT of Chandigarh is not empowered to notify such rules on its own. The Civil Society extends all the support to the administration for proper implementation of the RTI Act and is also ready to pool international and national professional expertise to advice and assist the administration on record management, and help in developing strategies and methodology to comply with the provisions of Section 4, Section 26 and also fulfill its obligations under the "Office Procedure Rules" and the "Public Records Act" of 1993.

18. By such a proactive action and by polling in all the expert resources, we can make Chandigarh an example for the rest of the country to follow in

RTI. Chandigarh can be a real example for IT and e-governance and not just a paper tiger, which it is at present.

19. All the available records in the government office can be proactively reduced in electronic format over a period of one year and can be uploaded as intended under Section 4(1)(a) and other legislations. Civil society can be helpful in advising and developing practical ways to do so and extends all the support for any such move.
20. It is suggested that an Advisory panel on RTI implementation constituting of civil rights activists, journalists, lawyers, prominent citizens, etc. be formed to look into the shortcomings, problems faced and also to work for proper adherence by the departments to facilitate implementation of various legislations helpful in proper record keeping, office management and pro-active disclosure of communication. The advisory panel can also act as a bridge between the common people and the government and can also be helpful in fulfilling the obligations of the government as mentioned under Section 26 of the RTI Act.

The undersigned on behalf of the Civil Society and the general public requests you to consider all the above facts and ensure that all the “Right to Information” rules notified by the Chandigarh Administration are repealed with immediate effect.

We are hopeful that you will support a corruption-free society and an era of transparency and accountability in the government.

In expectation, yours cordially;

**Hemant Goswami**

(Convenor) **Citizens Voice**

(A group of NGO's and CSO) C/o Burning Brain Society)

#3, Glass Office, Business Arcade, Shivalikview, Sector 17-E, Chandigarh

E-Mail: [info@burningbrain.org](mailto:info@burningbrain.org) Telephone: +91 9417868044, +91-172-5165555

HG/Legal Notice/Admr/2008/001

March 14, 2008

1. Sh. S. F. Rodrigues,  
Administrator of Chandigarh  
C/o Punjab Raj Bhawan,  
Sector 5, Chandigarh
  
2. Administrator of Chandigarh  
O/o Administrator, UT Secretariat  
Sector 9, Chandigarh 160 009  
E-Mail: admr@chdut.nic.in

**LEGAL NOTICE and also NOTICE UNDER ARTICLE 361(4)**

Sir,

I Hemant Goswami S/o B. M. Goswami operating from Society for Prevention of Crime and Corruption O/o BBS, #3, Glass Office, Shivalikview Business Arcade, Sector 17-E, Chandigarh 160017 (Telephone No. +91-172-5165555; E-Mail: goswami@hemant.org) serve you with the following notice in my individual capacity and on behalf of the people of India;

1. That you being the Administrator of Chandigarh have been empowered by the Constitution to maintain the spirit of Democracy and have been entrusted by the people of India to uphold the constitution and the law of the land.
  
2. That the constitutional position of Administrator is a position of trust wherein the Administrator acts as the custodian of the property and articles entrusted to him by virtue of his constitutional position. It is also a position of faith and trust wherein each and every member of the public expects that faith, trust and respect for the law of the land and Constitution of India be maintained at all times.



3. That being the Administrator of Chandigarh, you have been in position to promulgate certain orders for your office, and also in the interest of public, within the expressed rights conferred on you by way of well defined notifications delegating specific powers under the provisions of Article 239 of the constitution. That the said position also has a scope of the powers being misused beyond the call of the duty and/or beyond the powers conferred by law and/or conferred by way of the constitutional provisions.
4. That you have done the following acts, devoid of good faith and honest intentions, by which it also appears that you have exceeded the mandate of law and committed acts of omission and commission which call for civil and criminal redress by the public in general and the undersigned in specific.
  - a. That you unlawfully promulgating the “Union Territory, Chandigarh, Right to Information (Regulation of fee and cost) Rules 2005” and also “Union Territory, Chandigarh, Right to Information (Regulation of fee and cost) (Amendment) Rules 2005” and unlawfully made the said rules applicable to the whole of Chandigarh. That the said unlawful rules appear to have promulgated to prevent people from seeking information and creating barriers in obtaining information. The said act also abates corruption and prevents public spirited people from seeking information and thereby challenging the corrupt and incompetent section of the public servants. That the intention of the “Right to Information Act 2005” is clearly stated in its preamble which states that the purpose of the RTI Act was to bring in an era of transparency and contain corruption and also to hold the governments accountable to the people it served.
  - b. That by unlawfully promulgating the said “Union Territory, Chandigarh, Right to Information (Regulation of fee and cost)

Rules 2005” and also “Union Territory, Chandigarh, Right to Information (Regulation of fee and cost) (Amendment) Rules 2005,” you also disobeyed the direction of law as contained in Section 7(5) of the “Right to Information Act 2005” which calls for a reasonable fee to be charged for seeking information. That your action of promulgating the said rules and increasing the fee is neither in the interest of the public, nor in unison with the law of the land.

- c. That by unlawfully imposing a fee on the public by way of increased fee under the “Right to Information Act,” you have imposed an illegal tax on the people of Chandigarh which is prohibited under Article 265 and 285 of the Constitution. It has not been an act done in good faith.
- d. That despite your office being an office of a “Public Authority” and you being the head of the said public authority, by not appointing any “Public Information Officer” in the office of “Public Authority” under your exclusive and direct control and being headed by you at all times since the promulgation of the “Right to Information Act 2005,” you disobeyed the direction of law as contained in Section 4, 5, 6 and other parts of the “Right to Information Act 2005.” That this is also an offence amounting to disobeying the direction of law, as mentioned under the provisions of Section 166 of the Indian Penal Code.
- e. That you being a “Public Servant” and being duty bound to obey the direction of law contained under Section 76 of the Indian Evidence Act has failed to honour the same. That the undersigned had requested a copy of the public document under your control under the provisions of Section 76 of the Indian Evidence Act for urgent legal purpose but you failed to provide the same. That your office, under your instructions also refused to provide proper

lawful receipt of such a request sent to you. That this is also an offence of disobeying the direction of law, as mentioned under the provisions of Section 166 of the Indian Penal Code.

- f. That you are not the owner but custodian of all the property and documents addressed/created, executed, produced or under your control. People of India are the real owner of each and every document sent to you, produced by you and under your control. All such documents/articles/records are of great archival and other value. That “Public Records Act,” “Right to Information Act,” “Information Technology Act” and “Manual of Office Procedure” provides the direction of law for proper maintenance, receipts, disposal and archival of all documents and records. You and your office has not been accepting, under receipt or otherwise, petitions, letters, documents sent in electronic and paper form and addressed to your office. By such refusal, you have abused the spirit of the constitution, relevant laws and also caused many of the records/documents in electronic and paper form to be destroyed, misplaced and/or stolen. That your office has clearly stated that you have instructed officers working under you to enter the detail of any records/documents in the diary register only after you instruct them to do so. Your office further states that you selectively record the documents and allow the others documents including the electronic records to be destroyed and lost without properly archiving/recording them. That destruction of records is a cognizable offence under Section 9 of the “Public Records Act 1993.” You have also caused great loss to the people of India and also breached the trust you were duty bound to honour and maintain. That besides being a criminal breach of trust as defined under Section 405 of the IPC, such an action is also an offence of disobeying the direction of law, as mentioned under the provisions of 166 of the Indian Penal Code.

- g. That Article 19 of the Constitution provides that “*All citizens shall have the right- (a) To freedom of speech and expression; (b) To assemble peaceably and without arms.*” That you have prevented people from exercising the lawful right guaranteed under article 19(1)(b) and suppressed the said right by keeping Chandigarh under a continuous state of emergency and by passing an order which limited the people to assemble and protest only in a small area of Sector 25, next to the cremation ground. That you have done so against the advice and recommendation of the Inspector General of Police and the other officials and done so when no such power was vested in you. That you ignored the advice of the IG Police that the right guaranteed under the Constitution should not be denied and any action of denying the right of free expression and peaceful assembly can lead to aggrieved person adopting unlawful and violent means. That on July 19, 2006 you recommended that all peaceful assemblies be limited to a small area in Sector 25 only. That such an act amounts to amending the fundamental rights contained under the constitution and is like running a government parallel to one established by the Constitution of India. That such an act also amounts to creating dissatisfaction in the general public and others towards the Government as defined and explained in Section 124A of the Indian Penal Code and elsewhere. That this is also an offence of disobeying the direction of law, as mentioned under the provisions of Section 166 of the Indian Penal Code.
- h. That by virtue of being the Administrator you have been exercising the role of custodian of property and land in Chandigarh. That during your tenure you allowed innumerable unlawful changes in the layout and plan of Chandigarh and facilitated transfer of property and land without following proper process of law and

thereby caused grave injury, loss and damage to the people of India including the undersigned.

- i. That you have no power to change and facilitate and/or authorize changes in the Plan/Master Plan/Layout of Chandigarh and/or sanction projects and/or commit the use of land and/or transfer the control of land and property existing in Chandigarh and which belongs to people of India. That you have also approved a plan to change the basic design and layout of Chandigarh by allowing the Sector 17 bus-stand and other public areas to be shifted and that thereby it is rumored that you are facilitating transfer of land in Sector 17 to some big industrial and real estate companies. That by doing the abovementioned acts you have breached the trust of people of India, disobeyed the direction of law and caused loss, damages and injury to the people of India including the undersigned. That you have also committed criminal breach of trust, as defined under Section 405 of the Indian Penal Code.
- j. That knowing well that as an Administrator of Chandigarh and thereby acting as the Central Government nominee wherein the Central Government headed by the President of India remains an appropriate government, you were not vested with the power to remit the sentence of prisoners as otherwise provided under Section 432 of "Criminal Procedure Act." That in January 2008, you announced remission of sentence to a section of prisoners and thereby allowed a number of prisoners under your custody to evade the process of law and facilitated their escape from lawful custody. This is a criminal offence punishable under Section 217, 218, 223 and other provisions of the Indian Penal Code.
- k. That it appears that the process of law and the faith of people have been abused by you. That your actions also show disregard and disrespect for the rule of law and the Constitution of India.

5. That by doing the acts as mentioned in “Para 4” above, you seem to have committed many offences and also civil wrongs causing loss to the public including the undersigned.
6. To maintain the spirit of the constitution and to uphold the direction of law providing for equality before the constitution and the law of India, it becomes necessary that all such unlawful actions be challenged and rectified to the extent possible. It is also necessary that the judicial and other lawful constitutional agencies be prayed for investigating all or any of such acts and wherever necessary, prayer be made to punish the guilty under the law of the land, so as to restore the faith of the people in the process of law and the Constitution.
7. That the above mentioned acts (Specifically mentioned in Para 4 above) were not done during the
  - a. Discharge of your official function and duties
  - b. And in your capacity as a Governorbut rather done in your capacity as the Administrator of Chandigarh and against the powers and responsibilities by law conferred on you. That your official capacity only facilitated such illegal acts to be committed and were in no way connected with your official duty. Thereby the said acts are not covered by protection/immunity provided to Governors under Article 361 of the Constitution. That neither is any prosecution sanction required for bringing any civil or criminal proceedings against you.
8. That if you have reasons to believe that you as an Administrator of Chandigarh are covered by the provisions contained under Article 361 of the constitution and your above-mentioned acts can not be challenged in a court established by law, kindly provide expressed and explicitly reasons for the same (along with all supporting documents, extract of relevant laws and any other document relied upon. A copy of all such public documents

be supplied under the provisions of Section 76 of the Indian Evidence Act) within 15 days of receipt of this notice.

- a. That in the event it is honestly believed by your good self that the provisions of Article 361 prevents the undersigned from seeking criminal and civil redress against you; the undersigned requests you to consider resigning from such a constitutional position and be willing to stand the test of the law. That such an action shall be in the interest of law and will also facilitate an era of transparency and accountability.
9. That the undersigned requests you to rectify all the illegalities raised in “Para 4” above within 15 days from the receipt of this notice by you.
10. That it is estimated that your actions have also caused a loss of nearly one thousand and two hundred Crores Rupees (1200 Crores) to the people of India, including the undersigned, by way of direct loss, opportunity cost, causing damages and other losses. That the undersigned on behalf of the public, and in his own capacity brings it to your notice that he and other members of the public shall also be seeking civil and criminal remedy for recovery of the said amount (with interest) and for claiming other damages and loss caused.
11. That this notice may also be taken as a lawful notice sent under the provisions of Article 361(4) and the intention of the undersigned, and other members of the public, to seek appropriate civil and criminal action against you. Which kindly note.
12. That if you have anything to state in the matter, the same be clearly and explicitly stated, sent to the undersigned and put on record within 15 days of receipt of this notice by you. Failing which it shall be presumed that you have nothing to say in the matter and agree to all the issues raised.

13. That you shall be responsible for all the costs, damages and loss associated with your actions and also with the cost and consequences of seeking and pursuing lawful action, and for initiating and seeking redress against all the illegalities, anomalies and other unlawful acts.

14. A copy of this notice is kept in record for all purposes.

**Hemant Goswami**



**Public Relations Department,**

**Chandigarh Administration**

**[www.chdpr.gov.in](http://www.chdpr.gov.in)**

**Press Release**

Chandigarh, February 7:- The Right to Information Act, 2005 has been enacted to provide for setting out the practical regime of Right to Information for citizens to secure access to information under the control of the Public Authorities, in order to promote transparency and accountability in the working of every public authority. The Chandigarh Administration is headed by the Administrator. The Governor of Punjab has been appointed as Administrator, Union Territory, Chandigarh in addition to his duties as Governor of Punjab. **No separate office has been set up by the U.T. Administration with the nomenclature - "Administrator's office".** No post has been sanctioned for the so called Administrator's office and no staff is posted therein. The Administrator, U.T., Chandigarh is not drawing any salary from the U. T. Administration.

The files are submitted to the Administrator by the concerned departments/offices of the Administration for approval/decision. The files are received back with appropriate orders of the Administrator and maintained in the concerned offices only. **No information/record is maintained in the so called Administrator's office. Therefore, there is no necessity to appoint a Public Information Officer.** Similarly, since there is no information held/controlled, there is no necessity to publish the information under Section 4(1)(b)(c)(d). It is not possible even to publish the information under Section 4(1)(b)(c)(d), as no information exists in the so called Administrator's office. In fact, the Public Information Officers have already been appointed in all the departments/offices of the UT Administration and the information has been published/ is published under Section 4(1)(b)(c) and (d) of the Act by all the departments.

Referring to a press report which appeared in 'The Tribune dated 4.2.2008, a press note issued by the Administration clarified that a similar letter was recently received from Sh. Livleen Singh C/o Burning Brain Society, who has been informed by the Administration about the factual position. The news report has mentioned that the complainant intended to seek the information from U. T. Administrator's office regarding the announcement he made on remission of sentences of prisoners undergoing imprisonment in the Jails of Chandigarh. This information, in fact, is held in the Home Department and therefore the applicant should have submitted his application with the concerned Public Information Officer (Superintendent Home-III) in the office of Home Secretary, Chandigarh Administration. No such notice as mentioned in the news reports has been received by the Administration. Appropriate action will be taken on receipt of any such notice as per the provisions of Law.

**Annexure P-8**

**CENTRAL INFORMATION COMMISSION**

Complaint No.CIC/WB/C/2008/00020 dated 25.1.2008

Right to Information Act 2005 – Section 18

**Appellant** - Shri Hemant Goswami

**Respondent** - Administrator, U.T., Chandigarh

**Facts:**

This Commission has received a complaint from Shri Hemant Goswami of Chandigarh of non compliance with the RTI Act by the office of Administrator, Chandigarh. The prayer of Shri Hemant Goswami in his complaint of January 22, 2008, received on electronic mail, is as follows:

I Instruct the office of the Administrator and Chandigarh Administration to publish all the required information as provided under section 4(1) (b) and 4(1) (c) of the Right to Information Act and to maintain all the records as provided under Section 4 (1) (a) of the RTI Act.

II Instruct the office of the Administrator and Chandigarh Administration to appoint a CPIO for the office of the Administrator.

III Instruct the office of the Administrator and Chandigarh to accept through the CPIO of Administrator's office, all the RTI applications seeking information under the provisions of Section 6 and also those seeking reasons under the provisions of Section 4(1) (d) of the RTI Act 2005.

IV Take suitable action against the responsible officials/ persons who have failed to appoint a CPIO in the office of the Administrator and failed to publish

the necessary information under Section 4 (1) (b) and 4 (1) (c) of the Right to Information Act.

V All RTI applications from the complainant and/ or any person under Section 4 (1) (D) and 6 be received by the Administrators office henceforth.”

In response to our complaint notice, Jt. Secretary (Homes), Chandigarh Administration, in his letter of 6.2.08 submitted as below:-

**“It is intimated that the Chandigarh Administration is headed by the Administrator. The Governor of Punjab has been appointed as Administrator, Union Territory, Chandigarh in addition to his duties as Governor of Punjab. No separate office has been set up by the UT Administration with the nomenclature- “Administrator’s office.”**

Jt. Secretary has gone on to contend that because no information or record is maintained in the Administrator’s Office, there is “*no necessity to appoint a Public Information Officer*”. He has elaborated on this further, as follows:

“Since there is no information held/ controlled, there is no necessity to publish the information under Section 4(1) (b) (C) (d). It is not possible even to publish the information under Section 4(1) (b) (C) (d), as no information exists in the so called Administrator’s office. In fact, the Public Information Officers have already been appointed in all the departments/ offices of the UT Administration and the information has been published/ is published under Section 4(1) (b) (C) & (d) of the Act by all the departments.”

Jt. Secretary (Home) also informed complainant Shri Hemant Goswami in this letter that information regarding remission of sentence of prisoners undergoing imprisonment in Jails in Chandigarh which he has learnt from newspapers that Shri Goswami proposes to submit, should be submitted to the Office of Home Secretary.

Upon this, Shri Hemant Goswami has submitted a rejoinder dated 14.2.08 and received by us on 21.2.08, in which he has submitted, among other things *“that even during tenure of the present Administrator, various departments of Chandigarh Administration have been purchasing articles for the office of the Administrator, which clearly proves that an office of the Administrator exists and since there is a supply of articles and expenses made on behalf of the Administrator, there has to be a proper “stock Register”, “Movement Register” and also a budget. A copy of one such bill (No. 12248 dated 17.10.2005) supplied by the Director – Information Technology is annexed hereunder as “Annexure C-1” in support.”* 3

He has concluded his rejoinder as below:

- “1. Instruct for immediate publishing of all relevant information under Section 4.
2. Instruct for appointment of CPIO as provided under Section 5.
3. Instruct providing information to all information seekers.
4. Award damages and compensation to the complainant.
5. Issue appropriate recommendations under Section 25(5) of the RTI Act.
6. Instruct registration of a criminal case under Section 166 of the IPC against the erring persons for disobeying the directions of law as contained in Section 4 and 5 of the RTI Act,
7. Instruct initiation of criminal case under Section 199 for giving false statement and leading false evidence.
8. Pass any other orders as the Commission may find appropriate.” The appeal was heard on 8.5.2008.

The following are present at NIC Studio, Chandigarh:

**Appellant**

Mr. Hemant Goswami

**Respondents**

Mr. Bhupinder Singh, J.S. (Home) Mr. Sohan Singh, Assistant.

Subsequently, we have received an Email dated May 9, 2008 submitted by one Shri Keshav, Chandigarh to the Editor, Tribune India in which he has provided the following information:

“The question arises why the UT Official came to defend the case. The administrator has an office in sector 9 UT Secretariat and this office is being attended by the administrator regularly and Director IT of UT is officer in waiting and supposed to manage the affairs of the Administrator. A press release saying that Administrator will attend his office on 1st and 3rd Monday of every month was 4 released and Shri Manjit Brar Director IT was entrusted the responsibility to look into affairs of his office. All the official functions from issue of notification to all small openings are also being done by Administrator as such the contention that there is no office of administrator (who has been appointed by the President of India) is a farce on the face of people of Chandigarh.”

Complainant Shri Hemant Goswami submitted that the Administrator is a Public Authority, as defined under sec. 2(h) (a). This Section reads as follows: “**Sec. 2 (h)**

*(h) "public authority" means any authority or body or institution of self-government established or constituted— (a) by or under the Constitution;”*

The Administrator is appointed by the President of India under Article 239 of the Constitution of India. Respondent Shri Bhupinder Singh, Jt. Secy. (Home) UT Chandigarh on the other hand argued that the Administrator has no staff and no record. Even in his response to the complaint notice Shri Bhupinder Singh had repeatedly referred to the office of Administrator as “so called” office of Administrator.

The key issue here, therefore, is whether there is in existence any Office of Administrator, Chandigarh.

#### **DECISION NOTICE**

The definition of 'office' in the Random House Dictionary of the English Language is as follows:

“...6. A position of duty, trust or authority esp. in the government, a corporation, a society or the like: *He was elected twice to the office of President.* 7 Employment or position as an official: *to seek office.* 8 The duty, function, or part of a particular person or agency: *to act in the office of adviser.* 9. A service or task to be performed; assignment; chore: *little domestic offices.*”<sup>1</sup> 1 Underlined by us for emphasis

This may be read with the definition of a public authority, which includes “*Any Authority which may be other than a body or institution of self government.*” In this case there can be little doubt that the Administrator is an authority established under Article 239 of the Constitution, occupied by an official with an assignment, and therefore an office. It matters little whether that authority exercises any duty or not. Even if he does not head a particular body or sit in a room or building where people work at desk, he still occupies a formal position of responsibility. Under the circumstances there can be little doubt that the Administrator is a public authority and, under sec. 5(1) was required within 100 days of the enactment of this Act to designate a Public Information Officer. It is another matter that because the present Administrator holds concurrent charge of Governor, Punjab for which there is a separate established office, a tradition since 1985. This office is therefore expected to appoint a PIO. It is however up to the Administrator in what manner the Administrator will make such an appointment. It is open to him to give this as an additional charge to an officer functioning as CPIO in the office of Governor Punjab, or Chief Secretary UT of Chandigarh or of the Home Secretary. Whenever the information sought is not held by the Administrator, since as pointed out by respondent Shri Bhupinder Singh there is

no physical office in which he sits, this may be transferred u/s 6(3)(1) of the RTI Act by such CPIO. However, in making such an application sec. 6(1) will also have to be kept in mind by an applicant, which requires that application should be made to the CPIO of the “concerned” public authority, which would imply the public authority which holds the information. **Gen. S. F. Rodrigues, Administrator, Chandigarh is, therefore, directed to designate a CPIO in the Office of Administrator within a week of receipt of this Decision Notice.** That officer will publish and maintain a record as mandated u/s 4 (1) (b).

On the plea that criminal action be initiated and compensation awarded, however we find that the decision not to appoint a PIO in the office of Administrator was although as we have found above, a misplaced decision this 6 action was taken after due consideration and in good faith, as evidenced by the spirited defence of the action by respondent Shri Bhupinder Singh, J.S. (Home). This is an issue of interpretation. Because each department has its PIO in the UT, although complainant can plead inconvenience caused, there is no credible evidence of damage. **There will therefore be no costs**

Reserved in the hearing, this decision is announced in open chamber on the 13th day of May, 2008.

Notice of this decision be given free of cost to the parties.

(Wajahat Habibullah)

Chief Information Commissioner

13.5.2008



**Annexure P-9**

From

The Superintendent Record-cum-Central Public Information Officer,  
Chandigarh Administration

To

Sh. Hemant Goswami,  
# 3, Hotel Shivalik View,  
Sector-17E, Chandigarh

No.4 (RTD/2008/16528

Dated, Chandigarh the 21 Aug 2008

Subject: - Handing over of RTI pay orders

Reference on the subject noted above.

As per Notification dated 11.2.2008 issued by the Home Department, Chandigarh Administration (copy enclosed), you are requested to kindly deposit Rs.50/- instead of Rs.10/-for taking information. However, a Pay Orders dated 29.07.2008 for Rs.10/- is returned herewith in original.

Superintendent Record-cum- Central Public Information Officer,  
Chandigarh Administration

Endst.No. 4 (RTT)/2008/

A copy is forwarded to the AXIS Bank, SCO No.343-344, Sector-356, Chandigarh w.r.t. his letter No.AXIS/Chandigarh/RTI/08/2696, dated 14.08.08 for information.

Superintendent Record-cum- Central Public Information Officer,  
Chandigarh Administration

**Regulation of Fee and Cost**

PUBLISHED IN PART-II, SECTION. 3, SUB-SECTION (i) OF THE GAZETTE  
OF INDIA

**Government of India,**

Ministry of Personal, Public Grievances and Pensions  
( Department of Personal and Training )

New Delhi, the 16th September, 2005.

**NOTIFICATION**

G.S.R....., In exercise of the powers conferred by clauses (b) and (c) of sub-section (2) of section 27 of the Right to Information Act, 2005 ( 22 of 2005), the Central Government hereby makes the following rules, namely :-

1. Short title and commencement -

(1) These rules may be called the Right to Information ( Regulation of Fee and Cost ) Rules, 2005.

(2) They shall come into force on the date of their publicaion in the Official Gazette.

2. Defination - In the rules, unless the context otherwise requires, -

(a) 'Act' means the Right to Information Act, 2005;

(b) 'section' means section of the Act;

(c) all other words and expression used herein but not defined and defined in the Act shall have the meanings assigned to them in the Act.

3. A request for obtaining information under sub-section (1) of section 6 shall be accompanied by an application fee of rupees ten by way of cash against proper receipt or by demand draft or bankers cheque payable to the Accounts Officer of the public authority.

4. For providing the information under sub-section (1) of section 7, the fee shall be charged by way of cash against proper receipt or by demand draft or bankers cheque payable to the Accounts Officer of the public authority at following rates:-

(a) rupees two for each page ( in A-4 or A-3 size paper) created or copied;

(b) actual charge or cost price of a copy in large size paper;

(c) actual cost or price for samples or models; and

(d) for inspection of records, no fee for the first hour; and a fee of rupees five for each fifteen minutes ( or fraction thereof) thereafter.

5. For providing the information under sub-section (5) of section 7, the fee shall be charged by way of cash against proper receipt or by demand draft or bankers cheque payable to the Accounts Officer of the public authority at following rates:-

(a) for information provided in diskette or floppy rupees fifty per diskette or floppy; and

(b) for information provided in printed form at the price fixed for such publication or rupees two per page of photocopy for extracts from the publication.

Sd/-

Hari Kumar

Director