

APPEAL & PENALTIES



GOVERNMENT OF SIKKIM

**DEPARTMENT OF PERSONNEL, ADM. REFORMS, TRAINING, PUBLIC GRIEVANCES, CAREER OPTIONS &
EMPLOYMENT SKILL DEVELOPMENT AND CHIEF MINISTER'S SELF EMPLOYMENT SCHEME,
GANGTOK**

No. 102/GEN/DOP

Dated: 26.5.07

NOTIFICATION

In exercise of the powers conferred by clause (e) of sub-section (2) of section 27 of the Right to Information Act, 2005 (22 of 2005), the State Government hereby makes the following rules, namely:-

Short title and commencement: 1. (1) *These rules may be called the Sikkim Information Commission (Appeal Procedure) Rules, 2007*

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

Definitions:

2. (1) *In these rules, unless the context otherwise require:-*

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

(b) *"Commission" means the State Information Commission;*

(c) *"Registrar" means the Secretary, Sikkim State Information Commission.*

(d) *"Section" means section of the act;*

(2) *Words and expressions used herein and not defined but defined in the Act shall*

have the meaning respectively

assigned to them in that Act.

Contents of Appeal:

3. *An appeal to the Commission shall contain the following information namely:-*

(i) *name and address of the appellant;*

(ii) *name and address of the State Public Information Officer against the decision*

of whom the appeal is

preferred;

(iii) *particulars of the order including number, if any, against which the appeal*

preferred;

- (iv) brief fact leading to the appeal;
- (v) if the appeal is preferred against deemed refusal, the particulars of the

application, including number, date

name and address of the State Public Information Officer to whom application

was made;

- (vi) Prayer of relief sought;
- (vii) grounds for the prayer or relief;
- (viii) verification by the appellant; and
- (ix) any other information which the Commission may deem necessary for deciding

the appeal.

Documents to accompany appeal: 4. Every appeal made to the Commission shall be accompanied by the following documents, namely:-

- (i) self attested copies of the Orders or documents against which the appeal is being preferred;
- (ii) copies of documents relied upon by the appellant and referred to in the appeal;
- (iii) an index of the documents referred to in the appeal.

Procedure in deciding: appeal

5. In deciding the appeal the Commission may:-

- (i) hear oral or written evidence on oath or on affidavit from concerned or interested person;
- (ii) peruse or inspect documents, public records or copies thereof;
- (iii) inquire through authorized officer further details or facts;
- (iv) hear State Public Information Officer, State Assistant Public Information Officer, as the case may be;
- (v) hear third party, and
- (vi) receive evidence on affidavits from State Public Information Officer, State Assistant Public Officer such Senior

Assistant Public Officer such Senior

Officers who decided the first appeal, such persons against whom the complaint

lies or the third party.

Service of notice by Commission: 6. Notice to be issued by the Commission may be served in any of the following modes, namely:-

- (i) service by the party itself;
- (ii) by hand delivery through Process Server;
- (iii) by registered post with acknowledgement due; or
- (iv) through Head of Office or Department.

Personal presence of the

appellant or complainant:

7. 1. The appellant or the complainant, as the case may be, shall in every case be

informed of the date of hearing at

least seven clear days before that date;

of hearing of the appeal or

representative or may opt not

then the Commission may

being heard before a final

any person in the process of

a legal practitioner.

Order of the Commission
duly authenticated by the

2. *The appellant or the complainant, as the case may be, at his discretion at the time*

complaint by the Commission be present in person or through his duly authorized

to be present;

3. *Where the Commission is satisfied that the circumstances exist due to which the*

the case may be, is being prevented from attending the hearing of the Commission

afford the appellant or the complainant, as the case may be, another opportunity of

decision is taken or take any other appropriate action as may deemed fit;

4. *The appellant or the complainant, as the case may be, may seek the assistance of*

the appeal while presenting his points and the person representing him may not be

8. *Order of the Commission shall be pronounced in open proceedings and be in writing*

Registrar or any other officer authorized by the Commission for this purpose.

POWERS AND FUNCTIONS OF THE INFORMATION COMMISSIONS, APPEAL AND PENALTIES

18. *Powers and functions of Information Commission - (1) Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission, as the case may be, to receive and inquire into a complaint from any person,*

(a) who has been unable to submit a request to a Central Public Information Officer or State Public Information Officer, as the case may be, either by reason that no such officer has been appointed under this Act, or because the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, has refused to accept his or her application for information or appeal under this Act for forwarding the same to the Central Public Information Officer or State Public Information Officer or senior officer specified in sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be;

(b) who has been refused access to any information requested under this Act; (c) who has not been given a response to a request for information or access to information within the time limit specified under this Act;

(d) who has been required to pay an amount offer which he or she considers unreasonable;

(e) who believes that he or she has been given incomplete, misleading or false information under this Act; and

(f) in respect of any other matter relating to requesting or obtaining access to records under this Act.

(2) Where the Central Information Commission or State Information Commission, as the case may be, is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof,

(3) The Central Information Commission or State Information Commission, as the case may be, shall, while inquiring into any matter under this section, have the same powers as are vested in a civil Court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely:

(a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;

(b) requiring the discovery and inspection of documents;

(c) receiving evidence on affidavit;

(d) requisitioning any public record or copies thereof from any court or office

(e) issuing summons for examination of witnesses or documents; and

(f) any other matter which may be prescribed.

(4) Notwithstanding anything inconsistent contained in any other Act of Parliament or State Legislature, as the case may be, the Central Information Commission or the State Information Commission, as the case may be, may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds.

19. Appeal (1) Any person who, does not receive a decision within the time specified in subsection (1) or clause (a) of subsection (3) of section 7, or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, as the case may be, may within thirty days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority:

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

(2) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under section 11 to disclose third party information, the appeal by the concerned third party shall be made within thirty days from the date of the order.

(3) A second appeal against the decision under sub-section (1) shall lie within ninety days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission:

Provided that the Central Information Commission or the State Information Commission, as the case may be, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(4) If the decision of the Central Public Information Officer or State Public Information Officer, as the case may be, against which an appeal is preferred relates to information of a third party, the Central Information Commission or State Information Commission, as the case may be, shall give a reasonable opportunity of being heard to that third party.

(5) In any appeal proceedings, the onus to prove that a denial of a request was justified shall be on the Central Public Information Officer or State Public Information Officer, as the case may be, who denied the request.

(6) An appeal under sub-section (1) or sub-section (2) shall be disposed of within thirty days of the receipt of the appeal or within such extended period not exceeding a total of forty-five days from the date of filing thereof, as the case may be, for

reasons to be recorded in writing.

(7) The decision of the Central Information Commission or State Information Commission, as the case may be, shall be binding.

(8) In its decision, the Central Information Commission or State Information Commission, as the case may be, has the power to

(a) require the public authority to take any such steps as may be necessary to secure compliance with the provisions of this Act, including

(I) by providing access to information, if so requested, in a particular form;

(il) by appointing a Central Public Information Officer or State Public Information Officer, as the case may be;

(iil) by publishing certain information or categories of information;

(iv) by making necessary changes" 'to its practices in relation to the maintenance, management and destruction of records;

(v) by enhancing !pe provision of training on the right to information for its officials;

(VI) by providing it with an annual report in compliance with clause (b) of sub-section (1) of section 4;

(b) require the public authority to compensate the complainant for any loss or the detriment suffered;

(c) impose any of the penalties provided under this Act;

(d) reject the applications

(9) The Central Information Commission or State Information Commission, as the case may shall give notice of its decision, including any right of appeal, to the complainant and the public authority.

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PENALTIES

Protection of action taken in good faith.

Act to have overriding effect.

Bar of jurisdiction of courts.

Act not.

16 The Central Information Commission Or State Information Commission, as the case may be, shall decide the appeal in accordance with such procedure as may be prescribed.

20. (1) Where the Central Information Commission or the State Information Commission, as the case maybe, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under sub-section (J) of section 7 or immodestly denied he request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is fuf!lished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees:

Provided that the Central Public Information Officer or the State Public Information Officer, as the case may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him:"

Provided further that the burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be. . .

(2) Where the Central Informationation Commission or the State Information Commission, as the case may be, .at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may 'has, without any reasonable cause and persistently, failed to receive an application

for information or has not furnished information within the time specified under sub-section (I) of section 7 or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall recommend for disciplinary action against the Central Public Information Officer. or the State_ Public Information Over, as the case may be, under ,the service .rules applicable to him.

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