A Handbook for
INFORMATION SEEKERS



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Book Title : Handbook for Information Seekers
Editor : Ratna Prasad Mainali, Information Commissioner, National Information Commission
Publisher : National Information Commission
Translation,
Design, Layout : Public Affairs Research and Communications (PARC)
English Edition : 2024

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Published in collaboration between National Information Commission (NIC) and USAID. The topic and contents of this publication are the sole responsibility of NIC and do not necessarily reflect the views of the United States Government, USAID, or The Asia Foundation.

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The Asia Foundation

Statement from National Information Commission

The right of citizens to ask and obtain information has been recognized as a fundamental right in the Constitution of Nepal. The right to information enshrined in Article 27 of the Constitution has been further systematized through the Right to Information Act, 2007. The Right to Information Rules, 2009 have been issued, and the National Information Commission was formed in 2008 as a regulatory body for the implementation of the right to information. The Commission has been fulfilling its responsibilities as directed by the Constitution and the laws.

The primary responsibility of the Commission is to ensure the right of citizens to ask and obtain information. The Right to Information Act, 2007 has a legal provision that allows citizens to appeal to the Commission if the Information Officers and chiefs of public bodies do not provide requested information related to personal or public interest matters available at those public bodies. Issuing appropriate orders on such appeals received and ensuring the constitutionally granted right of citizens to demand and receive information is the primary duty of the Commission.

The law has also assigned the responsibility of hearing appeals and promotional activities related to the right to information to the Commission. Although more than

a decade has passed since provisions were made in the Constitution and laws, there is still a lack of adequate awareness among the general public about such an important right as the right to information. Despite the Commission carrying out various promotional activities, the bitter reality is that it has not been able to reach the citizen level as required. Nevertheless, the Commission has been making efforts to the best of its ability. To take it to the citizen level, stronger commitment from political leadership, public bodies, and concerned bodies is further needed.

Public awareness is essential to make public bodies governed by good governance, transparent and accountable. This is not possible without informing the general public about the constitutional and legal provisions that allow them to ask, obtain information. In this context, this handbook has been prepared to inform citizens about the legal provisions related to the right to information. The Commission acknowledges with gratitude the significant support received from The Asia Foundation, in preparing this handbook.

April 2024, National Information Commission

Introduction

Article 27 of the Constitution of Nepal states that every citizen shall have the right to ask and obtain information on any matter of personal or public importance. This is a fundamental right of citizens.

Thus, the right to ask and obtain information also includes the right to disseminate information. This has been affirmed by existing laws, practices, and global human rights declarations. Therefore, since Nepali citizens have the established right to ask, obtain, and disseminate information, those requiring information such as researchers, journalists, and other citizens need to be proactive.

Legal Provisions

According to Article 27 of the Constitution of Nepal, which has made provisions for fundamental rights, Article 46 of the Constitution has made provisions for the right to constitutional remedies for the implementation of these rights. Accordingly, any citizen can file a writ petition in court to obtain information.

Section 11 of the Information Rights Act has a legal provision for an independent National Information Commission to protect, promote and implement the

citizens' right to information. As per the legal provision, the Commission was established in 2008.

The primary responsibility of the Commission is to provide information to citizens. Any citizen wanting to obtain personal or public interest-related information held by any public body has to file an appeal at the Commission against the official denying the information. After receiving such an appeal, the Commission ensures the citizen's right to ask and obtain information by completing the legal process.

Legal Guarantee of the Right to Information

The Right to Information Act, 2007 has made provisions for the following two legal provisions to guarantee citizens the right to ask and obtain information, except for some exceptions:

- Section 3 sub-section (2) of the Right to Information Act states that every Nepali citizen shall have access to information held by public bodies.
- Section 4 sub-section (1) of the Act has a legal provision that every public body must respect and cause to respect the citizen's right to information.

As per this legal provision in the law:

- After the order of the National Information Commission and the court's verdict, a precedent has been established for students to be able to see their own answer sheets. When demanding information, it has

been clarified that answer sheets can also be viewed. This provision has helped make those checking answer sheets more accountable.

- In many other appeals, the Commission has issued orders to government bodies, constitutional bodies, national and international non-governmental organizations, multinational companies, private banks and financial institutions, educational institutions, health service providers and consumer committees to provide information. After the Commission's orders, citizens received the information they demanded, sending a clear message that all these bodies fall under the purview of the right to information. Therefore, personal and public interest information held by these public bodies can be asked and obtained.

Global historical background of the Right to Information

In 1766, for the first time, the Right to Information Legislation was enacted in Sweden. After that, this law was enacted in Finland in 1951, in the United States of America in 1966, and in Denmark and Norway in 1970. Currently, more than 136 countries around the world have enacted this law.

The Development of the Right to Information in South Asia

In 2002, the Right to Information Act was enacted in Punjab and KP provinces of Pakistan. Subsequently, it was enacted in India in 2005, in Nepal in 2007, in Bangladesh in 2009, in

Afghanistan and Maldives in 2014, and in Sri Lanka in 2016. In Sri Lanka, there is a legal provision to sentence officials who obstruct providing information up to two years in prison.

Establishment of the National Information Commission
As per the constitutional provision made in Article 27 of the Interim Constitution of Nepal, the Right to Information Act was enacted in 2007 and the regulations were issued in 2009. In accordance with the provisions of this Act, the National Information Commission was formed in 2008.

Asking and Obtaining Information Immediately
Every citizen has to submit an application to the Information Officer of the respective office asking for information. After seeking for information in this manner, the Information Officer has to provide the information immediately as per the legal provision.

Generally, such information has to be asked in writing. Moreover, while seeking for information, the information seeker has to be certain about which subject they need information on and what the purpose is. After this, it becomes easier for the Information Officer to provide the information immediately. Asking for information by mentioning multiple subjects and points in a single application may make it difficult for the seeker to clarify

the purpose, and also inconvenient for the information provider. Therefore, the information seeker has to be clear about the subject they want to demand information on.

Information can also be asked and obtained via post, fax, email and other electronic mediums, but it is better to submit the application in person to the Information Officer if possible. While asking for information, one must go to the public body with the belief that the information will be provided, as asking and obtaining information is a constitutional fundamental right of every Nepali citizen.

Regardless of the medium used to seek information, the information seeker must attach proof of being a Nepali citizen (such as a copy of a citizenship certificate or similar). This is because our constitution has granted only Nepali citizens the right to demand information held by public bodies.

Requesting Information in Writing and Obtaining it within the Stipulated Time

Every citizen must submit a written application while demanding information. They must take a receipt of the submitted application. They should also take the contact number of the Information Officer. After submitting the application for information, the Information Officer should be enquired about the date when the information will be

available. The Right to Information Act has a provision to provide the requested information immediately. However, if the information needs to be collected, the Information Officer must provide the information to the applicant within a maximum of 15 days.

However, there is a legal provision to provide information related to the safety of life within 24 hours. For this, the application must also mention the same and inform the Information Officer accordingly. There is no legal provision to send a copy of the application seeking information with the information officer to the chief of that office and the National Information Commission after asking for information from the Information Officer. However, willing citizens can submit such a copy of application to alert the authorities where they may have to file a complaint or appeal in the future regarding their information.

Filing a Complaint if the Information Officer Doesn't Provide Information

Generally, if the Information Officer does not provide the requested information within 15 days, a complaint has to be filed with the head of a public body. Such a complaint can be sent in writing via post, fax, or email as well. If filing the complaint in person, a receipt of the registered complaint must be taken.

While filing the complaint, two demands must be made. First - take action against the Information Officer who denied information. Second - provide me with the information I asked for. Such a complaint must be filed within seven days from the date the Information Officer denied information in writing, provided partial information, or did not provide information within 15 days. Generally, after such a complaint is filed, the concerned office chief has to provide the information within 7 days as per the legal provision.

While filing an appeal with the Commission, the application submitted to the Information Officer demanding information, the complaint filed with the office head, and proof of being a Nepali citizen must also be attached.

After requesting information on matters of public interest, sometimes the information can be obtained, and in some cases, it cannot be obtained. By requesting information in this manner, officials of public bodies can be prevented from engaging in wrongdoing. By demanding information in this manner, public officials can be prevented from engaging in wrongdoing. This is because while making decisions on any subject, public officials are compelled to think that if citizens exercise their right to information and demand information on that subject in the future,

they will have to provide information on that subject. If their decision is found to be wrong or encourages corrupt activities when made public in the future, they may face further investigation and departmental action, which could even lead to termination of their job.

Filing an appeal if the office chief doesn't provide information

A citizen demanding information should never give up. Therefore, if both the Information Officer and the office chief do not provide information, an appeal must be filed with the National Information Commission. While filing such an appeal, firstly, the Information Officer must have either not provided information within 15 days, or provided wrong or partial information before that, or given a written document stating inability to provide information. Secondly, even after filing a complaint with the office chief, if they fail to provide information within the 7-day deadline or refuse to provide information through a letter, an appeal must be filed with the National Information Commission within 35 days from that date in the prescribed format.

No fee is charged while filing an appeal with the Commission. Postage stamps do not need to be affixed to the appeal either.

After so much effort, one may wonder what kind of information can be obtained? For example, after the order

of the National Information Commission, information seekers have obtained documents like the PDA agreement between the Investment Board and GMRB on the Upper Karnali Hydropower Project, the charter of the Pancheshwar Multipurpose Project between the governments of Nepal and India, and the agreement between Nepal and China on the purchase and grant of Chinese aircraft. This has established citizens' access to bilateral treaty documents.

In addition, through the Commission's initiatives, citizens have also obtained documents like the consultancy appointment agreement of the Nalsing Gad Hydropower Project. This has established citizens' right to information from donor agencies as well. All these examples clearly demonstrate the power of the right to information.

How is the Appeal Processed?

When filing an appeal with the National Information Commission, it is important to include documentation that verifies the initial request for information from the Information Officer and provides proof of a complaint filed with the office chief. On such appeals filed at the Commission, it can issue an order to the concerned body to provide information free of cost within a stipulated timeframe. The Commission has to deliver its decision within a maximum of 60 days. It can also dismiss the appeal if it deems it baseless.

For proceedings and final decisions on appeals before it, the Commission can record statements from the chief or Information Officer of the concerned public body or instruct them to submit any document. It can also examine witnesses and evidence related to the case. The Commission can summon the parties, opponents, their representatives or concerned legal practitioners. For this, hearings and pleadings can take place at the Commission's bench. In this manner, the Commission delivers its verdict following the court procedure.

Penalty for obstruction in providing information

After an appeal is filed at the National Information Commission, the Commission follows the necessary procedures and orders the concerned body to provide the information. If an official obstructs and does not comply with the Commission's order to provide information, the Commission can impose a fine ranging from NPR 1,000 to NPR 25,000.

For government employees, the Commission can also recommend departmental action. If an official delays providing the information demanded by a citizen, the Commission can fine them NPR 200 per day.

Additionally, if anyone does not comply with the Commission's order, it can impose another fine of up to NPR 10,000.

Thus, the Right to Information Act has granted the Commission formed to protect, promote and implement citizens' right to information the legal authority to punish as well. Nearly four dozen public officials who obstructed orders of the Commission to provide information demanded by citizens have been penalized. Those penalized include officials who obstructed providing students' answer sheets, denied information related to schools, did not provide exam-related information of universities to examinees, refused to provide information on public construction works, private banks and financial institutions, educational institutions, health service providers, consumer committees, and chief administrative officers of local levels who denied information demanded by citizens.

Provision to receive compensation if damages incurred for not receiving information

If a citizen has incurred damages for not receiving the information they demanded, they can submit an application to the National Information Commission for compensation along with details and evidence of the damages. After receiving such an application, the Commission can order reasonable compensation to be paid after considering the damages incurred. There is no limit set on the amount of compensation the Commission can order.

Therefore, it seems citizens can claim maximum compensation for the damages they have incurred. However, citizens must submit an application with proper evidence or valid grounds, along with their compensation claim.

But, for such a compensation claim, the application must be submitted within three months from the date the concerned office head refused to provide information within the stipulated seven days, or issued a letter denying information, or provided partial or wrong information.

Is there a fee for demanding information?

When citizens submit an application to the Information Officer demanding information, file a complaint with the office head, or file an appeal with the National Information Commission, they do not need to affix postage stamps to the application or pay any kind of fee. However, there is a legal provision to pay fees for obtaining information from public bodies, which is as follows:

- Applications demanding information must be registered and receipts issued free of cost.
- Postage stamps do not need to be affixed to the application, and no fee has to be paid for the application.
- The first 10 pages of information are provided free of cost.

- After that, Rs. 5 per page for A4 size, Rs. 10 for legal size, Rs. 50 per CD/diskette if information is obtained on CD or diskette, and the first half hour of studying/observing the information is free of cost, but Rs. 50 per person per hour is charged after that.
- Apart from this, there is a legal provision to pay fees as per the expenses incurred for obtaining the information.
- Citizens also need to be aware of these provisions in the law. Many information seekers have understood such provisions and obtained information free of cost.

Some information cannot be compelled to be provided

Citizens need to be aware that while Article 27 of the Constitution has made provisions for the right to information and the Right to Information Act has been enacted accordingly, Article 28 of the Constitution has made provisions for the right to privacy and the Privacy Act has also been enacted. In principle, the right to information and the right to privacy must be used in a balanced manner in a democracy. In this context, Section 3 of the Right to Information Act has a provision that public bodies are not obliged to provide information in five categories of information dissemination.

However, citizens need to demand the information they require. It is the responsibility of the officials of the public

body to determine whether the information demanded by the citizen can be provided as per the law or not, and the National Information Commission is the body to decide on this matter. If the information demanded by the citizen cannot be provided as per the law, it is the responsibility of the public body to inform for what period that information has been classified as protected under the law.

Therefore, firstly, citizens need to demand information related to matters of their personal interest. Secondly, they need to demand information on matters of public interest and keep public bodies vigilant against wrongdoing. There is a provision that if a citizen files an appeal with the Commission demanding classified information as well, the Commission can order to provide such information.

What is the classification of information?

- The Government of Nepal has a legal provision to classify information that falls under the clauses (a) to (e) of subsection (3) of section 3 of the Right to Information Act, and keep such types of information protected for a maximum of 30 years. This is referred to as the 'classification of information'.
- This provision of categorization of information is mentioned in section 27 of the Right to Information Act.
- While the Classification Committee has classified information three times so far, the implementation of

such classification has not been possible yet. Therefore, currently, there is no classification of information in place.

What kind of information is considered personal concern?
Citizens also have the constitutional and legal provisions to ask and obtain information of personal nature related to them.

Now, the question arises, what is considered personal concern information?

Our constitution and laws define information related to an individual as personal property. For example, educational certificates, character certificates, land, property, house, gold, silver, jewelry, bank accounts, cash kept at home, health reports, birth certificates, or any such facts, information, or details related to personal property are considered information related to personal concern. There is no provision in the law for others to obtain such information without the consent of the person concerned. Information of this nature cannot be disclosed by a public body to an unrelated individual, even if requested. However, if related to oneself, such information can be requested and obtained by the individual concerned.

What kind of information is considered of public interest?

Information of public interest refers to facts, data, knowledge or details related to matters of concern to all, held by public bodies. All Nepali citizens can show interest in such matters and ask and obtain information. For example, any Nepali citizen can ask and obtain information from any public body regarding matters at the Office of the President down to ward offices, roads, bridges, drainage, drinking water, education, health, environment, food security, parliament, judiciary, security agencies, all three tiers of government and their subordinate bodies, public institutions, all national and international non-governmental organizations, educational institutions, health service providers, banks and financial institutions, etc.

Duties of a conscious citizen

The Constitution of Nepal and laws have granted citizens the right to demand and obtain information. This right has also been mentioned in the Universal Declaration of Human Rights, of which Nepal is also a signatory nation.

Therefore, it is the duty of every vigilant citizen to fully exercise their right to demand and obtain information related to any matter of personal interest and public concern. Additionally, it is also the duty of a responsible citizen to be mindful of the following when demanding information:

1. When demanding information, one can be present in person at the respective public body or register a written application via post, fax or email, obtain a receipt for it, and mention the subject of one's right as stated in the constitution and laws in such an application.
2. However, illiterate or physically disabled citizens can also demand information verbally.
3. Such an information request application can be sent by being present at the respective office in person, via a representative, post, courier, fax, email or other available means, but the proof that the information officer has received one's application must be kept safe.
4. The legitimate purpose for demanding the information must be clearly stated. For this, one must request information on matters of personal concern required by oneself, information of public interest, controlling corruption and irregularities, etc. The application must contain what subject and information one has requested.
5. Misuse of information obtained by citizens from public bodies is prohibited. The law has a provision for fines ranging from Rs 5,000 to Rs 20,000 for misuse of information.
6. At any public body, one must first address the information officer to request information. Even if no information officer is designated, the application to request for information must be registered by

addressing the information officer. While requesting information via post, fax or email, the application must be addressed to the information officer. The application can also address both the information officer and the office chief.

7. When requesting information, the applicant must submit any type of document proving they are a Nepali citizen.
8. One must be clear whether requesting a copy of the information or to study/inspect the information.
9. If the information officer informs with a letter that the information requested is at another office, one must follow the due process to request the information from the office that the information officer has referred to.
10. One must agree to pay the legal fee for obtaining the information.
11. If the information officer does not provide information, provides partial or incomplete or incorrect information, or does not provide any information even after 15 days, a complaint must be filed with the chief of that office within a week.
12. If the office chief also does not provide the information, an appeal must be made to the National Information Commission within 35 days.

13. If possible, before requesting information, one should inquire about how many years the classified and protected information has been kept confidential.
14. As per Section 28 of the Right to Information Act 2007, since the office keeps personal information protected, the purpose for requesting such information must be clear beforehand.
15. To penalize the officer for not providing information, a complaint with evidence must be filed at the National Information Commission.
16. However, since no punishment is given for work done in good faith, everyone must use wisdom.
17. As per Section 30 of the Act, legal entities can also request, obtain and appeal for information by following the procedures mentioned in Sections 7(1), 9(1) and 10(1) of the Act, through the Commission.
18. If any public body has recorded incorrect information, an application must be made to keep that information rectified.
19. Citizens must demand information on matters of personal or public interest to stop wrongdoings and work towards social transformation.
20. However, information must not be demanded with the intent to cause suffering to anyone. Although this subject is not mentioned in the law, citizens themselves must be responsible on this matter.

21. The right to information is considered an effective tool for transparency worldwide. Therefore, information seekers should not forget that it is the duty of a citizen to demonstrate ethics along with transparency in their own work.
22. Let us develop a culture of seeking and obtaining information. Let us all put into practice the foundation of democracy - the right to information - through our thoughts, words and actions.

Format for an Application to Request Information

(The law does not specify a format for the application, so this format is only for convenience)

To the Information Officer,
.....(Name and address of the public body)

Subject: Request to provide information.
With reference to the above subject, I/we require the information mentioned in the following details held by this office for the purpose of ..... As such, in accordance with Article 27 of the Constitution of Nepal and Sub-section (1) of Section 7 of the Right to Information Act, 2007, I/we hereby submit this application.

Details:
1.....
2.....

Attached Documents:
Copy of document proving Nepali citizenship

Applicant:
Name:
Address:
Phone No.:
Email:

Date: .....Year..... Month .....Date..... Day..... May it be auspicious[1]

[1]The phrase "रोज.....शुभम्" at the end is a traditional Nepali way of ending a written document by expressing good wishes. This is a common concluding phrase used in Nepali to wish for the day to be auspicious or favorable.

Format for Complaint to Office Chief

(The law does not specify a format for the complaint, so this format is only for convenience)
To the Office Chief,

.....(Name and address of the office)

Subject: Request to take action against the Information Officer for not providing information/denying information/providing partial information/providing incorrect information and to provide the requested information.
With reference to the above subject, I/we had requested the following information of public interest from the Information Officer of this office on .....(date) by addressing him/her. However, the Information Officer did not provide the information/denied providing the information/provided partial information/provided incorrect information within the period mentioned in Sub-section (2) of Section 7 of the Right to Information Act, 2007. Therefore, in accordance with Sub-section (1) of Section 9 of the Right to Information Act, 2007, I/we hereby file this complaint.

Therefore, please take action against the Information Officer who did not provide the information/denied providing the information/ provided partial information/provided incorrect information in accordance with Sub-section (3) of Section 9, and provide the requested information in accordance with Sub-section (2).

Details:
1.....
2.....

Complainant:
Name:
Address:
Phone No.:
Email:

Date: .....Year..... Month .....Date..... Day..... May it be auspicious[2]

[2]The phrase "रोज.....शुभम्" at the end is a traditional Nepali way of ending a written document by expressing good wishes. This is a common concluding phrase used in Nepali to wish for the day to be auspicious or favorable.

Format for Appeal to National Information Commission

Through ..... Office
.....

..... Complainant
Versus
..... Defendant

Subject: Request to provide the requested information.

The head of the ..... office, Mr./Ms. ..... decided not to provide me/us the information on the subject of ..... on ..... (date). Being dissatisfied with this decision for the following reasons and grounds, I/we hereby file this appeal within 35 days as per Sub-section (1) of Section 10 of the Act.
(a) .....
(b) .....

The above-mentioned facts are true. If proved false, I/we shall accept punishment according to the law.

Attached Documents:
(a) Copy of the decision made by the head of the public body
(b) Copy of the application submitted to the Information Officer
(c) Copy of document proving Nepali citizenship

Appellant's Signature:
Name:
Address:
Phone No.:
Email:
Date: .....Year..... Month .....Date..... Day..... May it be auspicious

[3]The phrase "रोज.....शुभम्" at the end is a traditional Nepali way of ending a written document by expressing good wishes. This is a common concluding phrase used in Nepali to wish for the day to be auspicious or favorable.



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