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People's right to know v. Official secrecy: Can the former triumph?

Shamsul Bari, Ruhi Naz



Unfortunately, little effort has been made so far by the civil society or the Information Commission to help users unpeel the various layers of the subsections of the RTI Act. Collage: Afia Jahin

The Information Commission of Bangladesh delivered a much-awaited decision on March 8, 2022, and a much-needed shot in the arm of the right to information (RTI) regime in Bangladesh. The commission displayed objectivity in applying a key aspect of the law—that which pertains to the government's legitimate need to exclude some sensitive information from disclosure to the public.

The decision related to a complaint case dealt with by the Information Commission earlier in the year. It arose from an RTI request of a Bangladesh national to the police authority for some statistics on the application of the Digital Security Act (DSA). The police denied the request, arguing that disclosure of the requested information would obstruct enforcement of law, incite offence, endanger public security, impede judicial process, and affect investigation. Provisions of Section 7 of the Right to Information (RTI) Act, which provided for such exemptions to public authorities, were cited.

The complainant challenged this contention and argued that the exemptions did not apply to his request, as he had simply asked for official statistics, much of which was already available in the public domain. In its decision on March 8, the Information Commission concurred with his position.

We cited the case in our last column (*The Daily Star*, February 15, 2022) when the commission's decision was still pending. As we await the release of the full text now, we fervently hope that it lays out the respective arguments of the two sides, provides an in-depth analysis of the legal issues raised by them, and explains the reasoning behind the commission's decision. Such an exposition will be immensely helpful to inform the public about different aspects of the non-disclosure provisions of the law, and how their misuse could undermine its fundamental objectives.

The need for such understanding applies to all sides. It must be realised that the RTI Act makes a clear distinction between two categories of information available with the public authorities. The first category includes those that are important to assess transparency and accountability in their work, and the second comprises those that are exempted from disclosure under Section 7 of the RTI Act to safeguard public interest.

Obviously, RTI users are more inclined to see most information available with public bodies as belonging to the first category. On the contrary, the designated officers of public bodies dealing with RTI requests are naturally inclined to see them as belonging to the second category, and thus susceptible to refusal. It is important, therefore, for the two sides to understand the extent, scope and rationale of the exemption clauses provided under the law, and avoid any possible impasse.

To facilitate such understanding, it may be best to group the 20 subsections of the law's Section 7 into broad categories, based on the objectives they seek to safeguard. Here is our take: i) Information related to national security, integrity and sovereignty; ii) Information related to foreign policy and relations with other countries; iii) Information related to the national economic interest and other relevant issues; iv) Information related to law enforcement and judicial processes; v) Information related to trade secrets and commercial confidentiality; vi) Information related to the privacy of individuals; and vii) Information related to the cabinet decisions and similar other documents. There are, of course, many sub-layers within these categories.

However, little effort has been made so far by the civil society or the Information Commission to help users unpeel the various layers of the subsections. Closer attention would reveal, inter alia, an intrinsic mechanism to apply a "harm test" for their application. They require public officials to consider whether any public interest may be harmed through the disclosure of a requested information. If not, there should be no bar to its disclosure. Some exemptions are also qualified and

not absolute. The designated officers must bear all these in mind while making a decision on an RTI request.

It is important to underline that the RTI Act is one of the most valuable laws of the land for promoting active engagement of citizens in the affairs of the state. However, so far, participation has been limited, with a few exceptions, to the less privileged sections of our population. This must change. There are many aspects of the law that call for a more mature understanding, which are often beyond the grasp of less trained citizens.

Hopefully, the publicity surrounding the case under consideration will draw the attention of our civil society leaders. There is a particular need for social and political science scholars and researchers to assess the progress of the RTI Act in Bangladesh, with a more specific focus on the challenges faced. A particular challenge relates to the application of Section 7 of the RTI Act.

A good beginning would be to undertake research on the application of the exemption clauses over the years to deny disclosure of information, and assess their justification. It would call for close cooperation between the civil society and the Information Commission. The latter has paved the way with its recent decision, which will enhance its image in the eyes of RTI users, inculcate greater introspection among public officials, and contribute to an increased confidence in the law.

Shamsul Bari and Ruhi Naz are chairman and RTI coordinator, respectively, of the Research Initiatives, Bangladesh (RIB).