

## **Is The Right to Information Good for Businesses?**

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A debate has arisen in Sri Lanka on whether enacting a right to information (RTI) law could impede businesses. The main concern is that competitors could use the RTI process to easily obtain valuable information important to the competitive positions of private enterprises. This 'insight' discusses this problem and offers a solution based on the Indian RTI Act.

### **Placing the RTI on the Scale**

Businesses are mandated to disclose information about their operations to public authorities. For example, employment details, financial information and feasibility studies need to be disclosed to the relevant public authorities. In the course of dealing with public authorities, businesses often disclose trade secrets and sensitive commercial information. Under the RTI law, information in the possession of a public authority is technically accessible by any member of the public.

A key task of the RTI law is to strike a balance between transparency and the protection of commercial interests. This is a balancing exercise that will ultimately ensure the smooth functioning of the economy.

### **RTI and the Protection of Competitive Advantage**

The RTI law contains a series of exceptions on which a public authority can deny an information request. According to the draft RTI Bill, one of these grounds is if the disclosure 'would reveal any trade secrets or harm the commercial interests of any person'.

Denying publicly held information because it has a bearing on a person's commercial interests is problematic for two reasons:

- 1) All information requests are invariably likely to have some effect on the commercial interest of a person.
- 2) Unethical or illegal practices can ostensibly be classified as furthering a 'commercial interest'. For example, if a tender award is suspected of being biased, the disclosure of information pertaining to the award may harm the commercial interests of the entity benefiting from the award.

Thus an exception on the basis of ‘commercial interests of any person’ is too broad, and may defeat one of the principal aims of any RTI law—transparency. The use of the term ‘commercial interests’ prevents certainty and transparency in the marketplace, as businesses potentially prejudiced by a tender award have little opportunity to obtain vital information in order to contest decisions.

The Indian RTI Act is an instructive example of how to balance competing commercial interests. Departing from the Sri Lankan position, India permits the denial of information **‘including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party’** (Section 8(d) Right to Information Act, 2005). On the one hand, this formulation is not too broad as to deny disclosure of any information of a commercial nature. On the other, it is not too narrow as to permit competitors to exploit the law to access information that will undermine the competitiveness of businesses.

Therefore, framing Sri Lanka’s RTI in line with the Indian position would ensure that (a) information requests are not denied at the expense of a transparent business environment and (b) disclosures do not happen if it permits an entity to gain leverage in the marketplace at the expense of another.

### **The Value of an Open Government**

The McKinsey Global Institute places the economic value of better and more open data at USD 3 trillion per year. By equipping organisations to make better decisions, information has the potential to contribute to economic growth, and promote efficient and effective service delivery to the public. Moreover, as administrative decisions and processes are made more transparent, Sri Lanka is likely to inspire greater confidence amongst foreign investors.

Information gathered from public authorities can also be used to improve the quality of healthcare services, create more efficient transport systems, prevent environmental degradation, and fuel entrepreneurship. Moreover, the culture of openness created by an access route to public information, will strengthen accountability for public spending, and the ability for individuals and organisations to shape policymaking at a national level.

### **Creating Smart Channels for Information Access**

The draft RTI Bill has a 14-day period in which information requested has to be supplied to the requestor. This provision will ultimately place an obligation on public authorities to gather, store, and process data in a manner that ensures that the information-cycle matches the decision-making cycle. This process creates a climate that is beneficial to businesses, as they could obtain information in a timely manner.

However, such a business-conducive environment will only be possible in the event that technical and financial investments are made to reduce time lags between information collection and release. If requests are denied on the basis that the information requested has

not been gathered or entered into databases, the effectiveness and usefulness of RTI will be compromised.

Therefore, there eventually needs to be a stronger commitment towards e-Governance. Such a commitment will require public authorities to move away from reliance on traditional filing systems and embrace the benefits of machine-readable information and cloud computing. Additionally, a system for transparent data management and curation will ensure that the demands placed on public authorities post-RTI will be met in a cost effective manner.

### **Information is Power**

As Sri Lanka is on the cusp of enacting a law on RTI, it is vital that businesses recognise their responsibility to ensure that the scale between transparency and the protection of their competitive interests does not tip precariously in either direction. This is a delicate balance that will ensure that the current information gap between private businesses and the government is bridged. Bridging this gap will ultimately strengthen business efficacy with the power that timely information gives.

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