

Study on
Information Requests Submitted to Public Authorities
and Responses Received under the
Right to Information Act, No. 12 of 2016

Centre for Policy Alternatives

September 2018

Friedrich Naumann
STIFTUNG **FÜR DIE FREIHEIT**

C P A
CENTRE FOR POLICY ALTERNATIVES
විකල්ප ප්‍රතිපත්ති කේන්ද්‍රය
மீதாற்றல் கொள்கைமாற்றக் கழகம்

Friedrich Naumann
STIFTUNG **FÜR DIE FREIHEIT**

This publication has been produced in partnership with the Friedrich-Naumann-Stiftung für die Freiheit. The Foundation's work focuses on the core values of freedom and responsibility. Through its projects FNF contribute to a world in which all people can live in freedom, human dignity and peace. The contents of this publication are the responsibility of the Centre for Policy Alternatives.



CENTRE FOR POLICY ALTERNATIVES
විකල්ප ප්‍රතිපත්ති කේන්ද්‍රය
LDF විද්‍යා කේන්ද්‍රය

The Centre for Policy Alternatives (CPA) is an independent, non-partisan organisation that focuses primarily on issues of governance and conflict resolution. Formed in 1996 in the firm belief that the vital contribution of civil society to the public policy debate is in need of strengthening, CPA is committed to programmes of research and advocacy through which public policy is critiqued, alternatives identified and disseminated.

Address: 6/5, Layards Road, Colombo 5, Sri Lanka

Telephone: +94 (11) 2081384-6

Fax: +94 (11) 2081388

Web: www.cpalanka.org

Email: info@cpalanka.org

CONTENTS

1. Introduction

2. Objectives of the study

3. Methodology

4. Limitations of the study

5. Data on Applications for information

- 5.1 Analysis of the number of applications for which any response has been received
- 5.2 Requests for which requested information has or has not been provided
- 5.3 Number of requests for information that were accepted and those rejected
- 5.4 Lack of the requested information, or the availability of that information in another public authority resulting in a referral of the information request
- 5.5 The number of applications for which the only response has been that steps have been taken to reply within 14 days
- 5.6 The number of information requests that received or did not receive information after the initial appeal

6. Findings of the study

- 6.1 Attitudes in Public Authorities about the Right to Information Act
- 6.2 Status on the responses to the requests for information
- 6.3 Do the public authorities take note of the time period stipulated in the Act to when processing the requests for information?
- 6.4 Referencing errors committed when responding to letters requesting requests for information by public authorities
- 6.5 Instances where a common opinion is not visible when similar public authorities are responding to similar requests for information
- 6.6 If the public authorities do not have the relevant information do they refer it to the correct public authority?
- 6.7 Is information refused under justifiable or other reasons?
- 6.8 Do public authorities follow the due procedure concerning responses and delays in responses as stipulated in the Act?
- 6.9 Areas that need to be covered further in the Act regarding the Right to Information

7. Recommendations

1. INTRODUCTION

The Right to Information Act No. 12 of 2016 (RTI Act) certified by Parliament on August 4, 2016 and published as a Supplement to Part II of the Gazette of the Democratic Socialist Republic of Sri Lanka of August 5, 2016, can be considered one of the more meaningful and positive democratic measures passed during the time. The RTI Act provides an operational regime to enforce the right to information (RTI), which was enshrined as a fundamental right in the Constitution of Sri Lanka through the Nineteenth Amendment passed earlier in April 28, 2015. The RTI Act, as stated in its Preamble, is intended to foster a culture of transparency and accountability amongst public authorities thereby promoting a society where Sri Lankan citizens can increase participation in good governance and actively engage with the public life of the country.

The RTI Act provides the mechanism for citizens to oversee the decision-making and actions of public authorities. The RTI Act first expresses that it is the operational mechanism of the substantive right of access to information as recognised in Article 14A of the Constitution. Section 3 of the RTI Act outlines the scope of the right to information as an entitlement of every citizen to the information in the possession, custody or control of all public authorities. Section 43 of the Act provides a very broad definition of "public authority"[1]. Therefore, citizens will not be entitled to the right to information from any other entity that is not a public authority.

The engagement of the Centre for Policy Alternatives (CPA) in RTI Activism dates back as far as 2003, with its involvement in the drafting of a Freedom of Information Bill, which was approved by Cabinet in and tabled in Parliament in 2004, but never debated due to Parliament being dissolved prematurely. Since then, it has engaged in sustained advocacy for enacting a RTI regime in Sri Lanka, including in pushing for the right to be included in the Nineteenth Amendment and in advocating for the passage of the current RTI Act. Since the Act's passage, CPA has undertaken numerous community outreach activities, trainings and research exercises to educate and empower Sri Lankan citizens to exercise their right to information fully.

2. OBJECTIVES OF THE STUDY

The main objective of this study is to evaluate, investigate and identify weaknesses of the practical procedure stipulated in the RTI Act for public authorities and to make recommendations to strengthen the people's right to information. In addition, the study seeks to shed light on the attitudes of officers in public authorities regarding RTI and the practical difficulties faced by citizens in seeking of information under the Act.

3. METHODOLOGY

This study submitted information requests sourced from a grassroots level to a variety of public authorities during a controlled time period, and analysed the varied responses to the requests from said public authorities.

The information requests were sourced in two phases. During early 2018, the Outreach and Capacity Building Team of CPA facilitated discussions regarding the Right to Information with numerous grassroots level activists. We discussed the background of, implications for and information available through the RTI Act. As a result, CPA first facilitated requests originating from citizens in Anuradhapura, Galle, Matara, Kegalle, Moneragala, Ratnapura, Trincomalee, Matale, Ampara, Gampaha, Colombo, Kandy, Badulla, Polonnaruwa, Puttalam, Nuwara Eliya and Hambantota to relevant public authorities. Second, CPA of its own accord made further requests from public authorities regarding matters that were viewed as of general importance to the public.

A total of 203 initial information requests were sent to various public authorities from February 16, 2018 to March 30, 2018.

4. LIMITATIONS

The main purpose of this study is to evaluate, investigate, and identify weaknesses of the practical procedure stipulated under the RTI Act for public authorities. It is not a study of the RTI Act in general or the substantive law under Act.

The study is limited to the responses of public authorities and only to information requests filed with them. This takes into account the responses of public authorities at the initial information request submission stage – that is, the response of that public authority's Information Officer – and the responses at the first appeals stage – that is, the response of that public authority's Designated Officer. The study therefore does not take into account the second appeals stage, which is when appeals are directed to the Right to Information Commission (RTI Commission).

5. DATA ON REQUESTS FOR INFORMATION

No of Applications presented	No of Applications for which a response was received	No of Applications for which no response has been received
203	187 (92 %)	16 (8%)

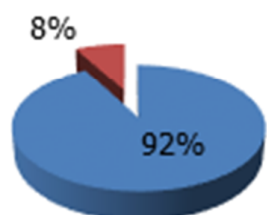
A total of **203** requests were submitted to public authorities. The relevant public authorities responded to **187** requests for information, while **16** requests were not responded to.

The requests for information were sent to the relevant public authorities by registered post and not under normal post. It should be emphasised here that for this study the date applied to the request for information was not the signed date of the requests, but the date on which it was despatched under registered cover. In this regard, we used the date of the request as that submitted under registered post to ensure that the requests were received by the relevant public authorities in an acceptable and systematic manner and to study whether the public authorities operate under the time period specified by the Act.

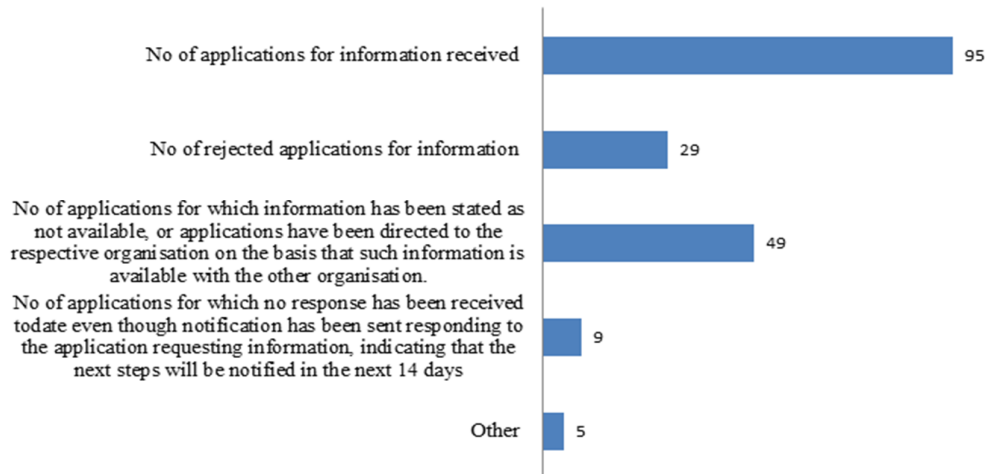
Accordingly, the Act emphasises that within 14 (working) days of the request for information, the information officer of the relevant public authority shall provide an acknowledgement to the request. This was the basis adopted for the regularisation of our study. Accordingly, requests were sent under registered post on **February 22, 2018, March 13 and 23, 2018** and **April 3, 2018**.

5.1 Requests for which any response has been received

- No of Applications for which any response was received -187
- No of Applications for which no response has been received -16



Disaggregated data on the number of applications for which any response was received



A total of **203** requests were made to public authorities in four stages. **187** requests received some sort of a response. Responses that can be categorised as ‘some sort of response’ are as follows:

- Letters of notice sent notifying that requests for information have been referred to other authorities,
- Letters seeking further explanation on the information requested in the applications,
- Letters notifying that the request for information has been rejected,
- Letters notifying that the next steps taken regarding the request for information, will be sent within 14 days.

95 out of **203** information requests resulted in the information requested being provided. **78** information requests did not result in the information requested being provided, which includes **29** responses which were rejected requests for information and **49** responses stating that the information requested is not available to the public authority or being referred to another public authority. All three types of responses have been classified under the category with a definite response. Therefore, the *total number of responses receiving a definite answer* to the requests for information is **173**, which is **85%** as a percentage of the total, and the total number of requests for information that *did not receive a definite answer* is **30**, which is **15%** as a percentage of the total.

This state of affairs reflects a satisfactory performance by public authorities in a short period of time in terms of accountability and responsibility in informing the availability or non-availability of information. It should also be noted that public authorities have taken definite steps to create a positive situation to a certain extent, to ensure the right to information

5.2 Requests for which requested information has or has not been provided

- Information received from the submitted requests for information - 95
- Information not received from the submitted requests for information - 108



CPA received the requested information for **95** information requests submitted, which represents **47%** of the total number of information requests. Requests for information that did not receive the requested information were **53%**, which is **108** from the total requests made.

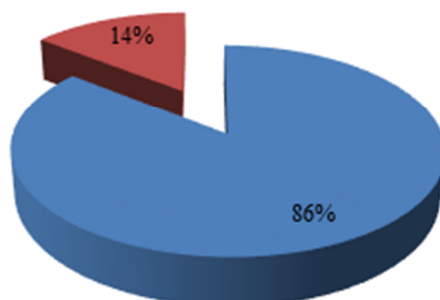
It should also be noted that a majority of requests resulted in the requested information not being provided. On the other hand, information requests resulting in the requested information being provided constituted a minority of requests. This reflects a negative accessibility to the right to information. At least **47%** of requests resulting in the provision of the requested information suggests room for further improvement in accessibility. It must also be acknowledged that the non-provision of information due to the public authority not possessing that information (which represents the majority of non-provisions) does not indicate any intent by public authorities to intentionally impair the right to access information per se.

The number of applications for which no information was received can be broken down into the following categories:

- Letters of notice stating that request for information have been referred to other public authorities
- Letters seeking further explanation on the information requested in the applications
- Letters notifying that the request for information has been rejected
- Letters notifying that the next steps taken regarding the request for information, will be sent within 14 days
- Information requests that have not received a response to date
- Information requests rejected stating that the relevant institution is not a public authority
- Letters notifying that the relevant information is not within the subject scope etc.

5.3 Number of requests for information that were accepted and those rejected

- No of requests for information that were not rejected - 174
- No of requests rejected - 29



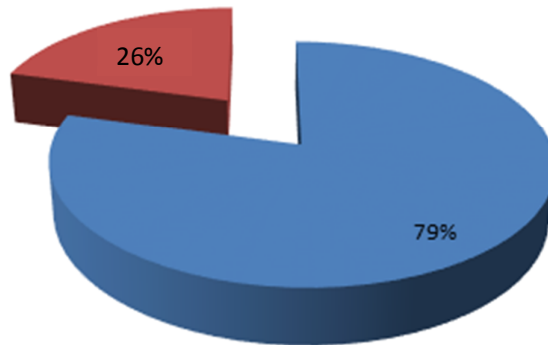
The number of requests for information that were rejected was **29**. As a percentage it is **14%**. From the **29** requests for information the majority were rejected by the relevant public authorities citing section 5 of the Act and stating that the information requested does not exist in their control or authority even though the non-possession of information is not a ground of rejection under section 5. A minority rejected the requests for information due to a lack of clarity without stating a ground of rejection under section 5 of the Act. Both these types of responses are incorrect responses under the RTI Act.

174 Information requests did not get automatically rejected which as a percentage, is **86%**. However, it should be highlighted that according to the provisions of section 5 of the Act information requests, that were not rejected are included in the following categorization, that is:

- Letters of notice sent stating that request for information have been referred to other institutions
- Letters seeking further explanation on the information requested in the applications,
- Letters notifying that the next steps taken regarding the request for information, will be sent within 14 days
- Information requests that have not received a response to date
- Letters notifying that the task related to the information is not applicable to their institution
- Letters notifying that the relevant information is not within the subject scope etc.

5.4 Lack of the requested information, or the availability of that information in another public authority resulting in a referral of the information request

- Number receiving any response - 187
- Number of referrals to other organisations from the above - 49

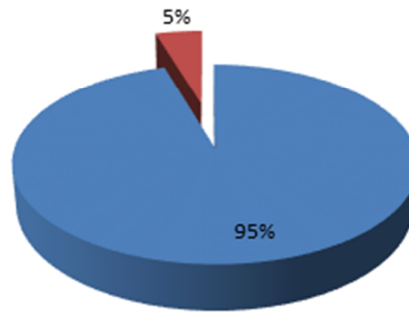


CPA received some manner of response to **187** requests for information submitted. The responses received either indicated that the information request submitted was not relevant to the particular public authority and therefore the request for information has been referred by them to another public authority or identified the public authority that we should submit our application to and requested us to obtain the relevant information from the public authority named. **49** requests for information returned such responses, representing **26%** of the total submitted requests.

We understood this measure as an initiative taken by the public authorities to effectively implement the rights granted to the citizens of Sri Lanka under the RTI Act by attempting to provide some information on the source of requested information if they did not possess it. But it also must be noted that comparatively most of the public authorities simply state they do not have the information in their possession, without indicating a relevant public authority that could have the requested information. Furthermore, the number of outright rejections do indicate somewhat negative accessibility in securing the right to information.

5.5 Number of applications for which the only response has been that steps have been taken to reply within 14 days

- Number receiving any response - 187
- No of applications for which no response has been received to date even though notification has been sent responding to the application requesting information, indicating that the next steps will be notified in the next 14 days- 09



Whereas **187** out of the **203** requests for information received some sort of a response, most of the public authorities responded saying that the next steps regarding the request for information will be taken within 14 days. However, it should be noted that even though they have indicated the next steps taken regarding the request for information would be within 14 days, there are 9 requests for information that have exceeded the 14 day period and are still without a response to date, which constitutes **5%** of the requests for information receiving some sort of a response.

5.6 The number of information requests that received or did not receive information after the initial appeal

- Number of responses received after submitting initial appeals - 27
- Number of responses not received after submitting initial appeals - 40



CPA has submitted **67** initial appeals to the Designated Officers of public authorities regarding requests for information that have been notified as rejected and for requests that have not returned a response after a considerable period of time. We received information

for **27** appeals and that constitutes **40%**, while **40** requests for information did not receive a response even after the appeals, which constitutes **60%** as a percentage.

The following responses or situations are from the 60% requests for information that have not received a response even after the initial appeal, in other words, requests for information refused:

- Letters notifying that the application is not relevant to the Institution.
- Letters notifying that the relevant information is not in their custody
- Letters notifying that the information is not in their possession and indicating a different institution that possess the relevant information.
- Letters acknowledging the receipt of appeal and stating that it has been documented, however without a response to the letter
- Letters of notice sent stating that request for information have been referred to other institutions
- The appeal has been submitted, but there has been no response

6. FINDINGS OF THE STUDY

6.1 Attitudes in Public Authorities about the Right to Information Act

As a result of this study, it can be identified that there is an overall positive attitude regarding the right to information by Sri Lankan public authorities. This is based on the high percentage of responses of some sort received for the submitted requests for information which stands at **92%**. However, it should be emphasised that it is not entirely positive, since the percentage of applications that received the requested information was at **47%**. As this **47%** value is not a majority, this shows that the right can be improved systematically and suggests that there should be a strategic course of action within the relevant public authorities to do so. Conversely, the **8%** of relevant public authorities that failed to respond in any manner to the requests for information reflect negatively on the RTI regime's operation.

Another significant matter to note is that during the phone calls received by us regarding the requests for information submitted to public authorities, there were inquiries as to whether we were trying to find any weaknesses of the public authorities. This attitude, which was identified during our work in the field was seen amongst many officials. This attitude can negate the transparency and governance in the provision of information to some extent and therefore, it is proposed that necessary action be taken to eliminate this attitude.

In responding to requests for information, some public authorities have responded in a hostile manner, which would have a negative effect on the promotion of citizens' rights. Since the words that are used by the public authorities are a direct reflection and related to the attitudes of the institution or the relevant official, when responding, the communication should not be made in a way to undermine the citizenry but conducted in a manner that will continue to promote the right, which will achieve the intended objective of the Act to create a culture of transparency of information.

6.2 Status on the responses to the requests for information

From a total of **203** requests for information submitted, public authorities have responded to **172** requests with a definitive yes or no for information availability. This response to requests for information which was at a very high level considering that the operation of the Act is still in its early stages, can be considered an extremely positive situation. However in relation to this, **31** requests for information have not been responded to with a definitive yes or no and this should not be ignored.

In summary, this new approach, introduced as another of the tools for safeguarding the democratic rights of the Sri Lankan citizens, can be observed to be effective based on the fact that the response of the relevant public authorities has been significantly high, which is an initial step in securing the right to information.

6.3 Do public authorities take note of the time period stipulated in the Act when processing requests for information?

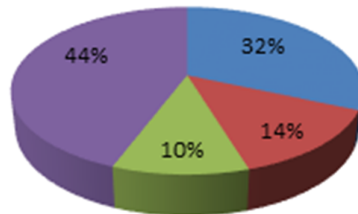
When calculating time frames in terms of the RTI Act, it should be noted that calculation was based on the number of working days of the public institutions (Saturday, Sunday and public holidays have not been counted). It should also be noted that the date used in calculations for this study was weighted in favour of public authorities since the date considered was not the date on which the response was sent to the post but the date the signature was placed in the response document.

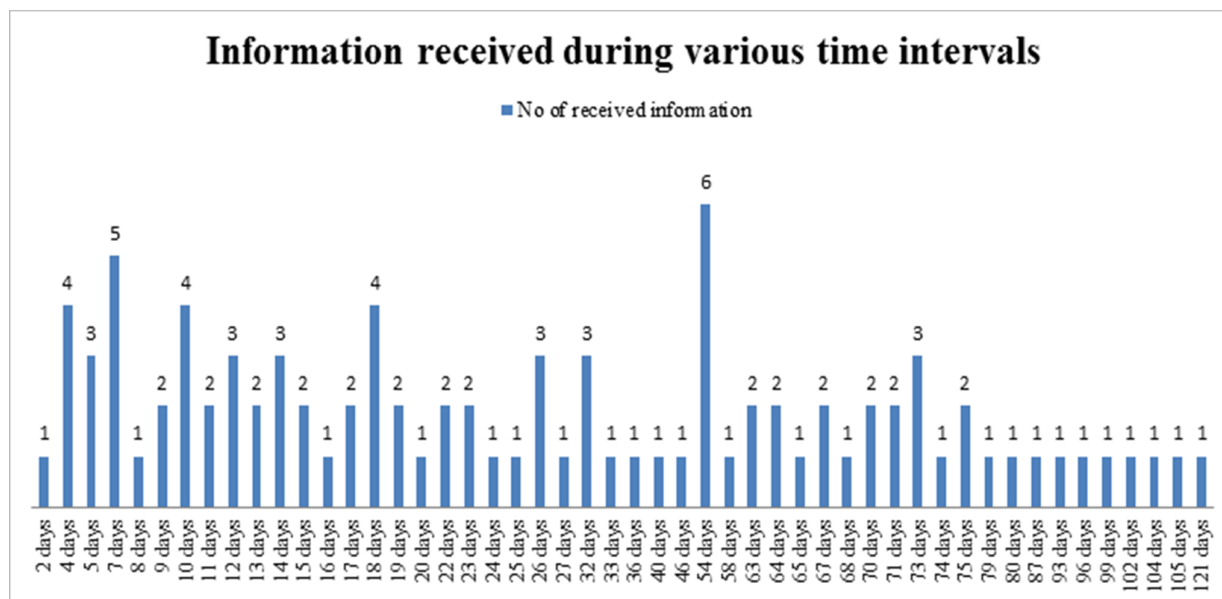
Total number of applications for information received	Information received within 14 days	Information received within 21 days	Information received within 30 days	Information received within 121 days
95	30/95	30+13=43 3/95	43+10=53 2/95	52+42=95

From the RTI applications submitted, **30** applications were provided with relevant information within **14** days representing **32%** of those requests where information was received. Similarly, from information requests submitted, 13 were provided with the requested information within 21 days representing 14% of those requests where information was received . Within 30 days, 10 requests were provided with relevant information representing 10% of the of those requests where information was received. Similarly, 42 applications were provided with relevant information within 21 days representing 44% of those requests where information was received.

Percentage of Information received as Dates

- total number receiving Information within 14 days - 30
- total number receiving Information within 21 days - 13
- total number receiving Information within 30 days - 10
- total number of receiving Information within 121 days - 42





6.4 Referencing errors committed when responding to letters requesting requests for information by public authorities

Another finding of the study was that public authorities, when responding to some of the requests for information have not used proper reference numbering or taken steps to implement referrals in a systematic manner. This is indicative of inefficiency in public authorities and should not be ignored since such miscommunication can have a number of knock - on effects such as:

- Where a number of discrete information requests are made to the same public authority and that public authority fails to number these requests separately, in the event of several requests being rejected it will be difficult to ascertain which requests have been rejected.
- Similarly, it is a difficult task to proceed further through a non-referenced letter, which impacts negatively on the accessibility of a citizen's right to information.
- It could also reduce the evidential value of the documentation and be discarded as evidence, when produced as the initial documentary evidence in the appeal process or when finally seeking RTI Commission- or further court action.

Therefore, not attending to proper numbering of requests and referrals, strongly impacts on the implementation of the right to information and is indicative of the inefficiency of the public authorities in documentation. Reducing this inefficiency of the documentation/referencing systems of public authorities must be focused on.

6.5 Instances where a common opinion is not visible when similar public authorities are responding to similar requests for information

This finding is related particularly to the schools system. It should be noted that we applied for requests for information from several popular schools in the country, requesting information on students who were recruited to the first grade in these schools and information on reasons/criteria that were used as basis for admission. A significant feature observed was that most schools are not consistent in these areas. The responses of these schools included:

- Providing relevant information
- Refusing to provide relevant information stating that the school does not fall into the category of public authorities
- Notifying that a prior approval of the Ministry of Education is required to provide information
- Different conflicting responses, stating that providing information is not a responsibility of the school but of the Education Ministry.

Subsequently, the Ministry of Education issued a directive to the schools instructing that the information has to be provided by the principal of the school. Through this directive, the Ministry for Education has been able to establish consistency regarding this matter. This implies a strong need for a systematic course of action for providing information.

6.6 If the public authorities do not have the relevant information do they refer it to the correct public authority?

If the contacted authority does not have the information, naming a different authority that may have the information and referring to the authority responsible for issuing the relevant information is essentially a two-way approach. That is, simply naming another public authority that could provide the information does in some ways contribute to secure the right to information of the citizen; however, referring it to the relevant public authority enabling the citizen to obtain information (rather than requiring the citizen to make a new information request to that other public authority), more fully ensures the right to information of the citizen and can be identified as a due implementation of the duty and responsibility of the public authorities.

Nevertheless, whilst this directly reflects the attitudinal values of the officers in the public authorities, it is directly related to the development of the right to information and its

future. As noted in section 5.4 above, **49** public institutions have named other institutions or gone beyond and referred the information request to those institutions, which is commendable and the availability of a proper course of action for the development of this culture will have a definite impact on its stability.

6.7 Is information refused under justifiable or other reasons?

29 requests for information submitted under the study have been rejected, the main reason given by the public authorities for rejection was based on section 5 of the Act, stating that they rejected the request on the grounds that the information is not in their control or possession. Some of the public authorities have rejected stating that the information requested is not within their scope while some public authorities have referred it to relevant other public authorities which has been noted. Some authorities rejected requests simply citing section 5 of the Act without specifying which ground of refusal they are invoking.

However, public authorities must provide an explanation for rejections even for the information that is not in their possession, This provides transparency even in rejections and invariably contributes to securing the citizen's right to information. This is because citizens expect a justifiable explanation for all decisions of public authorities as they are institutions that function for their well-being.

It should also be emphasised that the right to information is directly and indirectly linked with the right to know the basis for rejection or non provision of the information, and for whatever the reason, there should be a detailed and clear explanation for all decisions of public authorities in providing information.

6.8 Do public authorities follow the due procedure concerning responses and delays in responses as stipulated in the Act?

Another finding of this study was that many public authorities take more time than the specified time frame in the Act to respond as well as provide information. It should be highlighted that **68** of the **203** public institutions failed to respond within the 14-day period given to the public authorities to provide their first response. That is **33%** of the total, while the rest of the other **135** public authorities, the larger group have indicated the *availability or non-availability* of information, and provided or rejected information within the 14-day period. As a percentage it is **67%**. Our focus here is on the institutions that have not responded within 14 days and to investigate the issues and find solutions for the weakness. In fact, the failure of the public authorities to respond in whatever manner within 14 days,

directly impacts the citizens' right to information negatively, and is contrary to the provisions stipulated in the Act.

Overall, the operation of **135** public authorities in order to respond within the time frame stipulated in the Act during the initial stages of operation is a positive characteristic and should be commended. On the other hand, a considerable majority from the **135** applications that responded within the 14 days, have delayed in *either providing the information or rejecting requests* which should be noted. On a practical level, the officer acting as the information officer has not been instituted exclusively to that task and therefore the difficulty in responding within the time frame stipulated within the Act amidst other work responsibilities has been cited as a reason for the delays, whereas however, subsection 24(3) of the Act states that the information officer should respond to the information requests as soon as possible.

6.9 Areas that need to be covered further in the Act regarding the Right to Information

Section 3(1) of the RTI Act highlights that the right of access to information is provided to all citizens of Sri Lanka. The citizen is clearly defined in the Act and the entitlement is for all citizens. However, the lack of clarity in the Act regarding the procedure to be adopted when citizens who have different needs and capacities for accessing information, creates certain negative outcomes.

For instance, when we inquired directly from the RTI Commission in regard to a request for information to provide information in Braille, the response given by the Commission was that they have not been provided the facilities to provide information in possession of the Commission in Braille, to a visually impaired person, and that we should inquire from the various institutions coming under the Act, as to whether they have the required facilities.

This reveals that the Commission does not have the appropriate mechanisms in place and that the implementation of the right to information has certain limitations depending on citizens' disabilities. Therefore, as the prime institution for the right to information, it is imperative that the RTI Commission take necessary action in this regard to provide equal access to the right to information for all citizens.

7. RECOMMENDATIONS

1. Create a **systematic programme** for the staff of public authorities highlighting the importance of the right to information, the nature of their responsibilities and their duties in securing the right and especially in how public officers interact with citizens in discharging the right. This will directly contribute to safeguarding citizen's rights, paving the way to an attitudinal change in public authorities.
2. **Regulate** a course of action ensuring compliance with the specific time frames stipulated in the Act. The Act specifies that this task has to be discharged as expeditiously as possible.
3. In the event of a refusal to provide information, the **basis of rejection** must be provided under the exact grounds specified in section 5 of the RTI Act by all public authorities.
4. In the event of a lack of clarity in an information request, or where the public authority does not possess the requested information, section 5 of the RTI Act cannot be cited in a blanket manner as a ground of rejection. The public authority must provide a **suitable explanation** via the RTI-05 form.
5. Whilst protecting the concept of proactive disclosure under the RTI Act, there is a need for a **broader interpretation** of the grounds of rejection under section 5 of the RTI Act to ensure as wide access to the right to information as possible.
6. Public authorities must ensure that the response to the information request is received in the **original language in which the information was requested**. However, this does not mean that information has to be provided in the language in which the citizen has requested going beyond the language of the available information. The expectation is the protection of the citizen's language rights and the facilitation of the Official Languages Policy.
7. Requesting citizens to seek information and appeal related matters from Colombo-based public authorities may negatively impact the implementation of the right to information of citizens outside Colombo, therefore, establishing **regional centres** equipped to make decisions regarding the right to information may not only secure the right to information but essentially safeguard the right to access justice.

8. If there is a possibility to develop and implement a **special mechanism** that considers the information requests of all the provinces at least every quarter, citizens will be able to connect with/focus on good governance measures and promoting them.

9. While it is the responsibility of the information officer, it is also the duty of citizens to proactively engage in ensuring the implementation of their rights. The reason being that this cannot be achieved exclusively with the understanding of only one stakeholder; it is a journey that needs to move forward based on the **mutual understanding** and responsibilities of the public officer and the citizen. It is therefore essential that the attention of responsible institutions and people are directed at promoting and securing this interdependent relationship.

