

## Can the PIO fix the scale of fees to be paid an applicant?

In one case, the Public Information asked the petitioner to pay Rs 6 as copying charges to supply three pages and in addition demanded Rs 1,000 as search fees to search for and collate the information. The PIO had informed the Appellate Authority that a senior superintendent will have to be assigned this work to collect and collate the information and it would take four hours of extra work for which the institution will have to pay. The petitioner disputed the demand for the search fees. During the enquiry in this case, the PIO sought to justify this by referring to the clause “as determined by” by the PIO in Section 7(3) of RTI Act under which the Public Information Officer is expected to send an intimation to the petitioner giving “details of further fees representing the cost of providing the information **as determined by him** with the calculations made to arrive at the amount”. His understanding was that this Section enabled him to determine the cost. The Commission pointed out to him that

- Under Section 7(3) of the Act, the amount should be arrived at in accordance with fee prescribed under 7(1)
- Section 7(1) makes clear that payment should be ‘such fee as may be prescribed’.
- Section 2(g) defines the word ‘prescribed’ as ‘prescribed by rules made under this Act by the appropriate Government or the competent authority, as the case may be,
- Section 2(a)(ii) lays down that the State government shall be the appropriate government in respect of public authority established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly by the State Government,
- Section 27(1) empowers the State Government to make Rules
- Section 27(2)(c) enables the Rules to encompass fees payable under Section 7(1) and 7(5) of the Act, and,
- The State Government has framed Tamil Nadu Right to Information (Fees) Rules 2005 in exercise of the powers vested under Section 27

It is apparent from a cogent reading of these provisions that fees can be demanded only in terms of the Fees Rules notified by the State government. Essentially, the fees have to prescribed

in Rules to be made by the appropriate government, which in this case is the State government, which has, accordingly, framed Rules in 2005 prescribing the fees. No power is vested in the PIO to determine the fees. At best, he can prescribe the charge for supply of copy in paper size larger than A3 or the price for a sample or model, as laid down in Fees Rule 3(b) (ii) and (iii). Even in such cases, he has no discretion to charge more than the actual cost incurred.

It is obvious that the Act has been framed in such a manner that fees are not dependent of the subjective judgment of individual PIOs.

In this context, it worth mentioning that it has been pointed out that lack of oversight and an independent organization to enforce consistency in US with relation to Freedom of Information Act has led to a situation where Human Rights Watch requesting identical information from each branch of the armed forces got a bill for \$168,316 in processing fees from the Air Force while the Army asked for \$1,584.

Another argument advanced by the PIO is that Section 4(4) of the Act refers to taking into consideration cost effectiveness. This actually applies only to suo motu dissemination of information and is irrelevant to requests under Section 6 of the Act.

The Commission decided that the demand for payment of Rs 1000 as search fees was not sustainable. ([SA4644/2016](#))