माननीय मुख्य सूचना आयुक्त की अध्यक्षता में आहूत प्रथम बैठक दिनांक 01.08.2006 का कार्यवाही:

उपस्थिति:

अधिकारी:
- श्री तारकेन्द्र वैष्णव सचिव
- डॉ. शुभिरसिंहा सेनगुप्ता पाण्डेय उपसचिव

स्टाफ़:
- श्री प्रकाश चंद्र उपाध्याय
- श्री राजेश नैसानी
- श्री जयेंड्रा महेश्वरी
- श्री जितेंद्र पाण्डेय
- श्रीमती रजनी भण्डारी
- श्री सतीश सूदा
- श्री भूपेंद्र चंद्र पपने सहायक समीक्षक अधिकारी

1- बैठक आयोजित:

1.1 माय मुख्य सूचना आयुक्त द्वारा निर्देशित किया गया कि प्रथम शनिवार को अपराह्न 4 बजे बैठक आहूत की जायेगी तथा इसे कमांड कम संख्या दी जायेगी, जैसे इस बैठक को प्रथम बैठक कहा जायेगा तथा इस बैठक में लिये गये निर्णय को प्रथम बैठक में लिये गये निर्णय के रूप में उद्धृत किया जायेगा, द्वितीय शनिवार के अवकाश होने अथवा किसी शनिवार को अवकाश होने की स्थिति में उक्त शनिवार के पूर्ववर्ती शुक्लवार को बैठक आहूत की जायेगी.

1.2 आयोग की इन बैठकों में निम्न बिनुँ एवं प्रथम रूप में विचार किया जाएगा:
   1.2.1 आयोग कार्यक्रमाली से सम्बन्धित विषय,
   1.2.2 कार्यलय प्रबन्ध व सम्बन्धित विषय,
   1.2.3 अधिनियम से सम्बन्धित विषय तथा,
   1.2.4 अन्य विषय.

2.0 कार्यलय प्रबन्ध:

2.1 आयोग को प्राप्त होने वाली डाक दिन में दो बार संकलित की जायेगी.

2.2 पूर्वांगन एवं अपराह्न में प्राप्त होने वाले सभी सन्दर्भों का प्राप्ति प्रशिक्षण लिपिक्ष द्वारा रजिस्टर में अंकित करते हुए उपसचिव को प्रस्तुत किया जाएगा.

3 कार्यलय में प्रचलित सभी रजिस्तानियों की नम्बरिंग की जायेगी, तथा पत्रावलियों का एक रजिस्टर अनुसरित किया जाएगा,

2.4 सभी पत्रावलियों पर स्पष्ट रूप से विषय वर्तु अंकित की जायेगी एवं तदनुसार ही रजिस्टर में दर्ज होगी,

2.5 कार्यलय में कोई भी पत्रावली बिना नम्बरिंग के प्रचलन में नहीं रखी जायेगी,

2.6 सभी शिकायतों एवं अपीलों के सन्दर्भों को तकाळ फाइलों पर अनुसरित कर उसी दिन दिया जायेगा एवं सम्बन्धित लिपिक्ष के द्वारा विशेषता के अंकित करते हुए प्रमुख रजिस्टर में दर्ज कर दिया जायेगा,

2.7 कार्यलय में कर्मचारी के समवेत में एक रजिस्टर अनुसरित किया जाएगा, जिसमें उनका नाम, जिन पदों के विश्रूत कार्यरत हैं उसका विवरण एवं आयोग में नियुक्ति सम्बन्धी सभी अभिलेखों का विवरण होगा,
2.8 उक्त रजिस्टर में उल्लिखित कर्मचारियों को प्रदत्त कराये गये दायित्व भी अंकित होंगे। इस रजिस्टर में कर्मचारियों को देय तत्त्व/पारिष्ठिक का स्पष्ट विवरण अंकित किया जायेगा तथा,
2.9 आयोग में कार्यरत नियुक्त कर्मचारियों एवं संविधा पर नियुक्त कर्मचारियों का रजिस्टर पृथक-पृथक खोला जायेगा।

3.0 अधिष्ठानः
सूचना आयोग कार्यलय में कार्यरत कर्मचारियों की नियुक्ति एवं अन्य सेवा विवरण के सम्बन्ध में
चर्चा की गयी, एवं कार्यलय द्वारा मात्र मुख्य सूचना आयोग को निम्नवत अवगत कराया गया:
3.1 श्री प्रकाश चन्द्र उपाध्याय निजी सचिव मुख्य: सचिवालय के ही अधिकार हैं जो आयोग में प्रतिनियुक्ति पर कार्यरत हैं,
3.2 श्री राजेश नैथानी निजी सचिव के पद पर आउटसर्सिंग के माध्यम से कार्यरत हैं तथा निजी सचिव
सह कन्सोल ऑपरेटर के पद पर समायोजन हेतु सचिवालय सामान्य प्रशासन विभाग से पदभारपार
चल रहा है। मुख्य आयोग के संस्थान किया गया, कि शासनाधिकार संख्या 204/XXXII/2005
में उल्लिखित जन सम्पर्क अधिकारी के पद के विरुद्ध श्री नैथानी को दर्शित करने हुए शासन को
tदनुसार अवगत कराया जाये।
3.3 श्री जेसोनियाथी समीक्षा अधिकारी के पद पर कार्यरत हैं तथा आदेश संख्या 549/उ.सू.आ/मु.सू.आ/
2006 दिनांक 29 मार्च 2006 के द्वारा पुष्पपत्र विभाग से प्रतिनियुक्ति पर आयोग में कार्यरत हैं।
3.4 श्री सतीश सूदा आउटसर्सिंग के माध्यम से आदेश संख्या 356/उ.सू.आ/मु.सू.आ/2006 दिनांक
22 मार्च 2006 आयोग में कार्यरत हैं। मात्र मुख्य सूचना आयुक्त महाद्वार निर्देशित किया
गया कि शासनाधिकार संख्या 204/XXI/2005 दिनांक 19 नवम्बर 2005 में वर्णित लेखाकार के पद के
विरुद्ध इन्हें दर्शित करने हुए शासन को अवगत करा दिया जाये।

3.5 श्री जितेंद्र पापडे आउटसर्सिंग के माध्यम से आदेश संख्या 356/उ.सू.आ/मु.सू.आ/2006
dिनांक 22 मार्च 2006 आयोग में कार्यरत हैं। मुख्य सूचना आयुक्त महाद्वार निर्देशित किया
गया कि शासनाधिकार संख्या 204/XXI/2005 दिनांक 19 नवम्बर 2005 में वर्णित आयुक्तिक के
पद के विरुद्ध इन्हें दर्शित करने हुए शासन को अवगत करा दिया जाये।
3.6 श्रीमती रजनी भण्डारी आदेश संख्या 875/67-उ.सू.आ/2006 दिनांक 06 मई 2006 आयोग में
कार्यरत हैं। शासनाधिकार संख्या 204/XXI/2005 दिनांक 19 नवम्बर 2005 में तिलिप का कोई
पद नहीं है दिया गया है। श्रीमती भण्डारी को पत्र प्रेषण का दास्तांदीय दिया गया है, जो
कार्यलय के लिए अत्यन्त महत्वपूर्ण है। इस पद की स्वीकृती हेतु शासन को तत्काल
संदर्भित किया जाये।
3.7 श्री भृषेंद्र चन्द्र पापडे सहायक समीक्षा अधिकारी के पद पर कार्यरत हैं तथा आदेश संख्या
1082/उ.सू.आ/मु.सू.आ/2006 दिनांक 31 मई 2006 के द्वारा पुष्पपत्र विभाग से प्रतिनियुक्ति
पर आयोग में कार्यरत हैं।
3.8 सहायक समीक्षा अधिकारी का एक पद आयोग में रिक्त है, जिस पर प्रतिनियुक्ति हेतु श्रीमती हीरा
रावत शिखा विभाग द्वारा प्रत्यावर्तन दिया गया है, एवं इनका कार्यभार शीघ्र ही आयोग में ग्रहण
करने की प्रक्रिया अंतिम चरण में है।

4.0 शासन के पत्र संख्या 204/XXI/2005 दिनांक 19 नवम्बर 2005 तथा शासन के पत्र संख्या
301/XXXI/(13)/सू.आ/2006 दिनांक 1.11.2005 में सचिव, उपसचिव, समीक्षा अधिकारी के 2 पद,
सहायक समीक्षा अधिकारी के 2 पद, निजी सचिव के 1 पद, आयुक्तिक 1 पद, कम्प्यूटर ऑपरेटर 1,
अनुसूचक 1, लेखाकार 1 (प्रतिनियुक्ति), वालक 1 (उपसूचन से सम्बन्ध) पर विवादः
4.1 सचिव एवं उपसचिव के लिए कोई निजी स्थान स्वीकृत नहीं किया गया है,
4.2 सचिवालय प्रशासन विभाग उत्तराधिकार शासन के आदेश संख्या 51/एक--चार/2002 दिनांक 24.
01.2002 के द्वारा सचिव के लिए निजी स्थान एक, वैयक्तिक सहायक 1, अनुसूचक 2 तथा संयुक्त
सचिव/उपसचिव के लिए 1 वैयक्तिक सहायक एवं 1 अनुसूचक अनुमया किया गया है,
4.3 सचिव द्वारा पत्र संख्या 1041/उ.सु.आ./मु.सु.आ. दिनांक 25.05.2006 के माध्यम से प्रमुख सचिव सामर्थ्य प्रशासन को इस आशय का सन्दर्भ प्रस्तुत किया गया है कि वे सचिव एवं उपसचिव हेतु निजी स्टाफ अनुमोदन कराते हुए पदों की स्वीकृति आदेश निर्माण करने का कदम करें, इन पदों का विवरण निम्नवत प्रस्तावित किया गया है:

4.3.1 सचिव के लिए:
- निजी सचिव
- वैयक्तिक सहायक
- सहायक समीक्षा अधिकारी/कम्प्यूटर ऑपरेटर
- चतुर्थ श्रेणी

4.3.2 उपसचिव के लिए:
- आश्लीलक कम कम्प्यूटर ऑपरेटर
- चतुर्थ श्रेणी

4.4 उपरोक्त प्रस्ताव पुनः शासन को सन्दर्भित किये जाने के निर्देश मात्र मुख्य सूचना आयुक्त द्वारा दिये गये,

5.0 वाहन:
कार्यालय द्वारा अवगत कराया गया कि वाहन कप मद में वित्तीय वर्ष 2006-07 के लिए 40 लाख रुपये स्वीकृत हैं:

5.1 2 वाहनों के क्रम के आदेश मुख्य सूचना आयुक्त द्वारा दिये गये तथा Contract पर ती गधी गाड़ियाँ की संख्या न्यून की जाये.

5.2 मात्र मुख्य आयुक्त द्वारा निर्देशित किया गया कि तत्काल चालक के एक और पद की स्वीकृति हेतु प्रस्ताव शासन को सन्दर्भित कर दिया जाये.

5.3 आयोग को अवगत कराया गया कि 2 चालक 5 अनुसंधायों की नियुक्ति उपसूची के माध्यम से कर ली गई है.

5.4 शासन की सचिव एवं उपसचिव के निजी स्टाफ हेतु प्रस्ताव के अंतर्गत अनुसंधायों के पद के साथ ऐसे कर्मचारी की भर्ती की जायें जो वाहन चलाना जानते हों एवं जिनके पास नियमित ढाइविंग लाइसेंस हो.

5.5 सचिव एवं उपसचिव के निजी स्टाफ के प्रस्ताव के अनुमोदन की प्रत्याशा में Outsourcing द्वारा नियुक्ति किये जाने की दशा में प्रशासकीय विभाग का अवगत करा दिया जाये.

6.0 अधिनियम विषयक:

6.1 अधिनियम की धारा 18(1) में प्राप्त संदर्भों के सम्बन्ध में एक पृथक रजिस्टर अनुरक्षित रखा जाये.

6.2 अधिनियम की धारा 18(2) में प्राप्त संदर्भों के सम्बन्ध में एक पृथक रजिस्टर अनुरक्षित रखा किया जाये.

6.3 अधिनियम के विभिन्न धाराओं के यथार्थ क्रियान्वयन के सम्बन्ध में शासन को नियमित रूप से संदर्भ प्रेषित किये जायें.

बैठक सच्चायता समाप्त हुई.

सचिव
उत्तरांचल सूचना आयोग
AGENDA ITEM NO : I / Second : Consideration of the Reference received from Chief Secretary, Go UA No. 330/Su./VI/2006, dated 01 August, 2006

A reference has been received by the Information Commission from the Chief Secretary, Government of Uttarakhand (No. 330 / Su. / VI / 2006) wherein it has been requested that the Commission may review the contents of the following two letters, as they appear to be of “administrative nature” and both are probably not covered by the provisions and scheme of section 25 of the Right to Information Act, 2005 (RTI Act, 2005).

Letter No.1 : Letter No. 1723/U.Su.Aa./2006 dated 24 July, 2006; an Order ensuring arrangements for providing expenses for hiring of an expert on contract, who on the directions of the Commission or its Secretary, shall visit notified public authorities to report to the Commission whether “the practice of (that) public authority, in relation to the exercise of its functions under this Act, does or does not conform, with the provisions or spirit of this Act.”, specifically the maintenance of records and files (see paras 2 and 3 of this order).

Letter No. 2: Letter issued by the Secretary, Uttarakhand Information Commission, No. 1689/U.Su.Aa/2006, dated 22 July, 2006- communicating to 17 Public Authorities a Time Table of a Monitoring Programme of their respective subordinate Public Authorities in respect of the Good Practices Recommendations communicated by the Uttarakhand Information Commission for all Public Authorities existing within the state of Uttarakhand as well as the record arrangement prescribed by the Chief Secretary of Uttarakhand vide G.O. No. 146/Su./XXXI (3) G-/2006, dated 22 March, 2006, and calling for information from the notified Public Authorities, as per Annexure I of the said letter.

2. The Commission has also been requested to communicate its recommendations to the Nodal administrative department, General Administration Departments (GAD), for the Right to Information, instead of directly to the administrative units.

3. The Information Commission has since reviewed both the communications under reference, as requested by the Chief Secretary; the first, actually an internal Order of the Commission and the second, a Monitoring Programme of the 17 selected Public Authorities, and resolved to communicate the following Resolution of the Commission through the Secretary, Uttarakhand Information Commission, covering all points received through the aforesaid reference.

RESOLVED : that the following Resolution of the Information Commission be communicated to the Chief Secretary, Government of Uttarakhand, in reply to his letter under reference, addressed to the Chief Information Commissioner/ Information Commission.

FIRST: Powers and Functions of the Uttarakhand Information Commission (hereafter the Commission), as included in the “practical regime of right of information for citizens to secure access to information under the control of the public authorities”, otherwise known as The Right To Information Act, 2005 (No.22 of 2005), has to be understood in context of the entire scheme laid out in the RTI Act.

Even a plain reading of the Act would reveal that the Commission has the following two kinds of functions, namely:

( i ) Quasi - judicial functions, and
(ii) Functions which are essentially administrative in nature.

Its functions, while dealing with complaints under section 18(2), as distinct from those while dealing under section 18(1), or hearing second appeals under section 19(3) read with sections 20(1) are ones which qualify to be called as quasi-judicial in their nature. Chapter V, Powers and functions of the Information Commissions, appeal and penalties, covers both, powers as well as functions, which are quasi judicial as well as what may be termed as administrative in nature.

To illustrate, under this Chapter so long the Commission “receives and enquires into a complaint”, under section 18(1)(a) to (f), undertakes the function in purely an administrative capacity. However, once the Commission “is satisfied that there are reasonable grounds to enquire into the matter”, it enters into a mode of enquiry which becomes quasi-judicial and it proceeds to enquire into the complaint invoking provisions contained in sections 18(2) read with sections 18(3).

The Commission has internally made arrangements, as these are early days of working of the Act, to keep and maintain this fine distinction in its administrative and quasi-judicial functions, as far as disposal of complaints received by it are concerned.

In doing so and in following this internal procedure, the Commission itself has taken note of not only of “the limited human and material resources at the command of the Government of Uttaranchal”, as alluded to by the Chief Secretary in his reference under consideration, but equally of the fact that an old administrative system and working ethos, developed over a period of more than two centuries, requires some time to change-over to a totally different way of working and behaviour. However, it does not mean that Public Authorities of the state can take an unlimited time to comply with some of the most important obligations like those under section 4, conforming both to the provisions and spirit of the Act.

To cite another example of its administrative functions, even under Chapter V, dealing with powers and functions of the Information Commission, dealing with appeals, it determines penalties under section 20(1) while deciding appeals in a quasi-judicial capacity; and recommends “for disciplinary action against a recalcitrant Public Information Officer, under the service rules applicable to him”, as an administrative / disciplinary function, under section 20(2) of the Act.

The functions which are evidently and purely of administrative nature have been built into the scheme of the Act under the rubric of “Monitoring and Reporting”. Section 25 of the Act through its 5 sub-sections explains its meaning. One has to only look at the meaning of the expression Monitoring, in any of the standard dictionaries, to appreciate the expectations arising out of this provision of the Act.

Some Dictionary meanings of word Monitor / Monitoring:

( Oxford Pocket ) v. to keep watch over, to record or test or control the working of

( Chambers English ) v. to watch, check, supervise.

One has only to read the scheme of Monitoring and Reporting, as laid out under the 5 sub-sections of section 25 relative to these administrative functions, and relate it to the dictionary meanings which have been reproduced above, to appreciate the real import of this crucial provision of the Act.
The Commission would like to draw the attention of the Chief Secretary towards the respective roles which this scheme assigns to “Each Ministry or Department, in relation to the public authorities within their jurisdiction”, who are mandated to “collect and provide such information to the Information Commission, as the case may be, as is required to prepare the report under this section and comply with the requirements concerning the furnishing of that information and keeping of records for the purpose of this section” (see sub-section 2 of section 25). These are the obligatory duties of each department and the various public authorities under them towards the Commission and it is entirely up to the Commission to determine, not only the mode and manner but the frequency as well, of the information which will go into the preparation of its report, which the Commission is required to prepare in compliance of section 25(1).

The appropriate Government, here Government of Uttaranchal, is a receiver of this report under section 25(1) and a conduit for placing it before the State Assembly, as provided by section 25(4). Under the scheme of Monitoring and Reporting, as given out in section 25 of the RTI Act, Government of Uttaranchal, besides its role (i) as a receiver of the Report from the Commission and (ii) a conduit of the Report after the Commission has prepared it, has only obligations and duties to discharge, as given in sub section 2 of section 25, by way of administrative functions.

This leaves the Commission to discharge the remaining functions under section 25 of the Act, which by their very nature are administrative functions. It is but only obligatory on the part of the Commission to do so and the same has been taken in that spirit by the Commission from the very inception of the Act, as implemented so far in this state. To suggest that the Commission has no administrative functions under the Act, as could be inferred from the last line of the reference received from the Chief Secretary, would only betray, as explained above, a rather simplistic and perfunctory reading of the provisions of this important Act.

While dealing with the provisions of section 25 of the Act, Government of Uttaranchal, would notice that the Commission has already mainstreamed parts of report, which have to be included in the Annual Report prescribed by section 25(1), as prescribed by sub-section (3)(a) to (3)(e). Through the Monthly Progress Reports the 55 departments through their 63 Directorates/Public Authorities are already sending some of these inputs, which are analyzed on a monthly basis with a view to provide a critical analysis in the Annual Report. This reporting is in strict adherence of the Monitoring and Report scheme provided under section 25 of the Act, a clear statutory and administrative responsibility the Commission is required to discharge.

Commission would hereafter like to point out that the existing arrangement still leaves out certain inputs for the Annual Report as spelled out by sub-section 3(f) and 3(g) of section 25. The Commission is of the opinion that no scheme of reporting, however exhaustive, can ever fully capture the intent and spirit of the inputs which are expected from these two sub-sub sections and the same necessitate having a mechanism which the Commission has now conveyed to the 17 Departments and Public Authorities, through the Second Letter under reference and discussion.

The two letters, in fact one internal Order of the Commission and the second a Time Table to capture information required to be collected for inclusion in the Annual Report, and mentioned in sections 25(3)(f) and (g), are proposed to be covered through the arrangements prescribed specially by the letter dated 22 July, 2006.

Besides securing inputs included in sub-sections (3)(f and g) the Commission have, in the first instance selected 17 Public Authorities for in-depth examination under the provision of section 25(5),
namely whether the practices of these public authorities “in relation to the exercise of (their) functions under this Act, do or do not conform with the provisions or spirit of this Act.” (see section 25(5).

Commission are of the firm view that there has to be practical arrangement to monitor to deduce and ascertain, what is expected of the Commission under this sub-section, through direct and indirect field-observations, which have now been prescribed by the letter under discussion.

The Commission has already brought out and released through the hands of Hon Chief Minister of the State, Good Practice Recommendations, on 13th March 2006, which was based on the inferences drawn from a limited number of complaints and second appeals disposed off and decided by it before the date of their release. These Recommendations, by and large, not only still hold good but require to be elaborated further during the proposed consultations with the senior officials of the selected Departments and Public Authorities, and these are also expected to assessed and evaluated through the Time Table released by the Secretary of the Commission on the 22nd July, 2006, the subject matter of this discussion and Commission's Resolution. Good Practice Recommendations have also been included by the Commission, for speedy implementation, in its Recommendations included in its First Annual Report to the Uttaranchal Assembly under conveyance through the Government of Uttaranchal.

SECOND : From the above narrative, the Commission earnestly believes, now it would be evident that each Ministry or Department, of the Government of Uttaranchal, in relation to the public authorities within their jurisdiction, are themselves under a clear and unmistakable obligation to first collect and then directly report to the Commission, in a manner as may be required by the Commission, under the scheme of Monitoring and Reporting provided in section 25 of the Act and therefore it is only in the fitness of the scheme provided that the Commission has to address them directly as also receive their communications directly.

It is not very clear to the Commission, as to how and under what scheme or provision of the Act the Chief Secretary has been persuaded, or decided himself, to make a reference to the Commission requesting to forward its communications to the Departments, and the Public Authorities under their jurisdictions, only through the so-called Nodal department i.e. the GAD for the purposes of the Right to Information, as a subject. GAD, being itself a Department and also a Public Authority, is equally amenable to the provision contained in section 25(2) of the Act. A Department and/or Public Authority which itself is under an obligation to report to the Commission, in a manner prescribed by the Commission, cannot possibly be the solitary and only conduit of information between the Commission and the various Departments and Public Authorities. How the Government of Uttaranchal arranges collection, compilation and processing of various informations it is mandated to furnish through its various Departments/Public Authorities to the Commission, is a matter entirely internal to it and the Commission has absolutely nothing to do with it.

The Commission has been unable to discover any rationale whatsoever behind the reference under discussion and it would be happy to consider further, and at any time in future, any reference which is strictly in consonance with the scheme of Monitoring and Reporting provided in the Act. GAD, as a department and as per the Business Rules of the Government of Uttaranchal, is a Department which, besides other subjects entrusted to its charge, deals with the subject brought forward by the enactment of the Right to Information Act and the attendant issues like the budget, staff and appointments which are to be made in respect of the Commission, including handling of the Annual Report, as and when received. These are the functions which the Commission understands the GAD is expected to discharge, as per its mandate, as also any other activity related to the RTI Act which the Government of Uttaranchal may deem appropriate to entrust to it.
In context of the reference under consideration received, the Commission in passing, would like to very strongly recommend that the Government of Uttaranchal may also make suitable and adequate arrangements in the GAD for a very careful reading of the import and meaning of the various provisions contained in the Act, very specifically sections 4 and 25 which deserve special appreciation and a very strong and determined follow up, both in letter and spirit, and many other references made by the Commission, which have direct bearing on an effective implementation of this extremely important piece of administrative reform and good-governance.

THIRD: The Commission also avails this opportunity to record its sincere appreciation of the efforts made by the Government of Uttaranchal so far towards implementation of the RTI Act in the state, many of them indeed having been very pro-active in their timing and approach, and hopes that it would continue to extend its unstinted support to the Commission in discharge of its onerous duties and obligations; as also the words of appreciation contained in the reference of some of the pioneering efforts made by the Commission to implement the over-all scheme and provisions of the Act, both in letter and spirit.

10th August 2006