EDN-H(16)B(15)-RTI/2017- RTI Circular Instructions/ RTI ACT, 2005.
Directorate of Higher Education, Himachal Pradesh, Shimla-1.
Dated: Shimla - 171001 the 7, April, 2018.

OFFICE MEMORANDUM

Subject:- The Right to Information Act, 2005, Instructions for Supplying/Providing Information Under this Act to Applicants.

The basic aim, object and purpose of the RTI Act, 2005 is to provide the right to information for citizens to secure access to information under the control of Public Authorities in order to promote transparency and accountability in the working of every public authority. Large numbers of applicants seek information under the RTI Act from this Department of Higher Education. Therefore, in view of increasing number of RTI applications and the various issues connected therewith and the objections which are raised by the RTI applicants /appellants from time to time before the 1st Appellate Authority and in the Hon'ble State Information Commission, the provisions of the RTI Act, 2005 and the Himachal Pradesh RTI Rules, 2006 made thereunder needs to be followed scrupulously and meticulously in letter and spirit by all the Officers and Officials dealing the RTI matters. The following instructions may mandatorily be followed at all levels to facilitate supply of Information to the RTI applicants under the provisions of Act/Rules ibid. :-

1. **Disposal of RTI Applications**:-

The information/reply of every RTI application may be provided expeditiously as soon as possible and in any case within thirty days of the receipt of the RTI application. The Hon'ble State Information Commission/Commissioner may impose penalty of @ Rs. 250/ per day or maximum up to Rs. 25000/- in case(s) where the information has not been supplied in time, or for malafidely denying the information, providing incorrect, incomplete or misleading information or destroying the information, etc... Besides above, compensation to the RTI applicant(s) and disciplinary action could also be ordered

by the Hon'ble State Information Commission/Commissioner against the delinquent dealing officers/officials.

2. **Proper Information/ Reply of RTI Application** :-

The record based proper information/reply of every RTI application should be provided. If asked point wise, proper point wise information/reply should be provided/supplied. Applying any Section of RTI Act to deny information on any query asked by the RTI applicant should be wisely invoked with proper thorough application of mind. It has been observed that in many cases, section(s) of RTI Act are being unnecessarily applied/quoted to deny the information to the RTI applicants without properly understanding of the provisions of Act and the aims and the objectives for which the RTI Act has been enacted. If the information is available in the office record then definitely the same should be supplied to the applicant.

3. **Instructions to Branch Officers/Branch Superintendents/Dealing Officials in the Directorate of Higher Education and also to the Field Officers/Officials**:-

In Sub-section 4 of the Section 5 of the RTI Act, 2005, it is specifically provided that State Public Information Officer may seek the assistance of any other Officer as he considers it necessary for the proper discharge of his duties. Further, attention is drawn to Sub-section 5 of the Section 5 of the RTI Act, 2005 wherein it is expressly provided that Officer(s)/Official(s) whose assistance has been sought under Sub-section 4 of the Section 5, shall provide all assistance to the State Public Information Officer. And for the purpose of any contravention of the provisions of the RTI Act, 2005 such other Officer(s)/Official(s) shall be treated as State Public Information Officer(s)/Deemed PIO, and are therefore, liable for payment of penalty and compensation, apart from this disciplinary action could also initiated/taken for violation of the provisions of the RTI Act, 2005 as provided under Section 20 of the RTI Act, 2005. Therefore, the onus of supplying complete, correct information to the RTI applicants fully and completely lies on the Branch Officers, Branch Superintendents and dealing Officials, as every bit of information is requisitioned by the PIO/ RTI Cell from the different branches of DHE. There is no

record of the business of Directorate in the RTI Cell, and hence no information is available in the RTI Cell of DHE. The information is requisitioned by the PIO DHE from the Branch Officers/ Branch Superintendents of various branches of DHE, as these branches are the custodian of all the records available in the Directorate. Therefore, information/reply of every RTI application should be provided as per the available office/branch records as early as possible and in no case later than **fifteen days** after the receipt of the requisition in the Branch. The need of issuing reminder(s) to branches for supplying information already requisitioned should not arise. It is also observed that at times, branches return requisitions sent to them as such, orally telling that information does not pertain to their branch. This practice should be discontinued, and if the information does not pertain to any branch, it should be so communicated in writing to the RTI cell. Branch Officers/Officials are fully and squarely responsible for supplying complete, correct and record based information in a time bound manner. Sometimes information has to be sought from different branches of DHE, and, therefore, this information is required to be compiled and collated in the RTI Cell, only thereafter it is supplied to the RTI applicants under the signature and stamp of PIO from the RTI Cell of DHE. And the information sought by the applicant is to be supplied well within the prescribed time frame of 30 days. The information supplied by the branches should be complete in all respect and fully legible. The Branch Officers and the dealing Officials responsible for providing information/reply of RTI applications should work in tandem and every information/reply sought under the RTI Act should be provided to the RTI Cell DHE at the earliest and invariably under the signature of the Branch Officer concerned. Non-supply, inadequate, improper or late supply of the information leads to protracted litigation, as in all such cases, First and Second Appeals are filed by the RTI applicants. This leads to unnecessary unfruitful engagement of government officials, besides involving financial implications in terms of TA/DA which have to be paid to the officials, as at times, hearing of Second Appeals is fixed at outstations in Mandi and Dharamshala, etc. In the recent past during 2nd appeal hearings before the Hon'ble State Chief Information Commissioner, department have to face awkward situations in cases

wherein proper, in time, adequate and legible copies of the information have not been supplied to the RTI Applicants/Appellants.

4. **Suo Motu Disclosure Under Section 4 of RTI Act, 2005**:-

Section 4 of the RTI act,2005 casts duty on the Public Authority to Suo-motu disclose all the available information on the departmental web site, internet or put it proactively in the public domain so as to make it readily available to all citizens general public. All the available common Instructions, Notifications, Office Orders, Office Memoranda, and any other instructions received from Government from time to time or any information in which larger public interest is involved should be uploaded on the Department website without any delay, so as to facilitate the common general public as well as officials working under Departments at field level can have an easy access to all such information. Proactive disclosure of the information will per se decrease the volume of RTI applications thereby facilitating common citizens an easy access to information. Section 4(1)(a) of the RTI Act mandates that every public authority shall maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this act and ensure that all records are appropriate to be computerized and connected through the network all over the country so that access to such record is facilitated.

5. **Clarification Regarding Missing/Non-Traceability of Record**:-

Unless proved that record was destroyed as per the prescribed rules of destruction/weeding of the office record, it is deemed that record continues to be held by the public authority. Claim or alibi that file is missing or not traceable has no legality as it is not recognized as an exception by the RTI Act. The practice of saying that the File is Missing has no legal sanctity under the RTI Act, 2005. Also lodging FIR is not the remedy in such cases, as one cannot expect the Police to come to the office and trace the file. According to law, Police does not have any responsibility to trace the missing files, as they will come into picture only when there is theft of the files. It is responsibility of

Dealing Officials/ Deemed PIOs to make necessary efforts to trace the file. Such aforementioned observations, directions and orders have been passed in various cases e.g. Case No. CIC/DS/A/2013/001788 dated 29/08/2014 and CIC/BS/C/2016/000025 dated 20/04/2017 by the Hon'ble Central Information Commission/Commissioner.

6. **Disposal of RTI First Appeals at Field Level by The Deputy Directors Higher Education**:-

It has been observed that in many cases there are serious lapses in disposal of RTI First Appeals at field level by the First Appellate Authorities. Appeal orders are passed in perfunctory manners. It is reminded that the designated First Appellate authorities are quasi-judicial authorities, and therefore, First Appeal Orders to be passed by them should be drafted properly with clarity by reasoned self speaking orders. The disposal of first appeals should be strictly done as per the provisions contained in the RTI Act. Further, proper information as regarding 2nd Appellate Authority should indispensably be provided to RTI appellant by the First Appellate Authority in the draft of the order itself.

7. **Information Exempted form Disclosure Under Section 8 of the RTI Act**:-

Section 8 of the RTI Act, 2005 specifies certain information which is exempt from disclosure under the RTI Act, 2005. **But it is to be borne in mind that it is also specifically provided in Section 8 of RTI Act, 2005 that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.**

Therefore, it is impressed upon all the authorities, officials dealing RTI matters to exercise utmost care, caution and circumspection while dealing RTI matters. It may be ensured that proper information in a time bound manner as per the provisions enunciated and enumerated in the RTI Act, 2005 and in the Himachal Pradesh RTI Rules, 2006 made thereunder is provided to the RTI applicants so that the basic aim and objective of the RTI Act, 2005 i.e. to promote transparency and accountability in the working of every public authority is achieved. Furthermore, all the Deputy Directors Higher Education are directed to ensure that aforementioned instructions are also

complied and followed by all the PIOs/Officers and Officials working in Schools under their administrative control. Needless to say, instructions mentioned herein above, are only indicative, detailed exhaustive provisions, instructions and guidelines are available in the Right to Information Act, 2005 and in the Himachal Pradesh Right to Information Rules, 2006 made thereunder.

Public Authority-cum-Director
Higher Education, Himachal Pradesh,
Shimla-171001.

No. EDN-H(16)B(15)-RTI/2017- RTI Circular. Dated: Shimla -171001 the April, 2018.

Copy for information, above mentioned necessary action and for ensuring the compliance to:

1. All the Branch Officers in the Directorate of Higher Education, Shimla-1.
2. All the Principals of Govt. Degree Colleges in H.P.
3. All the Deputy Directors of Higher Education in Himachal Pradesh.
4. All the Branch Superintendents in the Directorate of Higher Education, Shimla-1.
5. Superintendent IT Cell DHE to upload this on the Department Web Site for information and compliance by all the Concerned.
6. Guard File.

Public Authority-cum-Director
Higher Education, Himachal Pradesh,
Shimla-171001.