POLICY BRIEF

SECTION 38 OF THE RIGHT TO INFORMATION ACT AND INSTITUTIONAL ACCOUNTABILITY IN RTI IMPLEMENTATION

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Focus of the brief

This brief explains the legal and policy significance of Section 38 of the Right to Information Act, No. 12 of 2016. It considers how the provision can strengthen compliance, administrative accountability and public trust when applied consistently, proportionately and in accordance with the design of the Act.

Prepared as a policy discussion document. This brief is not a substitute for the RTI Act, decisions of the Right to Information Commission, applicable disciplinary rules or legal advice where required.

Executive summary

Section 38 of the Right to Information Act, No. 12 of 2016 is a statutory accountability provision. It enables the Right to Information Commission to bring specified forms of wilful non-compliance by Information Officers and Designated Officers to the notice of the appropriate disciplinary authority. The disciplinary authority is then required to inform the Commission of the steps taken within one month.

The provision is significant because it addresses a gap that can arise in any access to information regime. Appeals before the Commission may resolve an individual applicant's grievance, but they do not automatically correct institutional conduct that caused the denial, delay or procedural failure in the first place. Section 38 connects the appeal and oversight function of the Commission with the internal accountability systems of public authorities.

Used correctly, Section 38 can strengthen RTI implementation in Sri Lanka in three ways. First, it can deter deliberate or repeated disregard of statutory duties. Second, it can reinforce the obligation to give reasoned decisions and to process requests in accordance with the Act. Third, it can promote institutional learning by signalling that RTI compliance is not a discretionary administrative courtesy but a legal obligation attached to public authority functions.

At the same time, Section 38 should not be understood as a punishment-first provision. Its wording focuses on wilful conduct and failure without reasonable cause. This distinction is central. The provision should not be used to penalise officers acting in good faith, or officers who face genuine capacity constraints, unclear record systems or institutional limitations beyond their control. Its strength lies in fair, consistent and principled use.

This brief argues that Section 38 should be treated as an important part of the RTI Act's accountability architecture. It should be understood by public authorities, applied by the Commission where legally appropriate, supported by the Ministry responsible for effective implementation of the Act, and reflected in institutional compliance practices.

Central policy position

Section 38 is best understood as an institutional accountability mechanism. It is not merely a disciplinary clause. It is a provision that can improve RTI implementation by making non-compliance visible, referable and subject to administrative consequences where the statutory threshold is met.

1. Policy context: RTI implementation and the need for accountability

The Right to Information Act gives legal effect to the citizen's right of access to information held by public authorities. Its broader purpose is to foster transparency and accountability in public authorities and to support public participation in governance. The effectiveness of this framework depends on practical compliance by public authorities at the point at which citizens request information.

A right of access to information can be weakened in practice even where the law is formally strong. Applications may not be accepted. Requests may remain unanswered. Refusals may be issued without reasons. Appeals may be treated as procedural formalities rather than genuine internal review. Excessive or irregular fees may discourage applicants. Records may not be properly searched, identified or produced. In such circumstances, the legal right exists, but the citizen is required to expend additional time and resources to obtain what the law already entitles them to seek.

The appeal structure under the RTI Act provides important remedies to applicants. However, appeals alone do not necessarily address the institutional behaviour that produced the original failure. A Commission decision may result in information being released in a specific case, but repeated non-compliance by a public authority or officer may continue unless there is an administrative consequence. Section 38 is therefore significant because it links RTI implementation to the internal disciplinary and accountability structures of public authorities.

For public institutions, this has an important implication: RTI compliance cannot be treated as a peripheral task assigned to one officer alone. It is part of lawful public administration. It requires institutional support, record management, cooperation between divisions, and leadership recognition that failure to comply with the Act may have consequences beyond the individual request.

2. Legal character and scope of Section 38

Section 38 is located within the general provisions of the RTI Act, after the provisions relating to the Commission's reporting function and before the offence provisions in Section 39. Its placement is important. It is neither an ordinary appeal provision nor a criminal offence provision. It is a disciplinary referral mechanism that operates through the Commission and the relevant disciplinary authority.

2.1 Conduct by Information Officers covered by Section 38

Section 38 applies where an Information Officer wilfully engages in any of the following forms of conduct:

- refuses to receive an application for information from any citizen;
- refuses a request for information without giving reasons for the refusal;
- stipulates excessive fees in breach of the applicable fee schedule; or
- otherwise fails to process a request in accordance with the provisions of the Act.

These categories are significant because they concern the core entry points of the RTI process. If an application is not accepted, if a request is refused without reasons, if unlawful fees are imposed, or if the request is not processed according to the Act, the citizen's statutory right is obstructed before effective review can occur.

2.2 Conduct by Designated Officers covered by Section 38

Section 38 also applies to Designated Officers where there is wilful failure in the handling of appeals. In particular, it covers situations where a Designated Officer:

- refuses an appeal made under Section 31 on any ground other than a ground specified in Section 5 of the Act; or
- fails, without reasonable cause, to make a decision on an appeal within the time specified under Section 31(3).

This aspect of Section 38 is especially important because the internal appeal stage is not merely administrative repetition. It is the first formal opportunity for a public authority to correct an earlier refusal, delay or procedural failure. If the internal appeal stage is not taken seriously, applicants are pushed unnecessarily towards the Commission, and the public authority loses an opportunity to resolve the matter internally.

2.3 The role of the Commission and the disciplinary authority

Where the statutory criteria are met, Section 38 provides that the Commission shall bring the matter to the notice of the appropriate disciplinary authority. The relevant disciplinary authority must then inform the Commission of the steps taken in respect of the matter within one month.

This structure creates a two-part accountability chain. The Commission identifies and refers conduct that falls within Section 38. The disciplinary authority, which has the administrative power over the officer or institution concerned, is responsible for taking appropriate steps and reporting back to the Commission. The Commission does not replace the disciplinary authority; rather, it activates the disciplinary authority's responsibility in relation to RTI non-compliance.

3. Section 38 in the architecture of the RTI Act

Section 38 should be read together with related provisions of the RTI Act. This is necessary to understand its policy function and avoid treating it as an isolated disciplinary clause.

Provision	Relevant legal function	Connection to Section 38
Section 2	Assigns responsibility for effective implementation of the Act to the Ministry assigned the subject of mass media.	Places Section 38 within a broader implementation responsibility, not only within individual appeals.
Section 3	Recognises the citizen's right of access to information in the possession, custody or control of a public authority.	Section 38 protects the practical enforceability of this right where officers wilfully obstruct or fail to process requests.
Section 23	Requires public authorities to appoint Information Officers and Designated Officers and requires Information Officers to deal with requests and assist citizens.	Section 38 gives consequences to wilful failure at the Information Officer stage.
Section 31	Provides for appeal to the Designated Officer and requires decisions within the statutory period with reasons.	Section 38 gives consequences to wilful failure at the internal appeal stage.
Section 32	Provides for appeal to the Commission and places the burden on the public authority to show compliance with the Act.	Commission proceedings may reveal conduct that triggers Section 38.
Section 37	Requires the Commission to report on its activities.	Section 38 referrals and patterns may inform institutional learning and public reporting.
Section 39	Creates offences for more serious conduct, including obstruction, false information, destruction or concealment, failure to comply with Commission decisions and related acts.	Section 38 is distinct from criminal offences. It operates through disciplinary referral and should be understood as an administrative accountability mechanism.

4. Policy implications of Section 38

4.1 It recognises RTI compliance as a public duty

Section 38 confirms that the handling of RTI requests is not an optional administrative service. It is a statutory function. Information Officers and Designated Officers carry legal responsibilities under the Act, and wilful failure to discharge those responsibilities may be referred to the disciplinary authority.

4.2 It strengthens the requirement to give reasons

A refusal of information without reasons is expressly identified in Section 38. This is significant because reasons are central to lawful decision-making. Reasons allow applicants to understand why access has been denied, allow appellate bodies to review the decision, and require public authorities to apply the Act rather than rely on general or unsupported refusal.

4.3 It protects the integrity of the appeal process

The Designated Officer stage is intended to be a meaningful internal appeal. Where appeals are refused on grounds outside Section 5, or where appeal decisions are not issued within the statutory time without reasonable cause, the internal appeal process becomes ineffective. Section 38 reinforces the importance of this stage and encourages public authorities to resolve matters before they reach the Commission.

4.4 It promotes institutional responsibility

Although Section 38 refers to the conduct of Information Officers and Designated Officers, the policy implication is institutional. Officers often depend on subject divisions, records units, senior management and administrative support. A Section 38 concern may therefore indicate not only individual conduct, but also weaknesses in institutional systems that require correction.

4.5 It supports public trust in the RTI regime

Citizens are more likely to use the RTI Act when they believe that non-compliance has consequences. A provision such as Section 38 helps demonstrate that the RTI framework is capable of responding not only to individual denials of information, but also to conduct that undermines the functioning of the system as a whole.

5. Interpreting Section 38: avoiding both underuse and misuse

The effectiveness of Section 38 depends on balanced interpretation. If it is not used at all, or is used only in exceptional cases despite clear evidence of wilful non-compliance, it risks becoming a dormant provision. Public authorities may then treat delays, unexplained refusals and procedural failures as low-consequence matters. This would weaken the deterrent and corrective purpose of the provision.

At the same time, Section 38 should not be used mechanically for every delay, mistake or adverse decision. The statutory language is important. In relation to Information Officers, the provision refers to conduct done wilfully. In relation to Designated Officers, it also refers to failure without reasonable cause. These terms indicate that the provision is concerned with culpable non-compliance, not every administrative shortcoming.

A principled approach should distinguish between good-faith error, capacity limitation, systemic institutional weakness, and deliberate or unreasonable non-compliance. Good-faith error may require training or clarification. Capacity limitations may require institutional support. Systemic weakness may require management action. Wilful or unreasonable non-compliance may require disciplinary consideration under Section 38.

This distinction is important for public institutions. A fair Section 38 practice should not create fear among officers who are attempting to comply with the Act. Rather, it should encourage lawful, timely and reasoned decision-making, while ensuring that deliberate obstruction or disregard of duties is not normalised.

6. Risks addressed by effective use of Section 38

Section 38 has policy value because it addresses risks that can weaken the RTI regime even where the statutory framework remains intact. These include ignored or delayed requests, unsupported refusals, ineffective internal appeals, unnecessary escalation to the Commission, and the gradual normalisation of non-compliance within public authorities.

The provision responds to these risks by making serious or wilful failures visible to the Commission and referable to the authority that has disciplinary competence over the officer or institution concerned. In doing so, it reinforces the idea that RTI implementation is not only a matter of resolving individual applications, but also a matter of maintaining lawful and accountable public administration.

7. Recommendations

The following recommendations are framed at policy level. They are intended to support a shared understanding of Section 38 among public authorities, the Commission and the Ministry assigned responsibility for effective implementation of the RTI Act.

Recommendation 1: Recognise Section 38 as part of the RTI accountability framework

Public authorities and oversight institutions should recognise Section 38 as a central part of the Act’s accountability design. It should not be treated as an exceptional or marginal provision. Its existence indicates that Parliament intended wilful non-compliance with RTI duties to carry administrative consequences.

Recommendation 2: Clarify the meaning and threshold of wilful non-compliance

The Commission's approach to Section 38 should be guided by a clear understanding of wilfulness and absence of reasonable cause. This would help distinguish between deliberate non-compliance, repeated disregard of duties, unsupported refusal and genuine institutional constraints. Such clarity would support consistency and fairness.

Recommendation 3: Strengthen the role of reasoned decision-making

Refusal without reasons is specifically captured by Section 38. Public authorities should therefore treat reason-giving as a core RTI obligation. Reasons should not be formulaic. They should identify the legal basis for refusal, explain the application of the relevant exemption and, where applicable, demonstrate consideration of the public interest.

Recommendation 4: Treat internal appeals as a substantive safeguard

Designated Officers should approach appeals as an opportunity to correct errors and ensure compliance before a matter reaches the Commission. A weak internal appeal system increases the burden on applicants and the Commission, and undermines the institutional purpose of the appeal stage.

Recommendation 5: Use Section 38 proportionately and fairly

Section 38 should be applied in a manner that is firm but proportionate. Officers should not be exposed to disciplinary referral for good-faith errors or circumstances beyond their control. However, deliberate refusal, repeated failure, unreasonable delay or disregard of clear statutory duties should not be excused as ordinary administrative difficulty.

Recommendation 6: Link Section 38 to institutional improvement

A Section 38 referral should be understood not only as an individual disciplinary matter but also as a signal of possible institutional weakness. Public authorities should use such instances to improve record management, internal coordination, supervision of RTI functions and officer training.

Recommendation 7: Reflect Section 38 in public reporting and policy learning

At an aggregated level, information on Section 38 referrals and responses can help identify patterns in RTI implementation. Such analysis would support evidence-based policy discussion without compromising the fairness of individual disciplinary processes.

Recommendation 8: Strengthen Ministry-Commission coordination on effective implementation

Section 2 assigns responsibility for effective implementation of the Act to the Ministry assigned the subject of mass media. Section 38 can be strengthened where the Ministry and Commission share a common policy understanding of how public authorities should respond to disciplinary referrals and recurring compliance failures.

8. Expected impact on RTI implementation

If Section 38 is understood and applied correctly, it can contribute to a more credible RTI system. Its impact is not limited to disciplinary consequences – its broader value is preventive, corrective and institutional.

Preventively, it can encourage Information Officers and Designated Officers to comply with statutory duties at the earliest stage. Correctively, it can ensure that serious or wilful failures do not end with the release of information in one case, but are brought to the attention of the authority responsible for administrative discipline. Institutionally, it can help public authorities identify weaknesses in records, decision-making, appeal handling and management oversight.

For the Commission, Section 38 strengthens the ability to address patterns of non-compliance revealed through appeals. For the Ministry, it provides a statutory basis to support effective implementation across public authorities. For public institutions, it clarifies that RTI compliance is an institutional responsibility that must be supervised, supported and taken seriously.

9. Conclusion

Section 38 is one of the RTI Act's most important accountability provisions. It gives practical effect to the idea that the right to information cannot depend solely on the willingness of individual officers or institutions to comply. Where wilful non-compliance occurs, the Act provides a mechanism for the Commission to bring the matter before the appropriate disciplinary authority, and for that authority to report back within one month.

The provision should be understood in a balanced manner. It should not be allowed to remain dormant, because underuse weakens the Act's accountability function. It should also not be applied indiscriminately, because misuse could discourage officers acting in good faith. Its proper role is to address wilful or unreasonable non-compliance and to strengthen institutional responsibility for RTI implementation.

A well-understood and fairly applied Section 38 can help shift RTI implementation from a reactive, appeal-driven model towards a culture of lawful, reasoned and accountable public administration. This would improve the effectiveness of the RTI Act and strengthen public confidence in the transparency obligations of the State.

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